

# Submission to Inquiry into Youth Justice and Other Legislation Amendment Bill 2021

Legal Affairs and Safety Committee

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# The Australian Association of Social Workers

The Australian Association of Social Workers (AASW) is the professional body representing more than 12,000 social workers throughout Australia. We set the benchmark for professional education and practice in social work, and advocate on matters of human rights, discrimination, and matters that influence people's quality of life.

## The social work profession

Social work is a tertiary qualified profession recognised internationally that pursues social justice and human rights. Social workers aim to enhance the quality of life of every member of society and empower them to develop their full potential. Principles of social justice, human rights, collective responsibility and respect for diversity are central to the profession, and are underpinned by theories of social work, social sciences, humanities and Indigenous knowledges. Professional social workers consider the relationship between biological, psychological, social and cultural factors and how they influence a person's health, wellbeing and development. Social workers work with individuals, families, groups and communities. They maintain a dual focus on improving human wellbeing; and identifying and addressing any external issues (known as systemic or structural issues) that detract from wellbeing, such as inequality, injustice and discrimination.

## Our submission

In line with our Code of Ethics, this AASW submission is underpinned by a commitment to the principles and aspirations of the United Nations Universal Declaration of Human Rights (1948) and all relevant human rights instruments. A rights-based approach to understanding the current and critical issues concerning the Youth Justice and Other Legislation Amendment Bill 2021 fails to uphold Australia's obligations as a signatory to key international conventions and protocols, such as the United Nations Convention on the Rights of the Child. This also extends to Queensland's rights-informed legalisation including the *Queensland's Human Rights Act 2019* (QLD) (the HR Act). These

instruments enshrine the right of all people to be treated with humanity, dignity, and respect. Importantly, these rights also apply to those deprived of their liberty. Recognising that a significant proportion of those residing in youth justice centres are Aboriginal and/or Torres Strait Islander young people and children, and in line with the United Nations Convention on the Rights of the Child and the Declaration on the Rights of Indigenous Peoples, special protection should be granted to these children and young people with regard to both their age and their inherent vulnerability. The AASW is deeply concerned about the psychological harm inflicted upon children and young people when they have been forced through the criminal legal processes at such a formative age. Violent actions or behaviours in young children are often directly linked to experiences of trauma, neglect, and harm or unaddressed mental or physical health problems. Rather than criminalising trauma, it is the responsibility of our governments to provide each child with the services needed to address the underlying causes of their behaviours.

Based on our commitment to the rights of children and young people, the AASW **opposes** the Youth Justice and Other Legislation Amendment Bill 2021 and **it is our overall recommendation that the Queensland Government implements all recommendations from the 2018 Atkinson Youth Justice Report to divert young people from the criminal justice system**. We note the short timeframe provided for submissions to the Bill, which impacts the level of consultation available. Our submission will comment on the following amendments suggested by the Bill:

- Insertion of new s 52AA: Court may impose tracking device conditions
- Amendment of s 48AA (Matters to be considered in making particular decisions about release and bail)
- Amendment of *Police Powers and Responsibilities Act 2000* (QLD)

## Insertion of new s 52AA: Court may impose tracking device condition

### Electronic monitoring devices as a condition of bail

The AASW is concerned about the stigmatising effect of imposing a tracking device as a condition of bail on vulnerable communities, in particular Aboriginal and/or Torres Strait Islander young people. AASW members across Queensland work with vulnerable young people and their families and are aware that intergenerational trauma, intergenerational poverty, mental health conditions, and the experiences in the out-of-home-care system often contributes to offending behaviours. Therefore, imposing a tracking device as a bail condition does not address the root causes of offending. Instead, this can contribute to the further traumatisation, marginalisation and disadvantage of children and young people as one consequence could be negative judgement and public shaming from the general population around young people wearing these, in particular in smaller regional and rural communities. Research has found that ankle monitors, and the like are stigmatising and can have negative effects on the wearers' emotional wellbeing and make the

community prejudiced towards those individuals.<sup>1</sup> Therefore, the AASW is concerned of that it will more lead to more victimisation on young people who have already been traumatised, marginalised and disadvantaged by the criminal justice system.

We are also concerned about the impact on Aboriginal and/or Torres Strait Islander young people in Queensland. The use of electronic monitors is rooted in carceral surveillance, which is frequently discriminatory towards minority communities. Aboriginal and/or Torres Strait Islander young people are significantly over-represented in the youth justice system and using monitoring devices could result in further stigmatisation and over-incarceration of this community. Therefore, monitoring devices are counter-productive and in contravention to this recommendation of the 2018 Atkinson Youth Justice Report to decrease the representation of Aboriginal and/or Torres Strait Islander people in the criminal justice system.

The AASW also suggests that indeed the tracking device can promote re-offending, instead of crime prevention. AASW members told us that this might prevent young people who are wearing electronic monitors from engaging in meaningful activities such as participating in school and vocational training. Members have also identified that for some young people wearing a monitoring device can be seen by some as a 'right of passage' where it becomes something to aim for and which indicates adulthood. Therefore, it can have unintended consequence of promoting re-offending, which deviates from the government's intent.

In terms of the implementation of this Bill, the AASW highlights that that the Bill essentially contradicts the the HR Act and the Youth Justice Strategy Action Plan 2019-2021 and has practical implications regarding implementation that do not appear to have been considered.

First of all, there are privacy issues associated with ankle and electronic monitors, due to the data collected. There is evidence in other jurisdictions that digital monitor wearers suffer from financial strain and homelessness because of the costs associated with the device.

Secondly, there is a lack of clarity with regards to the age of the child. While the Bill states that a child is at least 16 years old, it does not explicitly suggest whether this is the age of first offence or the age of court attendance.

While we acknowledge the intent of the Queensland Government is to prevent re-offending behaviours, it is our concern that the new proposed legislation will further limit the right to privacy and protection in their best interests (s26(2) HR Act), equality and non-discrimination in s15 of the HR Act.

Rather than introducing tracking devices into the youth justice system, we refer the committee to the 2018 Atkinson Youth Justice Report where it recommends a focus on school attendance and

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<sup>1</sup> Kilgour, L. (2020). The ethics of aesthetics: Stigma, information, and the politics of electronic ankle monitor design. *The Information Society*, 36(3), 131-146.

vocational training, given that disengagement from school and vocational training is a big risk factor for recidivism. What is needed and is strongly recommended by the Atkinson report is a focus on prevention and early intervention in line with the four pillars model advocated, and indeed accepted, by the Queensland Government: intervene early, keep children out of court, keep children out of custody and reduce offending. The report lists a series of changes required to reduce recidivism, including:

- coordinated, multi-government agency approaches to high-risk children and families including sharing information, co-location, coordinated case management and shared goals;
- greater specialisation in the children's criminal jurisdiction, and
- a trial of 'Protected Admissions' involving a wide range of stakeholders but primarily Youth Justice within the Department of Child Safety, Youth and Women (DCSYW), the Queensland Police Service (QPS), the Crime and Corruption Commission (CCC), the Department of Justice and Attorney-General (DJAG), Legal Aid Queensland (LAQ) and the Aboriginal and Torres Strait Islander Legal Service (ATSILS), the intent being for engagement in dialogue to enable a police diversion rather than prosecution.

### **Willingness of a parent or another person to support a young person with bail conditions**

The AASW is very concerned that this proposed amendment may result in further deepening a young person's involvement with the youth justice system if a parent or another person is unable to support a young person with bail conditions. Through working with vulnerable families, our members advise that there are many practical, financial, and social reasons why a parent or other person may not be able to support a young person with bail conditions. This is particularly relevant for Aboriginal and Torres Strait Islander children and families who live in rural and remote communities and have limited access to culturally safe services. Often a young person's family are not present in the town or city where the person is being charged and so are not there to provide support or reassurance.

Our members working in regional Queensland communities have provided examples about the challenges for parents or families to support young people. For example, where young people living with intellectual disability and with limited family support struggle to show cause because of factors outside of their control, such as a lack of suitable or any services to address needs; inability to inform solicitor of contributing factors; limited familial support and presence at court. This is not the case for young people from Brisbane, who are usually relatively supported by family and community and be able to attend court hearings. As there are greater services to address broader needs, parents may also be more articulate, and be more involved in a court. By adding such conditions, the AASW is concerned of the risk of furthering structural disadvantage and racism, which contradicts attempts to close the gap for Aboriginal and/or Torres Strait Islander children and families.

Therefore, the AASW refers the Committee to the following recommendations from the 2018 Atkinson Youth Justice Report:

- coordinated, multi-government agency approaches to high-risk children and families including sharing information, co-location, coordinated case management and shared goals,
- services delivered by government and non-government agencies being available at times of need (e.g., night-time and weekends),
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- services delivered by government and non-government agencies being available at times of need (e.g., night-time and weekends).

## **Amendment of s 48AA (Matters to be considered in making particular decisions about release and bail)**

The AASW is concerned the proposed amendments of putting young people in a ‘show cause’ position means that the onus is upon them to argue bail merit, as opposed to the current position where all young people present as ‘favourable’ to receive bail and the Queensland Police Service must argue otherwise, against a risk assessment framework outlined in the Bail section of *Youth Justice Act 1992* (QLD). For example, both the proposed S48AF and S48AA(d) provide that the child has to show cause why their detention in custody is not justified. The issue with this is that in any case, a successful bail application relies upon willingness, ability, capacity, and access to suitable resources. Our members’ experiences have been that bail breach has never been deemed an aggravating factor, or offence. Young people, for all intents and purposes, are regarded dependent and should not be held to the same standard as an adult with regards to ability to understand and comply with orders. This proposed amendment would have inadvertent trickle-down effects, such as expediting the criminalisation and incarceration of young people, which is a proponent to recidivist offences and likelihood of offence escalation.

The proposed amendment goes against 3<sup>rd</sup> pillar of the 2018 Atkinson Youth Justice Report ‘keep children out of custody’ and further undermines the human rights of children.<sup>2</sup> The Atkinson Report recommended specific measurable goals and targets toward “reducing the number of children on remand in detention”. By creating further barriers for children to be granted a bail condition, those in the criminal justice system who may not have support from their family and community for a range of reasons will remain in custody. In addition, the proposed S48AF will remove the right to not be automatically detained in custody as it sets a general rule in favour of detention and limits the right to be presumed innocent under the S29(6) and S32(1) of the HR Act. This will result in the increased number of children in custody. Considering youth detention centres across Queensland remain overcrowded, we are aware that young people have continued to be housed in the watch house. For Aboriginal and/or Torres Strait Islander young people, this is even more concerning as they are removed from country and their supports and the risks of suicide and death increase. Instead of tightening the existing bail conditions for young people, the AASW recommends the

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<sup>2</sup> <https://www.youthjustice.qld.gov.au/resources/youthjustice/reform/youth-justice-report.pdf>

Queensland Government implement the following key recommendations that the Queensland Government should adopt immediately:<sup>3</sup>

- increased options for police to divert child offenders from prosecution,
- increased options for courts to divert children from detention centres,
- increased options for children to remain in the community rather than be remanded in custody.

### **Amendment of *Police Powers and Responsibilities Act 2000 (QLD)***

The AASW asserts that the proposed amendments to the *Police Act 2000* further limits the rights of young people while providing police with significant power without proper safeguarding mechanisms. For example, it is concerning that senior police officers do not have any criteria that they must satisfy before giving authorisation to a police officer to use the proposed handheld scanner. The proposed S39E allows that a police officer can receive authorisation to use hand-held metal detectors on a young person for a particular prescribed area, and while it is recognised that the government has identified particular high-risk areas, this removes the rights of children and young people generally. Furthermore, Section 39D provides that if QPS detects metal on a young person, they will be allowed to require the person to stop and submit or resubmit to the hand-held scanner (1) and use least invasive method practicable (2) and may detain the person for so long as reasonably necessary to exercise the power (3). Without an appropriate framework, training and support for this level of power, the AASW argues that this contravenes the rights of people, and in particular, vulnerable young people, resulting in the vilification of children and young people and the invasion of their privacy. It creates a narrative that children and young people on the streets are dangerous and must be treated with suspicion which will further marginalise them, creating distrust and disconnection from society.

### **Conclusion**

In summary, the AASW strongly opposes Youth Justice and Other Legislation Amendment Bill 2021. The proposed legislative changes contradict the 2018 Atkinson Report on Youth Justice which the government committed to. Systemic level change takes time and resources and a cultural shift. It is our position that continuing to focus on effectively implementing the recommendations from the 2018 Atkinson Youth Justice Report, and appropriately investing in the original recommendations is more appropriate. While we recognise that there have been tragic deaths and incidents caused by a few, we however need a considered approach that focuses on the underlying issues if we are to achieve meaningful change. A punitive approach that punishes all young people is not in the best interest of young people, their families, and the public.

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<sup>3</sup> <https://www.youthjustice.qld.gov.au/resources/youthjustice/reform/gov-response-atkinson-report.docx>



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