Speech By

Hon. Mark Ryan

MEMBER FOR MORAYFIELD

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STRENGTHENING COMMUNITY SAFETY BILL

Introduction

Hon. MT RYAN (Morayfield—ALP) (Minister for Police and Corrective Services and Minister for Fire and Emergency Services) (11.45 am): I present a bill for an act to amend the Bail Act 1980, the Criminal Code, the Police Powers and Responsibilities Act 2000 and the Youth Justice Act 1992 for particular purposes. I table the bill, the explanatory notes and a statement of compatibility with human rights. I also table a statement of exceptional circumstances. I nominate the Economics and Governance Committee to consider the bill.

Tabled paper: Strengthening Community Safety Bill 2023 164.

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The statement of exceptional circumstances, which I just tabled, outlines the reasons for the provisions in the bill that override the Human Rights Act 2021. I refer members to the statement of compatibility that details the incompatibility of these measures with the Human Rights Act 2021.

The Palaszczuk government understands the impact that youth crime is having on our community. This is why we are taking new, tougher action to further protect the community and tackle the complex causes of youth crime. The government has once again moved decisively in response to serious offending that is occurring in our community.

On 29 December 2022, we announced further strategies to take new action to address the harmful behaviours associated with offences like unlawful use of a motor vehicle by young offenders. Members of the community have called for a defining change to be made to the way in which the government responds to serious repeat offending, particularly by those young offenders.

Overall numbers of unique young offenders are declining and the majority of young people who have contact with the youth justice system do not reoffend after the first contact. However, recent events amplified community concerns about the strength and adequacy of responses to this small cohort of serious repeat young offenders. This bill contributes to addressing those concerns, and coupled with a combined investment package of more than $332 million focused on prevention, rehabilitation and support measures, this bill will provide a stronger foundation from which to make that change. Additional funding of $9 million will also enhance assistance for victims of crime, including expediting financial assistance and improving response to victims of property crime where violence or a threat of violence has occurred.

While this bill contains significant reforms to strengthen and build on the operation of some of Queensland's current youth justice and criminal laws, the significant additional investment package of more than $332 million ensures that programs to divert children away from crime will continue, building on the work already done over recent years and continuing to reduce the overall number of unique

young offenders. More than $88 million will be available for grants programs and programs delivered by non-government organisations, and $66 million will be provided over two years for priority police initiatives including extreme high-visibility patrols, police online and engagement teams with intelligence capability, and a specialist youth crime rapid response squad. The greatest impact of these legislative reforms will be on the small cohort of serious repeat young offenders who are responsible for a large proportion of youth crime and require intensive effort to change the trajectory of their offending.

The opposition has previously called for the reintroduction of former section 59A of the Youth Justice Act, which was introduced by the former LNP government in 2014. This is not what the government is proposing in this bill. The reality is the LNP never legislated for a breach of bail offence for young offenders when they were last in government. What the LNP introduced in the Youth Justice and Other Legislation Amendment Bill 2014 was not 'breach of bail'. The offence they introduced, at section 59A of their Youth Justice Act, was called 'finding of guilt while on bail'. In fact, the explanatory notes for the Youth Justice and Other Legislation Amendment Bill 2014 says—

The Bill inserts new division 2 into part 5 of the Youth Justice Act 1992 making it an offence for a child to commit a further offence while on bail. This new offence will be taken to have been committed where a finding of guilt is made against the young person in relation to that further offence.

There is no reference to breach of bail—not in the explanatory notes or in the bill itself. The fact is the former section 59A of the Youth Justice Act did not allow a young offender to be punished for breaching a condition of bail following the decision by the Queensland Childrens Court. It was a fake offence and it did not work.

The evidence is clear: that offence, the LNP's 'finding of guilt while on bail', did not work. The vast majority of offenders convicted of a 'finding of guilt while on bail' did not spend any additional time in detention in connection with the LNP's offence. Let's look at how the LNP's offence operated in practice. A young offender on bail would need to be charged and later convicted of a further criminal offence. Only then, when the young offender was convicted of that further offence, would the offender be deemed to have committed the offence of 'finding of guilt while on bail'. It sounds like a nonsense because it was a nonsense. It was ineffective, inefficient and poorly drafted. In fact, as pointed out by the Childrens Court, the explanatory notes for the LNP's bill even referenced the wrong act when referring to the penalty applied to adults for breaching a condition of bail in the Bail Act. Is it any wonder when the member for Kawana was responsible for the introduction of that legislation?

This government has been very clear: anything we do must be evidence based and stand up to the scrutiny of the courts. That is why this bill seeks to amend section 29 of the Bail Act 1980 to expand the application of 'offence to breach conditions of bail' to young offenders. Unlike the LNP's failed law, the offence at section 29 of the Bail Act has worked effectively in respect of adults for more than 20 years, since it was clearly legislated by the Beattie Labor government in 2000. This real-deal breach-of-bail offence for young offenders will mean that an offender who breaches any conditions of their bail undertaking may be liable to this offence and the penalty that accompanies it. This is what the community and the government expect.

In taking this legislative step, the government is also providing additional resources to the Queensland Police Service to enhance their bail compliance activities across the state. The government acknowledges that removing the prohibition on the application of this offence to children is not compatible with human rights. The bill proposes to override the operation of the Human Rights Act in relation to this provision. The decision to override the operation of the Human Rights Act is not taken lightly but is considered necessary in order to address the acute problem presented by a small cohort of serious repeat offenders who engage in persistent and high-risk offending.

As announced on 29 December 2022, the bill will amend the Criminal Code to increase the maximum penalty for the unlawful use or possession of motor vehicles, aircraft or vessels to 10 years imprisonment. It will also introduce a new circumstance of aggravation, with a maximum penalty of 12 years imprisonment, for the offence of unlawful use or possession of motor vehicles, aircraft or vehicles where the offender has published material advertising their involvement in or of the offending on social media and introduce new circumstances of aggravation, with a maximum penalty of 14 years imprisonment, for the offence of unlawful use or possession of motor vehicles, aircraft or vessels where the offending occurs at night or where the offender uses or threatens violence, is or pretends to be armed, is in company, or damages or threatens to damage any property. The maximum penalty for unlawful use or possession of motor vehicles, aircraft or vessels where the offender uses or threatens to use the motor vehicle, aircraft or vessel for the purpose of facilitating the commission of an indictable offence under section 408A(1A) of the code will be increased from 10 to 12 years.

We said that we would increase these maximums and target these behaviours because these offences are serious. They are dangerous, and the community rightly denounces those who do these things. The risk to the community is real and the community—and this government—will not tolerate it.

The government acknowledges that these amendments may also limit section 29(1) and 26(2) of the Human Rights Act—the right to liberty and the right of the best interest of the child—however, these limitations are outweighed by the need to appropriately reflect the seriousness of the unlawful use of a motor vehicle offence.

In 2021 the government introduced amendments to the Youth Justice Act 1992 to establish a presumption against bail, or show cause provision, for young people who are charged with prescribed indictable offences while on bail. Prescribed indictable offences include serious offences which attract a life sentence or maximum imprisonment of 14 years if committed by an adult; for example, grievous bodily harm, robbery or burglary. They include specified offences such as assault occasioning bodily harm, wounding and the unlawful use of motor vehicle offences in certain circumstances.

Under these provisions, the court or police officer must refuse to release a young person from custody unless the young person can show why their release is justified. The introduction of these measures had a significant and immediate impact on the number of young people remanded in custody. The provisions commenced on 30 April 2021 and the average number of children in custody the following month rose by over 30 to be 70 higher than the same month the previous year. By September 2021 they were up by another 20—101 more than the same month the previous year.

The bill amends the definition of 'prescribed indictable offence' to provide that the presumption against bail applies to being a passenger in a vehicle the subject of an unlawful use offence and also to the offence of entering a premises with the intent to commit an indictable offence. This will ensure presumption against bail provisions stay current, reflect emerging patterns of offending behaviour and continue to protect the community.

To further facilitate greater operation of the current electronic monitoring device provisions targeting serious repeat youth offenders, amendments will be made to extend the duration of the trial to 2025. The eligibility criteria will also be extended to children over the age of 15 years. Section 52AA of the Youth Justice Act 1992 provides that a court may impose an electronic monitoring device as a condition of bail for a young person in certain circumstances. These powers have facilitated a trial of electronic monitoring devices in the Townsville, north Brisbane, Moreton, Logan and Gold Coast areas. A review of the trial has been completed, and I understand that the report was published this morning. The review found that, while there are some benefits associated with electronic monitoring, a larger sample size is needed to determine its effectiveness in deterring offending behaviour, nor can any changes to offending be attributed to engagement with the trial. A larger sample size is required. To establish a more robust evidence base, the bill amends section 52AA to extend the sunset clause to 30 April 2025 and, as I said, expands the eligibility criteria to include young people aged 15 and over.

I announce today that the government will expand the trial sites to include Cairns, Toowoomba and Mount Isa in the near future. Additionally, and subject to further detailed work occurring on the resourcing of the extension of the trial, we are proposing to expand the scheme to include electronic monitoring on sentenced young offenders in the community as a tool to assist with their supervision.

This bill also focuses on building on strengthening the current sentencing framework in the Youth Justice Act 1992. Amendments in this regard include making it clear that when sentencing a child a court must take into account their relevant bail history. It is intended that those serious repeat youth offenders who display unacceptable behaviour in not complying with bail and who pose a risk to community safety are a less viable option for community-based sentences.

The bill will introduce a new and separate sentencing scheme for serious repeat youth offenders. For children declared to be serious repeat offenders, the courts will be required to ensure community safety is the paramount consideration during sentencing. A declaration will be available upon application by the prosecution where a child has been previously sentenced to detention for a prescribed indictable offence. The child can then be declared a serious repeat offender if the court is satisfied that there is a high probability that the child would commit a further prescribed indictable offence. As a result, a declared serious repeat young offender will be subject to specific sentencing considerations that focus primarily on protecting community safety and will enable the application of longer periods of detention. If the child subsequently offends, the declaration may have effect on a sentencing court of like or higher jurisdiction for a relevant period of 12 months.

This new provision strengthens the sentencing framework for young offenders by creating the ability of a sentencing court to declare a child a serious repeat offender in certain circumstances to ensure considerations such as community safety are paramount during sentencing and that serious repeat offenders are held in detention on sentence for longer than would normally be the case. This will mean that, where appropriate, youth offenders will have the opportunity to complete the necessary rehabilitation programs identified in any pre-sentence report. The other sentencing factors in the Youth Justice Act will still be relevant but will not be primary considerations.

The government acknowledges that new sections 150A and 150B of the Youth Justice Act are incompatible with human rights. The bill therefore proposes to override the operation of the Human Rights Act in relation to these provisions. This decision to override the operation of the Human Rights Act is not taken lightly but is considered necessary in order to address the acute problem presented by a small cohort of serious repeat offenders who engage in persistent and high-risk offending. I have tabled before parliament today a statement of exceptional circumstances that outline the reasoning for this override provision and refer the parliament to this statement of compatibility that details the incompatibility of this measure and others that I will talk to with the Human Rights Act.

Amendments will also strengthen conditional release orders under the Youth Justice Act by strictly mandating that if a child breaches a conditional release order for a prescribed indictable offence then they must serve the suspended term of their detention, unless there are special circumstances. The maximum duration of a conditional release order will also double to six months. This will allow young people even more time to complete the intensive programs they need to address the causes of their offending.

Strengthening the current youth bail framework in the Youth Justice Act and creating a new offence of breach of bail for young offenders will provide police the power to consider the welfare of the community as well as the child when making decisions about how to deal with a child who is breaching their bail conditions. This includes amendments that expressly remove the requirement for police officers to consider alternatives to arrest if they reasonably suspect a child on bail for a prescribed indictable offence or certain domestic violence offences is likely to contravene bail or is contravening bail.

With the bill increasing penalties and strengthening the youth bail and sentence frameworks, this will likely increase the number of children held on remand and in detention. To assist detention centres to accommodate the anticipated increase, the bill enables the transfer of certain 18-year-old sentenced or remanded detainees to adult facilities. Although this amendment does enliven some human rights issues, this will be appropriately dealt with as part of ongoing considerations. Specifically, the bill amends section 276B of the Youth Justice Act to provide that sentenced persons aged 18 years or older are liable to be transferred if they have a remaining period of detention of two months instead of the current six months in the act. The bill will also provide that the initial application for a delay to a transfer date will be made to the chief executive instead of the Childrens Court. The chief executive making this decision at first instance will be more efficient than requiring an application to the Childrens Court.

The Youth Justice Act 1992 does not currently contain provisions for the transfer of remanded young people into adult custody. This bill will provide that a person over 18 who enters custody on remand for a child offence goes to an adult facility unless the remanding court orders otherwise and detention centre remandees over 18 years can be transferred to adult correctional facilities. The latter scheme will also apply to remandees aged at least 17 years and 10 months who have at least two months until their next court date or no next scheduled court date. The bill ensures procedural fairness for these amendments by providing an opportunity for the young person to obtain legal representation and comment on the proposed transfer. The chief executive's decision is reviewable by the Childrens Court.

While the bill takes new action to strengthen responses to serious offending, the importance of also building on prevention and early intervention to achieve better outcomes for children engaged in the youth justice system and break the cycle of offending is recognised. The bill introduces amendments to ensure the continuation of, and commitment of the government to, multiagency collaborative panels, also known as MACPs. MACPs have existed since 2021 to ensure a collaborative response to the needs of young offenders through a multiagency and multidisciplinary approach. They have proved effective in bringing together relevant government agencies and non-government service providers to ensure timely and coordinated assessments of the needs of serious repeat offenders and responses to those needs. This includes providing access to mental health programs, drug and alcohol programs, enrolment into education and connecting children to culture and healthcare providers.

The bill establishes MACPs in legislation in a way similar to the establishment of the suspected child abuse and neglect system under the Child Protection Act 1999. The bill prescribes the MACP system's purpose, membership and the responsibilities of core members. Finally, it is important to note that the Senior Officers Reference Group of the Youth Crime Taskforce will provide oversight of the implementation of the proposed reforms and will report to the cabinet subcommittee on progress.

This bill strengthens Queensland's response to serious offending, particularly unlawful use of a motor vehicle and youth offending specifically, and increases focus on supporting and improving the protection of the community. It provides courts and police officers strengthened tools to respond to this unacceptable offending which poses a significant risk of harm to both the community and offenders.

The bill will be accompanied by additional funding for continued and expanded youth justice related programs across multiple communities in Queensland. Priority police initiatives will receive an additional injection of funds over two years to further support this response to serious youth offending.

This bill targets serious repeat offenders, tackles the causes of youth crime and also continues our record of investing in community safety. The government has listened to the community, to members of parliament and to experts. Whilst not wanting to single anyone out, I want to particularly acknowledge the thoughtful and constant advocacy of the member for Thuringowa and his Townsville colleagues, the member for Cairns, the member for Bancroft, the member for Greenslopes, the member for Maryborough and his Wide Bay colleagues, the member for Capalaba and the member for Rockhampton who have been very diligent and very firm in their advocacy. I commend the bill to the House.

First Reading

Hon. MT RYAN (Morayfield—ALP) (Minister for Police and Corrective Services and Minister for Fire and Emergency Services) (12.07 pm): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Referral to Economics and Governance Committee

Mr DEPUTY SPEAKER (Mr Kelly): Order! In accordance with standing order 131, the bill is now referred to the Economics and Governance Committee.

Declared Urgent

Hon. MT RYAN (Morayfield—ALP) (Minister for Police and Corrective Services and Minister for Fire and Emergency Services) (12.08 pm), by leave, without notice: I move—

That, under the provisions of standing order 137, the Strengthening Community Safety Bill be declared an urgent bill and the Economics and Governance Committee report to the House on the bill by Friday, 10 March 2023.

Question put—That the motion be agreed to.

Motion agreed to.