Parliamentary Committees



Strengthening Community Safety Bill 2023

Report No. 41, 57th Parliament

Economics and Governance Committee

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Economics and Governance Committee

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All web address references are current at the time of publishing.

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Chair's foreword

This report presents a summary of the Economics and Governance Committee's examination of the Strengthening Community Safety Bill 2023.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, the institution of Parliament and compatibility with human rights in accordance with the *Human Rights Act 2019*.

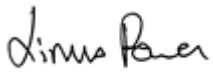
The Bill seeks to give effect to legislative reforms announced by the Queensland Government on 29 December 2022 aimed at keeping the community safe, and to strengthen youth justice laws to respond to serious repeat offenders. The Bill will do so by amending the *Bail Act 1980*, the Queensland Criminal Code, the *Youth Justice Act 1992* and *the Police Powers and Responsibilities Act 2000*.

An important part of the Bill has a focus on youth serious repeat offenders, defined in the Bill as those that have been before the court and found guilty of a prescribed indictable offence and for a magistrate or judge to have found that this offending to be of a serious enough nature that they determined that the offence warranted a period of detention. Further, this must happen not just once but twice, and that then the court must be satisfied that there is a high probability that the individual would commit a further serious offence. These individuals will now know they face more serious consequences and that in future sentencing there must be a primary focus on protecting members of the community and public safety.

Witnesses before the committee in Brisbane, Cairns and Townsville were asked 'if this was a good first step' and it is important to not see this Bill in isolation, but to recognise that a variety of other steps are being taken simultaneously. The other steps include more than $100 million extra invested in diversion and rehabilitation, expanding the positive results of intensive case management, Youth Co-responder Teams, expanding the Stronger Communities Initiative, On Country programs with Elders and investment in grassroots early intervention.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank our Parliamentary Service staff, the Queensland Police Service, the Department of Children, Youth Justice and Multicultural Affairs, and Department of Justice and Attorney-General.

I commend this report to the House.



Linus Power MP
Chair

Recommendations

Executive Summary

The Strengthening Community Safety Bill 2023 (the Bill) amends the *Bail Act 1980*, the *Criminal Code Act 1899*, the *Youth Justice Act 1992* and the *Police Powers and Responsibilities Act 2000*.

Collectively, the amendments to youth justice laws give effect to legislative reforms that aim to strengthen community safety.

While there was broad support for the Bill's intent, submitter response to the proposed amendments was mixed.

Key issues raised by submitters included:

- the current laws fail to ensure public safety and support for the Bill
- the impact on the human rights of young people
- greater investment in support programs for young people and their families is required to prevent youth crime
- the Bill is a solid starting point but does not go far enough to be a deterrent
- the Bill may increase the number of youth in detention and lead to more adult offenders
- support for the Bill, but additional amendments are required to strengthen safety for retail and food workers
- the Bill may have a negative effect on Aboriginal and Torres Strait Islander youth.

The committee considered issues of fundamental legislative principles. The committee accepts that some provisions in the Bill are incompatible with human rights. However, in this exceptional case, the committee noted that the *Human Rights Act 2019* is being overridden, and its application is entirely excluded from the operation of these new provisions in the Bill to protect community safety.

The committee recommends that the Bill be passed.

1 Introduction

1.1 Policy objectives of the Bill

The objective of the Strengthening Community Safety Bill 2023 (the Bill) is to give effect to legislative reforms announced by the Queensland Government on 29 December 2022 aimed at keeping the community safe, and to strengthen youth justice laws to respond to serious repeat offenders.

The Bill will do so by amending the *Bail Act 1980* (Bail Act), the *Criminal Code Act 1899* (Criminal Code), the *Youth Justice Act 1992* (Youth Justice Act and YJ Act) and the *Police Powers and Responsibilities Act 2000* (PPR Act) to:

- increase the maximum penalty for unlawful use or possession of motor vehicles, aircraft or vessels from 7 to 10 years imprisonment
- increase the maximum penalty for using or threatening to use a motor vehicle, aircraft or vessel to commit an indictable offence from 10 years to 12 years imprisonment
- create new circumstances of aggravation for the offence of unlawful use or possession of motor vehicles, aircraft or vessels where:
  - the offender has published material advertising their involvement in or of the offending on social media
  - where the offending occurs at night
  - where the offender uses or threatens violence, is or pretends to be armed, is in company and damages or threatens to damage any property
- provide that it is an offence for children to breach a condition of their bail undertaking
- extend and expand the trial of electronic monitoring as a condition of bail for a further two years and to include eligible 15-year-olds
- remove the requirement that police consider alternatives to arrest if they reasonably suspect a child on bail for a prescribed indictable offence or certain domestic violence offences has contravened or is contravening a bail condition
- provide that a child's bail history must be taken into account during sentencing
- create the ability of a sentencing court to declare that a child offender is a serious repeat offender in certain circumstances to enable considerations such as community safety to be paramount
- enable conditional release orders to operate for a greater period of time
- ensure certain child offenders serve their suspended term of detention if they breach their conditional release orders
- expand the list of offences included within the definition of 'prescribed indictable offence' to facilitate greater operation of provisions of the Youth Justice Act aimed at serious repeat offenders, including the presumption against bail provision under section 48AF and the new sentencing regime for children declared serious repeat offenders
- enable the transfer of persons who have turned 18 years on remand and the earlier transfer of persons who have turned 18 years serving a sentence from youth detention centres to adult correctional centres

- ensure the continuation of multi-agency collaborative panels (MACPs) which provide intensive case management and holistic support for young persons identified as high risk or requiring a collaborative response through a multi-agency and multi-disciplinary approach.[1]

The proposed legislative changes were announced with a suite of measures and a funding package to ensure young offenders will stay in custody for longer to make sure they can complete requisite rehabilitation and reform programs set out by the courts.

To support the provisions in the Bill, the government has committed to investing more than $100 million in extra diversion and rehabilitation services. These include the expansion of Intensive Bail Initiative, Intensive Case Management, Youth Co-responder teams and the Stronger Communities Initiative to assist young people in complying with their bail conditions.[2]

To help prevent car theft in the first place, $10 million will be provided to supply 20,000 engine immobilisers to be trialled in Mt Isa, Cairns and Townsville and a $9.89 million fast-track sentencing program in Brisbane, Townsville, Southport and Cairns, so children spend less time on remand and more time serving their sentences.[3]

Committee comment

The committee notes that crime, especially youth crime, is a complex issue but community safety must come first.

Following consultation on the Bill with Queenslanders who had been affected by youth crime, the committee considers it would be opportune for the Legal Affairs and Safety Committee to conduct a review of the *Victims of Crime Assistance Act 2009* (VoC Act), with a view to considering enhancements to the VoC Act designed to better assist victims of acts of violence, by providing support and financial assistance in a timely manner to avoid compounding the distress suffered by them.

In this proposed review, consideration could be given to a) expanding the eligible victim's category to include home invasion enabling these victims access to financial support to recover from the act of violence, b) mapping the victim's experience through the (VOCAA Financial Assistance) application process to identify ways to reduce the burden on applicants, and c) reviewing the Charter of Victims' Rights – to identify common complaint themes from victims to inform future sector training needs.

Further, we consider it would also be beneficial for the Queensland Police Service (QPS) to review the way in which it supports victims. While the community want accountability and consequences for the offender, there is also the need for a victim to be heard and included throughout the investigation and prosecution of their matter in a timely manner.

We would also like to see the QPS liaise more closely with relevant government agencies and organisations such as the Queensland Aboriginal and Torres Strait Islander Child Protection Peak and the Queensland Family and Child Commission to look at how restorative justice conferences and processes may be improved.

This would include exploring the barriers for uptake, and may include considering an amendment to the *Youth Justice Act 1992* to remove the voluntary nature of youth justice conferencing for the offender in the case where a victim would like to proceed with a youth justice conference.

We note restorative justice processes such as youth justice conferencing have a proven positive effect for both the offender and the victim, helping to improve greater empathy for both parties, increasing accountability for the offender as they are required to hear first-hand the impact of their crime on the victim, and in many cases, reducing the victim's psychological distress.

1 Explanatory notes, pp 1-2.

2 Joint departmental response to submissions, p 5.

3 Tough laws made even tougher, media statement, https://statements.qld.gov.au/statements/96885.

1.2 Background

On 29 December 2022, the Premier and Minister for the Olympics and Paralympic Games, the Minister for Police and Corrective Services and Minister for Fire and Emergency Services, and the Minister for Children and Youth Justice and Minister for Multicultural Affairs made a joint statement announcing new measures to address youth crime.[4]

In the introductory speech for the Bill, the Minister for Police and Corrective Services and Minister for Fire and Emergency Services (the Minister), stated:

> 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.[5]

The Minister referred to community members who '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'.[6]

The 'Statement about exceptional circumstances' accompanying the Bill expanded on the issue of repeat young offenders by advising:

> There is an acute problem presented by a small cohort of serious repeat offenders who engage in persistent and high-risk offending; the latest Childrens Court Annual Report indicates 17 percent of all youth offenders account for 48 per cent of all youth crime. There is some evidence of growth in the number of this cohort and the intensity of their offending, up approximately seven percentage points from the previous 12-month period.[7]

1.2.1 Offending relating to motor vehicles

The explanatory notes to the Bill state that 'recent data identifies that unlawful use of a motor vehicle offences represent a greater proportion of youth crime than in previous years' with 'unlawful use of a motor vehicle' becoming 'the fourth most prevalent offence committed by child offenders in Queensland' of reported crime in 2020-21.[8]

QPS data indicated that between 1 July 2021 and 31 March 2022, 'juvenile offenders were responsible for over half of all recorded unlawful use of a motor vehicle (UUMV) offences in Queensland'.[9] UUMV is often accompanied by dangerous, risk-taking behaviour that places both the offender and the community at risk of harm.[10]

The explanatory notes advise that there is an 'increasing trend where offenders post images and recordings of their offending online and on social media platforms, particularly in relation to motor vehicle offences', which encourages others 'to engage in similar criminal behaviour involving vehicles'.[11]

The current maximum penalty for unlawful use or possession of motor vehicles, aircraft or vessels is 7 years imprisonment. If the offender uses or intends to use the motor vehicle, aircraft or vessel to

4 Tough laws made even tougher, media statement, https://statements.qld.gov.au/statements/96885.

5 Record of proceedings, 21 February 2023, p 37.

6 Record of proceedings, 21 February 2023, p 37.

7 Statement about exceptional circumstances, 2023.

8 Explanatory notes, p 1.

9 Joint departmental brief, 24 February 2023, p 2.

10 Joint departmental brief, 24 February 2023, p 2.

11 Explanatory notes, p 1.

commit an indictable offence, the offender is liable to imprisonment for 10 years.[12] These penalties are not currently impacted by the posting of images online or on social media.

1.2.2 Youth justice bail framework

Currently, if a police officer reasonably suspects a child has contravened or is about to contravene a condition of bail and the contravention is not an offence, a police officer must consider whether alternative actions would be more appropriate prior to arrest, such as taking no action or warning the child.[13]

Under existing legislation, it is an offence for an adult to break any condition of their undertaking on which they were granted bail requiring their appearance before a court and is punishable by a maximum of 40 penalty units or 2 years imprisonment. This does not currently apply to a child defendant.[14]

Since 2021 a court, in certain circumstances, is able to impose on a grant of bail to a child who is at least 16 years, has committed a prescribed indictable offence and has been previously found guilty of at least one indictable offence, a condition that the child must wear a monitoring device while released on bail.[15]

1.2.3 Youth sentencing framework

Under current legislation, a court making a detention order against a child may immediately suspend the order and make a conditional release order that the child be immediately released from detention, subject to supervision and participation in programs. The maximum time period for a conditional order is 3 months.[16]

If a child breaches their conditional release order (including by committing a further offence), they must demonstrate why they should not be returned to detention and be offered a further opportunity to comply with the conditional release order.[17]

1.2.4 Consultation

Once the announcements on the proposed new measures had been made, the Queensland Government undertook community consultation via an online survey portal. According to the explanatory notes, the government received 197 submissions through the website and 4 via email.

1.3 Legislative compliance

Our deliberations included assessing whether or not the Bill complies with the Parliament's requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* (LSA) and the *Human Rights Act 2019* (HRA).

Committee comment

Overall, we are satisfied that the Bill complies with these legislative requirements.

1.3.1 Incompatibility with human rights

As detailed in section 2.1, several aspects of the Bill are not compatible with human rights, while other aspects limit human rights.

12 Criminal Code, s 408A.

13 Youth Justice Act, s 59A(3).

14 Bail Act, s 29.

15 Explanatory notes, p 4.

16 Youth Justice Act, ss 220, 221; explanatory notes, p 6.

17 Explanatory notes, p 6.

Committee comment

We consider that these incompatibilities with human rights are justified in the circumstances.

1.3.2 Documents tabled with the Bill

The Minister tabled a statement of compatibility with the introduction of the Bill as required by s 38 of the HRA. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

The Minister also tabled a statement about exceptional circumstances when introducing the Bill, in accordance with s 44 of the HRA. Section 44 requires that when a Bill contains an override declaration, the member who introduces it[18] must make a statement to the Legislative Assembly explaining the exceptional circumstances that justify the override declaration for provisions of the Bill[19] to have effect despite that incompatibility. The statement contained a sufficient level of information to facilitate understanding of the justification for the proposed override of the HRA.

1.4 Should the Bill be passed?

The committee is required to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends the Strengthening Community Safety Bill 2023 be passed.

2 Examination of the Bill

This section discusses key issues raised during the committee's examination of the Bill. It does not discuss all consequential, minor or technical amendments.

2.1 The impact on the *Human Rights Act 2019*

The government has acknowledged that some aspects of the Bill are incompatible with the HRA. These are:

- the proposed amendment to s 29 of the Bail Act, which will criminalise breaches of bail by children[20]
- proposed ss 150A and 150B of the Youth Justice Act, which will establish the process by which a court may make a declaration that a child is a serious repeat offender and require later courts to rely on such declarations when sentencing children who commit further offences[21]
- proposed s 246A of the Youth Justice Act, which will require a court to revoke a conditional release order made for a prescribed indictable offence, and order a child to serve their sentence of detention, if that order is breached and there are no special circumstances.[22]

18 Or another member acting on their behalf.

19 Bill, cls 5, 21, 28.

20 Bill, cl 5.

21 Bill, cl 21.

22 Bill, cl 28.

Given these incompatibilities, the Bill proposes overriding the HRA with respect to the provisions listed above. The government states that this override is necessary due to 'an acute problem presented by a small cohort of serious repeat offenders who engage in persistent and high-risk offending.'[23]

In the government's view, this problem constitutes an exceptional crisis that threatens public safety, justifying its decision to override the HRA.

The government has acknowledged these limitations in the statement of compatibility and explained why it considers them justified in the circumstances.

Overall, the concerns expressed by submitters in relation to human rights fell into two groups: matters of principle and matters of fact, both of which are briefly discussed below.

In response to these concerns, the department emphasised that the decision to override human rights and the justification for that decision are both matters for the government.[24]

2.1.1.1 Matters of principle relating to human rights

Some submitters expressed the view that the Parliament should not, as a matter of principle, override the HRA. Notable points raised by these submitters include the following:

- that the Parliament should be particularly hesitant to override the rights of children, especially when vulnerable children (including First Nations children, and children with disabilities) are more likely to be affected by the Bill[25]
- that any override of the HRA should occur only after extensive consultation, which has not occurred[26]
- the importance of the precedent that the Bill will set as the first case in which the HRA has been overridden[27]
- that the override will be inconsistent with international standards and human rights instruments.[28]

2.1.1.2 Matters of fact relating to human rights

Some submitters expressed the view that key facts asserted by the government to justify the Bill's impact on human rights are not supported by evidence.

Many of these submitters queried whether current rates of youth crime constitute a sufficient threat to public safety to amount to the kind of exceptional circumstance that would justify overriding the HRA.[29]

Several of these submitters observed that although the number of serious repeat youth offenders may have recently increased, overall rates of youth crime appear to be trending downwards.[30]

Some submitters expressed the view that there are a number of alternatives reasonably available to the government that would avoid, or mitigate, negative impacts on human rights.

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23 Statement about exceptional circumstances, p 1.

24 Joint departmental response to submissions, p 72.

25 See, for example, submissions 34, 42, 47, 52.

26 See, for example, submissions 41, 46, 47.

27 See, for example, submissions 35, 42.

28 See, for example, submissions 14, 51, 52, 78.

29 See, for example, submissions 35, 39, 42, 45, 46, 47, 48, 51, 52, 66, 71.

30 See, for example, submissions 47, 51.

Several of these submitters stated that these alternatives – such as greater investment in early intervention, prevention, and bail support programs – would provide more effective ways of strengthening community safety than the measures proposed in the Bill.[31]

Committee comment

Limitations of human rights are always a matter of balance.

Overall, we are satisfied that the Bill strikes an appropriate balance between the protection of the rights of children and young people in Queensland, and strengthening community safety.

We are therefore satisfied that the Bill's impact on human rights is justified in the circumstances.

In reaching this conclusion, we have considered the concerns raised by submitters regarding the principle of overriding the HRA and the evidence base on which the Bill's impact on human rights has been justified.

Further, we note that the changes in the Bill are not in isolation and the government has announced a number of investments in intervention and rehabilitation programs.

2.2 Increased penalties and new circumstances of aggravation

To address serious offending relating to motor vehicles, the Bill seeks to increase the maximum penalties for the offence of unlawful use or possession of motor vehicles, aircraft or vessels by increasing existing penalties and introducing a number of circumstances of aggravation.

The Bill proposes to amend the Criminal Code to increase the maximum penalty for unlawful use or possession of motor vehicles, aircraft or vessels from 7 years imprisonment to 10 years imprisonment.[32]

The Bill also proposes increasing the maximum penalty for using or threatening to use a motor vehicle, aircraft or vessel to commit an indictable offence from 10 years to 12 years imprisonment.[33]

The Bill introduces new circumstances of aggravation involving:

- a maximum penalty of 12 years imprisonment for publishing material on social media or an online social network advertising their involvement in, or of, unlawful use or possession of motor vehicles, aircraft or vessels
- a maximum penalty of 14 years imprisonment for unlawful use or possession of motor vehicles, aircraft or vessels where the:
  - offending occurs at night
  - the offender uses or threatens to use actual violence, is or pretends to be armed, is in company with 1 or more persons, or damages or threatens to damage any property.[34]

The amendments in the Bill to the Criminal Code related to UUMV will apply to both adults and children.[35]

For adult defendants, the Bill proposes reflecting other offences in the Criminal Code which carry the same circumstances of aggravation. Where the circumstance of alleged aggravation involves violence or that the defendant was armed or pretends to be armed, or involves property damage exceeding $30,000 and the defendant does not plead guilty, those charges must proceed on indictment. This will

31 See, for example, submissions 18, 31, 36, 39, 52.

32 Bill, cl 8; explanatory notes, p 3.

33 Bill, cl 8; explanatory notes, p 3.

34 Bill, cl 8; explanatory notes, p 3.

35 Joint departmental briefing, 24 February 2022, p 3.

fall within the jurisdiction of the District Court. The remaining circumstances of aggravation will generally be dealt with in the Magistrates Court, subject to s 552D of the Criminal Code.[36] A consideration under that section includes whether that court can adequately punish a defendant, noting that it may impose imprisonment of up to 3 years.[37]

For child defendants who are charged with UUMV with a circumstance of aggravation of violence or threatened violence, the matter must be heard by a Childrens Court judge, enabling a court to consider a maximum period of detention of 7 years.[38] A judge of the Childrens Court would be required only to hear UUMV offences involving violence, or threats of violence or being or pretending to be armed.[39]

The remaining circumstances of aggravation will be dealt with generally in the Magistrates Court, subject to that court's ability to adequately punish a defendant. [40]

2.2.1.1 New maximum penalties would be among the longest in Australia

Fundamental legislative principles require that a penalty should be proportionate to an offence.

The changes proposed in the Bill would mean that offenders found guilty of unlawful use of a motor vehicle in Queensland would face some of the longest maximum penalties in Australia.

2.2.1.2 Likely impact of new maximum penalties on sentencing

The Youth Justice Act would limit the extent to which the increased maximum penalties apply to children. Children found guilty of unlawful use of a motor vehicle would face:

- up to 1 year imprisonment, if convicted by a magistrate
- up to 5 years imprisonment, if convicted by a judge
- up to 7 years imprisonment, if convicted under proposed s 408A(1C) of the Criminal Code.[41]

Between 2005-06 and 2019-20 the most common penalty for adult offenders convicted of unlawful use of a motor vehicle was imprisonment. The average sentence imposed on these offenders was 10.1 months – well below the current maximum of 7 years. In the same period, the most common penalty imposed on young offenders convicted of the same offence was probation. The average length of their probation was 7.4 months.[42]

2.2.1.3 New circumstances of aggravation

As noted above, the Bill proposes establishing several new circumstances of aggravation for unlawful use of a motor vehicle. While equivalents to some of these circumstances of aggravation exist in other Australian jurisdictions, others would be unique to Queensland.

36 Joint departmental briefing, 24 February 2022, p 3.

37 Joint departmental briefing, 24 February 2022, pp 3-4.

38 Joint departmental briefing, 24 February 2022, p 4.

39 Joint departmental briefing, 24 February 2022, p 4.

40 Public briefing transcript, Brisbane, 27 February 2023, p 5.

41 Youth Justice Act, ss 175 and 176.

42 Queensland Sentencing Advisory Council, *Sentencing Spotlight on unlawful use of a motor vehicle,* December 2020, p 2.

Committee comment

We note that a reversal of the onus of proof currently exists in the Criminal Code, requiring the accused person to prove the defence.[43] The Bill will modify this requirement, such that the accused will only bear the evidential burden.

2.2.2 Submitter views – increase in maximum penalties

In response to the increase in maximum penalties, there was support by some submitters for the increased penalties for UUMV, with the Queensland Police Union of Employees (QPU) arguing it would meet the community's expectations and serve as a deterrent.[44]

Some submitters called for mandatory minimum sentencing for UUMV.[45] Other submitters opposed the increase in penalties, arguing that:

- penalties will not reduce offending by children for reasons including:
  - children not being aware of the penalties
  - children tending to act impulsively and opportunistically
  - poor assessment of consequences by children due to their still-developing brain and/or developmental delays[46]

Submitters also shared their concerns on the following:

- increased penalties/longer prison sentences do not deter crime or reduce the risk of reoffending, and may instead be likely to cause criminal behaviour[47]
- current sentencing outcomes are sufficient to reflect the objective criminality involved in this type of offending[48]

Submitters suggested increasing the maximum penalty relating to the use of the vehicle is unlikely to have any effect on the sentence imposed because:

- offenders who steal and use a vehicle are usually charged with entering a dwelling or premises and committing an indictable offence, both offences carrying a maximum penalty of 14 years imprisonment[49]
- legislation regarding young offenders limits the terms of imprisonment to a period shorter than that proposed[50]

Submitters further added that:

- the increased penalties are inconsistent with the lengths of comparable offences, with the maximum penalty equalling or exceeding the penalties for more serious crimes[51]

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43 The existing law includes a defence to the existing offences for unlawful use or possession of motor vehicles, aircraft or vessels, if it is proved that the accused person had the lawful consent of the owner of the motor vehicle, aircraft or vessel to its use or possession by the accused person.

44 Queensland Police Union of Employees (QPU), submission 73, p 1.

45 Public hearing transcript, Townsville, 3 March 2023, p 16 (Mr Hawks), p 20 (Ms Liddle); public hearing transcript, Cairns, 1 March 2023, p 15 (Ms Conti).

46 See, for example, submissions 23, 31, 42, 59, 72.

47 See for example, submissions 35, 42, 44, 50, 51, 57, 59.

48 Hub Community Legal, submission 23, p 2.

49 Queensland Law Society (QLS), submission 42, p 12.

50 See, for example, submissions 44, 62, 69.

51 See, for example, submissions 21, 42, 59, 62, 65.

- there is a risk of overrepresentation of Aboriginal and Torres Strait Islander children and young people in the statutory system[52]
- the provision does not differentiate between driver and passenger in terms of culpability, which does not account for the way in which children may become passengers in a stolen vehicle,[53] while the increase in the maximum penalty for a passenger is likely to have a negligible effect on the sentencing proceedings due to lesser culpability[54]
- the judicial system is unlikely to impose the maximum penalties.[55]

The Department of Children, Youth Justice and Multicultural Affairs (department/DCYJMA) noted the concerns of submitters that young offenders are more impulsive and prone to engage in sensation seeking than adults, and that instead of acting as a deterrent, the penalty increases may be likely to cause criminal behaviour.

In response, the department advised 'the Statement of Compatibility identifies that the purpose of the increased penalties is to reflect the seriousness of this offending and community and Government denunciation of such conduct'.[56]

In response to the issue of proportionality of the penalty increase and concerns that the provisions do not differentiate between drivers and passengers, the joint departmental response to submissions advised:

> The Bill's provisions regarding the maximum penalties for offences under section 408A of the Criminal Code are policy matters determined by Government.
>
> Section 408A of the Criminal Code creates an offence to unlawfully use or possess a vehicle without the consent of the person in lawful possession of it. "Use" includes defendants who travel in the vehicle as a driver or a passenger. The exculpatory provisions in Chapter 5 of the Criminal Code apply to this offence, including the defence under section 24 (Mistake of fact) of the Criminal Code.
>
> While the offence and its maximum penalty does not distinguish the criminal culpability between drivers and passengers, it is for sentencing courts to exercise their judicial discretion and determine what sentence to impose in the particular circumstances of each case.
>
> The Queensland Government has recently established the Criminal Justice Innovation Office (CJIO) and First Nations Justice Office (FNJO).
>
> The CJIO is a dedicated multidisciplinary office established to identify, implement and support initiatives with a focus on innovative and long-term solutions to reforming the criminal justice system and improving community safety. The CJIO aims to modernise Queensland's laws, reduce demand on courts and prisons, enhance diversionary programs and help break the cycle of reoffending.
>
> The FNJO has been tasked with co-designing a whole-of-government and community justice strategy to address the over-representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system, which will significantly contribute to achieving the Queensland Government's commitments under the National Agreement on Closing the Gap.
>
> The CJIO and FNJO will monitor any unintended impacts of the proposed amendment on criminal justice system demand, including impacts on achieving justice targets within the national agreement on closing the gap.[57]

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52 Queensland Aboriginal and Torres Strait Islander Child Protection Peak Ltd (QATSICPP), submission 59, p 8.

53 Submission 42, pp 12, 13. See also Hub Community Legal, submission 23, p 2.

54 See, for example, submissions 23, 42.

55 See, for example, submissions 37, 64.

56 Joint departmental response to submissions, p 29.

57 Joint departmental response to submissions, pp 27-29.

On the issues of whether the increased penalties will have an effect on sentencing, offenders often being charged with more serious crimes than UUMV, and passengers or drivers after the fact usually being seen to have lesser culpability, the departments advised:

> While Parliament determines the maximum penalty for offences, it is for the courts to exercise their judicial discretion and determine what sentence to impose in the particular circumstances of each case. The task of determining a penalty for offenders involves a complex balancing of interests, including the nature and seriousness of the offending, the offender's criminal history, culpability, cooperation with the administration of justice, age, personal circumstances and prospects for rehabilitation, the community's expectations and the need to deter the offender and others from future offending.[58]

2.2.3 Submitter views – new circumstances of aggravation

There was support for the introduction of new circumstances of aggravation, including for making publishing material on social media or an online social network an offence,[59] if an offender is or pretends to be armed,[60] where the offending occurs at night,[61] where the offender uses or threatens violence,[62] is in company or damages or threatens to damage any property.[63]

Submitters opposed to the new circumstances of aggravation raised their following concerns:

- charges heard on indictment (involving violence, weapons or damage or threats to damage property) will increase both the number of children refused bail and the workload of the court and take a longer period of time to resolve, meaning children may experience longer periods on remand and a delay in the finalisation of those matters[64]
- almost all unlawful use offences will be categorised as aggravated offending, with the maximum penalty set at 14 years imprisonment, because the vast majority of unlawful use offences occur with passengers in a vehicle (that is, involve more than one person) and the majority occur at night[65]

Submitters further added:

- the offences duplicate an existing offence (such as the use of threat of violence, robbery) and are unnecessary[66] and the offences do not reflect proportionately serious offending, particularly posting to social media[67]
- the social media circumstance of aggravation will not cover SMS messages or emails[68]
- aggravated charges may be brought against the wrong person because many children have little security on their social media accounts and often use each other's accounts, resulting in the publishing of images and videos by one child to another's account[69]

58 Joint departmental response to submissions, p 30.

59 See, for example, submissions 10, 37, 73; public hearing transcript, Cairns, 1 March 2023, p 15 (Ms Conti).

60 See, for example, submissions 10, 64, 73.

61 See, for example, submissions 10, 64.

62 See, for example, submissions 10, 64; public hearing transcript, Cairns, 1 March 2023, p 15 (Ms Conti).

63 See, for example, submissions 10, 64.

64 See, for example, submissions 23, 42, 62.

65 QLS, submission 42, p 12.

66 QLS, submission 42, p 72.

67 See, for example, submissions 5, 64, 65.

68 QLS, submission 42, p 13.

69 QLS, submission 42, p 12.

- the provisions inappropriately treat children the same as adults, contain no restorative or rehabilitative justice elements, and will mean First Nations children spend longer in non-therapeutic detention facilities.[70]

The DCYJMA noted the submitter concerns about matters being dealt with on indictment potentially increasing time on remand, and responded by advising:

> In relation to the disposition of the new circumstances of aggravation under section 408A of the Criminal Code, Clause 9 of the Bill will enable the majority of offences to be dealt with by a magistrate. Requiring a judge to hear only offences committed with violence, whilst armed or involving property damage of $30,000 or more where the defendant does not plead guilty, reflects the significant seriousness of these offences compared with the other circumstances of aggravation. It also mirrors existing arrangements for similar offences which carry the same circumstances of aggravation (that is, burglary and unlawful entry of vehicle for committing indictable offence).[71]

On the issues of social media use by children, the absence of coverage of SMS messages or emails, and the potential for an increase in the number of children on remand and length of time in watch houses, the DCYJMA advised:

> Under Clause 8(3) of the Bill, the legal and evidential onus of proof will be on the prosecution to prove that a defendant unlawfully used or possessed a vehicle and published material advertising their involvement in or of the offending on social media. The issue as to which person published the relevant material will be a matter for the prosecution to prove and for the finder of fact to determine having regard to the whole of the evidence including any a defendant may choose to call or give.
>
> The Bill's provision as it relates to the scope of the new circumstance of aggravation and seeks to address the publication of relevant material on social media is a policy matter determined by Government.
>
> It is noted that the new circumstance of aggravation relating to the publication of relevant material on social media is not included within the list of prescribed indictable offences to which the presumption against bail under section 48AF of the *Youth Justice Act 1992* applies.
>
> The Fast Track Sentence Pilot is enhancing interagency coordination at pilot locations (Southport, Brisbane, Townsville, Cairns) to finalise matters as soon as possible to reduce the time young people spend on remand and provide earlier access to intervention and rehabilitation programs.[72]

In response to submitters' concerns that the provisions treat children the same as adults, the DCYJMA advised that 'children charged with offences under the amended section 408A of the Criminal Code will still be dealt with under the provisions of the Youth Justice Act including the limits applied upon the sentencing powers of judges and magistrates under sections 175 and 176 of that Act'.[73]

[70] QATSICPP, submission 59, p 7.

[71] Joint departmental response to submissions, pp 29-30.

[72] Joint departmental response to submissions, pp 32-33.

[73] Joint departmental response to submissions, p 33.

Committee comment

The committee notes the existing offences are subject to an increase in maximum penalty of 3 and 2 years.[74] The explanatory notes do not provide a great deal of commentary on the increased penalties and aggravated circumstances for these offences.

We note that when considering the maximum penalties associated with existing aggravated circumstances for other offences in the Criminal Code, there is a diverse range of such penalties, extending from a maximum of one year's imprisonment to life imprisonment.

Other penalties in the relevant chapter of the Criminal Code, being for offences analogous to stealing,[75] include an offence of fraud (5 years imprisonment), with aggravated circumstances offences attracting maximum penalties of 14 and 20 years, respectively.[76]

We consider there is justification for the provisions in response to existing community sentiment associated with the offending behaviour.

We note the changing nature of these crimes and support sending a clear message from the legislature that these criminal acts are not acceptable.

2.3 Amendments to the youth justice bail framework

According to the explanatory notes, the Bill makes amendments to a number of Acts as a means of responding to 'the small cohort of serious repeat young offenders who engage in persistent and serious offending'.[77]

The Bill makes changes to legislation which provide for the youth justice bail framework.

2.3.1 Adding breach of bail conditions as an offence for children

The Bill proposes to make it an offence for a child to breach a condition of their bail undertaking, similar to that of adults, meaning a child can be charged with an offence of breaching conditions of bail.[78] The maximum penalty available to a court in sentencing a child for this offence will be limited to 12 months detention under section 175 of the Youth Justice Act.[79]

The Bill declares that the proposed amendment providing a child can be charged with an offence of breaching conditions of bail has effect despite it being incompatible with human rights and despite anything else in the HRA.[80]

2.3.1.1 Approach in other jurisdictions

Some other Australian jurisdictions maintain breach of bail offences that apply to children, including South Australia, Western Australia and the Northern Territory.[81] However, other jurisdictions, including New South Wales, Victoria, and Tasmania, only criminalise a child's failure to appear before a court while on bail – either because they do not criminalise breaches of bail conditions (by anyone) or because children are excluded from breach of bail offences.[82] In these jurisdictions, a child's failure

74 Bill, cl 8 amends Criminal Code, ss 408A(1) and (1A), respectively.

75 Criminal Code, Chapter 39, ss 399 to 408E.

76 Criminal Code, s 408C(1), (2) & (2A).

77 Explanatory notes, p 1.

78 Bill, cl 5; explanatory notes, p 4.

79 Public briefing transcript, Brisbane, 27 February 2023, p 4.

80 Bill, cl 5; explanatory notes, p 4.

81 *Bail Act 1985* (SA), s 17(1); *Bail Act 1982* (WA), s 51; *Bail Act 1982* (NT), ss 37B and 38AA.

82 *Bail Act 2013* (NSW), s 79(1); *Bail Act 1977* (Vic), ss 30 and 30A; *Bail Act* 1994 (Tas), s 5(4); *Bail Act 1992* (ACT), s 49.

to comply with other bail conditions, such as a requirement to attend school or engage with counselling, does not constitute a criminal offence.

2.3.2 Submitter views

Some submitters supported adding breach of bail as an offence for children.[83] This included the QPU, who stated:

> The reality is that the current crop of repeat youth offenders are unmoved by the sanctimonious lectures of the judiciary. The Government has taken the necessary step of imposing a breach of bail offence on youth offenders. If this offence works for adults it will work for youth offenders.[84]

Ms Perri Conti supported the provisions, except 'if an unsafe environment at home has led a child to breaching the designated curfew set out in their bail conditions, they should not be locked up'.[85] Ms Conti also raised the issue of monitoring and difficulties with enforcement. [86]

Further, other submitters opposed the provision, arguing the following:

- it breaches human rights which emphasise that depriving children of their liberty must be reserved as a 'last resort', and 'limited to exceptional cases'[87]
- there is a lack of evidence that having a breach of bail offence makes the community safer, increases bail compliance or that it will act as a deterrent[88]
- the proposed breach of bail offence would restrict the ability for courts to make innovative bail conditions to mitigate the risk of reoffending or to manage bail in a flexible way[89] and a breach of bail offence criminalises and punishes children for a failure to follow conditions that do not otherwise constitute a criminal offence[90]

Some submitters considered children may have more difficulty adhering to bail conditions because:

- they are not always in control of their circumstances and may find it challenging to meet bail conditions due to factors such as housing insecurity, domestic violence, lack of transport, reliance on adults[91]
- they have brains that are still developing, particularly in areas of executive functioning that can make compliance difficult[92]
- there may be complex and lengthy bail conditions in place for long periods of time, different bails can have contradictory conditions, bail conditions can be onerous, and children are more likely than adults to have a greater number of specific bail conditions including curfews, to reside at a certain place, be with either mum or dad or a worker, to attend school, go to counselling, attend programs etc.[93]

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83 See, for example, submissions, 3, 10, 33, 37, 73.

84 Submission 73, p 2.

85 Public hearing transcript, Cairns, 1 March 2023, p 15.

86 Public hearing transcript, Cairns, 1 March 2023, p 17.

87 See, for example, submissions 14, 19, 29, 31, 36, 44.

88 See, for example, submissions 23, 29, 31, 36, 47, 49, 51, 52, 65.

89 See, for example, submissions 42, 52.

90 See, for example, submissions 23, 36, 42, 47, 52.

91 See, for example, submissions 23, 36, 42, 47, 49, 62.

92 See, for example, submissions 23, 47.

93 See, for example, submissions 23, 42, 44, 65.

It was also noted by submitters that there are already consequences for children who commit offences while on bail:

- children who commit offences while on bail can already be arrested, the Childrens Court has the power to refuse to grant bail if the risk of reoffending is too high, and there is a presumption against bail if a child is in custody in connection with a charge of a prescribed indictable offence if it is alleged to have been committed while they were on bail[94]
- being on bail is already an aggravating factor to be taken into account at sentencing for the further offence[95]
- police may already request a matter be brought before a court to have bail reconsidered in circumstances where there has been a breach or continued offending[96]

Submitters also considered that:

- the provision fails to address the causes of the crime or the reasons children breach bail, and is disproportionate,[97] and it will disproportionately impact children who are more vulnerable, such as First Nations children, children living with a disability or mental health issue, and children who are homeless or lack appropriate accommodation[98]
- the proposed amendment is likely to increase the workload of Queensland's courts.[99]

Alternatives suggested by submitters to the provision included investment in more intensive bail support services[100] and revisiting the consequences for the crime that led to the initial bail decision, rather than creating a new crime which separates the consequence of the breach of bail from the original offending event.[101]

Regarding access to bail support and the reasons children may breach their bail conditions, the DCYJMA noted the comments and acknowledged that breaches of bail conditions are sometimes caused by circumstances outside the control of young people or arise from a failure of a young person to understand their bail conditions.[102]

To assist with bail compliance, the DCYJMA advised it:

> currently funds services to assist young people to comply with their bail conditions through the Intensive Bail Initiative.
>
> The Intensive Bail Initiative involves nongovernment service providers delivering wrap-around interventions to engage and work with families of young people who are serious repeat offenders. The initiative consists of three highly integrated services:
>
> - Bail Support – provides support, intervention and after-hours services
> - Intensive Family Partnerships – provides intensive case work to support young people and their families to identify practical supports to keep young people out of custody and involve family members to help young people to comply with bail conditions, and

94 Queensland Youth Policy Collective, submission 51, p 10.

95 Hub Community Legal, submission 23, p 3.

96 See, for example, submission 23.

97 See, for example, submissions 23, 31, 34, 36, 45, 51, 52.

98 See, for example, submissions 23, 36, 44, 47, 49, 51.

99 See, for example, submissions 42, 60, 62.

100 See, for example, submissions 23, 31, 34, 36, 45, 51, 52.

101 Queensland Family and Child Commission, public hearing transcript, Brisbane, 28 February 2023, pp 29, 31.

102 Joint departmental response to submissions, p 3.

- Community Co-Responder – coordinates and follows up referrals to other community and welfare services as a diversionary and short-term response for young people with complex needs and at a high risk of offending

To support the provisions in the Bill, the Government has committed to investing more than $100 million in extra diversion and rehabilitation services. These include the expansion of Intensive Bail Initiative, Intensive Case Management, Youth Co-responder teams and the Stronger Communities Initiative to assist young people in complying with their bail conditions.

The expansion of the Youth Co-responder teams will see dedicated teams of police and youth justice workers provide support and rapid responses for young people at risk of offending and young people on bail. Already operational in many parts of Queensland, this proven initiative has already completed 40,000 engagements with young people including to check their compliance with bail conditions and follow up to ensure they are accessing the right services. A recent review of electronic monitoring found between 92 and 99 per cent compliance with bail conditions amongst children engaged with a Youth Co-responder team.[103]

On concerns that children will not be able to access the exception for therapeutic programs in the same way adults can, the DCYJMA advised it:

…offers a Conditional Bail Program for consideration by courts when making a decision about a child who might remanded in custody. If the court grants bail on condition that the child participates in the program, then as part of the program, CYJMA will give a child help and support to reduce their risk of offending or breaching bail conditions. The Conditional Bail Program does this by getting the child to participate in positive activities and to help them access services and deliver skills.[104]

The joint departmental response to submissions also provided the following on the issue of young people being provided with contradictory bail conditions:

The *Youth Justice Act 1992* does not require that all bail undertakings have special conditions attached. Where those conditions are attached, they may be varied or revoked in accordance with the person's bail undertaking or the *Bail Act 1980*. Where a child is given contradictory conditions across a number of undertakings, ensuring that those conditions are not contradictory is a matter for the child's legal representative acting on the child's instructions.[105]

On the issue of onerous bail conditions, it was advised:

Where onerous conditions are imposed, existing review mechanisms in the *Bail Act 1980* may provide a remedy. This might include avenues for review under sections 19B and 19C.[106]

The impacts on courts, police and legal services was addressed by the following advice:

As set out in the Explanatory Notes at page 7: Amendments in the Bill are likely to increase demand in both the adult and youth criminal justice system thereby resulting in operational impacts for Queensland Courts, the Queensland Police Service, the Office of the Director of Public Prosecutions, Legal Aid Queensland and Youth Justice Services.

Funding required beyond existing agency resources is subject to normal budget processes.[107]

The joint departmental response also referred to the recently-established CJIO and FNJO (see section 2.2.2) in relation to contradictory and onerous bail conditions, the likely increased demands on courts,

[103] Joint departmental response to submissions, pp 4-7.

[104] Joint departmental response to submissions, p 7.

[105] Joint departmental response to submissions, p 8.

[106] Joint departmental response to submissions, p 10.

[107] Joint departmental response to submissions, p 12.

police and legal representatives, and potential damage to the relationships between children and providers of bail support.[108]

Committee comment

The committee acknowledges this proposed amendment in the Bill, as outlined in the statement of compatibility, contains an override declaration which provides that the HRA does not apply to section 29 of the Bail Act as it applies to children.

Based on evidence received from relevant agencies and in submissions from individuals and organisations, we consider that the aim of the Bill is to keep Queenslanders safe from those repeat offenders who engage in persistent and high-risk offending and that the Bill's impact on human rights is justified.

We also note the department's commitment of added support for youth offenders to meet bail conditions.

2.3.3 Requirement to consider alternatives to arrest for contravention of bail conditions

The Bill proposes to remove the requirement that a police officer consider alternatives to arrest for a child who is on bail for a prescribed indictable offence or for an offence of contravention of domestic violence order or police protection notice.[109]

The Bill will do this by amending sections 59A(1)-(2) of the Youth Justice Act to remove the requirement for a police officer to consider alternatives to arrest for contraventions, or likely contraventions, of bail conditions, where the child is on bail for a prescribed indictable offence, or where a child is on bail for an offence against sections 177 (contravention of domestic violence order) and 178 (contravention of police protection notice) of the *Domestic and Family Violence Protection Act 2012*.[110]

2.3.4 Submitter views

Some submitters supported the amendment, including individuals[111] and the QPU. It is noted the QPU submitted that the changes may not go far enough as the courts may 'still attempt to exert pressure on police for not considering other options'.[112] The QPU acknowledged that the juvenile detention system would need to accommodate increased demand for detention and watch house facilities.[113]

Several submitters were opposed to this amendment for the following reasons:

- removing the requirement to consider alternatives to arrest may result in this step being overlooked; the current provision allows for police to 'exercise discretion and flexibility to respond appropriately and proportionately to the circumstances they perceive', thereby reducing 'negative interactions between children and the criminal justice system'[114]
- the threshold for determining the action taken by police would be too low i.e. under the Bill, a police officer must only reasonably suspect a child *is likely* to contravene a condition imposed on a grant of bail to the child for a prescribed indictable office or certain domestic violence offences in order to take action to arrest[115]

108 Joint departmental response to submissions, p 9.

109 Bill, cl 15; explanatory notes, p 5.

110 Joint departmental brief, 24 February 2023, p 5.

111 Kelvin Bunyan, submission 37; Perri Conti, submission 70.

112 Submission 73, p 3.

113 Submission 73, p 3.

114 QLS, submission 42, p 15. See also Lily Fletcher, submission 62, p 5.

115 Queensland Human Rights Commission (QHRC), submission 52, p 19.

- the proposed amendment would provide 'too much leeway for inconsistent use of the discretion' to consider alternatives to arrest.[116]

Submitters also shared their concerns regarding:

- a bail condition may require a child to engage in/not engage in a broad range of conduct, many of which might not otherwise be criminal in nature[117]
- a lack of criteria/safeguards in the Bill to explain how a police officer should form their opinion about considering alternatives to arrest or not[118]
- the amendment would result in an increase in the number of children being arrested without consideration of the appropriateness/necessity of that arrest, and this would create lifelong harm, trauma and further disadvantage to vulnerable children[119]
- uncertainty about how the amendment would make the community safer[120]
- this amendment would place expectations on police to exercise principles that are normally reserved for the judicial branch.[121]

In response to issues raised about the proposed amendments, the departments advised that several diversionary options would remain available to police officers who detect a breach of bail offence if the Bill is passed, including taking no action, official caution, restorative justice conference, a graffiti removal program or drug diversion program.

In this way, the Bill would not change the approach that police officers take to consider alternate options other than detention where appropriate, as evidence shows youth offending often stops after offenders interact with the criminal justice system. However, the Bill introduces a 'strong action against serious repeat offenders' to ensure 'the police remain able to protect the community from harm'.[122]

In response to criticism about a lack of criteria upon which police will make their decisions when considering alternatives to arrest or not, the departments advised that police decisions will need to be made in accordance with youth justice principles.[123] QPS further advised its officers are able 'to appropriately exercise their discretion when determining alternatives to arrest for contraventions of bail conditions', and they would be provided policy guidance on how to make those decisions.[124]

116 PeakCare, submission 44, p 8.

117 QHRC, submission 52, p 19.

118 QHRC, submission 52, p 19.

119 QLS, submission 42, p 15; Sisters Inside Inc, submission 36 p 4; Queensland Youth Police Collective, submission 51, pp 9-10; Queensland Council of Social Service, submission 63, p 2.

120 Youth Advocacy Centre Inc, submission 65, p 4.

121 Crime and Justice Action Group, submission 64, p 6.

122 Joint departmental response to submissions, pp 37, 38, 42.

123 Joint departmental response to submissions, p 37.

124 Joint departmental response to submissions, p 45.

Committee comment

We note submitters' concerns regarding the proposed removal of the requirement for police officers to consider alternatives to arrest for a child who is on bail for a prescribed indictable offence or for an offence of contravention of domestic violence order or police protection notice.

However, we note that the underlying objective of the amendment is to support community safety.

The Bill will not remove the ability of police to consider alternatives other than detention where appropriate.

Rather, the focus of this provision is on 'serious repeat offenders'. We also note that police decisions in this regard will need to be made in accordance with youth justice principles, and the QPS will continue to provide policy guidance to its officers about how to make their decisions.

2.3.5 Expansion of electronic monitoring

The Bill proposes the expansion of the trial of electronic monitoring of youth offenders. The explanatory notes to the Bill state that 3 Australian jurisdictions (Western Australia, Northern Territory and South Australia) permit electronic monitoring of children in certain circumstances. Electronic monitoring is also used in New Zealand for children on bail.

The South Australian electronic monitoring program caters for bail conditions, including 24-hour curfew monitoring, curfew between specified hours, and gradual release from prison as a way to re-integrate child offenders in the community.

In Western Australia, electronic monitoring is only available for sentenced cases, and may be used for supervised release orders. Electronic monitoring in the Northern Territory is a sentencing option and may be used for children on bail.[125]

2.3.6 Submitter views

Some submitters raised concerns with this proposed amendment to the Bill. Young people on bail who are required to wear electronic monitoring devices (EMD) may create a level of stigma for that person, making it difficult to attend school, find employment, or secure safe accommodation.[126]

Further concerns are that the requirement for young people on bail to wear electronic monitoring devices will inflame the already present concerns of the growing vigilante responses to youth crime. The devices may make it easier for this group to identify the children on bail, making them more vulnerable when in public.[127]

Alternatively, other submitters suggested this amendment did not go far enough and considered this amendment to be a practical measure for this cohort of offenders.[128]

In its response, the DCYJMA noted submitters' concerns about the impact that wearing an EMD may have on a young person. The trial of EMDs as a conditions of bail commenced in 2021 in Townsville, north Brisbane, Moreton, Logan and Gold Coast. A review was conducted by the DCYJMA with former Police Commissioner Mr Robert Atkinson AO, APM providing an independent peer review.[129]

The review found that while there are some benefits associated with electronic monitoring as a bail condition, its effectiveness in deterring offending behaviour could not yet be confirmed, nor could any changes to offending be attributed to engagement with the trial. During the trial, there was initially

[125] Explanatory notes, p 14.

[126] Australian Lawyers Alliance, submission 14, pp 5-6.

[127] Australian Lawyers Alliance, submission 14, pp 5-6.

[128] Crime and Justice Action Group, submission 64, p 7; QPU, submission 73, p 2.

[129] Joint departmental response to submissions, p 34.

low take up. Only 8 young people were subject to EMD conditions during the period examined by the review. The extension of the trial to April 2025 and expansion to include young people 15 years and over will provide a bigger sample size to support decisions on future use of EMDs.[130]

2.4 Amendments to the youth justice sentencing framework

2.4.1 Sentencing to consider child's bail history

The Bill adds to the sentencing principles for child offenders by proposing that before a court sentences a child offender, it is also to take into account any bail history information.[131]

According to the explanatory notes, bail history information could include 'information about compliance or non-compliance with bail conditions, or reoffending or abstaining from offending while on bail'.[132] The explanatory notes state 'this will enhance community confidence in the sentencing process.'[133]

2.4.2 Submitter views

Submitters were supportive of the amendment for sentencing to consider a child's bail history.[134] QPU stated that 'youth offenders must be judged by the standards society expects offenders to be judged by' and that 'the principles of a fair go demand that past performance is an indication of future performance'. QPU also submitted that the proposed reforms would meet community expectations.[135]

Alternatively, other submitters raised the following matters in relation to the proposed amendment for sentencing to consider a child's bail history:

- it would disproportionately affect Aboriginal and Torres Strait Islander people, who are already disproportionately represented in the total number of young people in detention in Queensland[136]
- taking into account a bail history at sentence and having an offence of breaching bail creates a double jeopardy situation where the child is being punished more than once for the same act[137]
- 'bail history' is not defined in the Bill, which does not accord with the fundamental legislative principles in section 4(3) of the LSA which mandates that legislation is unambiguous and drafted in a sufficiently clear and precise way[138]

Submitters also shared their concerns that:

- it would 'further criminalise non-compliance with bail beyond just a breach of bail condition which is proposed by clause 5 of the Bill', potentially resulting 'in children being liable to

130 Joint departmental response to submissions, p 35.

131 Bill, cl 20. Explanatory notes, p 5.

132 Explanatory notes, p 5.

133 Explanatory notes, p 5.

134 See, for example, Kelvin Bunyan, submission 37; Perri Conti, submission 70; QPU, submission 73, p 3; Schae Gregory, submission 30.

135 QPU, submission 73, p 3.

136 Australian Lawyers Alliance, submission 14, p 6; QATSICPP, submission 59, p 12.

137 Hub Community Legal, submission 23, p 4; Community Legal Centres Queensland, submission 72, p 4.

138 Hub Community Legal, submission 23, p 4; QLS, submission 42, p 16; Community Legal Centres Queensland, submission 72, p 4.

increased penalties for non-compliance of bail condition in circumstances where they have not been charged with breach of bail condition'[139]

- the proposed amendment may see harsher penalties imposed on children than those imposed on adults[140]
- youth justice officers may feel compelled to provide information concerning a child's bail history even when not sought by the court[141]
- it is unclear whether the intent of the proposed amendment is to take into account a broader range of historical material so sentences can be more severe, or to help ensure sentencing that creates the best opportunities for rehabilitation, reintegration and healing.[142]

In response to submitter concerns, the DCYJMA advised that the amendments are clarifying provisions which confirm that a court must take into account any bail history information put before it in sentencing.

It has always been a practice of courts to assess any information about recent compliance with bail provided by the prosecution or defence when considering the appropriateness of a non-custodial sentence order, and the conditions of such an order.

Further, the DCYJMA argued that good compliance with bail conditions 'may indicate a non-custodial order may be very effective in achieving the objectives of sentencing (including protection of the community and rehabilitation)' while 'poor compliance may make detention the only viable option'.[143]

In response to concerns that 'bail history' is not defined in the Bill, the DCYJMA advised that it will be up to the court to determine the relevance of any information provided, and the weight to attribute to it. For example, failure to appear is currently an offence and is noted on the child's criminal history already and provided to the court. Other 'bail history' may include whether the child committed offences while on bail, or compliance with conditions such as a curfew.[144]

Committee comment

We note that it is already the practice of the courts to consider information about recent compliance with bail when considering a non-custodial sentence order or conditions of such an order.

The Bill clarifies that the courts must consider bail history when sentencing. We also note advice on what other 'bail history' may include, such as offences committed while on bail or compliance with conditions.

We support the view that the provision will highlight the difference between past good compliance and poor compliance where relevant, thereby helping the courts to determine whether a non-custodial order may be effective in achieving the objectives of sentencing.

Furthermore, we note that the courts will determine the relevance of the information provided and the weight to attribute to it.

139 QLS, submission 42, p 16.

140 QLS, submission 42, p 16; Community Legal Centres Queensland, submission 72, p 4; Lily Fletcher, submission 62, p 6.

141 QLS, submission 42, p 16.

142 QATSICPP, submission 59, p 11.

143 Joint departmental response to submissions, p 20.

144 Joint departmental response to submissions, pp 20, 21.

2.4.3 Serious repeat offender declaration

Clause 21 of the Bill proposes that the court may declare the child is a serious repeat offender if:

- the court is sentencing the child in relation to a prescribed indictable offence [found in Schedule 4 of the Youth Justice Act]
- the child has previously been sentenced on at least one occasion to a detention order for a prescribed indictable offence
- a pre-sentence report has been received and considered
- the court has had regard to the child's previous offending history and bail history, any efforts of rehabilitation by the child, including rehabilitation carried out under a court order, and any other matter relevant the court considered relevant
- the court is satisfied that there is a high probability that the child would commit a further prescribed indictable offence.[145]

If such a declaration is made, the court must still consider the sentencing principles, but must also have primary regard to:

- the need to protect members of the community
- the nature and extent of violence, if any, used in the commission of the offence
- the extent of any disregard by the child in the commission of the offence for the interests of public safety
- the impact of the offence on public safety
- the child's previous offending history and bail history.[146]

2.4.3.1 Incompatibility with the Human Rights Act 2019

In the statement of compatibility, the government acknowledges that clause 21 of the Bill, which proposes the framework relating to declarations that children are serious repeat offenders, is incompatible with the HRA.[147] Specifically, clause 21 is incompatible with:

- the right of children to protection in their best interests[148]
- the right to liberty[149]
- the right not to be subject to retrospective increases in penalties.[150]

The government therefore seeks to override the HRA with respect to proposed ss 150A and 150B, which the Bill will insert into the Youth Justice Act.

2.4.3.2 Provisions are modelled on, but differ from, Western Australian legislation

The explanatory notes state that the relevant provisions of the Bill adapt ss 124 and 125 of Western Australia's *Young Offenders Act 1994* (WA).

While both jurisdictions require a court to be satisfied that there is a high probability that a child will commit a further serious offence, the framework proposed in the Bill will allow a court to make a declaration when a child is found guilty of a second serious offence.

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145 Explanatory notes, p 5.

146 Explanatory notes, p 6.

147 Statement of compatibility, p 21.

148 *Human Rights Act 2019* (HRA), s 26(2).

149 HRA, s 29(1).

150 HRA, s 35(2).

In contrast, the Western Australian model requires a child to have committed a third serious offence.

2.4.4 Submitter views

Only a small number of submitters commented on the proposed process for making a declaration that a child is a serious repeat offender in detail. While several of them expressed support for these provisions,[151] many submitters who engaged with this aspect of the Bill opposed it.[152]

The submitters who expressed opposition to this aspect of the Bill raised a variety issues. These included:

- the inconsistency of the proposed provisions with the principle that detention of children should be a last resort[153]
- the risk that the framework for dealing with serious repeat offenders will disproportionately affect Aboriginal and Torres Strait Islander children, and children with disabilities, both groups that are already over-represented in the youth justice system[154]
- the risk that declarations will stigmatise children who are likely to have backgrounds characterised by complex histories of intergenerational trauma, violence, poverty and disadvantage.[155]

Submitters also shared their concerns about:

- the risk that declaring a child to be a serious repeat offender will be counterproductive because it entrenches that child's identify as a criminal and leads to them spending more time in detention – both factors likely to increase reoffending[156]
- the fact that a court making a declaration will be required to make a ruling about what a child is likely to do in the future, which some submitters saw as 'a flagrant deviation from the rule of law'[157]
- concern that the proposed framework for dealing with serious repeat offenders under the Youth Justice Act will mean that young people are treated more harshly than adults[158]
- specific concerns about how different aspects of the process will operate in practice, including when applications for a declaration will be made and the scope of the term 'bail history,' which is not defined.[159]

In its response to submissions, the department acknowledged these submitter concerns.[160] The DCYJMA also:

- stressed that the introduction of the serious repeat offender framework is a policy matter determined by government

151 See, for example, submissions 70, 73.

152 See, for example, submissions 14, 23, 36, 42, 52, 59, 62, 65, 72.

153 Submissions 42, 62.

154 Submissions 14, 36, 65.

155 Submissions 23, 36.

156 Submissions 23, 26.

157 Submission 42, p 17; submission 62.

158 Submissions 65, 72.

159 Submission 42.

160 Joint departmental response to submissions, p 45.

- emphasised that although courts will be required to give primary regard to the matters identified in proposed s 150A(3), they will retain a degree of discretion to determine the appropriate sentence in each case and will not be required to make a detention order
- highlighted the 'high probability test' for making a declaration that a child is a serious youth offender that has been adapted from the Western Australian model
- noted several of its ongoing initiatives that address the root causes of youth crime.[161]

2.4.5 Conditional release orders

The Bill proposes increasing the maximum period of a conditional release order (CRO) from 3 months to 6 months 'to facilitate completion of programs and provide a greater period of supervision'.[162]

The Bill also proposes that, if a child breaches a CRO made for a prescribed indictable offence, the court must revoke the conditional release order and order the child serve the sentence of detention for which the CRO was made, unless the court considers that there are special circumstances.[163]

This latter proposed provision has been identified as being incompatible with the HRA and therefore the Bill contains an override declaration which provides that the HRA does not apply to this provision.[164] The statement of compatibility refers to this incompatibility, and states:

> …the Government considers that this measure is needed to respond to the problem of children who continue to put the community at harm, including by repeatedly failing to comply with court orders. This amendment sends a message that there will be consequences if a child fails to comply with the conditions of their order.[165]

2.4.6 Submitter views

Some submitters expressed support for the proposed changes to conditional release orders under the Bill.[166]

Submitters opposed to the proposed provisions raised the following:

- no evidence has been offered in support of this amendment or its anticipated efficacy/therapeutic benefit,[167] and larger numbers of children will be exposed to revocation and periods of actual detention as with little efficacy from the extended period[168]
- more children will be in custody[169] and increasing the duration of time that a child must comply with the conditions attached to CROs will be costly and resource intensive[170]
- the increase to 6 months may reduce children's willingness and ability to engage in these orders, as the requirement to continue engaging at such a high level for this period will be overwhelming to some.[171]

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161 Joint departmental response to submissions, pp 46-53.

162 Bill, cl 22; explanatory notes, p 6.

163 Bill, cl 28; explanatory notes, pp 6-7.

164 Bill, cl 28; explanatory notes, p 7.

165 Statement of compatibility, p 24.

166 See QPU, submission 73, p 3; Kelvin Bunyan, submission 37, p 3.

167 See, for example, submissions 23, 42.

168 QLS, submission 42, p 19.

169 QLS, submission 42, p 19.

170 QLS, submission 42, p 19; Youth Advocacy Centre Inc, submission 65, p 6.

171 Submission 62, p 7.

Submitters also shared their concerns on:

- it is not contemplated how a child with a CRO in place prior to the commencement of the amendments would be notified of the change[172] and a breach of a CRO does not necessarily arise due to further offending but could be something as simple as not attending a program or reporting as required[173]
- the changes may disproportionately impact already disadvantaged children, particularly those without stable accommodation or who lack family support, including children under the care of the Department of Child Safety[174]
- the words 'must revoke' undermines judicial discretion and fails to acknowledge that every matter before a court should be determined on its individual facts;[175] the words 'special circumstances are not defined; and the clause is silent on the manner in which the issue of 'special circumstances' is brought to the court's attention[176]
- the likely delay that may be caused in the need to properly evidence the special circumstance.[177]

In response to the concern that there is no evidence base for increasing the period of a CRO, the departments advised:

> The purpose of extending the program period is to facilitate rehabilitation through a longer conditional release program. A longer maximum period for conditional release orders will also mean that it is available as an alternative to a period of imprisonment in a greater number of cases.[178]

On the issue of how a young person subject to a CRO before commencement will be notified of the change and have explained the potential consequences for breaching the CRO, the departments advised the following:

> Proposed section 410 of the Youth Justice Act provides that new section 246A will apply to CROs that are made prior to the commencement but only where the breach occurs after the commencement of the Bill. In these circumstances, the reformulated powers for a court dealing with the breach of CRO will apply.
>
> Section 246 of the Youth Justice Act already provides a power for a court, in dealing with a breach of a CRO, to revoke the order and order the child to serve the sentence of detention for which the CRO was made.
>
> While the amendment applies to CROs made prior to the commencement, the potential consequence of serving a period of detention was always a prospect under section 246 of the Youth Justice Act.[179]

On the issue of the definition of special circumstances and that consideration may delay matters, the departments advised:

> The term 'special circumstances' is an established term in the Youth Justice Act used in section 227(2) and has been subject to judicial consideration and interpretation. The use of this term in the proposed provisions ensures consistency with the existing legislation and it is intended that the courts will draw on the established interpretation when applying this test.

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172 QLS, submission 42, p 19.

173 QHRC, submission 52, p 21.

174 QHRC, submission 52, p 21.

175 QLS, submission 42, p 20; QHRC, submission 52, p 21; Aged and Disability Advocacy, submission 35, p 3.

176 QLS, submission 42, p 20.

177 QLS, submission 42, p 20.

178 Joint departmental response to submissions, p 53.

179 Joint departmental response to submissions, pp 53-54.

> Generally, the courts have considered that the application of 'special circumstances' is dependent on the facts of the case and the child's particular circumstances but can include matters such as an early plea of guilty, lack of prior convictions for like offences, a dysfunctional upbringing and that the community would be best protected by a longer period of community supervision, or a combination of these (*R v KAL* [2013] QCA 317).[180]

In response to the concern that the reasons for noncompliance with a CRO are out of a young person's control, the department advised:

> The amendments to Conditional Release Orders are policy matters determined by Government. The court retains discretion not to revoke the conditional release order and order the child serve the sentence of detention if it finds there are 'special circumstances.[181]

The department also clarified that when section 246 and new section 246A both apply to a young person, section 246A(1) of the Youth Justice Act will apply where the CRO was made in relation to a prescribed indictable offence. [182]

The department addressed concerns about police not having the capacity to monitor CROs or breach bail conditions by advising that CROs are overseen and supervised by a youth justice worker, not police officers.[183] Also, in relation to the concern that bail checks and curfews are difficult to enforce, the department advised the following:

> In relation to breach bail conditions, there has been over 33,000 interactions with young people as part of the intensive bail supervision. The activities undertaken have included checking in with the child offender, and their family, to ensure bail conditions were being adhered to, offering assistance and referrals, including providing transport to meet court dates. Through these actions, over time there has been an increase in bail compliance.[184]

Committee comment

The committee notes the proposed amendment to increase the maximum period of a conditional release order from 3 months to 6 months is to facilitate completion of rehabilitation programs and provide a greater period of supervision.

We also note that the department's advice that a longer maximum period for conditional release orders will also mean that it is available as an alternative to a period of imprisonment in a greater number of cases.

We note that requiring the child to serve a suspended period of detention for conditional release orders is incompatible with human rights, but also note the government's advice that the measure is needed to respond to the problem of a continual lack of compliance by some child offenders.

2.5 Expanding the scope of 'prescribed indictable offence'

The Bill expands the dictionary definition of 'prescribed indictable offence', which applies to a number of provisions in the Youth Justice Act, to include further offences.[185]

2.5.1 More offences will be a prescribed indictable offence

Clause 41 of the Bill expands the definition of 'prescribed indictable offence' under the Youth Justice Act to include:

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180 Joint departmental response to submissions, p 55.

181 Joint departmental response to submissions, p 55.

182 Joint departmental response to submissions, p 55.

183 Joint departmental response to submissions, p 56.

184 Joint departmental response to submissions, p 56.

185 Explanatory notes, p 7.

- cases in which a child was merely the passenger (i.e. not the driver) of a motor vehicle that was used unlawfully under s 408A(1) of the Criminal Code
- entering or being in a premises with intent to commit an indictable offence under section s 421(1) of the Criminal Code.

Some of the new aggravated offences proposed by the Bill, including unlawful use of a motor vehicle at night or in a manner that causes property damage, will also fall within the definition of 'prescribed indictable offence' because they are subject to a maximum penalty of 14 years imprisonment.[186]

2.5.2 Consequences of expanded definition under the Youth Justice Act

The expanded definition of 'prescribed indictable offence' will have consequences under several provisions of the Youth Justice Act. Most notably, it will:

- require more children to 'show cause' that their detention is not justified in order to be granted bail[187]
- broaden the scope of the proposed framework for making of declarations that a child is a serious repeat offender[188]
- broaden the scope of s 59A of the Youth Justice Act , which as amended by the Bill will remove the requirement that police consider alternatives to arrest when they suspect that certain children (including those on bail for a prescribed indictable offence) are in breach of a bail condition[189]
- expand the application of proposed s 246A of the Youth Justice Act, which will require a court to revoke a conditional release order, and order that a child serve their period of detention, where that child has breached the conditional release order.[190]

2.5.3 Submitter views

Some submitters expressed support for the expanded definition of 'prescribed indictable offence', asserting that the change reflects community expectations.[191]

However, the majority of submitters who engaged directly with this aspect of the Bill opposed it. Submitters raised a variety of concerns, including:

- the very high likelihood that the expanded definition will result in more children being detained on remand, which will have a variety of negative effects including increasing recidivism among youth offenders[192] and the very high likelihood that the expanded definition will have a disproportionately negative effect on Aboriginal and Torres Strait Islander children, and could contribute to the deaths of First Nations children in custody[193]
- that the expanded definition will capture offending that is not sufficiently serious to warrant inclusion, such as being a passenger in a stolen car[194]

186 Youth Justice Act, schedule 4.

187 Under the Youth Justice Act, s 48AF.

188 Proposed ss 150A and 150B of the Youth Justice Act. See section 2.4.3, above.

189 See section 2.3.3, above.

190 See section 2.4.5, above.

191 Submission 73, p 4.

192 Submissions 42, 52, 59, 62.

193 Submission 52.

194 Submission 51, 52, 62.

- the increased burden on the court system, as more cases will have to be heard on indictment, causing delays[195] and that it is undesirable to have different definitions of 'prescribed indictable offence' apply in different parts of the Youth Justice Act.[196]

2.6 Transfer of persons turning or who have turned 18 years from youth detention centres

The Bill provides that a sentenced person aged 18 years (rather than 19 years) or older who is remanded in custody in relation to a child offence goes to an adult corrective services facility.[197]

The explanatory notes to the Bill outline that this is to allow detention centres to focus on providing rehabilitation services to children.[198] However, under the Bill, the court may order that the person be held in a youth detention centre instead.[199]

New South Wales, Western Australia and Victoria allow for the transfer of children under 18-years-old to adult correctional centres. In the ACT, once a person reaches the age of 18 they can be transferred to adult prison, whether or not they are on remand or on a sentence.[200]

2.6.1 Submitter views

Key issues arising from submissions include concerns that time periods for notice or review are not adequate; it is not fair to those on remand when there are legal delays beyond their control; and there is a lack of right to legal aid for those subject to transfer despite the complexity of the process and serious repercussions. [201]

Alternatively, moving adult detainees out of youth detention and into the adult correctional system was supported by some submitters who considered this was in line with community expectations.[202]

Adult offenders tend to be physically larger and stronger than younger detainees, meaning that the effect of their violence towards staff and others within youth detention centres tends to be more severe. It was submitted that these proposed changes in the Bill have the potential to deliver better health and safety outcomes for those who work in youth detention centres even though the intention of the Bill is to address detainee violence.[203]

Committee comment

We recognise the imbalance in youth detention centres when older detainees become larger and physically stronger, and that this can create safety issues for both staff and younger detainees.

2.7 Multi-agency collaborative panels (MACPs)

MACPs have existed since 2021 and have proved effective in bringing together relevant agencies and non-government service providers to ensure timely and coordinated assessments of the needs of serious repeat offenders, and respond to those needs.

195 Submission 51.

196 Submission 42.

197 Bill, cl 18; explanatory notes, p 21.

198 Explanatory notes, p 7.

199 Bill, cl 18; explanatory notes, p 21.

200 Explanatory notes, p 16.

201 QLS, submission 42, p 21.

202 The Australian Workers' Union of Employees, Queensland (AWU), submission 54, p 2; AWU, public hearing transcript, Brisbane, 28 February 2023, p 40.

203 AWU, submission 54, p 2. AWU, public hearing transcript, Brisbane, 28 February 2023, p 40.

The Bill proposes to ensure the continuation of MACPs which provide intensive case management and holistic support for young persons identified as high risk or requiring a collaborative response through a multi-agency and multi-disciplinary approach.

MACPs currently function in 18 locations, with a specific emphasis on addressing the needs of serious repeat young offenders, by coordinating access to services and support such as mental health, drug and alcohol programs, school engagement support, cultural connections, connecting with doctors and allied health providers.

Information is shared between members under an arrangement established under the Youth Justice Act, which has appropriate regard to the child's right to privacy.[204]

The Bill establishes MACPs in legislation in a way similar to the establishment of the SCAN (suspected child abuse and neglect) system under the *Child Protection Act 1999*.[205]

2.7.1 Submitter views

Submitters generally supported the Bill establishing these statutory arrangements particularly the ability for 'at risk' young people to be referred to what could be life-changing intervention and prevention programs. One submission considered this has the potential to be a particularly effective intervention in situations where schools refer young people.[206]

Alternatively, some submitters considered there was a lack of guaranteed role for community service organisations and First Nations controlled organisations; a lack of clarity around how panels will operate, especially given the variation in how they currently work in different regions plus potential complexity in cross-border communities; and concern about sharing confidential information about young people.[207]

2.8 Fundamental legislative principles

2.8.1 Serious offending relating to motor vehicles – Criminal Code amendments

2.8.1.1 Rights and liberties of individuals—penalties and reversal of onus of proof

Increasing existing penalties and providing for new circumstances of aggravation can affect the rights and liberties of individuals. A penalty should be proportionate to the offence, and penalties within legislation should be consistent with each other.[208]

Consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences relate.[209]

Legislation should not reverse the onus of proof in criminal proceedings without adequate justification.[210]

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204 Joint departmental briefing, 24 February 2022, p 10.

205 Explanatory notes, p 7.

206 QHRC, submission 52, p 22.

207 Hub Community Legal, submission 23, p 5; Justice Reform Initiative, submission 34, p 13.

208 Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental legislative principles: the OQPC notebook* (Notebook), 2008, p 120.

209 OQPC, Notebook, 2008, p 120.

210 *Legislative Standards Act 1992* (LSA), s 4(3)(d); For a reversal to be justified, the relevant fact must be something inherently impractical to test by alternative evidential means and the defendant would be particularly well positioned to disprove guilt (OQPC, Notebook, 2008, p 36).

2.8.1.2 Penalties – clause 8

To address serious offending related to motor vehicles, the Bill proposes to amend the Criminal Code to:

- increase the maximum penalty for the offence of unlawful use or possession of motor vehicles, aircraft or vessels — from 7 years imprisonment to 10 years imprisonment[211]
- increase the maximum penalty for the offence of unlawful use or possession of motor vehicles, aircraft or vessels where the offender uses or intends to use the motor vehicle, aircraft or vessel for the purpose of facilitating the commission of an indictable offence — from 10 years imprisonment to 12 years imprisonment[212]
- introduce a new aggravated offence providing that if the offender publishes material on a social media platform or an online social network to advertise the offender's involvement in the offence of unlawful use or possession of motor vehicles, aircraft or vessels, or the act or omission constituting the offence, they are liable to a maximum of 12 years imprisonment[213]
- substitute an existing aggravated offence for new aggravating offences providing that if the the offence is committed in the night[214] or the offender:
    - uses or threatens to use actual violence, or
    - is or pretends to be armed with a dangerous or offensive weapon, instrument or noxious substance, or
    - is in company with one or more persons, or
    - damages or threatens or attempts to damage any property

  the offender is liable to a maximum of 14 years imprisonment.[215]

According to the explanatory notes, recent data on reported crime identifies that unlawful use of a motor vehicle offences represent a greater proportion of youth crime than in previous years, becoming in 2020-21, the 'fourth most prevalent offence committed by child offenders in Queensland, recording the largest increase in the proportion of all child offenders'.[216]

The explanatory notes also reference an increasing trend where offenders post images and recordings of their offending online and on social media platforms, particularly in relation to motor vehicle offences: 'By publishing images and recordings of their criminal acts, these offenders encourage others, particularly young people, to engage in similar criminal behaviour involving vehicles'.[217]

In addressing fundamental legislative principles, the explanatory notes acknowledge the amendments in clause 8 may impact on the rights and liberties of individuals and state they are justified to address and reflect the community's denunciation of this offending behaviour.[218]

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211 Bill, cl 8 amends Criminal Code, s 408A(1).

212 Bill, cl 8 amends Criminal Code, s 408A(1A).

213 Bill, cl 8 amends Criminal Code, new s 408A(1B).

214 That is, between 9pm and 6am (Criminal Code, s 1).

215 Bill, cl 8 amends Criminal Code to replace existing s 408A(1B) and (1C) and insert new (1D) and (1E).

216 Explanatory notes, p 1.

217 Explanatory notes, p 1.

218 Explanatory notes, p 8.

Committee comment

The committee considers that the offence of UUMV is often accompanied by risk-taking behaviour that can result in tragic consequences for both the offender and the community.

We are satisfied that the increases in maximum penalties reflect the seriousness and the dangers of this type of offending.

We also note the department's advice that the nature of UUMV offences is changing.

2.8.1.3 Reversal of onus of proof – clause 8

The Bill provides that the above offences and aggravated circumstances do not apply if the accused person had the lawful consent of the owner of the motor vehicle, aircraft or vessel to its use or possession by the accused person. However, the accused person is to bear the evidential burden in this regard.[219]

The explanatory notes explain that the Bill amends the reverse onus for the defence under the relevant existing section of the Criminal Code:[220]

> Former section 408A(1C) creates a defence for an accused person to prove that they had the lawful consent of the owner (as opposed to the person in lawful possession) of the motor vehicle, aircraft or vessel to its use or possession. This requires an accused person to prove the defence on the balance of probabilities, thereby reversing the onus of proof. Acknowledging that matters required to be proved are not matters uniquely within an accused person's knowledge (although the defendant may be best placed to provide this information), the Bill seeks (in new sections 408A(1D) and (1E)) to remove the legal burden of proof being on an accused person to prove the defence. Instead, the Bill seeks to place an evidential burden on an accused person. The burden of proof will remain with the prosecution to prove the offence beyond a reasonable doubt. The Bill contains transitional provisions which provide for the operation of new sections 408A(1D) and (1E) of the Code.[221]

In addressing fundamental legislative principles, the explanatory notes observe that:

> Whilst the evidential onus of proof is still reversed, it is considered justified as the defendant is best placed to provide evidence that they had the lawful consent of the owner of the motor vehicle, aircraft or vessel to its use or possession.[222]

2.9 Amendments to Youth Justice Laws

The Bill also amends the Bail Act, the YJ Act and the PPR Act to amend the youth bail sentencing framework, amongst other things.

2.9.1 Youth justice bail framework

2.9.1.1 General rights and liberties of individuals

Fundamental legislative principles include requiring legislation to have sufficient regard to rights and liberties of individuals.[223]

To address serious, persistent repeat youth offending, the Bill proposes to amend youth justice laws by:

- *clause 5* - making it an offence for children to breach a condition of their bail undertaking[224]

[219] Bill, cl 8 inserts new s 408(1D).

[220] Criminal Code, s 408A(1C).

[221] Explanatory notes, p 3.

[222] Explanatory notes, p 8.

[223] LSA, s 4(2).

[224] Bill, cl 5 amends Bail Act, s 29.

- *clause 14* - extending and expanding the trial of electronic monitoring as a condition of bail for a further 2 years and to include eligible 15-year-olds[225]
- *clause 15* - removing the requirement for police to consider alternatives to arrest if they reasonably suspect a child on bail for a prescribed indictable offence or certain domestic violence offences has contravened or is contravening a bail condition.[226]

2.9.1.2 Breach of bail as an offence for a child - clause 5

The Bail Act makes it an offence for a defendant to break any condition of the undertaking on which they were granted bail requiring the defendant's appearance before a court, attracting a maximum penalty of 40 penalty units (currently, $5,750) or 2 years imprisonment.[227] The existing provision excludes a defendant who is a child.[228] The Bill removes this exclusion.

In addressing fundamental legislative principles, the explanatory notes outline that enabling children to be charged with an offence of breach of bail[229] will impact on the rights and liberties of child defendants, as it exposes them to criminal proceedings and penalties; however, it is 'justified to ensure that children comply with bail conditions'.[230]

2.9.1.3 Extension and expansion of electronic monitoring device trial – clause 14

The YJ Act provides that a court may impose[231] on a grant of bail to a child, a condition that the child must wear a monitoring device while released on bail, if the specified requirements are satisfied, including that the child is at least 16 years old.[232] The YJ Act provides for the monitoring device trial to expire 2 years after commencement.[233]

The Bill decreases the age of the child to whom the monitor device trial can apply to 15-years-old and extends the trial for a further 2 years.[234]

In addressing fundamental legislative principles, the explanatory notes reference the *Youth Justice and Other Legislation Amendment Act 2021* (2021 Act), asserting that the amendments in the Bill will have the same impact on the rights and liberties of children (including on the right to privacy and confidentiality), and also reference the Bill's human rights statement of compatibility.[235]

The explanatory notes observe that uptake during the current electronic monitoring device trial was low (8 children), resulting in the review of the trial not being able to confirm its effectiveness in deterring offending behaviour:

> The extension of the trial for a further two years and expansion of the criteria to include 15-year-olds will increase the potential cohort size of the trial, which in turn will better enable the Government to determine the effectiveness of the trial in achieving its objectives.

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225 Bill, cl 14 amends YJ Act.

226 Bill, cl 15 amends YJ Act, s 59A.

227 Bail Act, s 29(1).

228 Bail Act, s 29(2)(a).

229 Under the Bail Act, s 29.

230 Explanatory notes, p 9.

231 Under, YJ Act, s 52AA(2).

232 Other requirements include that the offence in relation to which bail is being granted is a prescribed indictable offence and the child has previously been found guilty of at least one indictable offence; YJ Act, s 52AA(1).

233 YJ Act, s 52AA(10).

234 Bill, cl 14 amends YJ Act, s 52AA.

235 Explanatory notes, p 9.

> As outlined in the Explanatory Notes to the 2021 Act, the electronic monitoring device trial facilitates an appropriate level of monitoring while a child is on bail, deterring them from committing further offences and, in so doing, protecting the community. The existing safeguards will be retained, including the requirement for a child to have allegedly committed a prescribed offence and been convicted previously for an indictable offence. The power to order an electronic monitoring condition will continue to be limited to the courts and may only occur following a comprehensive assessment of the child's ability to comply.
>
> The provisions will be subject to a new sunset clause on 30 April 2025 and a further review prior to any Government decision about the future use of electronic monitoring devices in the youth justice system.[236]

The explanatory notes conclude that the Bill has sufficient regard to the rights and liberties of children, given the 'limitations and safeguards on the use of the electronic monitoring orders and the intention to further review their efficacy prior to any determination on future use'.[237]

2.9.1.4 Police powers to arrest for contravention of bail conditions – clause 15

Section 59A of the YJ Act requires a police officer, before arresting a child under the PPR Act[238] in relation to the contravention or likely contravention of a condition imposed on a grant of bail to the child, to first consider whether, in all the circumstances, it would be more appropriate to do one of the specified alternatives.[239]

The explanatory notes state that section 59A provides guidance to police officers in applying the provision to ensure that, for example, 'a minor breach of a curfew with no evidence of reoffending could be dealt with by way of a warning rather than arrest'.[240]

The Bill removes the requirement for police to consider the alternatives for a child who is on bail for a prescribed indictable offence;[241] however, discretion to consider alternatives in those circumstances is retained.

Although the explanatory notes acknowledge the amendments may impact a child's rights and liberties, as it may increase the chances of a child being arrested for breaching their bail conditions, the explanatory notes state the amendments are considered to have sufficient regard to the rights and liberties of children as:

> … police officers will still have the discretion to take actions other than arrest (e.g. take no action, issue a warning, or make an application to vary or revoke bail). Further, a police officer may take into account the seriousness of the contravention or likely contravention, whether the child has a reasonable excuse, the child's particular circumstances, and any other relevant information of which the police officer is aware, in deciding whether arrest is the most appropriate course of action.
>
> Decisions by police officers, in these circumstances, will also be subject to the youth justice principles under the YJ Act.[242]

The reasons provided in the explanatory notes for these provisions are to:

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236 Explanatory notes, pp 9-10.

237 Explanatory notes, p 10.

238 PPR Act, s 367(3)(a)(i) empowers police to arrest without warrant a person, including a child, who the police officer reasonably suspects has breached or is about to breach a condition of bail.

239 Those alternatives are: to take no action; to warn the child of the action a police officer may take in relation to a contravention of a condition imposed on the grant of bail; if the contravention or likely contravention is in relation to a condition other than a condition for the child's appearance before a court—to make an application under the Bail Act to vary or revoke the bail.

240 Explanatory notes, p 5.

241 Or for an offence of contravention of domestic violence order or contravention of police protection notice under the *Domestic and Family Violence Prevention Act 2012*; explanatory notes, p 5.

242 Explanatory notes, p 10.

- ensure that children comply with bail conditions[243]
- enable the continuing trial of electronic monitoring devices as a condition of bail (intended to deter children from committing further offences and thereby protecting the community)[244]
- increase a police officer's discretion when exercising powers of arrest for contravention of a bail condition.[245]

2.9.2 Youth justice sentencing framework

2.9.2.1 General rights and liberties of individuals and retrospectivity

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not adversely affect rights and liberties, or impose obligations, retrospectively.[246]

To address serious repeat young offenders who engage in persistent serious offending, the Bill proposes to strengthen youth justice laws by:

- *clause 21* - 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[247]
- *clause 22* - enabling conditional release orders to operate for a greater period of time[248]
- *clause 28* - requiring certain child offenders serve their suspended term of detention if they breach their conditional release orders, subject to special circumstances.[249]

2.9.2.2 Serious repeat offender declaration - clause 21

The Bill proposes to amend the YJ Act[250] to provide a separate sentencing regime for serious repeat offenders, which would enable courts[251] to declare a child a 'serious repeat offender' if:

- the court is sentencing the child in relation to a prescribed indictable offence
- the child has previously been sentenced on at least one occasion to a detention order for a prescribed indictable offence
- a pre-sentence report has been received and considered
- the court has had regard to the child's previous offending history and bail history, any efforts of rehabilitation by the child, including rehabilitation carried out under a court order, and any other matter the court considered relevant, and

243 Explanatory notes, p 9.

244 Explanatory notes, p 9.

245 Explanatory notes, p 10.

246 LSA, s 4(g).

247 The explanatory notes state that this will mean that, where appropriate, child offenders will have the opportunity to complete the necessary rehabilitation programs identified in any pre-sentence report (explanatory notes, p 2); Bill, cl 21 inserts YJ Act, ss 150A & 150B.

248 Bill, cl 22 amends YJ Act, s 221.

249 Bill, cl 28 inserts YJ Act, new s 246A.

250 Bill, cl 21 inserts YJ Act, ss 150A & 150B.

251 On application by the prosecution.

- the court is satisfied that there is a high probability that the child would commit a further prescribed indictable offence.[252]

The explanatory notes state that, if a child is declared a serious repeat offender, the court must still consider the sentencing principles.[253] However, the court must have primary regard to the specified sentencing considerations, which are:

- the need to protect members of the community
- the nature and extent of violence, if any, used in the commission of the offence
- the extent of any disregard by the child in the commission of the offence for the interests of public safety
- the impact of the offence on public safety, and
- the child's previous offending history and bail history.[254]

The sentencing considerations ensure that, when a child is declared a serious repeat offender, primacy is placed on community safety, while still requiring that some weight be placed on the individual's particular circumstances by way of regard to the sentencing principles.

A serious repeat offender declaration will remain current for 12 months and bind subsequent courts of a like or lower jurisdiction[255] when sentencing a child for a further prescribed indictable offence committed within the relevant period the declaration is in operation.[256]

For determining the duration of the declaration, the explanatory notes state that the Bill provides that the relevant period means 12 months from the day the declaration was made by the original court or, where the child was detained by the original court, commencing on the day the declaration is made and ending 12 months after the day the child is released from detention.[257]

2.9.2.3 Conditional release orders – clauses 22 and 28

The YJ Act sets out the requirements for a conditional release order, including that the child participate as directed by the chief executive in a program (the conditional release program) for the period, of not more than 3 months, stated in the order (the program period).[258]

According to the explanatory notes, a court making a detention order in relation to a child can immediately suspend the order and make a conditional release order, which results in the release of the child subject to supervision and participation in programs. However:

252 Explanatory notes, p 5.

253 Under YJ Act, s 150.

254 Explanatory notes, p 6.

255 The subsequent court must have primary regard to the aforementioned sentencing considerations contained in YJ Act, new s 150A(3)(a) to (e).

256 Explanatory notes, p 10.

257 Bill, cl 21 inserts YJ Act, s 150B(4); the intent is for the declaration to cover any offences that may occur during the child's detention (explanatory notes, p 6).

258 Other requirements include that, during the period of the order: the child abstain from violation of the law; the child comply with every reasonable direction of the chief executive; the child report and receive visits as directed by the chief executive; the child or a parent of the child notify the chief executive within 2 business days of any change of address, employment or school; and child not leave, or stay out of, Queensland without the prior approval of the chief executive. YJ Act, s 221.

> If a child breaches their conditional release order (including by committing a further offence), they must demonstrate why they should not be returned to detention and be offered a further opportunity to comply with the conditional release order.[259]

The Bill amends the YJ Act to increase the program period from 3 months to 6 months[260] to 'facilitate completion of programs and provide a greater period of supervision'.[261]

The explanatory notes state that the Bill also seeks to strengthen the consequences for breaching a conditional release order,[262] which was made in relation to a prescribed indictable offence:

> The amendments require the court in these circumstances to revoke the conditional release order and order the child serve the sentence of detention for which the conditional release order was made, unless the court considers that there are special circumstances.[263]

2.9.2.4 General rights and liberties – clauses 21 and 28

In the context of fundamental legislative principles with respect to clause 21, the explanatory notes state that 'courts sentencing a serious repeat offender will more likely impose harsher penalties, including imposing a period of detention'[264] and that the serious repeat offender declaration amendments will impact on the rights and liberties of child offenders:

> … however, it is considered justified to address the acute problem presented by serious repeat offenders who continue to put the community at harm. It is noted that there are provisions in the Bill to require a court to provide reasons for making the declaration. Further, the Bill provides that a child is still able to make an application for review of, and appeal, the making of a declaration as though it were part of the sentence. This ensures that the regime is still subject to appropriate review and appeal.[265]

The Bill requires a court dealing with a breach of a conditional release order (which was made in relation to a prescribed indictable offence) to revoke the conditional release order and order the child serve the sentence of detention for which the conditional release order was made, unless the court considers that there are special circumstances.[266] The explanatory notes observe that these amendments increase the likelihood that the child will serve a period of detention:

> In this regard, Clause 28 will impact on the rights and liberties of child offenders; however, it is again considered justified to address youth offenders who continue to put the community at harm. The court may, however, consider whether there are special circumstances when deciding whether to revoke the order and order the child to serve a period of detention. If there are special circumstances, the court may otherwise deal with the child pursuant to section 246(2) of the YJ Act.[267]

2.9.2.5 Retrospectivity – clauses 21, 22 and 28

In addressing fundamental legislative principles, the explanatory notes state that:

- *clause 21* - the new sentencing regime will breach fundamental legislative principles, as it will operate with a degree of retrospectivity in that it will apply to sentences for offences committed before commencement[268]

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259 Explanatory notes, p 6.

260 Bill, cl 22 amends YJ Act, s 221(1)(a).

261 Explanatory notes, p 6.

262 Bill, cl 28 inserts YJ Act, s 246A.

263 Explanatory notes, pp 6-7.

264 Explanatory notes, p 10.

265 Explanatory notes, pp 10-11.

266 Bill, cl 28 inserts YJ Act, s 246A; explanatory notes, p 11.

267 Explanatory notes, p 11.

268 Explanatory notes, p 10.

- *clause 22* – by increasing the maximum operational period for a conditional release order this amendment will breach fundamental legislative principles, as it will operate with a degree of retrospectivity in that it will apply to sentences for offences committed prior to commencement[269]
- *clause 28* – the conditional release order amendments will breach fundamental legislative principles, as they will operate with a degree of retrospectivity in that it will apply to conditional release orders which were imposed before commencement (although, it will not apply to breaches that occur prior to commencement).[270]

The explanatory notes acknowledge that these amendments are retrospective in nature and will breach fundamental legislative principles.

2.9.3 Transfer to adult correctional centres

2.9.3.1 Rights and liberties of individuals—administrative power and natural justice

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.[271]

> Depending on the seriousness of a decision and its consequences, it is generally inappropriate to provide for administrative decision-making in legislation without providing for a review process. If individual rights and liberties are in jeopardy, a merits-based review is the most appropriate type of review.[272]

Legislation should be consistent with principles of natural justice.[273] The principles of natural justice include that something should not be done to a person that will deprive the person of some right, interest, or legitimate expectation of a benefit without the person being given an adequate opportunity to present the person's case to the decision-maker.[274]

The principles also require procedural fairness, involving a flexible obligation to adopt fair procedures that are appropriate and adapted to the circumstances of the particular case.[275]

The Bill amends the YJ Act to enable the 'transfer of persons who have turned 18 years on remand or serving a sentence from youth detention centres to adult correctional centres' to 'allow detention centres to focus on providing rehabilitation services to children'.[276]

The YJ Act provides for prison transfer directions, including provisions for: particular detainees who are liable to be transferred to a corrective services facility; the transfer of particular detainees to a corrective services facility; and the application process for a temporary delay of transfer.

Part 8 of the YJ Act provides for detention administration and includes Division 2A 'Age related transfers to corrective service facilities'. The Bill amends a range of provisions in this division, including to:

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269 Explanatory notes, p 11.

270 Explanatory notes, p 11.

271 LSA, s 4(3)(a).

272 OQPC, Notebook, 2008, p 18.

273 LSA, s 4(3)(b).

274 OQPC, Notebook, 2008, p 25.

275 OQPC, Notebook, 2008, p 25.

276 Bill, cl 29-36 amend YJ Act, amending ss 276A-F, inserting new ss 276DA and 276DB, and inserting new part 8, div 2A, sdiv 3 'Transfer of persons remanded in detention', consisting of new ss 276GA–276K. Explanatory notes, pp 2, 7, respectively.

- define a 'temporary delay' as a delay of 6 months or less[277]
- reduce the duration of custody beyond which a detainee is liable to be transferred, from a person who is liable to serve a remaining period of detention of 6 months or more, to 2 months or more[278]
- insert timeframes, require the provision of relevant information to assist the detainee to understand the implications of a transfer, and oblige the chief executive to arrange a consultation with a lawyer[279]
- establish an administrative process (in place of the current need for an application to the Childrens Court) for considering a delay of a transfer, which includes a review on the merits by the Childrens Court[280]
- introduce new arrangements for the transfer of remandees, which apply to a person remanded in custody in detention in relation to a charge of an offence, who turns 17 years and 10 months while remanded.[281]

According to the explanatory notes, the new arrangements for the transfer of remandees are consistent (as appropriately varied) with the provisions for sentenced detainees, and provide that:

> The chief executive must facilitate a consultation with a lawyer, who would be expected to be the detainee's lawyer for their court matters for which they are remanded, and who will be able to provide information on expected timeframes for resolution of the matters – which will affect the chief executive's decision. Appropriate safeguards apply, including a review on the merits by the Childrens Court.[282]

2.9.3.2 Fundamental legislative principles

The explanatory notes acknowledge the Bill's transfer provisions may impact on:

- the rights and liberties of 18-year-olds in detention, for example their continued access to the services, programs and interventions
- the rights of vulnerable 18-year-olds whose needs may be better addressed in a youth detention setting.[283]

However, the explanatory notes state that these impacts need to be balanced with the right of children in detention to be segregated from adults, and provide the following commentary on relevant limitations and safeguards:

> The provisions are limited in their scope to those young people in detention who have, or are close to, turning 18-years-old. The inclusion of the following safeguards also ensure that the provisions are consistent with natural justice and procedural fairness. Prior to determining whether to transfer a young person, the chief executive must provide a written notice to the young person, provide an opportunity to comment and facilitate a consultation with a lawyer. The Bill also specifies the issues the chief executive may consider in deciding whether to proceed with a transfer, including any submission made by the affected person, the vulnerability of the person, and the interventionist and rehabilitation services available if the person is transferred.

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277 Bill, cl 29 amends YJ Act, s 276A.

278 Bill, cl 30 amends YJ Act, s 276B.

279 Bill, cl 29 and 31 amend YJ Act, ss 276A and 276C, respectively; explanatory notes, p 24.

280 Bill, cl 29 inserts YJ Act, new ss 276DA and 276DB; explanatory notes, p 24.

281 And for whom there is no future court attendance date in relation to the charge, or the future court attendance date in relation to the charge is 2 months or more after the day the person turns 17 years and 10 months; Bill, cl 36 inserts YJ Act, new s 276GA.

282 Explanatory notes, p 25.

283 Explanatory notes, p 12.

The decision of the chief executive is also subject to review by the Childrens Court.[284]

2.9.3.3 Application for a temporary delay of transfer

In terms of an application for a temporary delay of transfer, the committee notes a range of safeguards and limitations in the Bill that may assist the detainee, including:

- the provision of relevant information to assist the detainee to understand the implications of a transfer[285]
- an obligation on the chief executive to arrange a consultation with a lawyer[286]
- that transfer of the detainee is stayed upon the chief executive's receipt of the application, and remains stayed until the application is decided, withdrawn or otherwise ends[287]
- that the chief executive may grant the application only if satisfied the delay would be in the interests of justice; would not prejudice the security or good order of the detention centre at which the detainee is, or is to be, detained; and would not prejudice the safety or wellbeing of any other detainee at that detention centre[288]
- that after making a decision, the chief executive must inform the detainee of the decision; give the detainee reasons in writing for the decision; and facilitate a consultation between the detainee and a lawyer at least 7 business days before the day the prison transfer direction takes effect[289]
- that if the chief executive decides to refuse the application, the detainee may apply to the Childrens Court for a review of the decision,[290] which will involve a stay of the detainee's transfer[291] and requires the Childrens Court to hear and decide a review of a decision by the chief executive by way of a fresh hearing on the merits.[292]

2.9.3.4 Transfer of specified remandees in detention

In terms of the new arrangements for the transfer of specified remandees in detention,[293] the Bill provides for the chief executive to give a detainee a prison transfer notice, invite the person to make submissions about the transfer and facilitate a consultation between the person and a lawyer.[294]

When deciding to transfer a detainee to a corrective services facility (which must be on a day that is on or after the day the person turns 18 years), the chief executive must have regard to specified

284 Explanatory notes, p 12.

285 Bill, cl 31 amends YJ Act, s 276C.

286 Bill, cl 31 amends YJ Act, s 276C.

287 Bill, cl 33 inserts YJ Act, new s 276DA(3).

288 Bill, cl 33 inserts YJ Act, new s 276DA(4). The chief executive must also have regard to the matters mentioned in section 276D(3), as per new s 276DA(5).

289 Bill, cl 33 inserts YJ Act, new s 276DA(7).

290 However, such an application is subject to a timeframe requiring that it be made within 5 business days of the day of consultation between the detainee and a lawyer (in accordance with YJ Act, new s 276DA(7)(c)) or, if the detainee refused to consult with a lawyer, within 5 business days of that refusal; Bill cl 33 inserts YJ Act, new s 276DB(2).

291 Until the application is decided, withdrawn or otherwise ends.

292 Bill, cl 33 inserts YJ Act, new s 276DB.

293 The specified remandees are persons remanded in custody in detention in relation to a charge of an offence, who turn 17 years and 10 months while remanded and for whom there is no future court attendance date in relation to the charge (or the future court attendance date is 2 months or more after the day the person turns 17 years and 10 months); Bill, cl 36 inserts YJ Act, new s 276GA.

294 Bill, cl 36 inserts YJ Act, new s 276H(1).

matters.[295] The chief executive must inform the person of the decision (giving reasons in writing) and facilitate a consultation between the person and a lawyer, at least 7 business days before the transfer day.[296]

The Bill also provides that, if the chief executive decides to transfer the person, the person may apply to the Childrens Court for a review of the decision, which will involve a stay, and requires the Childrens Court to hear and decide a review of a decision by the chief executive by way of a fresh hearing on the merits.[297] The Childrens Court may affirm the transfer day, decide a new transfer day, or order that the person not be transferred to a corrective services facility.[298]

Committee comment

The committee notes the various safeguards and limitations included in the Bill, in particular the recourse to a merits review in the Childrens Court.

We further note that natural justice and procedural fairness is supported by various aspects of the proposed administrative processes, such as certain timeframes, requirements for notices and information to be given to the detainee, matters to be considered by the chief executive and legal consultation for the benefit of the detainee.

In addressing the Bill's consistency with fundamental legislative principles, the explanatory notes explicitly raise the fundamental principles of administrative powers and natural justice, concluding that the provisions are consistent with natural justice and procedural fairness.

We consider, on balance, the amendments strike the appropriate balance between the rights and liberties of the individual against the need for community safety, and have sufficient regard to the fundamental legislative principles.

2.9.4 Multi-agency Collaborative Panels

2.9.4.1 Rights and liberties of individuals—privacy and administrative power

The right to privacy and the disclosure of confidential information are relevant to a consideration of whether legislation has sufficient regard to the rights and liberties of individuals.

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.[299]

> Depending on the seriousness of a decision and its consequences, it is generally inappropriate to provide for administrative decision-making in legislation without providing for a review process. If individual rights and liberties are in jeopardy, a merits-based review is the most appropriate type of review.[300]

According to the explanatory notes, MACPs bring together relevant agencies and non-government service providers to ensure timely and coordinated assessments of the needs of serious repeat offenders, and respond to those needs.[301] The Bill establishes statutory arrangements[302] to ensure the continuation of MACPs, which provide 'intensive case management and holistic support for children

295 Bill, cl 36 inserts YJ Act, new s 276I.

296 Bill, cl 36 inserts YJ Act, new s 276I.

297 Bill, cl 33 inserts YJ Act, new s 276J.

298 Bill, cl 33 inserts YJ Act, new s 276J.

299 LSA, s 4(3)(a).

300 OQPC, Notebook, 2008, p 18.

301 Explanatory notes, p 7.

302 Similar to the Suspected Child Abuse and Neglect (SCAN) system in the *Child Protection Act 1999.*

identified as high risk or requiring a collaborative response through a multi-agency and multidisciplinary approach'.[303]

The Bill provides for the process applicable to the referral of children to the MACP system, which includes that:

- the chief executive must decide, in consultation with the core members, the categories of children charged with offences or at risk of being charged with offences (each an 'eligible category') who may be referred to the MACP system
- the chief executive must inform the members of the MACP system of the decision
- a member of the MACP system may refer a child who is in an eligible category to the system
- the members of the MACP system must collectively decide whether to accept the referral of the child to the system.[304]

Additionally, the Bill provides that it is the responsibility of the core members to use their best endeavours to agree on recommendations to give to the chief executive, and to each other, about assessing and responding to the needs and offending behaviour of children referred to and accepted by the members.[305]

The explanatory notes identify the information sharing provisions[306] associated with the establishment of MACPs as raising potential issues of fundamental legislative principle.

In addressing the Bill's consistency with fundamental legislative principles, the explanatory notes comment on the new requirement that the chief executive decide the categories of children who may be referred to the MACP system.

The explanatory notes conclude that these provisions are sufficiently defined and subject to appropriate review:

> In reaching a decision as to the category of children who may be referred, the chief executive will be limited by the purpose of the MACP system at new section 282J, that is meeting the needs of particular children charged with offences or at risk of offending. New section 282L of the YJ Act provides that in deciding the category of children who may be referred to the MACP system, they must consult the chief executives of the other core members. This will ensure that the chief executive considers a wide variety of factors before reaching a decision on a category.
>
> The chief executive's decision in relation to the category of children who may be referred to the MACP system will subject to judicial review under the *Judicial Review Act 1991*. In addition, the decision as to whether to accept the referral of specific children will be one for the MACP members based on the child's individual circumstances.[307]

The MACP members are bound by the purpose of the MACP system, which includes meeting the needs of the relevant children.

Decision-making is also to be based on the responsibilities of the core members (as included in the Bill), which includes the reliance on representatives who have appropriate knowledge and experience and decision-making authority, and also includes responsibilities that are cognisant of the need to assess and respond to the needs and offending behaviour of children.

303 Explanatory notes, p 2.

304 Bill, cl 37 inserts YJ Act, new s 282L.

305 Bill, cl 37 inserts YJ Act, new s 282M.

306 Bill, cl 37 inserts YJ Act, new s 282M.

307 Explanatory notes, p 13.

The administrative decision-making in the Bill is subject to judicial review;[308] however, there is no specific process outlined in the Bill to allow for any other review process.

Committee comment

We are satisfied that the privacy of children is sufficiently protected because information can only be shared under the *Youth Justice Act 2019*, part 9, division 2A. That division includes the principles for sharing information, which provide that a person's consent should be obtained before disclosing confidential information about the person.

2.9.5 Expanding the scope of 'prescribed indictable offence'

2.9.5.1 Rights and liberties of individuals—retrospectivity and reversal of the onus of proof

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not adversely affect rights and liberties, or impose obligations, retrospectively.[309]

Legislation should not reverse the onus of proof in criminal proceedings without adequate justification.[310]

The Bill amends the definition of 'prescribed indictable offence'[311] to expand the list of offences to facilitate greater operation of provisions of the YJ Act aimed at serious repeat offenders, including:

> … the show cause provision under section 48AF [the presumption against bail[312]] and the new sentencing regime for children declared serious repeat offenders (with the exception that the former definition of prescribed indictable offence will continue to apply to electronic monitoring as a condition of bail under section 52AA) …[313]

In relation to the Bill, the explanatory notes state:

> The amendments in this Bill are limited to adding to the list of prescribed indictable offences and the existing safeguards will remain in place. These include the limited application of the provisions to a small cohort of children (i.e. those charged with a prescribed indictable offence, if the offence was alleged to have been committed while at large or awaiting trial or sentence) and clear guidance on the considerations to be taken into account by the courts.
>
> It is considered that the inclusion of additional offences and their retrospective application, are justified on the basis of ensuring the community is safe from serious repeat offenders.[314]

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308 Explanatory notes, p 13.

309 LSA, s 4(g).

310 LSA, s 4(3)(d); For a reversal to be justified, the relevant fact must be something inherently impractical to test by alternative evidential means and the defendant would be particularly well positioned to disprove guilt (OQPC, Notebook, 2008, p 36).

311 Bill, cl 41 amends YJ Act, sch 4 to omit and replace the definition of 'prescribed indictable offence'.

312 YJ Act, existing s 48AF applies in relation to a child in custody in connection with a charge of a prescribed indictable offence, if the offence is alleged to have been committed: while the child was released into the custody of a parent (or at large with or without bail), between the day of the child's apprehension and the day of the child's committal for trial for another indictable offence; or while the child was awaiting trial, or sentencing, for another indictable offence. The section provides that a court or police officer must refuse to release the child from custody unless the child shows cause as to why their detention in custody is not justified.

313 Explanatory notes, p 2.

314 Explanatory notes, pp 11-12.

2.10 Explanatory notes

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain. Explanatory notes were tabled with the introduction of the Bill.

The notes contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

Committee comment

We consider the explanatory notes comply with part 4 of the LSA.

2.11 *Human Rights Act 2019*

The statement of compatibility to the Bill notes multiple ways in which the increased sentences and other factors that impact on human rights may have particular impact on young offenders.

2.11.1 Specific clauses and human rights issues

2.11.1.1 Offence for breach of bail conditions for children

The statement of compatibility does not provide extensive detail on extending this offence to children, as opposed to extending less restrictive and reasonably available ways to achieve the intended purpose.

2.11.1.2 Increase the maximum penalty for offence of unlawfully using or possessing a motor vehicle, aircraft or vessel in section 408A of the Criminal Code

The purpose of the limitation stated for this increased maximum penalty is twofold – first to denounce criminal behaviour, and second to deter offending. A maximum sentence of 10 years imprisonment is a serious custodial sentence that reflects the State's view of the seriousness of this offence.

2.11.1.3 Aggravated offence for publishing material on social media to advertise unlawful use of a motor vehicle or the offender's involvement in the offence

This new aggravated offence has an additional justifying factor of denouncing behaviour that encourages criminal offending. This is a significant and legitimate purpose of the proposed amendment.

2.11.1.4 Aggravated offence for unlawful use of a motor vehicle at night, use or threat of violence, pretending to be armed, in company or damage to property

This new aggravated offence is justified to promote community safety. The aggravating circumstances of use/threat to use actual violence, is/pretends to be armed with a dangerous weapon, or damages/threatens/attempts to damage property are persuasive reasons for introducing a new aggravated offence.

2.11.1.5 Removal of reverse onus for defence in section 408A(1C) of the Criminal Code

This removal of reverse onus promotes the presumption of innocence.

2.11.1.6 Extension of electronic monitoring devices as a condition of bail for offenders aged 15, 16 and 17 years old in certain circumstances

This proposal may have several impacts on human rights. Of note is the potential effect of deterring a child from continuing their education.

One stated purpose is to deter a child from committing offences while on bail and promote community safety. It is possible that this purpose could also be achieved by other enhanced bail conditions that do not require electronic monitoring.

The community safety considerations noted on pages 16-17 of the statement of compatibility are legitimate and reasonable. However, as noted on page 5 of the statement of compatibility, the

government has committed to implementing additional measures to address the causes of crime and assist in preventing crime.

The protections against arbitrary arrest in these circumstances are sufficient.

2.11.1.7 Courts to be required to consider a child's history on bail when determining an appropriate sentence

The committee concurs with the assessment made in the statement of compatibility.

2.11.2 Serious repeat offender declarations

The statement of compatibility, on page 22, presents evidence to show that recidivism is a problem in a cohort of young offenders. This is a serious matter that poses risks to public safety.

2.11.2.1 Extending program period for conditional release orders

The committee concurs with the assessment made in the statement of compatibility.

2.11.2.2 Requirement to serve suspended period of detention for conditional release orders

Courts already have the power under section 246 to revoke a conditional release order. That power can be exercised in appropriate circumstances.

2.11.2.3 Transfer of 18-year-olds serving detention order to adult correctional centres

The committee notes that the statement of incompatibility is limited to the proposed Bill.

2.11.2.4 Establishment of multi-agency collaborative panels (MACP) system

The committee concurs with the assessment in the statement of compatibility.

2.11.2.5 Expanding the categories of prescribed indictable offences

The committee concurs with the assessment in the statement of compatibility.

2.11.3 Statement of compatibility

Section 38 of the HRA requires that a member who introduces a Bill in the Legislative Assembly must prepare and table a statement of the Bill's compatibility with human rights.

A statement of compatibility was tabled with the introduction of the Bill as required by s 38 of the HRA. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

Committee comment

The committee accepts that there are provisions in the Bill that are incompatible with human rights.

However, we are satisfied that there is justification for these provisions due to the need for an urgent response to community safety concerns in Queensland that is associated with the offending behaviour.

We consider these provisions in the Bill are necessary to protect the safety of the Queensland community.

A statement of compatibility was tabled with the introduction of the Bill as required by section 38 of the HRA. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

Appendix A – Submitters

Sub #	Submitter
001	Name withheld
002	George Dickson
003	Victims of Youth Crime Collective
004	Robert Heron
005	Clynton Hawks
006	Janice Bradley
007	Katherine Keith
008	Julie West
009	Sandra Elton
010	Cairns Regional Council
011	Connie Duncan
012	Uniting Church in Australia Queensland Synod
013	Anthony Bethel
014	Australian Lawyers Alliance
015	Confidential
016	Jayden Reynolds
017	Confidential
018	Scouts Queensland
019	Helen Smith
020	Kye Willott
021	Caxton Legal Centre Inc
022	Jenelle Maree Reghenzani
023	Hub Community Legal
024	TASC Social and Legal Justice Services
025	Mareeba Shire Council
026	Lenore Keough
027	Timothy Grau
028	Youth Affairs Network Qld
029	National Therapeutic Residential Care Alliance
030	Schae Gregory
031	Anglicare Southern Queensland
032	Cape York Institute
033	Townsville City Council

Sub #	Submitter
034	Justice Reform Initiative
035	Aged and Disability Advocacy Australia
036	Sisters Inside Inc
037	Kelvin Bunyan
038	Ruth Gould
039	Queensland Indigenous Family Violence Legal Service
040	QUT School of Public Health and Social Work
041	Bar Association of Queensland
042	Queensland Law Society
043	Kate Neale
044	PeakCare Queensland
045	Brisbane Youth Service
046	Save the Children Australia
047	Queensland Advocacy for Inclusion
048	Qld Network of Alcohol and Other Drug Agencies
049	Act for Kids Limited
050	Confidential
051	Queensland Youth Policy Collective
052	Queensland Human Rights Commission
053	Taryn Ozoria
054	The Australian Workers' Union of Queensland
055	The Local Government Association of Queensland
056	The Shop Distributive and Allied Employees Association (Qld Branch)
057	Redcliffe Area Youth Space
058	Confidential
059	Queensland Aboriginal and Torres Strait Islander Child Protection Peak Limited
060	Queensland Family and Child Commission
061	Anglican Church Southern Queensland (Diocese of Brisbane)
062	Lily Fletcher
063	Queensland Council of Social Service
064	Crime and Justice Action Group
065	Youth Advocacy Centre Inc
066	Institute for Urban Indigenous Health
067	Aboriginal and Torres Strait Islander Legal Service (Qld)

Sub #	Submitter
068	Office of the Public Guardian
069	National Association for Prevention of Child Abuse and Neglect
070	Perri Conti + supplementary submission
071	YFS Legal
072	Community Legal Centres Queensland
073	Queensland Police Union of Employees
074	Queensland Aboriginal and Islander Health Council
075	Joel Richters
076	Australian Human Rights Commission
077	Queensland Council of Civil Liberties
078	Amnesty International
079	Pam Blamey
080	Caryn Powell
081	Name withheld
082	Queensland Mental Health Commission
083	Voice of Victims - Toowoomba Advocacy Group
084	Jonty Bush MP
085	Kevin Keeffe
086	Queensland Victim of Crime, Mackay
087	Madonna Doyle

Appendix B – Officials at public departmental briefing

Queensland Police Service

- Acting Assistant Commissioner, George Marchesini, Commander, Youth Crime Taskforce
- Acting Superintendent Scott McLaren, Commander, State Custody and Property Unit
- Inspector Grant Ralston, Manager, Youth Justice Unit, Crime and Intelligence Command

Department of Child Safety, Youth Justice and Multicultural Affairs

- Ms Bernadette Harvey, Acting Deputy Director General, Youth Justice Service
- Mr Michael Drane, Senior Executive Director, Youth Detention Operations and Reform
- Mr Phil Hall, Acting Director, Youth Justice Legislation Projects

Department of Justice and Attorney-General

- Ms Leanne Robertson, Assistant Director-General, Strategic Policy and Legal Services
- Ms Adele Bogard, Acting Director, Strategic Policy and Legal Services

Appendix C – Witnesses at public hearings

Tuesday, 28 February 2023, Brisbane

Queensland Human Rights Commission

- Mr Scott McDougall, Queensland Human Rights Commissioner
- Mr Sean Costello, Principal Lawyer

Queensland Law Society

- Ms Rebecca Fogerty, Vice President
- Ms Kristen Hodge, Co-Chair, First Nations Legal Policy Committee
- Mr Damian Bartholomew, Chair, Children's Law Committee

Bar Association of Queensland

- Mr James Benjamin, Barrister
- Ms Laura Reece, Barrister

PeakCare Queensland

- Mr Lindsay Wegener, Executive Director

Victims of Youth Crime Collective

- Ms Michelle Liddle

Queensland Aboriginal and Torres Strait Islander Child Protection Peak

- Mr Garth Morgan, Chief Executive Officer
- Ms Lisa Hillan, Director Strategy

Queensland Family and Child Commission

- Mr Luke Twyford, Principal Commissioner

Sisters Inside Inc

- Ms Debbie Kilroy, Chief Executive Officer
- Ms Neta-Rie Mabo, Youth Programs Manager
- Ms Ruby Wharton, Community Development Officer

The Australian Workers' Union of Employees, Queensland

- Ms Stacey Schinnerl, Secretary
- Mr Joseph Kaiser, Campaign Coordinator

Wednesday, 1 March 2023, Cairns

Crime and Justice Action Group

- Mr Aaron McLeod, President

Mareeba Shire Council (via videoconference)

- Cr Angela Toppin, Mayor

Cairns Regional Council

- Cr Bob Manning, Mayor

Individuals

- Ms Perri Conti
- Mr Timothy Grau

Stop Black Deaths in Custody Committee

- Mr Wayne Wharton, Convenor
- Ms Michelle Nunan, Administrative Officer

Cape York Institute

- Ms Fiona Jose, CEO Cape York Partnership
- Ms Zoe Ellerman, Strategic Advisor Cape York Institute
- Ms Doreen Hart, Local Commissioner, Family Responsibilities Commission (via teleconference)

Thursday, 2 March 2023, Townsville

Townsville City Council

- Cr Jenny Hill, Mayor
- Mr Jonte Verwey, Councillor Advisor to the Mayor

Individuals

- Mrs Sandra Elton
- Mr Kelvin Bunyan
- Mr Clynton Hawks
- Mr Steven Clare
- Uncle Alfred Smallwood, Elder
- Aunty Linda Janetzki, Elder

Voice of Victims, Toowoomba Advocacy Group (via videoconference)

- Ms Sarah Orton

Appendix D – Abbreviations

2021 Act	*Youth Justice and Other Legislation Amendment Act 2021*
Bail Act	*Bail Act 1980*
Bill	Strengthening Community Safety Bill 2023
CCTV	closed circuit television
committee	Economics and Governance Committee
Criminal Code	*Criminal Code Act 1899*
CRO	conditional release order
CSA	*Corrective Services Act 2006*
department/DCYJMA	Department of Children, Youth Justice and Multicultural Affairs
EMD	Electronic Monitoring Device
FLPs	Fundamental legislative principles
HRA	*Human Rights Act 2019*
LSA	*Legislative Standards Act 1992*
Minister	Minister for Police and Corrective Services and Minister for Fire and Emergency Services
MACPs	Multi-agency collaborative panels
Notebook	Office of the Queensland Parliamentary Counsel, *Fundamental legislative principles: the OQPC notebook*
PPR Act	*Police Powers and Responsibilities Act 2000*
QHRC	Queensland Human Rights Commission
QLS	Queensland Law Society
QNADA	Queensland Network of Alcohol and other Drug Agencies
QPS	Queensland Police Service
OQPC	Office of the Queensland Parliamentary Counsel
UUMV	Unlawful Use of Motor Vehicle

VoC Act	*Victims of Crime Assistance Act 2009*
Youth Justice Act or YJ Act	*Youth Justice Act 1992*

All Acts are Queensland Acts unless otherwise specified.

Statement of Reservation

Statement of Reservation

We, the non-government members of the Economics and Governance Committee, support any measures to address the outrageous incidence of youth crime in our communities. This bill proposes to remove the exemption to Section 29 of the Bail Act that currently applies to "a child". We support that change and note that the government's amendment is an exact copy of amendments moved by the LNP on 20 April 2021.

However, after hearing many submissions on this Bill in public meetings across the State, we wish to document our serious misgivings about the efficacy of the Bill in addressing the rampant outbreak of youth crime by repeat offenders across the State. It was brought to our attention, as well, that public consultation on the remedies proposed in this Bill was next to none. Because of this important facet of policy formulation being ignored, there were serious concerns that this Bill would fail to achieve any discernible diminution in the prevalence of youth crime throughout the State.

The major flaw in this bill in addressing "Strengthening Community Safety" is the omission of any change to the current directive under the Youth Justices Act that youth offenders only receive a custodial sentence as a measure of last resort. This directive seriously restricts the judiciary in their application of sentencing to serial repeat offenders. We believe this restriction on the legal system will prevent magistrate's and judge's from delivering sentences that ensure the safety of the community whilst enabling the behaviour of offenders to be corrected. We believe the Judiciary should be unshackled from this legislative change made by the Labor Government when they first came to office, a time when youth offending rates were considerably lower.

Police have identified approximately 400 persons who are, effectively, the target of this legislation. The LNP members of the Committee believe that affirmative action is required to restore public confidence in policing and judicial responsibility across the State of Queensland.

Submitters also highlighted the failure of support services, including government departments and other welfare agencies, that have failed to adequately support at risk youth before their offending became prolific. Early intervention and remedial support were solutions offered by submitters who believe prevention of these crime pathways must be implemented to protect the community and to assist in rehabilitating offenders. We believe in establishing gold standard early intervention programs.

Again, this bill offered no quantified audit of the services offered and delivered by government and non-government agencies tasked with delivering positive outcomes for young people and the wider community.

Many submitters highlighted their belief that government bears some responsibility for losses they have incurred and expressed concerns that counselling for victims of crime was omitted from the Bill.

It was further highlighted that the perception of many victims is that the rights of offenders were of more importance that the rights of victims. We believe in introducing consequences for actions for offenders and a system that puts the rights of victims ahead of the rights of criminals.

We support the passing of this Bill but hold serious concerns the bill does not provide the answer to Queensland's out of control youth crime problem.

Ray Stevens MP
Deputy Chair
Member for Mermaid Beach

Michael Crandon MP
Member for Coomera

Daniel Purdie MP
Member for Ninderry