Submission by

YOUTH ADVOCACY CENTRE INC

to the

ECONOMICS AND GOVERNANCE COMMITTEE

in relation to the

Strengthening Community Safety Bill 2023

24 FEBRUARY 2023

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The Youth Advocacy Centre supports and endorses the Queensland Law Society's submissions dated 24 February 2023, and provides the below additional submissions.

By implementing the Strengthening Community Safety Bill 2023 (**the Bill**) the Queensland Government is failing to keep the community safe.

Public safety is paramount. Consequently, the only viable response to curbing youth crime must be to implement strategies that work. Imprisonment does not work. Early intervention, diversion and restorative justice does work.[1] Notably, at no point in the Explanatory Notes are the amendments justified by *deterring* offenders – rather justification is primarily by way of 'strengthening' laws, which does nothing to actually improve community safety.

YAC's general comments are that:

1. The Bill will result in a worsening of the overcrowding of Queensland's youth detention centres and an increase in the number and length of children's stays in adult watchhouses. This is an entirely foreseeable consequence. No plan or strategy to deal with the increased number of detainees has been disclosed, apart from the transfer of 18 year olds into adult prisons. This is a questionable response to a significant crises involving the depravation of liberty of children in compromised circumstances. The overcrowding of the detention centres severely reduces the ability to rehabilitate young people, which then worsens the cycle of crime. As a result the community is **less safe**;
2. The **lengths of the sentences** in clauses 8, 9 and 14 are **inconsistent** with the lengths of comparable offences, and arguably greater than more serious crimes;
3. The Bill is **inconsistent** with the spirit of the **Queensland Government's Path to Treaty**[2] as it will disproportionately impact Aboriginal and Torres Strait Islander children.
4. There is **no urgency** for the Bill to be enacted. Its hasty introduction to parliament, with only 2.5 days for sector groups to provide feedback, is appalling and contrary to the democratic principles of accountability and transparency and is verging on an abuse of power, particularly as Queensland does not have the protection of an upper house. The recent domestic violence reforms were passed on 22 February 2023 and were the subject of extensive review and community consultation, which has resulted in legislation that the community can have confidence in. Domestic violence is killing and injuring much higher numbers than those caused by young people, yet the response was measured and considered. There is no justification for the lack of time for meaningful community consultation on these laws which will have significant impact on children's liberty and life outcomes.

[1] Atkinson B, Youth Justice Reforms Review Final Report March 2022 at page 25.

[2] "*Path to Treaty is a shared path – for Queenslanders to come together in a joint commitment. This path will move us forward, equally, on this land we share. By walking this path together, we are honouring generations of Aboriginal and Torres Strait Islander peoples who have called for self-determination, truth-telling and agreement-making."* About the Path to Treaty – Queensland Government Website https://www.qld.gov.au/firstnations/treaty/queensland-path-to-treaty/about

Breach of Bail Offence – clause 5

The policy objectives of the Bill are to give effect to the ten new measures aimed at keeping the community safe, and to strengthen the youth justice laws. The Explanatory Notes states that there are no '…*less restrictive (on human rights) and reasonably available ways to achieve the policy objectives.'*[3]

In the case of the Breach of Bail Offence, the Government has justified the overriding of the Human Rights Act by stating that the Breach of Bail Offence is '…*needed to respond to the small cohort of serious repeat offenders who engage in persistent and serious offending, in particular, offending which occurs while on bail.'* This statement is entirely misleading. The less restrictive and reasonably available response is that which currently exists: the revocation of bail upon breach resulting in the child being taken into custody. The child being remanded in custody effectively acts as a punishment. It is a direct consequence of their actions.

The breach of bail offence is remote and not a direct consequence. It does not deter young people from offending. The existing legislation already addresses the breach of bail conditions, providing for arrest and detention subject to the circumstances.

Police currently have the power of arrest for any young person in breach of their bail. The current law only requires consideration of alternatives before using the power of arrest. If those alternatives are not appropriate a police officer may arrest a young person for breach of their bail. A court appraised of all the circumstances then makes an assessment if bail should be revoked, varied or continued. The same considerations for the court will apply after the amendments. The only change will be the young person will be criminalised for the breach and the police will be able to arrest the young person using such force as is necessary and detain the young person until they can appear before the court, usually overnight, sometimes longer, without any consideration if alternatives would have been more appropriate. It is not apparent how this measure will make the community safer.

Further, the current practice in the Childrens Courts is for bail conditions for children to be more prescriptive than conditions for adults on bail. Children's bail conditions can assist in reducing reoffending and address rehabilitation Examples include conditions requiring attendance at therapeutic treatment programs, and spending time at home. These conditions may be quite easily breached due to their nature, and the Childrens Court practitioners take a pragmatic approach to enforcing breaches so that child's prospects of rehabilitation are maximised. This approach keeps the community safer as it encourages rehabilitation and diversion.

If breach of bail conditions were to become an offence, the prescriptive, low-level conditions are unlikely to be imposed, and instead the conditions will be less therapeutic, and will have a close connection to the underlying offence, such as living at a particular address, or reporting requirements. Such bail conditions provide less therapeutic support, and do not aid in reducing reoffending.

In addition, many children find it difficult to understand their bail conditions, leading to inadvertent breaches. The child would then be charged with the breach of bail offence and will be required to appear before the court again – an impost on the court's time and resources and likely to be a source of confusion to the young person. It is therefore unlikely that this provision will act as a deterrent to serious reoffenders.

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[3] At page 7.

Advertising on Social Media – clause 8

The policy objectives of the Bill are to give effect to the ten new measures aimed at keeping the community safe, and to strengthen the youth justice laws. The Explanatory Notes states that there are no '…*less restrictive (on human rights) and reasonably available ways to achieve the policy objectives.'*[4]

The Explanatory Notes state that the act of advertising motor vehicle offending on social media encourages criminal offending, which justified a circumstance of aggravation. This is wrong. Children are sometimes required by various gangs to post photographs of motor vehicle offending on social media in order to gain admission to the gang. The gangs, and not the posting on social media, are encouraging criminal offending. Similarly, children post photographs on social media so sell the stolen vehicle. Again, the social media is not encouraging the criminal offending: the black market for stolen vehicles is. The advertising the unlawful use on social media does not encourage offending, does not place the community at risk, and the breach of the Human Rights Act is not justified. Instead, the advertising on social media should be considered at sentencing.

Inclusion of offences the Domestic and Family Violence Prevention Act 2012,

YAC supports QLS in opposing the amendment to Section 59A of the Youth Justice Act

Further the Bill proposes offences against the Domestic and Family Violence Prevention Act 2012, section 177(2) or 178(2) as circumstances that would dispose of the requirement that police consider alternatives to arrest where a contravention of a Protection order or Police Protection Notice (PPN).

YAC offers the only domestic violence legal service to young people in Queensland. It is our experience that young people are informed when served with the PPN or Application that their attendance at Court was not compulsory. Young people often interpret this information as not having to attend court at all. They often do not understand that an order could be made in their absence. Young people are often unaware of a Temporary protection order or Protection Order was made, or when served with the Order as police did not explain the Order to the young person in a way they understood. In some cases, young people were told what the document (Police protection notice, Temporary protection Order or Protection Order) was and told to read it. This assumes the young person had the ability to both read and comprehend the document.

Such minor breaches of domestic violence orders due to young people not knowing or understanding the Order would see an influx of young people being brought before the Court, instead of an exercise of discretion. For example, if it is a first contravention that is very minor and could have been dealt with by way of a warning would mean a young person is arrest brought before the Court or spend a night in the watch house consequently.

Transferring Young people to adult prison.

When the Youth Justice Act was passed 1994 parliament it was agreed the 17 year olds would be dealt with in the Youth Justice System by proclamation of a regulation. Queensland was ultimately the last state to adopt this inclusion in 2017 after much criticism from local, national and international bodies. The provisions permitting the transfer of young people under 18 to adult prison

[4] At page 7.

represents a significant regression. This ability is not fettered if the matter under sentence is subject to appeal on either verdict or sentence. Under the current transfer system young people with appeals pending have been transferred. This means potentially innocent children can be transferred to an adult prison. The provisions also apply to young on remand who may be acquitted of their offending. This is clearly unacceptable.

Further the transfer is predicated on the availability of legal assistance for young people in detention. There is currently no grant of legal aid for transfer. YAC has frequently been requested to act for young people subject transfer applications because there is no grant of aid and or under resourcing issues at ATSILS. These applications can require complex consideration of material and require significant resources. There has been no indication of any additional resources to provide the service envisaged by these provisions despite the high likelihood of increased need resulting from these sections.

Serious repeat offenders declarations

The declaration of serious repeat offenders contradicts the principle that young people should not be treated more harshly than adult in the criminal justice system. There is no parallel declaration for adult offenders charged with the same offences. The only comparable declaration is in relation serious violent offenders, which is only for a discrete number of violent adult offenders after stringent court scrutiny. The displacing of long-established sentencing principles of the mitigating circumstance of disability, disadvantage, youth and detention as last resort to secondary considerations will result in children charged with offences being sentenced on harsher criteria than adults with similar history for the same offences. Consideration of the criteria for sentencing young people has been scrutinised by leading experts, academics and in court authorities by the most senior judicial officers, who have approved the considerations. YAC's work in this area for the past forty years would indicate these provisions will be almost exclusively applied to non-Caucasian young people, those with disability, child safety backgrounds and/or significant history of trauma. These provisions only entrench their disadvantage in the legal system and the consequent likelihood of reoffending. The community will be no safer.

The likelihood of disability for this cohort is evidence by the Banksia Hill Project which found of the young people on sentence in that institution, 89% had at least one form of severe neurodevelopmental impairment. Queensland has failed to implement any similar screening of young people in its detention or youth justice system. If a court is required to consider making a declaration of "serious repeat offender" there must be a requirement for proper assessment of the young people for whom it has been requested. There is no requirement of there to be additional assessment of information provided to court before making the declaration.

Conditional Release Orders

The provision to extend conditional release orders suggest a misunderstanding of the difference of young people's development and needs. The utility and efficacy of the intensive service provision of conditional release was expertly considered in the development and maintenance of this order in current time frame after extensive scrutiny of this legislation. There is no evidence in the explanatory notes to suggest that there is any evidence that the costly extension of this order would increase the utility and efficacy of the order though it inevitably doubles the resources required to provide. It is noted that there is no age restriction upon this extension. YAC would support an increase in resources to programs that are evidence based in reducing the risk offending however

there in evidence of this and the provision may only serve to keep young people in the youth justice system longer with the risks associated there with without any proven benefit.

YAC supports the observations by the QLS in relation to the breach provision for CRO support.

The MACP System.

Consideration of a whole of government response to young people is desirable. The unnecessary provision of personal information pertaining to young people is not. The balance requires significant careful consideration. It is known that the consequences of the stolen generation, institutional abuse and colonisation has caused many young people and their families to be reluctant to engage with government and non-government services. The potential for information to be exchanged is often a significant barrier to this engagement and acts as a barrier to service provision that may otherwise keep communities safe. There appears to be no criteria or assessment of outcomes or external scrutiny of the effectiveness of this proposed system. The implementation requires careful consideration of the protection of unnecessary information exchange and deserves greater consideration than can be accorded currently. This arrangement must be deferred until that can occur.

Please let us know if you have any questions regarding the above.

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