Parliamentary Committees



Youth Justice and Other Legislation Amendment Bill 2019

Report No. 43, 56th Parliament
Legal Affairs and Community Safety Committee
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Legal Affairs and Community Safety Committee

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Acknowledgements

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Contents

Abbreviations

AIHW	Australian Institute of Health and Welfare
ALA	Australian Lawyers Alliance
ALHR	Australian Lawyers for Human Rights
Anglicare	Anglicare Southern Queensland
ANTaR	Australians for Native Title and Reconciliation Qld Association Inc.
ATSILS	Aboriginal & Torres Strait Islander Legal Service (QLD) Ltd
Bill	Youth Justice and Other Legislation Amendment Bill 2019
CCOLA Act	*Criminal Code and Other Legislation Amendment Act 2019*
CCTV	closed circuit television
Churches of Christ	Churches of Christ in Queensland
committee	Legal Affairs and Community Safety Committee
CREATE	CREATE Foundation
DCSYW	Department of Child Safety, Youth and Women
department	Department of Youth Justice
IP Act	*Information Privacy Act 2009*
LAQ	Legal Aid Queensland
LSA	*Legislative Standards Act 1992*
OIC	Office of the Information Commissioner
PeakCare	PeakCare Queensland Inc.
POQA	*Parliament of Queensland Act 2001*
PPRA	*Police Powers and Responsibilities Act 2000*
PSA	*Penalties and Sentences Act 1992*
PSR	pre-sentence report
QCCL	Queensland Council of Civil Liberties
QFCC	Queensland Family and Child Commission
QHRC	Queensland Human Rights Commission
QLS	Queensland Law Society
QPS	Queensland Police Service
QSAC	Queensland Sentencing Advisory Council
Royal Commission	Royal Commission into Institutional Responses to Child Sexual Abuse
YAC	Youth Advocacy Centre Inc.
YANQ	Youth Affairs Network of Queensland
YJ Act or YJA	*Youth Justice Act 1992*
Youth Justice Strategy	*Working Together Changing the Story: Youth Justice Strategy 2019-2023*

Chair's foreword

This report presents a summary of the Legal Affairs and Community Safety Committee's examination of the Youth Justice and Other Legislation Amendment Bill 2019.

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, and to the institution of Parliament.

On behalf of the committee, I thank those organisations who made written submissions on the Bill and those who gave evidence at the public hearing. I also thank the Department of Youth Justice, the Department of Child Safety, Youth and Women and the Queensland Police Service for briefing the committee on the Bill. I would also like to thank Parliamentary Service staff for their assistance.

I commend this report to the House.

Peter Russo MP

Chair

Recommendations

Recommendation **3**

The committee recommends the Youth Justice and Other Legislation Amendment Bill 2019 be passed.

1 Introduction

1.1 Role of the committee

The Legal Affairs and Community Safety Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* (POQA) and the Standing Rules and Orders of the Legislative Assembly.[1]

The committee's primary areas of responsibility include:

- Justice and Attorney-General
- Police and Corrective Services
- Fire and Emergency Services.

The POQA provides that a portfolio committee is responsible for examining each bill in its portfolio areas to consider the policy to be given effect by the legislation and the application of fundamental legislative principles.[2]

The Youth Justice and Other Legislation Amendment Bill 2019 (Bill) was introduced into the Legislative Assembly and referred to the committee on 14 June 2019. The committee is to report to the Legislative Assembly by 9 August 2019.

1.2 Inquiry process

On 19 June 2019, the committee invited stakeholders and subscribers to make written submissions on the Bill. The committee received 28 submissions (see Appendix A for a list of submitters).

The committee received a public briefing about the Bill from the Department of Youth Justice (department), the Department of Child Safety, Youth and Women (DCSYW), the Queensland Police Service (QPS) on 27 June 2019 (see Appendix B for a list of officials who attended).

The committee received written advice dated 18 July 2019 from the department in response to matters raised in submissions.

The committee held a public hearing on 19 July 2019 (see Appendix C for a list of witnesses).

The submissions, correspondence from the department and transcripts of the briefing and hearing are available on the committee's webpage.

1.3 Policy objectives of the Bill

The explanatory notes provided the following background to the Bill:

> *On 11 December 2018, the Queensland Government released the* Working Together Changing the Story: Youth Justice Strategy 2019-2023 *(the Youth Justice Strategy). The Youth Justice Strategy adopts 'Four Pillars' as its policy position for youth justice reform: intervene early; keep children out of court; keep children out of custody; reduce reoffending. The Four Pillars were recommended by Mr Robert (Bob) Atkinson AO, APM in the* Report on Youth Justice.
>
> *The fourth pillar of the Youth Justice Strategy, reduce reoffending, commits to a review of the* Youth Justice Act 1992 *(YJ Act). The Bill supports the implementation of the Youth Justice Strategy by delivering the commitment to commence the review of the YJ Act.*[3]

The key objectives of the Bill are to:

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1 *Parliament of Queensland Act 2001*, s 88 and Standing Order 194.

2 *Parliament of Queensland Act 2001*, s 93(1).

3 Explanatory notes, p 1.

- reduce the period in which proceedings in the youth justice system are finalised
- remove legislative barriers to enable more young people to be granted bail
- ensure appropriate conditions are attached to grants of bail
- introduce a new information sharing regime to assist government and non-government organisations to assess and respond to the needs of young people in the youth justice system
- clarify that conditions requiring the use of an electronic device cannot be imposed on a child
- authorise the use of body worn cameras and the capture of audio recordings through closed circuit television (CCTV) technology
- provide that in sentencing a young person for the manslaughter of a child under 12 years, courts must treat the defencelessness of the victim and their vulnerability as an aggravating factor
- allow the Office of the Public Guardian's community visitor program for children to visit young people who may reside at a child accommodation service provided or funded by the department.[4]

1.4 Government consultation on the Bill

Consultation concerning the review of the YJ Act commenced in March 2019 and 'legal stakeholders, youth justice practitioners, and government agencies' were presented with policy proposals from the DCSYW.[5]

A draft of the Bill was provided to stakeholders for consultation purposes in May and June 2019. The stakeholders consulted included:

- Legal stakeholders: the Queensland Law Society (QLS), the Bar Association of Queensland, Legal Aid Queensland (LAQ), Youth Advocacy Centre Inc. (YAC), Aboriginal and Torres Strait Islander Legal Service QLD Ltd (ATSILS), Sisters Inside, YFS Legal and South West Brisbane Community Legal Centre and the Office of the Director of Public Prosecutions
- Oversight bodies: the Anti-Discrimination Commission Queensland, the Queensland Ombudsman, the Crime and Corruption Commission, the Queensland Family and Child Commission (QFCC) and the Office of the Information Commissioner (OIC)
- Key members of the judiciary: including the Chief Magistrate, Deputy Chief Magistrate, Chief Judge and the President of the Childrens Court of Queensland
- Government stakeholders: the department, Department of the Premier and Cabinet, Queensland Treasury, Department of Justice and Attorney-General, QPS, Queensland Health, Department of Education, Department of Housing and Public Works, Queensland Corrective Services, Department of Communities, Disability Services and Seniors and the Department of Aboriginal and Torres Strait Islander Partnerships.[6]

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

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4 Explanatory notes, pp 1-3.

5 Explanatory notes, p 16.

6 Explanatory notes, p 16.

Recommendation

The committee recommends the Youth Justice and Other Legislation Amendment Bill 2019 be passed.

2 Examination of the Bill

This section discusses issues raised during the committee's examination of the Bill.

2.1 Pre-sentence reports

2.1.1 Proposed amendments

Currently, the YJ Act requires the court to obtain a pre-sentence report (PSR) from the chief executive (youth justice services) before it may make an intensive supervision order or detention order against a child. A PSR must be provided promptly but need not be given to the court in less than 15 business days.[7] However, PSRs are sometimes not necessary or helpful to the court.[8] Accordingly, the time taken for the preparation of a pre-sentence report can cause delay to the finalisation of proceedings for young people.[9]

The Bill proposes to amend the YJ Act to 'allow the chief executive to provide further material to be considered with an existing pre-sentence report given to the court for another sentencing of the child within the previous six months'.[10] The aim of this amendment is to improve timeliness for the proceedings for young people.[11]

The Bill also amends the YJ Act to:

- require a court to consider, before ordering a PSR other than under s 203 or s 207, whether it is the most beneficial and efficient method of obtaining information
- remove the existing 15 day period and instead require that a PSR be provided to the court as soon as practicable, or in a reasonable timeframe ordered by the court.[12]

2.1.2 Stakeholder views and department response

A number of stakeholders commented on the proposed changes to the PSR requirements under the YJ Act.

The Together Union Queensland submitted:

> *The amendments offer some flexibility in the timing and nature of pre-sentence reports, which may support more efficient court proceedings finalisation. The practicality of seeking information from other sources, such as the child's legal representative, appears to be a useful way to expedite matters.*
>
> *However, members have raised concern that the removal of the existing 15-day period may result in the courts asking for reports earlier. Given the current demands on caseworkers, this could lead to additional caseload pressures. There does not appear to be the budget for additional caseworkers to be employed to support the implementation of these changes.*[13]

The department responded:

> *Rather than minimum timeframes, the YJ Act requires a PSR to be provided to the Court promptly and provides that this need not be less than 15 days. The Bill proposed to replace the current*

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7 Explanatory notes, p 4.

8 For example, where a young person was sentenced to detention in the previous six months and the court has been already provided with a pre-sentence report (see explanatory notes, p 4).

9 Explanatory notes, p 4.

10 Explanatory notes, p 4.

11 Explanatory notes, p 4.

12 Explanatory notes, p 4.

13 Submission 10, pp 1-2.

reference to 15 days in the YJ Act with a requirement for a PSR to be provided to the court as soon as practicable, or in the reasonable timeframe ordered by the court, having regard to the likely complexity of the report. The wording in the Bill and the obligations on the Court acknowledge that caseworkers will need to be provided with sufficient time to complete the PSR, having regard to the relevant child's circumstances and the complexity of each matter.[14]

The YAC noted the following concerns about the PSRs:

Care needs to be taken that this provision does not unintentionally put the lawyer in a compromised position with her client and relates to issues which are not within her role, and potentially fails to note that legal privilege may prevent a lawyer from providing the information required.[15]

In response to this, the department commented:

The amendments to section 151 do not in any way compel a lawyer to disclose information in relation to which a child may claim legal professional privilege, nor do they diminish a lawyer's obligations nor a client's rights in relation to privilege.[16]

The QLS supported the changes to the PSR provisions in cl 20 of the Bill but also expressed concern about the removal of the 15 day timeframe and proposed that the inclusion of an upper time limit be considered to reduce delays.[17]

The department responded to this concern:

Current section 151 provides that PSRs must be provided to the court promptly, but need not be given in less than 15 business days.

The Bill proposes to amend section 151 to remove the minimum timeframe and replace it with a requirement to provide a PSR within the reasonable timeframe set by the court, or if no timeframe is set, as soon as practicable. This means that if reasonable and practicable, reports may be provided in less than the 15 days currently provided for. This aims to reduce delays.

Inserting an upper limit would not allow for the rare occasions when longer than 15 days might be required, and inserting a maximum period might result in PSRs not being provided until the end of that period. The proposed amendment gives the Court discretion in an individual case.[18]

The QLS also raised the following about the proposed new PSR provisions:

We note that proposed section 151(1A) states, "before making the order, the court must consider whether a pre-sentence report is the most efficient and effective way to obtain information relevant to the sentencing of the child." This suggests that the court may rely on oral addendums to obtain information relevant to the sentencing of the child. The Society strongly suggests that the use of oral addendums be very carefully reviewed. In our view, oral addendums should only be used if the child's legal representative is made fully aware of what will be said. If this convention is not adhered to, the child's legal representative would be unable to obtain instructions from their client and a child would be unable to contest what is said. If there was a material impact on the sentence imposed, this would have a serious and significant impact on the child's ability to obtain natural justice.[19]

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[14] Department of Youth Justice, correspondence dated 18 July 2019, attachment, p 3.

[15] Submission 11, p 3.

[16] Department of Youth Justice, correspondence dated 18 July 2019, attachment, p 3.

[17] Submission 26, p 4.

[18] Department of Youth Justice, correspondence dated 18 July 2019, attachment, p 4.

[19] Submission 26, p 4.

In response, the department commented:

> *The proposed amendment does not suggest reliance on oral addendums in place of written PSRs. The Explanatory Notes to the Bill note that "There may be other practical ways that the court can obtain the information it is seeking, for example, directly from the child's legal representative."*
>
> *If the information required by the court is of such a kind that oral information of a factual and uncontested nature might be efficient and effective, then this could be appropriate.*[20]

2.2 Police contact with parents and lawyers

2.2.1 Proposed amendments

Section 392 of the *Police Powers and Responsibilities Act 2000* (PPRA) requires a police officer who arrests or serves a notice to appear on a child, to promptly advise a parent of the child about these matters. The Bill proposes to strengthen this provision 'by requiring a police officer to make all reasonable inquiries to promptly contact a parent and keep a record of inquiries made to do so, when contact could not be made'.[21]

The explanatory notes provided:

> *The requirement to record inquiries to contact a parent, when contact has not ultimately been made, [is] not intended to be administratively onerous for police, but rather to align with existing operational procedures and assist police to demonstrate that 'all reasonable inquiries' have been made to notify a parent.*[22]

The definition of 'parent' in s 392 of the PPRA is also expanded under the Bill to incorporate the broader definition applying under the YJ Act:

> *The YJ Act definition includes, in addition to a parent or guardian of a child, a person who has lawful custody of a child other than because of the child's detention for an offence or pending a proceeding for an offence and a person who has the day-to-day care and control of a child.*[23]

Under the proposed changes to s 421 of the PPRA, police will also be required to notify a legal aid organisation that the child is in custody, as soon as reasonably practicable. The explanatory notes stated:

> *The obligation on police to contact a legal aid organisation will not arise if the police officer is aware that the child has already spoken to a lawyer acting for the child, or arranged for their lawyer to be present during questioning as a support person.*[24]

2.2.2 Stakeholder views and department response

Sisters Inside welcomed the requirement for police to keep records on their reasons for decision and their attempts to notify parents.[25] However, Sisters Inside also noted that:

> *To effectively guarantee accountability, records must be reviewed and, therefore, they must be maintained in a format that allows for review.*[26]

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20 Department of Youth Justice, correspondence dated 18 July 2019, attachment, pp 4-5.

21 Explanatory notes, p 4.

22 Explanatory notes, pp 4-5.

23 Explanatory notes, p 5.

24 Explanatory notes, p 5.

25 Submission 8, p 3.

26 Submission 8, p 3.

The department commented:

> *The proposed amendment escalates the existing operational procedures for police to a legislative requirement and will assist police to demonstrate that 'all reasonable inquiries' have been made to notify a child's parent in a particular case. The need for police to demonstrate they have met this requirement means the information must be kept in a reviewable form in an individual case. As Queensland Police Service (QPS) systems improve over time the way this information is recorded.*[27]

Churches of Christ in Queensland (Churches of Christ) recommended that the definition of parent in the PPRA should 'be inclusive of carer or guardian, particularly as this relates to children in statutory care'.[28]

The department responded:

> *Clause 42 amends the definition of parent in the PPRA to include a person who is a parent within the meaning of parent as defined in Schedule 4 of the YJ Act. The definition includes "a person who has the day-to-day care and control of a child", which would include a carer or guardian of a child who is subject to a child protection order.*[29]

The Office of the Public Guardian recommended that:

> *… section 392 of the* Police Powers and Responsibilities Act 2000 *be amended to include the requirement that police also engage with relevant disability and/or health services when a young person is suspected to have impaired capacity due to intellectual or cognitive disability, or mental illness, and keep a record of when a specified person or organisation has not been contacted.*[30]

In response, the department noted:

> *Many children involved in the youth justice system have multiple and complex needs and require support including disability and health supports.*
>
> *The information sharing provisions in the Bill aim to enable relevant government and non-government agencies to share information and coordinate service delivery to assess and respond to a child's support needs.*
>
> *When a young person is arrested, police have an obligation under section 392 of the PPRA to contact a parent for the young person, youth justice services and child safety services (if the child is subject to statutory child protection intervention). If it is suspected that a child has impaired capacity or a mental illness, it is more appropriate for a parent, support person, youth justice services or child safety services to contact a disability or health service provider.*
>
> *It is not operationally feasible for police to make a determination about the supports required for each individual child or make contact with that service.*[31]

In relation to proposed changes to s 421 of the PPRA relating to police contact with a legal aid organisation, certain stakeholders submitted that this amendment must be supported by adequate resourcing.[32]

The department responded:

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27 Department of Youth Justice, correspondence dated 18 July 2019, attachment, p 5.

28 Submission 27, p 4.

29 Department of Youth Justice, correspondence dated 18 July 2019, attachment, p 5.

30 Submission 3, pp 3-4.

31 Department of Youth Justice, correspondence dated 18 July 2019, attachment, pp 5-6.

32 See submissions 8, 10, 24.

> *The aim of the proposed amendment is to enable arrangements to be made to enable a child's eligibility for legal assistance to be considered and legal representation to be arranged promptly. Implementation planning for the proposed amendment is underway and the impact of the proposed amendment, should the Bill be passed, will be monitored.*[33]

Some submitters also suggested that the requirement to contact a legal aid organisation should apply to all children, not just to those being questioned in relation to an indictable offence.[34]

In response to this concern, the department noted:

> *Children charged with an indictable offence may be more likely to be refused bail, and to face more serious consequences. For this reason, the requirement for police to contact a legal aid organisation only applies to children being questioned in relation to an alleged indictable offence. The provision has been carefully drafted to provide robust protections for those children most in need and to avoid unintended consequences such as delays in processing and finalising simple matters.*
>
> *The proposed amendment aligns with existing section 420 of the PPRA, which requires police to inform a legal aid organisation if an adult Aboriginal or Torres Strait Islander person is in custody in relation to an indictable offence.*[35]

In this context, ATSILS raised concerns that the language 'attempt to notify' a 'legal aid organisation' fails to address the situations where the requirement to contact a legal aid organisation is not genuinely complied with. ATSILS suggests that there be an obligation for the QPS to record its attempts to contact a legal aid organisation.[36]

The department responded:

> *The proposed amendment to section 421 of the PPRA requires police to, as soon as reasonably practicable and before questioning starts, notify or attempt to notify a representative of a legal aid organisation. Police are required to adhere to the provisions of the PPRA.*
>
> *The wording of the proposed amendment acknowledges that in some circumstances, police may not be able to notify a legal aid organisation that the child is in custody, and it may not be operationally feasible or in the interests of community safety to delay questioning of the child until contact can be made.*[37]

The QLS commented that the definition of 'legal aid organisation' needs to include LAQ.[38] The department explained that it is intended that relevant organisations will be prescribed under the Police Powers and Responsibilities Regulation prior to the commencement of cl 43 of the Bill.[39]

2.3 Requirement for child to be brought before the Childrens Court

2.3.1 Proposed amendments

The Bill proposes to amend the YJ Act to specify that if a child is arrested on a charge of an offence and is in custody in connection with the charge, the child must be brought before the Childrens Court as

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33 Department of Youth Justice, correspondence dated 18 July 2019, attachment, p 6.

34 See submissions 16, 19, 26.

35 Department of Youth Justice, correspondence dated 18 July 2019, attachment, p 7.

36 Submission 19, p 3.

37 Department of Youth Justice, correspondence dated 18 July 2019, attachment, p 8.

38 Submission 26, p 5.

39 Department of Youth Justice, correspondence dated 18 July 2019, attachment, pp 8-9.

soon as practicable and within 24 hours after the arrest or as soon as practicable on the next day the court can be constituted.[40]

The Bill also proposes to remove two current exceptions to the requirement that a child be brought promptly before the court – where a child is in watch house custody and where a child is being detained for an indictable offence.[41]

The purpose of the amendments is to limit the time young people spend in custody before being brought before the court.[42]

2.3.2 Stakeholder views and department response

The QLS queried how this amendment will be implemented in practice:

> *Clause 13 seeks to replace section 49 (arrested child must be brought promptly before the Childrens Court) of the* Youth Justice Act 1992*. The Society supports the policy intention behind clause 25 and agrees that a child must be brought before the Childrens Court as soon as practicable and within 24 hours after the arrest. However, we seek clarification of the term "as soon as practicable" and how this will be implemented in practice. Will a child arrested on Saturday appear before a court on a Sunday?*[43]

The department responded to this query as follows:

> *Proposed new section 49 requires a child who has been arrested to be brought before a court as soon as practicable and within 24 hours after the arrest, or, if it is not practicable to constitute the court within 24 hours after the arrest—as soon as practicable on the next day the court can practicably be constituted.*
>
> *The Bill recognises that it may not be practicable to constitute a Childrens Court on some days, including on a Sunday by requiring a child to be brought before the court as soon as practicable on the next day the court can practicably be constituted. This may include the next business day.*[44]

2.4 Bail decision making framework

2.4.1 Proposed amendments

The explanatory notes advised that stakeholders find the current bail decision-making framework in s 48 of the YJ Act 'confusing and difficult to apply.'[45] This is due in particular to the inconsistency between the requirement that a police officer or a court must not release a child if there is an unacceptable risk of certain conduct and the principle of detention as a last resort (Principle 17 of the Charter of youth justice principles).[46]

The explanatory notes provided that the Bill amends s 48 to 'create a logical, child-focused bail decision making framework'.[47]

The proposed new provisions include:

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40 Clause 13: *Youth Justice Act 1992*, proposed new s 49; explanatory notes, p 6.

41 Clause 13: *Youth Justice Act 1992*, proposed new s 49; explanatory notes, p 6. See also *Youth Justice Act*, s 49; *Police Powers and Responsibilities Act 1992*, s 393(2)(b) and (e).

42 Explanatory notes, p 6.

43 Submission 26, p 3.

44 Department of Youth Justice, correspondence dated 18 July 2019, attachment, p 10.

45 Explanatory notes, p 6.

46 Explanatory notes, p 6.

47 Explanatory notes, p 6.

> *… an explicit presumption in favour of release that can only be rebutted where the YJ Act or another Act requires the child to be detained in custody, or where the court or police officer is satisfied that there is an unacceptable risk that if released on bail, the child will fail to surrender into custody as required, commit an offence, endanger the safety or welfare of any person, or interfere with witnesses or otherwise obstruct the course of justice.*[48]

The explanatory notes also explained how the Bill addresses the concept of 'unacceptable risk':

> *The Bill provides that when deciding whether there is an unacceptable risk of one of the above matters, police officers and courts may have regard to a number of factors, including several of those included in current section 48(3) of the YJ Act (for example, the nature and seriousness of the alleged offence, the criminal history, associations and home environment of the child, and the history of a previous grant of bail to the child). When deciding whether an unacceptable risk exists, police officers and courts may also consider whether a condition could be imposed on a grant of bail to the child to mitigate an otherwise unacceptable risk. A police officer or court must not be satisfied the unacceptable risk exists only because the child would not have accommodation if release*[d]*, or has no apparent family support.*[49]

Under proposed new s 48AD, a child may be released, despite an unacceptable risk, if the court or police officer is satisfied the child's release is not inconsistent with ensuring community safety and is appropriate having regard to factors such as the desirability of strengthening and preserving the relationship between the child and the child's parents and family. The explanatory notes advised:

> *These child-specific criteria reflect the complex needs of young people involved in the youth justice system, which should be taken into account when making bail decisions. For example, the court may have determined that a young person who has been charged with a number of shoplifting offences poses a high risk of reoffending. However, as the reoffending is of a type that does not threaten community safety, and the child has complex health needs that can be more readily addressed if the child remains living at home, the child should be released. The court or police officer may decide in these circumstances to impose appropriate bail conditions on the child, to reduce or mitigate the unacceptable risk of the child committing further shoplifting offences.*[50]

The Bill gives discretion to the court to remand a child in custody while further information about an unacceptable risk is obtained.[51] This is in contrast with the current legislation which requires the court to remand the child in custody while the information is obtained.[52]

2.4.2 Stakeholder views and department response

Many of the stakeholders indicated their support of the proposed reform of bail law in the Bill, particularly the clarification of the principle that 'detention as a last resort' applies to bail decision-making.[53]

The Queensland Council of Civil Liberties (QCCL) provided the following explanation for why reform is needed in this area:

> *The necessity for the reform of the law of bail contained in this Bill is made clear by the statistics that 80% of children in detention are on remand and only 16 percent of young people on remand*

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48 Explanatory notes, pp 6-7.

49 Explanatory notes, p 7.

50 Explanatory notes, p 8.

51 Clause 10: *Youth Justice Act 1992*, proposed new s 48(6).

52 See *Youth Justice Act 1992*, s 48(9). See also public briefing transcript, Brisbane, 27 June 2019, p 2.

53 See, for example, submissions 2, 4, 5, 7, 9, 10, 11, 16, 17, 18, 19, 21, 22, 26 and 28.

go on to receive a custodial sentence and therefore the vast majority of them are spending unnecessary time in detention.[54]

PeakCare Queensland Inc. (PeakCare) provided the following background information which assists with understanding the issues that the Bill is attempting to address:

The Australian Institute of Health and Welfare (AIHW) annual Youth Justice in Australia 2017-18 *report, released in May 2019, shows that on an average day in 2017-18, 87% of young people in detention in Queensland were unsentenced (awaiting the outcome of their court matter or sentencing), which was the highest in the nation. Young people in Queensland also spent the longest amount of time in unsentenced detention at 63 days (almost double that of South Australia where young people spent the least amount of time in unsentenced detention). Compounding this concern is that completed periods of detention on remand were more likely in Queensland than other jurisdictions, to be followed by a community based sentence than by a detention sentence.*[55]

PeakCare then commented specifically on the proposals relating to the grant of bail under the Bill:

PeakCare supports the proposed measures to simplify and clarify a new child-focussed bail decision making framework and better enable young people to be granted bail, including:

- *emphasising 'detention as a last resort'*
- *an explicit presumption in favour of release*
- *child-specific factors which must be considered when deciding whether to release a young person, including the need to preserve the relationship between a young person and their family, the young person's prior exposure to trauma, their age and maturity, cognitive capacity and developmental and medical/disability needs, and if the young person is Aboriginal and Torres Strait Islander, their need to retain connection to their family and community, and*
- *in addition, for young people aged under 14 years, consideration of their particular vulnerability and entitlement to special care and protection must be taken into account.*[56]

Anglicare Southern Queensland (Anglicare) provided the following reasons for why it 'strongly supports' the removal of legislative barriers to enable young people to be granted bail:

Without denying the importance of community safety, granting bail in conjunction with therapeutic and integrative programs that aim to address the effects of trauma, and enable connection of children and young people to family and community, is much more likely to reduce recidivism than detention.[57]

In relation to the matters to be considered when making decisions about bail, various submissions addressed concerns that in some areas the proposals either do not go far enough or will require additional operational support.[58] For example, knowmore was broadly supportive of the proposals under the Bill but noted that 'legislative amendments will not make any meaningful difference unless they are effectively operationalised'.[59] It was further submitted by knowmore that to achieve the outcomes under the Bill, decision-makers will need to be given implementing measures to apply the

54 Submission 20, p 1.

55 Submission 18, p 4.

56 Submission 18, p 4.

57 Submission 7, p 5.

58 See, for example, submissions 8, 12 and 20.

59 Submission 12, p 8.

new bail provisions, particularly given 'the multiple, complex needs of many children in the youth justice system'. [60]

Sisters Inside, who did not support the Bill in its current form, submitted:

> *We acknowledge the intention of the Bill is to clarify the decision-making processes and considerations for children arrested and charged with criminal offences. However, in our view, the Bill does not outline a clear legislative framework that is likely to reduce the extremely high numbers of children remanded in watch houses and youth prisons.* [61]

The department responded to concerns that the Bill does not provide a clear legislative framework that will reduce the high number of young people on remand:

> *The Bill complements a broad range of systemic reforms and significant investment aimed to reduce the number of young people involved in the youth justice system including the number of young people on remand.*
>
> *During consultation on the Bill, stakeholders advised that the existing bail decision-making framework in section 48 of the YJA* [Youth Justice Act 1992] *is confusing and difficult to apply and this contributes to the number of young people remanded in detention. The Bill makes significant amendments to clarify this framework and encourage appropriate grants of bail, including by: providing an explicit presumption in favour of release, resolving confusion about whether certain provisions of the* Bail Act 1980 *apply to children, and providing that even where the presumption of release can be rebutted, police or a court may release a child if release is not inconsistent with community safety and is otherwise appropriate, having regard to a number of additional child focussed factors.* [62]

Sisters Inside also noted that:

> *The Bill proposes significant amendments to guide bail decision-making but it maintains the concept of "unacceptable risk" and it does not sufficiently shift the obligation to adults and Government agencies to address the social issues that are the reason for high remand rates. …*
>
> *The matters outlined in new section 48AD(2)(a)-(j) offer a good starting point for general principles that must apply to* all *decisions relating to children in the criminal legal system. In the Bill, these considerations only apply if the court or a police officer considers that is an unacceptable risk in relation to a child who is charged and being considered for release (see clause 10, new section 48(4) of the Bill). In our view, it would be better to dispense with the concept of 'unacceptable risk' altogether for children and, instead, outline specific matters that are consistent with community safety and children's inherent vulnerability. At the very least, the wording of section 48AD(2) should be changed from 'may' to 'must' to require courts and police officers to release children if satisfied that the child's release is consistent with community safety, and appropriate having regard to the matters outlines in the subsections.* [63]

Regarding the suggestion that the concept of 'unacceptable risk' should be removed and replaced with community safety and children's inherent vulnerability, the department responded:

> *The proposed amendments that clarify how decisions are made when a child is remanded in detention are based on the current law relating to bail decision making in Queensland and aim to provide for particular considerations that should be taken into account for children. The*

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60 Submission 12, p 8.

61 Submission 8, p 2. Similar concerns were raised by the Australian Lawyers Alliance, Submission 24, pp 5-6.

62 Department of Youth Justice, correspondence dated 18 July 2019, attachment, pp 11-12.

63 Submission 8, p 2.

concept of "unacceptable risk" is long-standing and well-understood, and includes consideration of community safety.[64]

In response to the suggestion by Sisters Inside that the wording of s 48AD(2) be changed from 'may' to 'must' to require courts and police to release children if satisfied that the child's release is consistent with community safety, and appropriate having regard to the matters outlined in the subsections, the department said:

The Bill meets the intention of the proposal. The Bill provides that police and courts must release a child unless there is an unacceptable risk that if released, the child will fail to surrender into custody, commit an offence, endanger the safety or welfare of a person, or interfere with a witness or otherwise obstruct the course of justice. If an unacceptable risk exists, police or courts may release the child under new section 48AD.

The Bill maintains discretion of decision makers and balances community safety while protecting the interests of children involved in the youth justice system.[65]

The following specific concerns were also raised by submitters.

2.4.2.1 Accommodation

The issue of a young person's accommodation arrangements affecting the outcome of a bail hearing was a matter of concern for a number of stakeholders. In this regard, the Public Guardian submitted:

One of the factors that the court or police officers must consider in deciding whether to release or bail a child in custody is the child's 'home environment' (s 48AA(5)(b)). However, it is not clear how this provision is to be applied in practice. For example, the lack of clarity regarding the application of these provisions, increases the risk that an inability to demonstrate a child has a safe home environment could be used as justification for refusal of bail, or release from custody.

Therefore, it is recommended that a note be included in this section to clarify the intent of how this provision is to be applied, and that the section must never be used to justify refusal of bail, or release from custody. Alternatively, an amendment could be made to section 48AA(7)(b) to clarify that the court or police officer must not decide it is satisfied there is a risk or unacceptable risk, simply on the basis that 'the child has no apparent family support or safe home environment*'.*[66]

The department provided the following response to the recommendation that new s 48AA(7)(b) should be amended to insert the words 'or safe home environment' after the words 'no apparent family support':

New section 48AA(7)(a) provides that a court or police officer must not decide it is satisfied there is a risk or unacceptable risk of a matter mentioned in section 48(4) only because the child will not have accommodation, or adequate accommodation, on release from custody. The words "adequate accommodation" would encompass "safe home environment".[67]

The Queensland Ombudsman supported 'the view that young people should not be remanded in custody simply because they do not have adequate accommodation arrangements'.[68] The Queensland Ombudsman also noted that in the case where 'no accommodation exists, then it will be incumbent on the child protection system to operate expeditiously to ensure safe and suitable accommodation

64 Department of Youth Justice, correspondence dated 18 July 2019, attachment, p 15.

65 Department of Youth Justice, correspondence dated 18 July 2019, attachment, p 16.

66 Submission 3, pp 7-8.

67 Department of Youth Justice, correspondence dated 18 July 2019, attachment, pp 13-14.

68 Submission 2, p 2

to support an affected young person, in the absence of a parent or guardian, is available'.[69] The Queensland Ombudsman also submitted:

> *Engaging the relevant child protection services as soon as it is identified that a young person may not have appropriate accommodation will be critical to the implementation of this amendment. The information sharing provisions proposed in the Bill will also support that communication between government and non-government entities that may be able to support the needs of a young person.*[70]

Sisters Inside raised the following concerns about how the Bill will work in practice where the adequacy of accommodation is an issue:

> *We note new section 48AA(7) states that a court or police officer must not decide it is satisfied that there is a risk or unacceptable risk of a matter mentioned in section 48(4) only because a child will not have accommodation or adequate accommodation and/or the child has no apparent family support. In practice, this amendment is unlikely to stop children from spending long periods of time in watch houses or youth prisons. This is because lack of accommodation affects has a compounding effect for children in particularly marginalised situations. For example, lack of an address affects children's ability to participate in programs or to be subject to a curfew.*[71]

PeakCare also commented on the issue of adequacy of accommodation in the context of bail hearings and the detention of young people:

> *PeakCare also strongly supports the proposal of making it explicit that police or courts are not able to detain a young person solely because they lack appropriate accommodation or have no apparent family support.*
>
> *However, PeakCare notes that homelessness and lack of appropriate (safe and supported) accommodation for some young people being considered for bail, or being released from detention, is a very real issue which will require a coordinated response and additional resourcing to enable the proposed amendments to be successfully implemented by the police and courts.*
>
> *PeakCare strongly contends that it is 'not the job' of the youth justice system to address issues of concern such as a young person's homelessness of lack of safe accommodation within their family home or other living arrangement, nor is it the responsibility of the youth justice system to ensure that young people are receiving appropriate support and assistance in relation to other aspects of their safety and well-being. This would represent a mis-use of the youth justice system and inadvertently create a 'netwidening' effect where young people are inappropriately drawn into the youth justice system in order to have their needs met.*[72]

The QLS also raised the issue of accommodation during the public hearing:

> *There needs to be a significant, urgent and sustainable investment by this government in providing alternative accommodation for the safety of children who are in watch houses. We have heard of FASD—foetal alcohol syndrome. We have heard of mental health issues. Children who are born into poverty, into intergenerational violence, who are born into a situation over which they have little or no control leading to mental health issues where they are most often*

69 Submission 2, p 2.

70 Submission 2, p 2.

71 Submission 8, p 2.

72 Submission 18, p 4.

very vulnerable victims themselves, do not improve by being placed in jails, in watch houses, and that requires a long-term investment.[73]

The QFCC provided the following insights in this context:

The Bill provides that a police officer or court cannot be satisfied there is a threat to the child's safety solely because the child lacks accommodation or has no apparent family support. This is a positive move to make sure detention truly is a 'last resort' and not seen as a placement option. It reflects the findings of the Report on Youth Justice*, where stakeholders expressed concern that children are in youth detention centres due to a lack of suitable accommodation options.*

…

Children who live in out of home care are more likely to be refused bail due to a lack of appropriate accommodation. In addition, children in the child protection system are many times more likely than the general population to be under youth justice supervision. There may be benefit in giving the Chief Executives of the Department of Child Safety, Youth and Women and the Department of Youth Justice specific responsibilities to find appropriate accommodation for children who receive bail while living in out of home care.

This could be modelled in part on s. 28 of the Bail Act 2013 (NSW)*, which requires hearings every two days when a child is held on remand due to a lack of accommodation. While this provides some safeguards for children, it has been criticised for not giving magistrates the power to require government departments to find accommodation. A strong provision along these lines could help to reduce the number of children experiencing vulnerability being remanded in custody.*[74]

2.4.2.2 Taking into account Aboriginal and Torres Strait Islander cultural considerations

Although the Bill does take into account Aboriginal and Torres Strait Islander cultural considerations (see, for example, proposed s 48AA(5)(f)), a number of submissions noted that there was further room for improvement in this regard.[75]

Mission Australia submitted:

The disproportionate number of Aboriginal and Torres Strait Islander children and young people within the justice system needs to be addressed as a matter of priority and in greater detail. While the Bill makes reference to Aboriginal and Torres Strait Islander children and young peoples' need to retain their connection to community, family and kin, it fails to acknowledge that Aboriginal and Torres Strait islander young people are significantly over-represented in youth justice system and in youth detention. Although the draft Bill is expected to achieve the policy objective of reducing reoffending set out in the Youth Justice Strategy, it is important to note that in order to achieve long-term sustainable outcomes, the over-representation of Aboriginal and Torres Strait Islander children and young people in the justice system should be addressed through a range of strategies including legislative intervention.[76]

The Queensland Human Rights Commission (QHRC) submitted:

There is an opportunity to improve the way in which police and courts take into account cultural considerations when making bail determinations for Aboriginal and Torres Strait Islander people. The proposed s48AA(4)(e) is limited to submissions made by community justice groups. In light of the disproportionate numbers of Indigenous children in youth justice detention, a stronger

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73 Public hearing transcript, Brisbane, 19 July 2019, p 5.

74 Submission 17, p 3.

75 See, for example, submissions 5, 15, 16, 22, 23, 25 and 28.

76 Submission 22, p 3.

legislative and operational approach to ensuring Aboriginal cultural considerations is justified. The Commission notes and endorses the Australian Law Reform Commission's Pathways to Justice Report *recommendations:*

Recommendation 5–1

State and territory bail laws should be amended to include standalone provisions that require bail authorities to consider any issues that arise due to a person's Aboriginality, including cultural background, ties to family and place, and cultural obligations. These would particularly facilitate release on bail with effective conditions for Aboriginal and Torres Strait Islander people who are accused of low-level offending. The Bail Act 1977 (Vic) incorporates such a provision. As with all other bail considerations, the requirement to consider issues that arise due to a person's Aboriginality would not supersede considerations of community safety.

Recommendation 5–2

State and territory governments should work with relevant Aboriginal and Torres Strait Islander organisations to: develop guidelines on the application of bail provisions requiring bail authorities to consider any issues that arise due to a person's Aboriginality, in collaboration with peak legal bodies; and identify gaps in the provision of culturally appropriate bail support programs and diversion options, and develop and implement relevant bail support and diversion options.[77]

In response to the concerns raised regarding the overrepresentation of Aboriginal and Torres Strait Islander children in the youth justice system, the department said:

The Queensland Government recognises that Aboriginal and/or Torres Strait Islander children are overrepresented in the youth justice system. There are a number of recently announced initiatives that aim to address overrepresentation and embed Aboriginal and Torres Strait Islander cultural responses across the youth justice system, including:

- *$6.38M over two years for the Enhanced Youth and Family Wellbeing Initiative, with extra case workers in Indigenous Family Wellbeing Services in 10 priority locations to work intensively with Aboriginal and Torres Strait Islander families and support them;*
- *$5.6M for eight Specialist Multi-Agency Response Teams (SMART) for court and bail assessments and service pathways, linking also with Aboriginal and Torres Strait Islander Family Wellbeing Services; and*
- *$0.8M for one year for a Mount Isa Transitional Hub - staffed by Aboriginal and/or Torres Strait Islander people from prominent local families*

The implementation of these initiatives is well underway.[78]

2.4.2.3 The need to invest in training, education and support services

In combination with legislative changes in this area, a number of stakeholders noted the need to invest in training, education and support services.[79]

For example, yourtown submitted:

In addition to this legislative clarification, the Government will need to invest in training and development of judicial staff and the police to ensure that they are aware of the changes and how to apply them in practice, particularly given as previous legislative changes to this effect

[77] Submission 23, p 9.

[78] Department of Youth Justice, correspondence dated 18 July 2019, attachment, pp 26-27.

[79] See, for example, submissions 5, 7, 10, 14, 15 and 17.

have not resulted in change occurring on the ground. Creating such change through legislation will not achieve the desired outcome without consideration for the organisational culture.

Moreover, whilst this is a welcome legislative change, Government still has a duty to safeguard minors and we therefore believe that additional investment into support services is also required so that the pressing needs of young people, such as accommodation support, can be met.[80]

The QFCC also made recommendations in this regard:

The measures established in this Bill make a positive contribution by providing alternatives to detention, particularly for children who would otherwise be remanded in custody. These measures will need to be supported by strong practice frameworks and appropriate resources to build the capacity of courts and police to respond in ways that protect children's rights.

The QFCC recommends an operational focus on education for police officers and court officials regarding exercising the discretion introduced in the Bill.[81]

2.5 Bail conditions

2.5.1 Proposed amendments

The explanatory notes stated that stakeholders have advised that bail conditions imposed on children 'are at times onerous and do not appropriately address or target the individual circumstances of the young person's alleged offending behaviour.'[82]

During her explanatory speech, the Hon Di Farmer, Minister for Child Safety, Youth and Women and Minister for the Prevention of Domestic and Family Violence, commented:

Ensuring that any conditions attached to grants of bail for children are appropriate is an important component of the bill. For some children, intensive and onerous bail conditions are likely to be counterproductive and increase the likelihood of a young person breaching their bail conditions and being remanded in detention for the breach. The bill amends the Youth Justice Act 1992 to ensure that bail conditions are sustainable, appropriate and targeted to manage the actual risks for an individual child while they are on bail and reduce the risk of the child breaching the conditions.[83]

The Bill proposes to amend the provisions relating to bail conditions to enable the court or a police officer to impose a condition on the grant of bail, other than a condition about appearing before a court or surrendering into custody, only if the police officer is satisfied:

- there is a risk the child will do any of the following while on release:
  - commit an offence
  - endanger the safety or welfare of a person
  - interfere with a witness or otherwise obstruct the course of justice, and
- the condition is necessary to mitigate the risk, and
- the condition does not, having regard to the following matters of which the court or police officer is aware, involve undue management or supervision of the child:
  - the child's age, maturity level, cognitive ability and developmental needs

[80] Submission 14, p 2.

[81] Submission 17, p 2.

[82] Explanatory notes, p 9.

[83] Queensland Parliament, Record of Proceedings, 14 June 2019, p 2122.

- the child's health, including the child's need for medical assessment or medical treatment
- for a child with a disability – the disability and the child's need for services and supports in relation to the disability
- the child's ability to comply with the condition.[84]

If a court or a police officer imposes a condition on the grant of bail, it must be recorded how the condition is intended to mitigate the risk.[85]

A condition only has effect for the stated period. The stated period cannot be longer than is necessary to mitigate the risk the child will do any of the following while on release:

- commit an offence
- endanger the safety or welfare of a person
- interfere with a witness or otherwise obstruct the course of justice.[86]

The explanatory notes advised that conditions would be able to be imposed only for a stated period:

> *… to reduce the likelihood that intensive and unnecessary bail conditions are imposed on young people for long and burdensome periods. This recognises that conditions of this nature are likely to result in more breaches, with the consequence that more young people are returned to or placed in custody.*[87]

The Bill inserts a new provision into the YJ Act that applies if a police officer reasonably suspects a child has breached a bail condition, and the contravention is not an offence. Before arresting the child in relation to the contravention, the police officer must first consider whether, in all the circumstances, it would be more appropriate to do one of the following:

- to take no action
- to issue a warning
- to make an application to vary or revoke the child's bail.

In making the decision, the police officer must consider the circumstances that include:

- the seriousness of the contravention or likely contravention
- whether the child has a reasonable excuse for the contravention or likely contravention
- the child's particular circumstances of which the police officer is aware
- other relevant circumstances of which the police officer is aware.[88]

The explanatory notes provided the following example: 'a police officer may choose to take no action in relation to a child who breached a bail condition requiring attendance at a police station at a certain time, if the child was unwell at the time of required attendance.'[89]

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84 Clause 16: *Youth Justice Act 1992*, proposed new s 52A.

85 Clause 16: *Youth Justice Act 1992*, proposed new s 52B.

86 Clause 16: *Youth Justice Act 1992*, proposed new s 52A.

87 Explanatory notes, p 10.

88 Clause 18: *Youth Justice Act 1992*, proposed new s 59A; Explanatory notes, p 10.

89 Explanatory notes, p 10.

2.5.2 Stakeholder views and department response

PeakCare commented on the provisions in the Bill which relate to ensuring appropriate conditions are attached to grants of bail:

> *PeakCare shares stakeholder concerns about onerous and unsustainable bail conditions which are often not specific to the individual circumstances of a young person's alleged offending and can lead to a higher likelihood of them breaching bail conditions.*
>
> *PeakCare supports the proposed amendments to ensure bail conditions are fair and proportionate, time limited, targeted at mitigating specific risks identified and tailored to a young person's circumstances and ability to comply, recognising that young people usually do not have the same access as held by adults to financial or other resources or the 'control' over conditions to which they are sometimes made subject such as their accommodation. PeakCare also supports the proposal that police officers must consider alternatives to arrest when responding to young people who have breached bail conditions.*[90]

CREATE Foundation (CREATE) also commented on the need for these provisions:

> *The need to ensure bail conditions are appropriate is evidenced by research that demonstrates young people in care have difficulties in complying with bail conditions, particularly when they have an intellectual disability, are homeless, or lack practical support, such as being assisted to attend appointments (McFarlane, 2018). CREATE Foundation (2018) found that young people are often not supported by child protection workers and carers when they attend court; these workers could inform the court of circumstances which could result in more appropriate bail conditions being set.*[91]

Australians for Native Title and Reconciliation Qld Association Inc. (ANTaR) provided the following insights on how similar provisions have worked elsewhere:

> *Experience in several other jurisdictions shows that prevention of re-offending is strongest when bail conditions and related opportunities are applied to the actual life circumstances of the child.*[92]

Anglicare discussed this topic at length in its submission and expressed strong support for 'more appropriate, practical and culturally-appropriate conditions attached to grants of bail for children and young people'.[93] In its submission, Anglicare also provided additional background concerning the need for these provisions:

> *Anglicare's experience working with children and young people provides a range of examples demonstrating the pressing need for this amendment.*
>
> *Cultural considerations should be core in any deliberations about bail conditions. We have had situations where young people have been in breach of bail conditions for attending funeral ceremonies, which occurred over the course of several days, for a grandparent. Maintaining their bail conditions in these circumstances comes at the cost of maintaining connection with family and community, as well as increasing the emotional hardship that accompanies the death of someone important in a child or young person's life.*
>
> *Other bail conditions can be physically impossible to meet. For example, if the only accommodation available is overnight-only, children or young people on curfews that include an*

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90 Submission 18, p 5.

91 Submission 5, pp 3-4.

92 Submission 9, p 4.

93 Submission 7, p 6.

obligation to maintain 24-hour contact with a youth worker or an adult are automatically in breach as soon as they follow a directive to leave the premises in the morning.

Other cohorts of children and young people on bail who face particular difficulties in meeting impractical and onerous bail conditions include those born in New Zealand who are Australian residents but not citizens, and therefore receive no income support. With no income, they have little chance of obtaining accommodation or meeting the requisites for employment. If they are estranged from their families, these young people are dependent on charity or theft to survive.

Similarly, the cohort of 14–15 year olds can find themselves homeless, with no or little support, and face significant difficulties in meeting bail conditions. This group is largely too young for a Centrelink allowance, and often too old or resistant to participate in a Child Safety system that is already under pressure.

Breaching bail is not an offence for young offenders. However, breaches are considered in court when the child or young person's case is heard, and can be interpreted as a sign that an individual is uncooperative, defiant or disinterested in taking responsibility for their behaviour.[94]

Mission Australia also recommended exempting children and young people from being subject to punitive bail conditions.[95]

The department responded:

Under clause 16 of the Bill, release decision-makers will be required to be satisfied that a condition is necessary to mitigate an identified risk that the child will commit an offence; endanger a person's safety or welfare; or interfere with a witness or otherwise obstruct the course of justice. This proposed new requirement aims to ensure that bail orders and the imposition of conditions are tailored to respond only to the particular risks identified for an individual child.

The Bill also provides that a bail condition must not involve undue management or supervision of a child, having regard to the child's age, maturity, cognitive ability and developmental needs, health, including need for medical assessment or treatment, any disability, including need to access supports and services, home environment and ability to comply with the condition. Applying this new criteria to the imposition of bail conditions aims to avoid punitive conditions that are not designed to specifically manage the actual risks for a child while on bail.[96]

Sisters Inside also noted that:

The Bill introduces new section 59A, which outlines considerations for decisions by police to arrest children if the officer reasonably suspects a child has contravened or is contravening a bail condition (clause 18 of the Bill). In contrast to clause 10 of the Bill, the considerations in new section 59A do not adequately reflect children's unique circumstances as defendants and the undesirability of arresting children for social or welfare reasons.[97]

The Australian Lawyers Alliance (ALA) agreed with these comments.[98]

In response to these concerns, the department said:

94 Submission 7, pp 6-7.

95 Submission 22, p 4.

96 Department of Youth Justice, correspondence dated 18 July 2019, attachment, p 17.

97 Submission 8, p 2.

98 Submission 24, p 6.

Proposed new section 59A of the YJ Act reflects the need for police to consider the unique circumstances of children as distinct to adults when responding to breaches of bail.[99]

2.6 Information sharing framework

The Bill proposes to insert a new information sharing framework into the YJ Act to enable a coordinated response to the needs of children charged with offences.[100]

The new information sharing framework would allow certain Queensland Government departments and other prescribed entities (such as the QPS and health services) to share information with service providers (such as legal, health and allied health service providers) for specific purposes.[101] The purposes include matters such as assessing the needs of a young person involved in the youth justice system, providing a referral, participating in case planning, or delivering services, programs or support to the young person.[102]

The explanatory notes stated that the proposed amendments 'aim to balance the privacy and confidentiality of information about a young person and the young person's circumstances with ensuring that sufficient, relevant information is available to achieve the best possible outcomes for the young person and the community.'[103]

In its response to issues raised by stakeholders about the new information sharing network, the department acknowledged the assistance of the OIC in the development of the Bill and advised that it 'will continue to consult with OIC in relation to the amendment of the *Youth Justice Regulation 2016*.'[104]

2.6.1 Stakeholder views and department response

Brisbane Youth Service, Life Without Barriers, Australian Association of Social Workers QLD Branch, PeakCare and Mission Australia expressed their support for the amendments that seek to enhance information sharing practices between government and non-government agencies.[105] Mission Australia contended that '[a]llowing for the greater communication and sharing of information will assist in the planning and delivering of programs and services to support young people in the youth justice system.[106]

The Australian Lawyers for Human Rights (ALHR) and CREATE supported the introduction of an information sharing framework but noted their concerns regarding the privacy of the children involved.

The ALHR stated:

ALHR supports the amendment of the Youth Justice Act 1992 *(Qld) to introduce an information sharing framework in which confidential information about children who have been charged with offences may be shared between relevant service providers, … for example between relevant government departments, education specialists, mental health practitioners and case workers who provide services to children. This is important to enable children to have the necessary support they need whilst being involved in the youth justice system, and to permit the necessary coordinated responses which are often required to provide for those complex needs. However, there must be sufficient protection of, and balance with the right to privacy of the child. ALHR*

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99 Department of Youth Justice, correspondence dated 18 July 2019, attachment, p 18.

100 See proposed new s 297B (cl 30).

101 Explanatory notes, p 11.

102 Explanatory notes, p 11.

103 Explanatory notes, p 11.

104 Department of Youth Justice, correspondence dated 18 July 2019, attachment, p 18.

105 Submission 21, p 1; submission 22, p 3; submission 15, p 4; submission 16, p 4; and submission 18, p 5.

106 Submission 22, p 3.

acknowledges that the Bill in part addresses this balance through its requirement for the child's consent to be sought whenever possible and practical in the introduction of section 297C of the Youth Justice Act 1992 *(Qld).*[107]

CREATE submitted:

CREATE … supports appropriate information sharing to facilitate young people's rights being upheld within a coordinated response committed to meeting their needs. Information sharing must be coordinated to facilitate caseworkers and caregivers being able to provide necessary support, whether through being physically present for the young person or coordinating other practical support such as transport home, throughout the young person's contact with the justice system. This requires consideration of privacy being maintained, with clear articulation and agreement of the purpose of information requested across systems. CREATE has concerns that information beyond a "need to know" basis, without appropriately trained staff in varied roles, can contribute to further stigmatisation and labelling of young people.[108]

In response to the issues raised by the ALHR and CREATE, the department identified the relevant safeguards in the Bill:

The Bill contains a number of safeguards to limit the sharing of confidential information. It clarifies that, in addition to the Charter of youth justice principles, it is a principle underlying the information sharing framework that, whenever possible and practical, a person's consent should be obtained before disclosing confidential information relating to the person to someone else.

Information sharing is limited to relevant information for particular purposes, including to help a recipient to:

- *participate in case planning for the child; or*
- *assess the child's needs; or*
- *ensure a court is able to take into account the child's needs; or*
- *provide appropriate referrals for the child; or*
- *deliver services, programs or support for the child; or*
- *address the child's health needs or disability needs so far as they are relevant to the child's previous, or possible future, offending behaviour.*

A further safeguard in the Bill provides that the information sharing provisions apply subject to any limitation prescribed by regulation about how, or the circumstances in which, a prescribed entity or service provider may disclose, record or use confidential information.

Additionally, the Bill amends section 285 of the YJ Act to provide that prescribed entities and service providers under the framework are 'persons involved in the administration of the YJ Act.' This will ensure that those entities are subject to the obligation in section 288 of the YJ Act to only disclose information for authorised purposes under the Act.[109]

The OIC advised that it was 'supportive of measures, such as the safeguards and limitations provided for in the Bill, which seek to strike an appropriate balance between the right to privacy and the legitimate aim of responding to the needs of children in the youth justice system.'[110]

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107 Submission 28, pp 6-7.

108 Submission 5, p 5.

109 Department of Youth Justice, correspondence dated 18 July 2019, attachment, pp 18-19.

110 Submission 6, p 2.

knowmore supported the amendments in the Bill that enable information sharing among government and non-government agencies because of their focus on 'improving how the needs of young people in the youth justice system are identified and addressed.'[111] knowmore was particularly supportive of 'the underlying principle that, wherever possible, a young person's consent should be obtained before confidential information about them is disclosed.'[112]

knowmore advised that the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) 'highlighted the importance of information sharing to enabling child sexual abuse to be effectively prevented, identified and responded to.'[113] knowmore further advised that the Royal Commission 'acknowledged that information sharing alone is not enough to protect children from sexual abuse, but advocated it as "one tool… to facilitate better collaboration between disparate institutions in promoting the wellbeing and safety of children".'[114]

knowmore submitted that to achieve the outcomes intended by the Bill, particular consideration needs to be given to:

> *Ensuring information sharing arrangements established under the new framework are clear and robust, and that people are provided with support and guidance to help them make decisions under it. This should include the development of relevant training, policies, procedures and guidelines, as well as work to promote a culture of information sharing within and across agencies.* [115]

The department addressed knowmore's suggestions:

> *The Bill provides that the information sharing provisions apply subject to any limitation prescribed by regulation about how, or the circumstances in which, a prescribed entity or service provider may disclose, record or use confidential information. If the Bill is passed, during the implementation of the Bill the amendments will be clearly communicated and explained to relevant agencies and services providers.*[116]

The YAC supported 'the underlying principle that wherever possible and practical a person's consent should be obtained before disclosing confidential information relating to the person to someone else.'[117] Its key concern in terms of sharing information was with respect to education facilities and the impact that the information may have on a child's schooling:

> *YAC's main concern in terms of sharing information is with respect to education facilities and whether this may put children at risk of being suspended or excluded – particularly since State Schools may suspend simply on the basis of charges and suspend or exclude where there is a conviction (even where a conviction is not recorded), irrespective of whether the offences had anything to do with behaviour related in any way to the school. Disengagement from education and training is a key risk factor in ongoing involvement with the youth justice system. Suspension and exclusion undermine the goal of diverting children.*[118]

The department offered the following reassurance in response to the concerns raised by the YAC:

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111 Submission 12, p 6.

112 Submission 12, p 7.

113 Submission 12, p 6.

114 Submission 12, p 6.

115 Submission 12, p 8.

116 Department of Youth Justice, correspondence dated 18 July 2019, attachment, p 21.

117 Submission 11, p 3.

118 Submission 11, p 3.

> *Under the amendments, information can only be shared for specified purposes and to the extent that the holder reasonably believes that it may help the receiver do particular things, such as participating in case planning or delivering services, programs or support to a child who has been charged with an offence. Penalties of up to two years imprisonment or 100 penalty units apply for the inappropriate use or disclosure of information (section 288 of the YJ Act).*[119]

The Youth Affairs Network of Queensland (YANQ) voiced its opposition to information sharing without the consent of the young person:

> *Confidentiality of young people must be maintained at all time. Young people must have the option of consenting to what information about them and to whom that information is going to be shared with. Any sharing of information without the young person's full consent is a breach of their confidentiality and basic rights.*[120]

Sisters Inside also had concerns about the information sharing provisions, similarly suggesting that children 'must maintain the right to consent to Government agencies and non-government organisations sharing or exchanging their confidential information.'[121] Sisters Inside elaborated:

> *As a non-government organisation, we are particularly concerned that these provisions may create a requirement that we must disclose children's information without their consent. Respecting children's decisions about their confidential information is essential to build a trusting support relationship. An aspirational principle to obtain consent wherever possible and practice before disclosing confidential information is not a sufficient safeguard against unnecessary disclosures.*[122]

Sisters Inside recommended adding a requirement in the Bill for a person who discloses information without consent to tell the child that their information has been disclosed and the reasons for its disclosure.

> *… This would ensure that children have an awareness of which individuals and organisations hold confidential information about their circumstances. It would also provide an accountability mechanism to ensure disclosures are necessary and appropriate.*[123]

The department explained the approach to information sharing taken in the Bill:

> *Obtaining consent before sharing a person's private information is specifically identified as the preferred approach. However, there may be circumstances when it is not practicable to first obtain a child's consent, and it is in the best interests of the child to share the information. For example, if a child cannot be found after all reasonable efforts, it might be appropriate to share information about the child without their consent if it is necessary to urgently address the child's health needs. The Bill includes protections and safeguards including limiting information sharing to information relevant for particular purposes and including a penalty for the inappropriate disclosure or use of information.*[124]

yourtown supported the proposed introduction of the new information sharing regime but made the following recommendation:

> *… we would like to see a principle inserted into the Bill stating that information regarding a child's offending history, or other information relating to the young person's circumstances, not be*

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119 Department of Youth Justice, correspondence dated 18 July 2019, attachment, p 19.

120 Submission 13, p 4.

121 Submission 8, p 3.

122 Submission 8, p 3.

123 Submission 8, p 3.

124 Department of Youth Justice, correspondence dated 18 July 2019, attachment, p 20.

shared unless in the opinion of their juvenile justice officer, it facilitates the child's best interests.[125]

The department advised that the Bill 'meets this intention'.[126] The department continued:

… Under the amendments, information can only be shared for specified purposes and to the extent that the holder reasonably believes that it may help the receiver for particular purposes, such as participating in case planning or to deliver services, programs or support to a child who has been charged with an offence.[127]

Churches of Christ had some reservations about the proposed information sharing provisions:

We agree that information sharing should take place but we express concern that the young person's rehabilitation is the focus and reason for the information sharing. Information sharing should always be timely and in the best interest of the child.[128]

In response to those concerns, the department advised:

The overarching aim of the information sharing framework is to achieve the best possible outcomes for a young person, acknowledging that this is a shared responsibility across multiple government and non-government agencies.[129]

The department acknowledged ANTaR's comments with respect to reviewing legislation and advised that if the Bill is passed, the impact of the amendments will be reviewed.[130]

2.7 Electronic tracking devices

The Bill would clarify that a condition requiring the use of an electronic tracking device cannot be imposed on a child.[131]

The explanatory notes identified a number of concerns relating to the imposition on a child, as opposed to an adult, of a condition requiring the use of an electronic tracking device:

… For example, wearing an electronic tracking device is likely to identify a child as an offender to their community and lead to stigma and isolation. This is likely to be counterproductive to attempts to reintegrate a child into activities such as school, sport or employment. Electronic tracking may also have a specific cultural impact for Aboriginal young people and Torres Strait Islander young people in that it may be symbolic of the historical control and subjugation imposed on those peoples and may be a cause of shame in their community. There is also limited evidence in Australia and internationally to show that this technology is effective at managing young people on bail and reducing risks of reoffending.

There are also issues related to the use of electronic tracking for young people that are different to its use for adults, due to their stage of brain development. Young people are less likely to consider the consequences of their actions and more likely to engage in dangerous or risky behaviour. This is even more prevalent for young people who have experienced trauma, or have alcohol or drug issues. The use of electronic tracking devices on young people is unlikely to be particularly effective at deterring them from breaching their bail conditions.

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125 Submission 14, p 3.

126 Department of Youth Justice, correspondence dated 18 July 2019, attachment, p 20.

127 Department of Youth Justice, correspondence dated 18 July 2019, attachment, p 20.

128 Submission 27, p 4.

129 Department of Youth Justice, correspondence dated 18 July 2019, attachment, p 22.

130 Department of Youth Justice, correspondence dated 18 July 2019, attachment, p 22.

131 Explanatory notes, p 1.

There is a risk that the use of electronic tracking would result in more breaches of bail conditions coming to the attention of police, including minor breaches, with the consequence that more young people are returned to or placed in custody. This may be as a result of the intensity of supervision and the ongoing and intensive contact with police. Research suggests that among young people in particular, the longer the period they spend under electronic tracking, the more likely they are to breach their conditions. This would be counterproductive to the intention of reducing the number of young people held in custody on remand.[132]

2.7.1 Stakeholder views and department response

Stakeholders supported the provisions in the Bill that clarify that a condition requiring the use of an electronic tracking device cannot be imposed on a child in circumstances including the granting of bail, a community based order or early release.

PeakCare expressed its strong support for clarifying that an electronic tracking device condition cannot be imposed on a young person. The organisation submitted:

… Taking into account the characteristics and behaviours of young people during this stage of their development, especially when this has been impacted by the trauma of childhood abuse or neglect, use of these devises are likely to:

- *prompt many young people to impulsively attempt to 'fool', 'test out' and/or remove the device which may result in physical or psychological harm and unnecessarily escalate their engagement in the youth justice system through perceptions being formed about their 'non-compliance'*
- *embarrass and humiliate young people with the visibility of the device further criminalising and estranging them from their communities, thereby counteracting efforts that should be in place to promote their positive connection or re-connection with their families, communities and culture, or*
- *elicit responses often born out of youthful bravado which superficially (but erroneously) suggest that young people are wearing the device as a 'badge of attainment' that earns the respect of peers, thereby further criminalising them and making their constructive engagement in pro-social behaviours, activities and networks more difficult.*[133]

ANTaR considered that:

… the only justified use of such a device with young offenders would be in the very rare instance of an offender who is a proven serious danger to other people – whether in custody or in the general community. Wider use than this with young offenders is highly likely to be counter-productive and criminogenic.[134]

Life Without Barriers provided 'in principle' support for the amendments that would clarify that conditions requiring the use of an electronic device cannot be imposed on a child.[135]

The QLS also expressed its support for the clarification.[136]

The YAC submitted:

YAC endorses the rationale behind these provisions as set out in the Explanatory Notes. It is understood that the intent is that electronic monitoring devices not be used with children at all.

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132 Explanatory notes, pp 11-12.

133 Submission 18, pp 5-6.

134 Submission 9, p 5.

135 Submission 15, p 4.

136 Submission 26, p 4.

However, the wording that a court cannot "require" the "imposition" of electronic monitoring devices may not convey that meaning and we believe that this could be stated more directly. The current wording may enable a device to be worn "by consent" or "voluntarily". It is noted that young people in custody will often "consent" to almost any condition to obtain their liberty.[137]

In response to the YAC's concerns, the department advised:

The wording in the Bill … clearly provides a court or the chief executive must not impose a condition requiring a child to wear an electronic monitoring device. The proposed amendments do not need to be strengthened.[138]

2.8 Body-worn cameras, video and audio recordings

The Bill would amend the YJ Act to authorise the capture of audio recordings through CCTV technology in youth detention centres and the use by detention centre employees of body-worn cameras to record images or sounds.[139] The explanatory notes advised of the reason for the amendment:

This amendment is necessary to provide greater protection and safety for young people, as well as increasing accountability for staff, within detention centres. The 2016 Independent Review of Youth Detention *and the 2019 Queensland Ombudsman* The Brisbane Youth Detention Centre report *made recommendations that CCTV coverage in youth detention centres should be enhanced and that body worn cameras for staff should be implemented to better protect both staff and young people.*[140]

The Queensland Ombudsman explained that the key reason for his recommendation was the unreasonable use of force in youth detention facilities:

… That is the major and most significant issue that arises from officer response to situations that emerge in youth detention facilities. Without body worn camera evidence there is some considerable difficulty in verifying the testimony of various individuals when you are trying to get to the facts of a particular incident.[141]

The explanatory notes identified limitations and safeguards that will apply to the use of CCTV and body-worn cameras:

- *appropriate warnings and signage will be displayed in youth detention centres about where and when the technology will be in use (see new section 263B);*
- *comprehensive training, guidelines and procedures for staff to detail the correct collection, use, retention and disposal requirements for captured recordings (see new section 263B);*
- *penalties of up to two years imprisonment or 100 penalty units apply for the inappropriate use or disclosure of information (section 288 of the YJ Act); and*
- *protecting prescribed communications between a child and a relevant oversight, legal representative, advocate, or law enforcement agency from deliberate recording.*[142]

137 Submission 11, p 3.

138 Department of Youth Justice, correspondence dated 18 July 2019, attachment, p 22.

139 Clause 5, proposed new s 263A. See also explanatory notes, p 15.

140 Explanatory notes, p 15.

141 Public hearing transcript, Brisbane, 19 July 2019, p 17.

142 Explanatory notes, p 16.

2.8.1 Stakeholder views and department response

Most stakeholders who commented on the matter were supportive of the introduction of body worn cameras and the capture of audio recordings through CCTV technology, but wanted assurance that the guidelines to be made by the department's chief executive would prevent their misuse.

knowmore, for example, supported the amendments to permit the use of body-worn cameras and CCTV audio recording technology in youth detention centres because of their focus on increasing transparency and accountability in youth detention centres.[143] It advised that the amendments:

> *… are consistent with the findings of the Royal Commission, which identified the use of CCTV and other surveillance technology as a key mechanism for reducing the risk of child sexual abuse in youth detention, and improving responses to abuse when it does occur.*[144]

knowmore was also supportive of the limitations and safeguards in the Bill.[145]

With respect to implementing the Bill, knowmore submitted that:

> *… particular consideration needs to be given to …* [e]*nsuring there are adequate numbers of body-worn cameras available for staff in youth detention centres, and that there are rigorous policies and procedures in place to ensure the cameras are used effectively and appropriately.*[146]

Life Without Barriers provided 'in principle' support for the amendments that would authorise the use of body-worn cameras and the capture of audio recordings through CCTV technology.[147]

As a general concept, PeakCare supported 'the use of cameras and CCTV to improve the safety of staff and young people in detention centres, with appropriate safeguards in place to preserve young people's rights.'[148]

The QCCL expressed concern about body-worn cameras, particularly in relation to the guidelines regarding their use.[149]

The OIC noted that the use of body-worn cameras

> *… poses a number of privacy risks to an individual. Further, the information generated by the use of body worn cameras will include personal information and the privacy obligations in the IP Act* [Information Privacy Act 2009] *and rights of access and amendment under the IP Act and* Right to Information Act 2009 *will apply. …*[150]

The OIC supported the safeguards provided in the Bill but considered that:

> *… it is imperative that robust guidelines which seek to enhance transparency and accountability are implemented to mitigate risks and minimise the privacy invasive nature of these technologies in youth detention centres.*[151]

The QHRC concurred with the views of the OIC, in particular its comments about the guidelines.[152]

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143 Submission 12, p 5.

144 Submission 12, p 5.

145 Submission 12, p 5.

146 Submission 12, p 8.

147 Submission 15, p 4.

148 Submission 18, p 6.

149 Submission 20, p 2.

150 Submission 6, p 2.

151 Submission 6, p 3.

152 Submission 23, p 10.

In addition to endorsing the OIC's recommendation with respect to the guidelines, the QHRC recommended 'the inclusion of a statutory review of the efficacy of the use of these technologies within a reasonable timeframe that will enable an effective evaluation.'[153]

Regarding this recommendation, the department advised:

> *If passed, the impact of the amendments in the Bill will be reviewed. The implementation of body worn cameras will be subject to monitoring, review and evaluation. The benefits of body worn cameras will be routinely evaluated.*[154]

In relation to body-worn cameras, the YANQ submitted that adequate consultation is needed to ensure the privacy issues of young people are taken into account in developing the guidelines for the use of the body-worn cameras.[155]

The ALHR supported the amendments relating to body-worn cameras and the capture of audio recordings through CCTV technology provided that 'the Queensland Government develop guidelines for the use of body work cameras, the detail of which will be made available to all stakeholders for comment, prior to proclamation of the relevant section.'[156]

The ALA and Sisters Inside submitted that the rollout of body-worn cameras and audio recordings of CCTV in detention centres 'should be deferred until there are clear published guidelines governing the recording of images and sounds, and the use of body worn cameras'.[157] Sisters Inside submitted:

> *We are concerned that this amendment is being prioritised without adequate consultation about the privacy issues and unintended consequences for children. CCTV and body worn camera footage will only offer greater accountability if the use and review of footage is governed by effective and transparent rules. …*[158]

In response to stakeholders' comments regarding the guidelines about the recording of images and sounds in detention centres and the use of body-worn cameras by detention centre employees, the department advised:

> *The Department of Youth Justice is committed to developing clear guidelines that minimise the risks to privacy of both children and staff at youth detention centres. The department will consult with OIC and other key stakeholders during the development of the guidelines prior to the commencement of the relevant provisions.*[159]

The ALHR encouraged the committee to recommend that cl 5 be amended 'to place an additional obligation on the chief executive to retain all CCTV footage for at least 12 months, and to ensure that any footage is made available on a timely basis on lawful request of any government department or agency.'[160] The ALHR noted that this 'is in line with Recommendation 21.2 of the 2017 Royal Commission and Board Inquiry into the Protection and Detention of Children in the Northern Territory.'[161]

Regarding the ALHR's recommendation about the retention of CCTV footage, the department advised:

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153 Submission 23, p 10.

154 Department of Youth Justice, correspondence dated 18 July 2019, attachment, p 24.

155 Submission 13, p 3.

156 Submission 28, p 5.

157 Australian Lawyers Alliance, submission 24, p 8. See also, Sisters Inside, submission 8, p 2.

158 Submission 8, p 2.

159 Department of Youth Justice, correspondence dated 18 July 2019, attachment, p 23.

160 Submission 28, p 5.

161 Submission 28, pp 5-6.

> *The storage and retention of body worn camera footage will adhere to the Queensland State Archives approved Retention and Disposal Schedules, which meets the intention of the proposal. Access to footage would be subject to a lawful request under the* Right to Information Act 2009.[162]

The ANTaR noted that body-worn cameras have deterrent value and can provide important evidence.[163] It submitted: 'When practised as intended, monitored and audited competently and serviced proficiently, it contributes towards keeping everyone honest. In this spirit, the legislative mandate for such practices needs to be clear and positive.'[164]

The YANQ and yourtown similarly contended that there should be independent monitoring of footage to ensure the cameras are used as intended. The YANQ submitted that '[o]ngoing and independent monitoring of … footage is one way of ensuring any footage will be used for improving conditions endured by children in prisons.'[165] yourtown was of the view that the use of cameras and recordings should be 'subject to independent audit to reduce the risk of misuse by youth justice staff.'[166]

In relation to these comments, the department advised:

> *The department in conjunction with the OIC will ensure that appropriate safeguards are in place for the use of cameras in youth detention centres and that recorded information is appropriately available for oversight purposes. These safeguards will be subject to scrutiny of oversight bodies and statutory officers.*[167]

Regarding the Together Union's concern that the introduction of body-worn cameras may lead to more investigations, 'which are frequently lengthy and disruptive to workforce stability' and 'may affect the retention of a stable and experienced workforce',[168] the department advised:

> *The use of body-worn cameras in youth detention centres was recommended by the Queensland Ombudsman in* The Brisbane Youth Detention Centre *report in March 2019. It was also recommended in the 2016* Independent Review of Youth Detention *report.*
>
> *Footage from body warn cameras has the capacity to make investigative processes more efficient.*[169]

As noted above, the Queensland Ombudsman made a recommendation in his 2017 Brisbane Youth Detention Centre report that body-worn cameras be introduced into youth detention facilities. At the committee's public hearing, the Queensland Ombudsman advised:

> *… I have considered the submissions particularly of the Privacy Commissioner and others and their reservations about the privacy concerns with body worn cameras. I acknowledge those concerns and agree that very clear guidelines for the use of body worn cameras are actually an essential part of the introduction of body worn cameras. I have no concerns with the comments made by other witnesses. However, I do believe that body worn cameras will lead to improved safety for young people in youth detention, improved safety for staff in youth detention and, indeed, will add to the protection of the human rights of young people in youth detention facilities. Notwithstanding the requirements to have very clear guidelines and, in particular, no-*

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162 Department of Youth Justice, correspondence dated 18 July 2019, attachment, p 23.

163 Submission 9, p 5.

164 Submission 9, pp 5-6.

165 Submission 13, p 3.

166 Submission 14, p 3.

167 Department of Youth Justice, correspondence dated 18 July 2019, attachment, p 24.

168 Submission 10, p 3.

169 Department of Youth Justice, correspondence dated 18 July 2019, attachment, p 24.

go zones for body worn cameras to protect the privacy of young people, I remain of the view that body worn cameras are potentially a significant enhancement to the operation of youth detention facilities.[170]

The Queensland Ombudsman submitted that he hoped to see the effective operation of body worn cameras in youth detention centres as soon as possible.[171]

2.9 Child homicide – aggravating factor in sentencing

In its report titled *Sentencing for criminal offences arising from the death of a* child, the Queensland Sentencing Advisory Council recommended that s 9 of the *Penalties and Sentences Act 1992* (PSA) be amended to include a requirement that, in sentencing an offender for an offence resulting in the death of a child under 12 years, courts must treat the defencelessness of the victim and their vulnerability as an aggravating factor.[172] The Criminal Code and Other Legislation Amendment Act 2019 (CCOLA Act) implemented this recommendation.[173]

The CCOLA Act did not, however, affect the sentencing of children because they are not sentenced under the PSA. They are sentenced 'according to the requirements of the YJ Act unless specifically stated otherwise.'[174]

The explanatory notes stated that Bill proposes to amend the YJ Act to align it 'with the CCOLA Act, respond to the general findings of Queensland Sentencing Advisory Council (QSAC), and achieve greater recognition of the defencelessness and vulnerability of child victims in sentencing'.[175]

The explanatory notes advised that certain safeguards remain in place to protect the interests of a child charged with manslaughter of another child under 12 years:

- The amendment does not override the Charter of youth justice principles, including that detention is a last resort and for the least time justified.
- The amendment will operate alongside the sentencing principles in s 150 of the YJ Act and the requirement in s 208 that all other available sentences must first be considered.
- The amendment does not override the existing provision in s 176 of the YJ Act that for a life offence, the court may order that the child be detained for a period of no more than 10 years, or a period up to the maximum of life only if the offence involves the commission of violence against a person and the court considers the offence to be particularly heinous having regard to all of the circumstances.[176]

2.9.1 Stakeholder views and department response

Life Without Barriers supported 'in principle' the proposed amendment that provides that in sentencing a young person for the manslaughter of a child under 12 years, courts must treat the defencelessness of the victim and their vulnerability as an aggravating factor.[177]

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170 Public hearing transcript, Brisbane, 19 July 2019, pp 15-16.

171 Submission 2, p 2.

172 Queensland Sentencing Advisory Council, *Sentencing for criminal offences arising from the death of a child – Final report*, October 2018, pp xxxix and 157, Recommendation 1.

173 Explanatory notes, p 12.

174 Explanatory notes, p 12.

175 Explanatory notes, pp 12-13.

176 Explanatory notes, p 13.

177 Submission 15, p 4.

PeakCare, the ALHR, Sisters Inside, the QLS, Mission Australia and the YAC did not support the proposed amendment to s 150 (Sentencing principles) of the YJ Act.[178]

Sisters Inside explained its opposition:

> *… The Council's recommendation was limited to the* Penalties and Sentences Act 1992 *(Qld), and it would be inappropriate to extend this principle to children via the Bill. It is apparent from the text of the Council's report that this recommendation was not intended to apply to children as defendants.*
>
> *Further, it is absolutely appalling that the Queensland Government would introduce this amendment while the minimum age of criminal responsibility remains at 10 years old. The Queensland Government cannot purport to recognise the defencelessness and vulnerability of children under 12 years, at the same time as children under 12 years old continue to be criminalised and imprisoned.*[179]

The QLS submitted:

> *We understand that QSAC's final report does not specifically exclude application of this provision to a child who is convicted of the manslaughter of a child under 12 years old. However, the primary conduct contemplated by QSAC's final report involves offending by an adult against a child.*
>
> *It is important to note that a child who is convicted of this type of offending, might themselves also be the victims of abuse and neglect. As such, children who commit these offences might also be defenceless and vulnerable and therefore worthy of protection. The effect of imposing clause 4 on a child would run contrary to the Charter of youth justice principles contained within schedule 1 of the* Youth Justice Act 1992*.*
>
> *We note that the cases of children who commit manslaughter of children under 12 are extremely rare and we expect that this provision will not be utilised. In cases where a child is convicted of what might be classified as the manslaughter of a child under 12 years, the sentencing judge already has a range of serious penalties that he or she has the discretion to impose. Therefore, this provision has no utility.*
>
> *The Society strongly urges the removal of clause 4 from the Bill.*[180]

PeakCare had reservations about the proposed amendment:

> *… PeakCare does not have the specific expertise to provide advice in this area and will defer to other agencies. However, it is noted that this proposal to remove discretion in sentencing would appear to be in contradiction to previous proposed amendments which emphasise the recognition of the special needs and individual circumstances of young people in contact with the youth justice system, particularly for those under the age of 14 years.*
>
> *The requirements in the* Criminal Code and Other Legislation Amendment Act 2019*, which resulted in amendments to the* Penalties and Sentences Act 1992*, specifically refer to adult offenders and the* Penalties and Sentences Act 1992 *does not apply to children, so it is unclear why this proposal seeks to align young people's sentencing in the* Youth Justice Act 1992 *with adult sentencing when all the previous amendments have been based on the approach that children who have committed offences must be responded to differently than adults who offend.*

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178 Submission 22, p 3; submission 8, p 1; submission 18, p 6; submission 28, p 6; submission 11, p 4; and submission 26, pp 2-3.

179 Submission 8, p 1.

180 Submission 26, pp 2-3.

On the face of it, this proposal does not seem consistent with the other amendments and does not appear to be appropriate.[181]

The ALHR opposed the inclusion of the provision:

ALHR does not support clause 4 of the Bill which proposes to reform sentencing principles applicable to children such that in determining the appropriate sentence for a child convicted of the manslaughter of a child under 12 years, a court must treat the victim's defencelessness and vulnerability, having regard to the victim's age, as an aggravating factor. Again, ALHR submits that these measures interfere with judicial discretion and disproportionately impede application of the guiding principles of the CRC [Convention on the Rights of the Child]*, particularly the best interests of the child as the primary consideration.*[182]

The YAC expressed its opposition as follows:

… the introduction of new subsection (3) to section 150 fails to differentiate adults from children. It is highly concerning that our youth justice system is incrementally being eroded through such inclusions. It is our understanding that the Sentencing Council, in its Final Report and Recommendations on Sentencing for criminal offences arising from the death of a child homicide *in October 2018 were not intended to apply to children in the youth justice system.*

Additionally, some clear anomalies arise: for example, if a ten year old was considered responsible for the death of an eleven year old.[183]

In response to the opposition of stakeholders to the introduction of the aggravating factor on the sentence for children, the department identified the legislative safeguards that would remain to protect the interests of a child who has been convicted of an offence of manslaughter of another child under 12 years.

… The amendment does not override the Charter of youth justice principles in the YJ Act. It also does not override the sentencing principles in section 150 of the YJ Act and the requirement in section 208 that all other available sentences must first be considered. The amendment does not override the existing provision in section 176 of the YJ Act that for a life offence, the court may order that the child be detained for a period of no more than 10 years, or a period up to the maximum of life only if the offence involves the commission of violence against a person and the court considers the offence to be particularly heinous having regard to all of the circumstances.[184]

2.10 Public Guardian community visitor program

The Bill proposes to include the department in the definition of 'prescribed department' in s 51 of the *Public Guardian Act 2014*.[185] This would ensure that the Office of the Public Guardian's community visitor program may continue to visit child accommodation services provided or funded by the new department.[186]

[181] Submission 18, p 6.

[182] Submission 28, p 6.

[183] Submission 11, p 4.

[184] Department of Youth Justice, correspondence dated 18 July 2019, attachment, p 25.

[185] Clause 47.

[186] Explanatory notes, p 13.

2.10.1 Stakeholder views and department response

Stakeholders supported the proposed amendment to enable the Public Guardian's community visitor program to visit child accommodation serviced provided or funded by the department.[187]

PeakCare, for example, stated:

> *PeakCare supports the community visitor program visiting young people in accommodation services provided or funded by youth justice, as another safeguard in protecting the rights and interests of young people who, due to their circumstances, may be regarded as vulnerable.*[188]

yourtown supported the amendments relating to community visitors but added that there is a need for community visitors to have suitable qualifications and experience.[189]

> *In principle, we fully support community visitors in child accommodation services, including watch houses. However, it is important that people appointed as community visitors have the appropriate qualifications and experience in communicating and working with young people and we would like to see this incorporated into the Bill.*[190]

The department advised that the suggestion:

> *… is outside the scope of the proposal in the Bill. Under the* Public Guardian Act 2014*, a person is eligible for appointment as a community visitor (child) only if the public guardian considers the person has the knowledge, experience or skills needed to perform the functions of a community visitor (child).*[191]

2.11 Other matters

During the inquiry, stakeholders provided information to the committee on a number of proposals that were not included in the Bill. Some of these proposals are discussed below.

2.11.1 Age of criminal responsibility

A number of stakeholders recommended that the age of criminal responsibility in Queensland should be raised to 12 or 14 years.[192]

The department responded to this recommendation:

> *In response to the Report on Youth Justice from Special Advisor, Mr Robert (Bob) Atkinson AO, APM in February 2018 the Queensland Government committed to consider recommendations that the minimum age of criminal responsibility be raised, pending any recommendations made in relation to this issue at a national level.*
>
> *This issue is being considered at a national level. The Council of Attorneys-General (CAG) agreed on 23 November 2018 "to establish an interjurisdictional working group to review the age of criminal responsibility and make recommendations to the Council in that regard".*
>
> *The Queensland Government is participating in the working group, which is due to report back to the CAG in late 2019.*[193]

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187 See, for example, submission 3, p 3; submission 4, p 2; submission 18, p 7; submission 21, p 1; submission 25, p 4; and submission 15, p 4.

188 Submission 18, p 7.

189 Submission 14, p 3.

190 Submission 14, p 3.

191 Department of Youth Justice, correspondence dated 18 July 2019, attachment, pp 24-25.

192 See, for example, see submissions 4, 5, 7, 8, 13, 17, 23, 24, 25 and 28.

193 Department of Youth Justice, correspondence dated 18 July 2019, attachment, pp 27-28.

2.11.2 Minimum age of detention

Some stakeholders recommended that children under 14 years should not be held in police watch houses or youth detention centres.[194]

The department responded:

> *The Bill maintains discretion of decision makers and balances community safety while protecting the interests of children involved in the youth justice system.*
>
> *Clause 10 of the Bill inserts new section 48AD (2)(j) which provides that if there is an 'unacceptable risk' in relation to a child being granted bail, bail decision makers may still release a child under 14 years of age from custody due to their vulnerability and community expectations that children under 14 years are entitled to special care and protection.*
>
> *Clause 7 of the Bill also clarifies that the principle of 'detention as a last resort' also applies to children on arrest, remand, or sentence. This issue was addressed by the Minister in her explanatory speech.*[195]

2.11.3 Accommodation for children

A number of stakeholders recommended that there be a legislative obligation on the Queensland Government to secure accommodation for children, for example similar to s 28 of the *Bail Act 2013* (NSW).[196]

In response, the department stated:

> *This suggestion is beyond the scope of the Bill and is a policy matter for Government.*
>
> *Such an amendment would require careful consideration to avoid unintended consequences including the detention of a child while appropriate accommodation is identified by a relevant government agency.*
>
> *The Bill includes provisions to enable the appropriate sharing of relevant information to enable government and non-government entities to share information to assist to identify an individual child's needs and develop an appropriate support plan for the child.*
>
> *The Government has committed $2.7 million over four years and $200,000 per annum ongoing to support multi-agency response teams (SMART) and dynamic risk assessments for court. The intention of SMART teams is for information to be shared earlier to enable a program of supports, including suitable accommodation to be arranged for a child, including to support making an application for bail. Implementation planning of this initiative is well underway.*
>
> *Where the Department of Child Safety, Youth and Women (DCSYW) is notified by QPS that a child subject to a child protection order is held in a watch house and issues of accommodation options are impacting on the likelihood of the child being granted bail, DCSYW works with the Department of Youth Justice (DYJ) and the Department of Housing and Public Works (DHPW) to source appropriate accommodation for the child.*[197]

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194 See, for example, see submissions 3, 23, 24 and 25.

195 Department of Youth Justice, correspondence dated 18 July 2019, attachment, pp 28-29.

196 See, for example, see submissions 3, 5, 13, 17 and 20.

197 Department of Youth Justice, correspondence dated 18 July 2019, attachment, pp 29-30.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill and brings the following to the attention of the Legislative Assembly.

3.1.1 Rights and liberties of individuals

Section 4(2)(a) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals.

Clauses 30 and 43 raise issues about the right to privacy and confidentiality of personal information. Clause 5 raises issues about the right to privacy.

3.1.1.1 Information sharing network

Clause 30 allows the sharing of confidential information about a child between particular entities for:

- the coordination of provision of services to meet the needs of children
- the provision of information that may be used by courts in making bail or sentencing decisions for children
- the sharing of relevant information with other entities for the purpose of the above matters.

These entities are either 'prescribed entities' or a 'service provider', and are set out in proposed section 297D. Prescribed entities include:

- the chief executive of a department that is mainly responsible for any of the following:
  - Aboriginal and Torres Strait Islander services
  - child protection services
  - community services
  - court services
  - disability services
  - education
  - housing services
  - public health services
  - youth justice services
- the chief executive of another department that provides services to children
- the commissioner of the police service
- the chief executive officer of Mater Misericordiae Ltd
- the Public Guardian.

'Service provider' means LAQ or a non-government entity that provides a service to children.

Information is shared following the establishment of an arrangement by a chief executive of a department under proposed s 297F. An arrangement enables:

- the coordination of provision of services to meet the needs of children
- the provision of information that may be used by courts in making bail or sentencing decisions for children
- the sharing of relevant information with other entities for the purpose of the above matters.

Proposed s 297H(5) states that an entity is not compelled to disclose information under this Division.

Issue of fundamental legislative principle

Clause 30 raises an issue of fundamental legislative principle relating to the rights and liberties of individuals, particularly regarding an individual's right to privacy with respect to their personal information.[198]

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

The disclosure and use of personal information of a child charged with an offence, could be seen to be breaching that child's right to privacy, particularly as children are regarded as being particularly vulnerable.

Comment

The explanatory notes set out this justification:

> *This amendment is necessary to ensure that government entities and government and non-government service providers (including, for example, drug and alcohol workers, education specialists, mental health practitioners and case workers) are able to share information for the purposes of providing multi-disciplinary assistance to a young person. This will allow underlying issues that may contribute to a young person's offending to be addressed, referrals provided to other support services, and the young person's support needs appropriately addressed. It will also ensure that the court can be provided with a single, comprehensive advice about the young person's needs, and how they are being addressed, enabling it to consider all relevant information about the young person when making a decision. The overarching aim is to achieve the best possible outcomes for the young person.*[199]

There are a large number of entities that personal information may be disclosed to, but their inclusion appears appropriate.

The following factors are described in the explanatory notes as limitations and safeguards included in the Bill:

- Obtaining consent before sharing a person's private information is specifically identified as the best practice approach within the new principles for sharing information.
- Information can only be shared for the specified purposes under the arrangement and to the extent that the holder reasonably believes that it may help the receiver do particular things, such as participating in case planning or delivering services, programs or support to a child who has been charged with an offence.
- The framework applies only to the entities identified as 'prescribed entities' and to service providers who fall within the relevant definition.

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198 See *Legislative Standards Act 1992*, s 4(2)(a).

199 Explanatory notes, p 14.

- The circumstances in which prescribed entities and service providers can share information for the purposes of the arrangement will be further limited by regulation.
- The new information sharing framework enables, but does not compel, the sharing of information for the purposes of the arrangement.
- The framework does not override certain provisions of other legislation that restrict the disclosure of highly sensitive information, for example, s 186 of the *Child Protection Act 1999* that protects the confidentiality of information about notifiers of harm or risks of harm to children
- A privilege that a person may claim under another Act or law (including, for example, legal professional privilege) is not affected only because information may be or has been disclosed under the new framework.
- Penalties of up to two years imprisonment or 100 penalty units apply for the inappropriate use or disclosure of information (s 288Y of the YJ Act).[200]

It is arguable whether these factors could all be regarded as sufficiently amounting to limitations and safeguards. (For example, the fact that information cannot be *compelled* to be shared is arguably irrelevant to a consideration of whether a provision *allowing* information to be shared involves a justified or unjustified breach of fundamental legislative principle.) Regardless, though, one might focus on the purpose of the provision, summed up this way:

> *Any departure from fundamental legislative principles in this regard is justified to meet the needs of vulnerable children who are involved in the youth justice system in a timely way and to try and avoid, as far as possible, them being held in detention.*[201]

As noted above, it will also ensure that the court can be provided with a single, comprehensive advice about the young person's needs.

Conclusion

The disclosure and use of personal information of a child charged with an offence, could be seen to be breaching that child's right to privacy, especially noting that children are regarded as being particularly vulnerable.

The committee considers sufficient regard has been given to an individual child's right to privacy, noting the purpose of the disclosure and the safeguards provided.

3.1.1.2 Police providing information about a child to a legal aid organisation

Clause 43 amends section 421 of the PPRA to require a police officer who wants to question a child who is in custody in relation to an alleged indictable offence to notify or attempt to notify a legal aid organisation service that the child is in custody, as soon as is reasonably practicable.

Comment

The explanatory notes provided the following justification:

> *This amendment is necessary to ensure that a young person who is being questioned by police in relation to an indictable offence is provided with legal representation as soon as possible, which may assist in informing police decision making about appropriate diversion or charge options as*

[200] Explanatory notes, p 14.

[201] Explanatory notes, p 14.

> *well as the decision to detain a child in police custody. It will also enable arrangements to be put in place for timely applications for bail is subsequently arrested and detained by police.*[202]

The explanatory notes set out what are described as limitations and safeguards that will apply to this giving of information:

- The amendment is aimed at protecting and furthering the rights of the young person during their involvement with the youth justice system.
- Police will only be able to provide information about the young person's arrest and whereabouts to a lawyer nominated by the child, or to a legal service (a one way information flow).

A lawyer who acts for the young person will be subject to a fiduciary duty of confidentiality.[203]

Conclusion

The issue of fundamental legislative principle is the same as for cl 30.

The committee considers that sufficient regard has been given to a child's right to privacy, noting the purpose of the disclosure and the safeguards provided.

3.1.1.3 Body-worn cameras and capture of audio recordings through CCTV technology

Clause 5 introduces a new s 263A into the YJ Act, which authorises the use of body worn cameras and the capture of audio recordings through CCTV technology in youth detention centres.

Issue of fundamental legislative principle

Clause 5 raises an issue of fundamental legislative principle relating to the rights and liberties of individuals, regarding an individual's right to privacy and confidentiality.[204]

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

This clause provides for the wearing of body-worn cameras by detention centre employees and the use of CCTV technology, which will record audio and vision of children detained in a detention centre. This could be seen to breach an individual's right to privacy and confidentiality.

Comment

The explanatory notes provide the following justification:

> *This amendment is necessary to provide greater protection and safety for young people, as well as increasing accountability for staff, within detention centres. The 2016* Independent Review of Youth Detention *and the 2019 Queensland Ombudsman* The Brisbane Youth Centre report *made recommendations that CCTV coverage in youth detention centres should be enhanced and that body worn cameras for staff should be implemented to better protect both staff and young people.*[205]

Note that new s 263B provides that the chief executive must:

- make guidelines about the recording of images and sounds in detention centres and the use of body-worn cameras by detention centre employees under s 263A, and
- ensure that a child in a detention centre, detention centre employee and visitors are advised that sounds and images may be recorded under s 263A.

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202 Explanatory notes, p 15.

203 Explanatory notes, p 15.

204 See *Legislative Standards Act 1992*, s 4(2)(a).

205 Explanatory notes, p 15.

The explanatory notes identify a number of safeguards that will be or are provided:

- Appropriate warnings and signage will be displayed in youth detention centres about where and when the technology will be in use (see new s 263B).
- There will be comprehensive training, guidelines and procedures for staff to detail the correct collection, use, retention and disposal requirements for captured recordings (see new s 263B).
- Penalties of up to two years imprisonment or 100 penalty units apply for the inappropriate use or disclosure of information (s 288 of the YJ Act).
- There is protection for prescribed communications between a child and a relevant oversight, legal representative, advocate, or law enforcement agency from deliberate recording.[206]

Conclusion

The committee considers that sufficient regard has been had for the privacy of individual children, noting the protections and safeguards provided.

3.2 Explanatory notes

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced and sets out the information explanatory notes should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and 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.

[206] Explanatory notes, p 16.

Appendix A – Submitters

Sub #	Submitter
001	Youth Off The Streets Limited
002	Queensland Ombudsman
003	The Public Guardian
004	Royal Australian and New Zealand College of Psychiatrists
005	CREATE Foundation
006	Office of the Information Commissioner Queensland
007	Anglicare Southern Queensland
008	Sisters Inside
009	Australians for Native Title and Reconciliation Qld Association Inc.
010	Together Union Queensland
011	Youth Advocacy Centre Inc.
012	knowmore
013	Youth Affairs Network of Queensland
014	yourtown
015	Life Without Barriers
016	Australian Association of Social Workers QLD Branch
017	Queensland Family and Child Commission
018	PeakCare Queensland Inc.
019	Aboriginal & Torres Strait Islander Legal Service (QLD) Ltd
020	Queensland Council for Civil Liberties
021	Brisbane Youth Service
022	Mission Australia
023	Queensland Human Rights Commission
024	Australian Lawyers Alliance
025	Queensland Advocacy Inc
026	Queensland Law Society
027	Churches of Christ in Queensland
028	Australian Lawyers for Human Rights

Appendix B – Officials at public departmental briefing

Department of Youth Justice

- Mr Darren Hegarty, Acting Deputy Director-General

Department of Child Safety Youth and Women

- Ms Megan Giles, Executive Director, Strategic Policy and Legislation

Queensland Police Service

- Mr Brian Codd, Assistant Commissioner, State Crime Command

Appendix C – Witnesses at public hearing

Office of the Public Guardian
- Natalie Siegel-Brown, Public Guardian
- Marion Byrne, Manager Policy and Reporting

Queensland Law Society
- Bill Potts, President
- Binny De Saram, Legal Policy Manager
- Damian Bartholomew, Chair of the Children's Law Committee

Office of the Information Commissioner
- Phil Green, Privacy Commissioner
- Susan Shanley, Principal Policy Officer

Aboriginal & Torres Strait Islander Legal Service (QLD) Ltd
- Kate Greenwood, Barrister, Policy, Early Intervention and Community Legal Education Officer

Office of the Queensland Ombudsman
- Phil Clarke, Queensland Ombudsman

knowmore
- Warren Strange, Executive Officer
- Lauren Hancock, Law Reform and Advocacy Officer

Sisters inside
- Deb Kilroy, Chief Executive Officer
- Marissa Dooris, Policy Officer

CREATE Foundation
- Rachael Donovan, State Coordinator QLD
- Naraja Clay, Youth Facilitator

PeakCare Queensland Inc.
- Lindsay Wegener, Executive Director

Anglicare Southern Queensland
- Tammy Lloyd, Group Manager – Children & Families

Queensland Human Rights Commission
- Scott McDougall, Queensland Human Rights Commissioner

Youth Advocacy Centre Inc.
- Janet Wight, Director
- Damian Bartholomew, Solicitor

Queensland Family and Child Commission
- Cheryl Vardon, Principal Commissioner

Australians for Native Title and Reconciliation Qld Association Inc.
- Dr Wayne Sanderson, Team Leader, Justice Reinvestment Project

Statement of Reservation

The LNP members of the Legal Affairs and Community Safety Committee have serious concerns about the Bill's ability to protect children from being held in watch houses for long periods of time.

These concerns come after the recent revelations in which it was found that 85 children on average were being detained in watch houses for weeks on end across Queensland. The conditions these children were held in was appalling and threatened the health and wellbeing of all children detained.

The LNP does not support children being held in watch houses for long periods of time. This is why the LNP has called for amendments that would cap the maximum amount of time a child can be detained in a watch house to 72 hours.

The Opposition members of the Committee notes that a number of key stakeholders have called for a time limit to be introduced. Most notably, the Human Rights Commissioner, Scott McDougall, is seeking a statutory prohibition on prolonged detention in watch houses. In particular, the Commissioner has recommended that the average time for children to be detained in watch houses should not extend beyond 24 hours, but considered 72 hours as the outside limit. The Commissioner went on to say that the 72 hour limit "would certainly protect children who, as we have sadly found out this year, have been subjected to horrendous conditions for weeks on end in some cases". Other stakeholders, including the Public Guardian and Sisters Inside are also advocating for strict time limitations in which children may remain in watch houses.

The Opposition members of the Committee affirm their commitment to protect all children, especially those who are some the most vulnerable in our community. However, it is the view of the Opposition members that the Bill in its current form will not adequately protect children unless sensible amendments are made to ensure children do not stay more than 72 hours in a watch house.

James Lister MP
Deputy Chair
Member for Southern Downs