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9th September 2026

Committee Secretary
Justice, Integrity and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000

By email: JICSC@parliament.qld.gov.au

Dear Committee Secretary,

Re: Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026

Thank you for the opportunity to provide comments on the Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026 (**Bill**) which proposes to amend certain legislation including the *Bail Act 1980* (**Bail Act**), *Police Powers and Responsibilities Act 2000* (**PPRA**) and the *Youth Justice Act 1992* (**YJ Act**) including, notably, to: introduce a 'high degree of confidence' test for defendants charged with a prescribed offence for adults or a significant offence for youths while on bail, unlawfully at large or failing to appear; create a standalone offence in the Bail Act for committing a prescribed offence for adults or a significant offence for youths, while on bail, unlawfully at large or failing to appear, carrying a mandatory minimum sentence of 1 year's imprisonment to be wholly served in custody; remove the mandatory requirement under section 11 of the YJ Act for police officers to consider diversionary options before commencing proceedings against a child, converting this obligation to an operational discretion; and remake the existing human rights overrides and exemptions in the YJ Act which relate to the detention of youths in watch-houses and other relevant facilities along with introducing a new exemption from section 58 of the *Human Rights Act 2019* (**HR Act**) into the PPRA which relates to the management of adults in watch-houses. On principle, we oppose the passage of this Bill for a number of reasons including: that we oppose mandatory minimum sentencing as it removes judicial discretion to impose the penalty that best fits the circumstances and prevents proportionate punishment; introducing the "high degree of confidence" test will place more people in prison but

such does not address repeat offending and has negative implications which are counterintuitive to community safety; these measures will put youth detention centres and prisons under further pressure and worsen overrepresentation of Aboriginal and Torres Strait Islander peoples in the criminal custody system; and the numerous proposed overrides of the Human Rights Act as contained in this Bill are opposed.

Preliminary consideration: Our background to comment

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (ATSILS), is a community-based public benevolent organisation, established to provide professional and culturally competent legal services for Aboriginal and Torres Strait Islander peoples across Queensland. The founding organisation was established in 1973. We now have 25 offices strategically located across the State. Our Vision is to be the leader of innovative and professional legal services. Our Mission is to deliver quality legal assistance services, community legal education, and early intervention and prevention initiatives which uphold and advance the legal and human rights of Aboriginal and Torres Strait Islander peoples.

ATSILS provides legal services to Aboriginal and Torres Strait Islander peoples throughout Queensland. Whilst our primary role is to provide criminal, civil and family law representation, we are also funded by the Commonwealth to perform a State-wide role in the key areas of Community Legal Education, and Early Intervention and Prevention initiatives (which include related law reform activities and monitoring Indigenous Australian deaths in custody). Our submission is informed by over five decades of legal practise at the coalface of the justice arena and we, therefore, believe we are well placed to provide meaningful comment, not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences.

Comments

Introductory comments

On principle, and consistent with our longstanding advocacy, we strongly oppose the passage of this Bill on the basis that we oppose:

- mandatory minimum sentencing as it takes away discretion of the presiding judicial officer to impose the penalty that best fits the circumstances of any given case, consistent with the principle of proportionate punishment, which is a fundamental principle in sentencing;
- bail reform that puts more people in custody, as such does not address repeat offending and is likely to be counterintuitive to community safety;
- measures that will worsen the overrepresentation of Aboriginal and Torres Strait Islander peoples in the criminal justice system; and
- the numerous overrides of the application of the HR Act as proposed in the Bill.

In our view, the Bill has the potential to cause significant injustices. It is not likely to impact serious recidivist offenders who are unlikely to receive bail in the first place and would be likely to receive significant detention orders in any event. Rather it is likely to impact early-stage offenders who are most in need of early intervention to divert them away from criminal activity and will simply expose them to the detention environment and criminal influences to make them 'better' criminals.

Removal of mandatory requirements for police to consider diversionary options for youth offenders

Removal of the mandatory requirement under section 11 of the Youth Justice Act ("YJ Act") for police officers to consider diversionary options before commencing proceedings against a child – cl.24, Bill

The Bill proposes to amend section 11 of the YJ Act to replace the existing mandatory obligation on police to consider alternatives to proceeding against a youth offender with a discretionary obligation. **Such would apply to all offences and not just significant offences.**

Further, under the transitional provisions in the Bill, the proposed amendments to section 11 of the YJ Act would apply in relation to any consideration of alternatives by a police officer under section 11 whether the offence relevant to the consideration was committed before or after commencement.

We strongly oppose the proposed amendments to section 11 of the YJ Act.

This mandatory obligation is an important statutory safeguard against the unnecessary criminalisation of children. Diversion of children away from the criminal justice system at the earliest possible opportunity is critical to ensure that they do not become entrenched in criminal behaviour. It presents the invaluable opportunity to address offending behaviours early and turn a child's life trajectory around.

The proposed amendments to section 11 are in direct conflict with the government's obligations under Targets 11 of the National Agreement on Closing the Gap (**NACTG**) to reduce the rate of Aboriginal and Torres Strait Islander children in youth detention, respectively. Given the risk of entrenching children in criminal pathways, such will also be in conflict with the government's obligations under Target 10 of the NACTG to reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration.

Amending section 11 of the YJ Act to make the obligation discretionary, rather than mandatory, would mean that diversion will become dependent upon individual police practice rather than operating as a consistent statutory safeguard for children. It would also mean that a significant cohort of children that might have been diverted under section 11 such that they could address the underlying drivers of their offending behaviour would instead be proceeded against through the courts. It will undoubtedly increase the number of children at risk of becoming entrenched in criminal behaviour, which is entirely counterproductive to making Queensland safer.

Additionally, injecting another cohort of children into the criminal justice system would increase the numbers of children on remand in a system that is already in considerable crisis. Youth detention centres are near or over capacity, Wacol Youth Remand Centre is close to capacity and, as at the date of writing, there are close to 70 children waiting in watchhouse cells on remand throughout the state. There are children that have spent and are spending up to 13 consecutive days in a watchhouse. These figures are climbing even without consideration of the introduction of this Bill.

We strongly recommend that the proposed amendments to section 11 of the YJ Act be removed from the Bill. **In the alternative, we propose that such should only apply in a situation where the child, if found guilty, falls under the mandatory regime proposed under this Bill** and the transitional provision in the Bill be amended to ensure that such applies only to offences committed after commencement.

Removal of the mandatory requirements for police to consider alternatives to arrest for alleged bail condition breaches

The Bill proposes to make amendments to section 59A and proposes to repeal section 59AA of the Youth Justice Act with the effect of removing mandatory requirements on police officers to consider alternatives to arrest for alleged bail condition breaches by youth.

The youth transitional provision expressly states that the amended section 59A applies regardless of whether bail was granted, the condition imposed, or the suspected contravention occurred before or after commencement. This will change the statutory decision-making framework applicable to historical bail conditions.

Pursuant to section 4 of the *Legislative Standards Act 1992*, legislation must have sufficient regard to the rights and liberties of individuals and the institution of parliament. Section 4(3) of the *Legislative Standards Act* goes on to provide that whether legislation has sufficient regard to rights and liberties of individuals depends on, inter alia, that the legislation does not adversely affect rights and liberties or impose obligations retrospectively (see s4(3)(g)).

In our view, it is manifestly unfair that children who have already signed a bail undertaking with an understanding at that time of their obligations; could potentially be charged with more offences based on subsequent laws that did not exist at the time the bail undertaking was entered into. Accordingly, we do not support that the relevant transitional provision apply to historical bail conditions.

We recommend that the transitional provision only apply to offences post commencement.

Human Rights Act overrides

Consistent with our advocacy on past overrides of the *Human Rights Act 2019* (**HR Act**), we strongly oppose:

(a) all of the numerous proposed remaking of HR Act overrides contained in this Bill; and

(b) the new HR Act override proposed to be inserted into the PPRA that essentially mirrors the HR Act override in connection with children in watchhouses such that it applies to adults as well.

"High degree of confidence test" – cl. 9 and cl. 28, Bill

The Bill proposes to introduce an additional bail threshold for adults who are charged with a "prescribed offence" or youths who are charged with a "significant offence" which was allegedly committed at any time while the defendant was on bail for another offence (per clauses 9 and 28 of the Bill).

The proposed "High Degree of Confidence Test" is broader and subject to less oversight than in other jurisdictions

In our view, the "high degree of confidence" test proposed in the Bill is broader than similar tests in other jurisdictions including that it would apply to a broader scope of offences and would make Queensland an outlier, if enacted. It is also subject to less oversight when compared with the regime in NSW, in particular.

New South Wales

Section 22C of the *Bail Act 2013* (NSW) contains a "high degree of confidence" test that applies to young persons aged between 14 to 17 years old charged with particular serious offences while on bail for another relevant offence. Under that regime, the bail authority can only grant bail if it has a "high degree of confidence" that the young person will not commit a further serious indictable offence while on bail.

Notably, the NSW model – which has been considered by the courts - expressly requires the bail authority to first consider whether appropriate bail conditions could address the concern about further offending before applying the "high degree of confidence" test (see s22C(2), *Bail Act 2013* (NSW)). The proposed model in the Bill does not appear to have such an express requirement. This difference also matters when relying on NSW authorities to construe the Queensland phrase or to justify the appropriateness of the Bill.

The NSW regime has a 12-month sunset clause per section 22C(5), *Bail Act 2013*(NSW).

It also has a comprehensive review of operation of amendments provision, as extracted below:

> ***22D Review of operation of amendments made by Bail Amendment (Extension of Limitation on Bail in Certain Circumstances) Act 2025***
>
> *(1) The Minister must review the operation of the amendments made by the amendment Act to determine whether—*
>
> *(a) the policy objectives of the amendments remain valid, and*
>
> *(b) the terms of the amendments remain appropriate for achieving the objectives.*
>
> *(2) The review must be undertaken as soon as possible after the period of 12 months from the commencement.*
>
> *(3) The Bureau of Crime Statistics and Research, within the department in which this Act is administered, must—*
>
> *(a) be consulted as part of the review, and*
>
> *(b) provide information and data to inform the review.*
>
> *(4) A report on the outcome of the review must be tabled in each House of Parliament as soon as practicable after the end of the period of 12 months from the commencement.*
>
> *(5) This section is repealed on the day that is 2 years after the day on which the section commences.*
>
> *(6) In this section—*
>
> *amendment Act means the Bail Amendment (Extension of Limitation on Bail in Certain Circumstances) Act 2025.*
>
> *commencement means the commencement of the amendment Act.*

<u>Northern Territory</u>

Section 7A (No bail for certain offences without high degree of confidence in accused person) of the *Bail Act 1982* (NT) is a regime which applies to adults. Section 7A(2AB) creates a test under which bail must not be granted unless the court has a high degree of confidence that the accused will not, if released, commit a prescribed offence or serious violent offence or endanger community safety.

This provision is currently the subject of a challenge in the High Court on the grounds that the relevant laws are unlawful and undermine the foundational principles of the legal system including that they constitute a punishment before a person has had a fair

trial or been found guilty or not guilty (see North Australian Aboriginal Justice Agency Limited v. Northern Territory of Australia (Case No. D15/2025)).

Notably, the specific issue before the High Court as described in the Plaintiff's submissions filing is as follows:

> *Section 7A(2AB) of the Bail Act 1982 (NT) requires a court to refuse bail, and so authorise the detention of the person, "unless the [] court has a high degree of confidence, when considered in isolation from matters mentioned in sections 24 and 24A, that the person will not, if released on bail" commit a prescribed offence or a serious violence offence, or otherwise endanger the safety of the community. The North Australian Aboriginal Justice Agency (NAAJA) contends that s 7A(2AB) substantially impairs the institutional integrity of several courts of the Northern Territory and is therefore inconsistent with Ch III of the Constitution."*[1]

Victoria

Victoria introduced amendments in 2025 to their Bail Act to introduce a "high degree of probability" test for certain serious repeat offending which applies within Victoria's existing unacceptable risk framework. This test applies where a person is alleged to have committed an offence of carjacking, home invasion, armed robbery or aggravated burglary while on bail for any of those offences. In order for the person to be granted bail, the bail authority must be satisfied that "there is a high degree of probability that the accused would not commit" one of the relevant offences if they were released on bail.

The Bill

In our view, the proposed 'high degree of confidence' test in the Bill is broader and has less oversight than the above regimes because it:

- applies to a broader range of offences both for adults and children;
- does not have a sunset clause; and
- does not have a review of operation of amendments provision.

[1] https://www.hcourt.gov.au/sites/default/files/2026-06/NAAJAL-NT_Pltf.pdf, p3.

We strongly recommend that:

(a) given there is a relevant live constitutional issue in the High Court, the Bill be assessed against this live issue before enactment, and again, before commencement;

(b) amendments in the Bill that propose to establish the high degree of probability test for adults and children be amended to include a sunset clause of 12 months, similar to the NSW jurisdiction;

(c) amendments be made to the Bill to insert an express requirement on the decision-maker to first consider whether appropriate bail conditions could address the concern about further offending before applying the "high degree of confidence test", similar to the NSW jurisdiction; and

(d) amendments be made to the Bill to insert a review of operation of amendments provision similar to s22D of the *Bail Act 2013* (NSW).

Definition of "prescribed offence" is too broad

In our view the definition of "prescribed offence" for the purposes of the Bill is too broad and captures an unnecessarily diverse range of conduct of varying degrees of seriousness, not all of which warrants to be within scope.

The Bill defines "prescribed offence" as:

- as an offence listed in proposed new Schedule 1 of the Bail Act
- s535 of the Criminal Code (Attempts to commit indictable offences) in relation to a Schedule 1, Bail Act offence
- s541 or 542 of the Criminal Code which relate to conspiring with another person to commit a Schedule 1, Bail Act offence, or
- s544 of the Criminal Code (Accessories after the fact to offences) in relation to a Schedule 1, Bail Act offence (per clause 4 of the Bill).

Given the offence is proposed to have a mandatory minimum term of 12 months' imprisonment to be wholly served in custody and such would apply regardless of the particular circumstances of the offending, its seriousness in the individual case or the degree of risk or harm posed to the community, close and careful consideration must be given to the list of offences that fall under this definition. We observe that the conduct captured under the offences proposed to be included within scope vary markedly in terms of their seriousness.

We strongly recommend that the following offences, at minimum, be removed from the definition of "prescribed offence" as it would be inappropriate to treat all conduct

captured under the offence provisions listed below as warranting a mandatory minimum one-year custodial sentence:

- Section 75, Criminal Code (Threatening violence) on the basis that this is a less serious offence and covers a broad range of conduct. For example, the offence encompasses a person who, with intent to annoy any person by words or conduct, threatens to enter or damage a dwelling or other premises. This could be very minor in nature and is not in the same category as committing a serious offence such as murder or manslaughter.
- Section 69, Criminal Code (Going armed so as to cause fear) on the basis that the conduct captured under this offence includes scenarios which do not necessarily involve an actual assault, injury or use of a weapon against another person.
- Section 359E, Criminal Code (Unlawful stalking, intimidation, harassment or abuse) on the basis that it encompasses a very broad range of conduct with varying levels of seriousness.
- Section 408A, Criminal Code (Unlawful use or possession of motor vehicles aircraft or vessels) on the basis that whilst motor vehicle offending can be serious and cause significant community harm, s408A encompasses a broad range of circumstances and culpability.
- Section 334C, Criminal Code (Coercive Control) on the basis that whilst Coercive Control can be serious, the offence provision is so broadly drafted that it includes a diverse range of circumstances and culpability.

All of the above offences, except for section 334C, Criminal Code (Coercive Control) offence are contained in the definition of "significant offence" in the youth context. In our view, for the same reasons as outlined above, and especially as the Bill proposes to impose a mandatory minimum one-year custodial sentence for relevant offences, they should be removed from the definition of "significant offence" also.

Requirement on a court or police officer to only have regard to the matters relevant to the risk of the child committing a further significant offence while released under proposed section 48AG(4) – cl.28

One notable difference between proposed new s16AA of the Bail Act and s48AG of the YJ Act is that s48AG(4) states that in making a decision as to whether the child has satisfied the court or police officer to a high degree of confidence that the child will not commit a further significant offence while released, "a court or police officer must have regard only to matters that are relevant to the risk of the child committing a further significant offence while released": cl.28, Bill. This is supported.

Standalone Bail Act offence

As noted in the introductory comments, the Bill has the potential to cause significant injustices including that it is not likely to impact serious recidivist offenders who are unlikely to receive bail in the first place and would be likely to receive significant detention orders in any event, but rather, it is likely to impact early-stage offenders who are most in need of early intervention to divert them away from criminal activity and will simply expose them to the detention environment and criminal influences.

As an example, a 12-year-old child with no criminal history who is caught shoplifting a baseball cap and placed on bail. His 20-year-old brother, who has just been released from prison after serving a jail sentenced for multiple property offences, but is not on bail, picks up the 12-year-old in a stolen car. They are both charged with the Unlawful use of a motor vehicle offence. It would appear that the amendments in the Bill would result in the 12-year-old child being required by law to be sentenced to a minimum mandatory 12-month detention order, while for the 20-year-old, all the sentencing options are available to the court, including non-custodial.

Assuming this is the effect of the Bill, this is, in our respectful submission, an absurd outcome. In our view, at minimum, there should be scope for exceptional circumstances to be considered. Such is an example as to why we oppose mandatory regimes that override judicial discretion.

The Bill expressly displaces ordinary double-punishment rules

We are concerned to see that proposed section 29AA(5) of the Bail Act provides that a person may be convicted and punished for the section 29AA offence despite already having been convicted and punished for the index offence, expressly overriding other legislation including the *Acts Interpretation Act 1954* (section 45) and Criminal Code (section 16). We strongly oppose the express override of these provisions as they expressly displace established statutory protections against double punishment. We are especially concerned as to how this could create unjust outcomes for those with disability.

Accordingly, **we strongly recommend** that the government reconsider introduction of this proposed standalone offence. If the policy objective is to impose more serious consequences where a person commits a prescribed offence or significant offence (as the case may be), that could be achieved without displacing this fundamental protection against double punishment.

The offence-counting rule only appears to address offences arising from the same circumstances

Proposed Section 29AA(4) prevents multiple section 29AA convictions/punishments for two or more prescribed or significant offences arising from the same or same set of circumstances. It does not, however, appear to expressly address how multiple episodes of offending and multiple bail grants would be treated. We are unclear as to what would happen where a person is charged with a series prescribed or significant offences that are charged on the same day, but which arise from different acts. On our reading, it appears that if, for example, a person who is on bail commits an unlawful use of a motor vehicle offence on 1 Sept, then another on 3 Sept and another on 5 Sept – all whilst on bail - and if they are convicted of all three offences, they could be charged three times. If that is all cumulative, then such would amount to 3 years imprisonment to be wholly served. We assume that such is not the intention, but would ask for greater clarity in the drafting.

We recommend that the Bill expressly address how multiple episodes of offending and multiple bail grants are to be treated under this regime. There should be consideration of proportionality of punishment and the impacts of cumulative punishment in doing so.

Police and courts warning about the offence – cl.12, Bill and proposed s29AB of the Bail Act

Proposed new section 29AB of the Bail Act provides that where the court or a police officer grants bail to a defendant under the Bail Act or Part 5 of the YJ Act, the court police officer (as the case may be) must warn the defendant that committing particular offences while on bail or unlawfully at large is an offence with a minimum penalty of 1 year's imprisonment to be served wholly in a correctional facility or a youth detention centre (as the case may be).

In the event that the government decides to retain the proposed model in this Bill despite our stated objections in this submission, we wish to express that we support this mandatory warning.

Proposed section 29AC - Evidentiary provision regarding proceedings for section 29AA offence - cl.12, Bill

In our view, section 29AC, as drafted, would benefit from greater clarity.

In particular, it appears that section 29AC(1) permits a section 29AA charge before the defendant is convicted of the prescribed offence. Yet section 29AA(3) defines the offence by saying the defendant commits the prescribed or significant offence if convicted. This does not appear to make sense.

Furthermore, we note that the phrase "sentenced or is otherwise dealt with" in proposed section 29AC(2) is broad and might generate disputes about whether a particular procedural outcome constitutes being "otherwise dealt with" especially where the prescribed offence or significant offence is disposed of by means other than conviction. Whilst we do not propose that the term "otherwise dealt with" be defined, the provision could include examples of what "otherwise dealt with" means, for clarity.

We recommend that s29AC be redrafted in consideration of the above comments.

Jurisdiction provision under section 29AD(4) – cl.12, Bill

Section 29AD of the Bill gives a court jurisdiction over the section 29AA charge if it has jurisdiction over the prescribed or significant offence, and also where it has already dealt with the prescribed or significant offence. It further states that a Magistrates Court can hear the section 29AA charge whether or not the charges are joined.

This provision causes confusion as drafted and would benefit from a redraft for clarity.

Changing the mandatory obligation on police to consider alternatives to arrest for contraventions of bail conditions to a discretionary one – cl.31, Bill

The Bill proposes to amend section 59A of the YJ Act (Police officers must consider alternatives to arrest for contraventions of bail conditions) to replace the requirement that police must consider alternatives to arrest for bail conditions with a discretionary obligation.

We oppose this proposed amendment on the basis that we do not support removing any existing mandatory obligations on police to consider alternatives to arrest when dealing with children for the reasons outlined earlier in this submission.

We recommend that clause 31 be removed from the Bill.

Amendments to limit the court's mandatory obligation to make a court diversion referral or presentence referral for restorative justice: cl.34 and 35, Bill

The Bill proposes to make amendments to:

- sections 162 of the YJ Act (When a court must consider making court diversion referral or presentence referral) such that that section 162 does not apply to s29AA Bail Act offences; and
- 163 of the YJ Act (Power of court to make restorative justice process referral) to provide that the court must not refer an offence against section 29AA of the Bail Act to the chief executive under section 163(1) for the purpose of making a court diversion referral in relation to a child.

We oppose these proposed amendments on the basis that we do not support any limitation on the court's mandatory obligation to make a court diversion referral or presentence referral to a restorative justice process. In our view, there needs to be careful consideration of whether these proposed provisions impinge on the institutional integrity of the courts.

We recommend that clauses 34 and 35 be removed from the Bill.

Thank you for the opportunity to provide feedback in relation to the Bill.

Yours faithfully,

Shane Duffy
Chief Executive Officer