

Making Queensland Safer (Adult Crime, Adult Time) Amendment Bill 2025

Statement of Compatibility

Prepared in accordance with Part 3 of the Human Rights Act 2019

In accordance with section 38 of the *Human Rights Act 2019*, I, Laura Gerber, MP, Minister for Youth Justice and Victim Support and Minister for Corrective Services, make this statement of compatibility with respect to the Making Queensland Safer (Adult Crime, Adult Time) Amendment Bill 2025 (the Bill).

In my opinion, part of the Bill is not compatible with the human rights protected by the *Human Rights Act 2019*. The nature and extent of the incompatibility is outlined in this statement. In my further opinion, the remainder of the Bill is compatible with the rights protected by the *Human Rights Act 2019* for the reasons outlined in this statement.

Overview of the Bill

The Making Queensland Safer (Adult Crime, Adult Time) Amendment Bill 2025 will amend the *Youth Justice Act 1992* (YJ Act) to:

- include 20 further offences (including three where only certain aggravated forms of the offences are prescribed) to s.175A; and
- make other minor and technical amendments.

The amendments to YJ Act s.175A are intended to enhance community safety. They do this by holding young offenders who commit offences (particularly serious offences) to account, by ensuring that courts can impose appropriate penalties that meet community expectations. These amendments will demonstrate to the community that youth offending is treated seriously by the courts, which will increase community confidence in the justice system.

An amendment to the *Making Queensland Safer Act 2024* provisions in relation to the YJ Act ‘eligible persons’ register’ (commonly known as the victims’ register’) will enhance the rights of victims, without any other impacts.

The other minor and technical amendment in the Bill has no human rights implications.

Human Rights Issues

I acknowledge that the amendments to YJ Act s.175A, which insert new offences into the ‘Adult Crime, Adult Time’ regime, are incompatible with human rights. However, I consider that the current situation with respect to youth crime in Queensland is exceptional and therefore the *Human Rights Act 2019* (HR Act) will be overridden in respect of that amendment.

The Bill will amend YJ Act s.175A to add to the list of offences for which children are liable to the same maximum, minimum and mandatory penalties as adults. The new offences are:

Criminal Code

s.69 Going armed so as to cause fear

- s.75 Threatening violence
- s.306 Attempt to murder
- s.307 Accessory after the fact to murder
- s.313(2) Assaulting a pregnant person and killing, or doing grievous bodily harm to, or transmitting a serious disease to the unborn child
- s.320A Torture
- s.328C Damaging emergency vehicle when operating motor vehicle
- s.328D Endangering police officer when driving motor vehicle
- s.349 Rape
- s.350 Attempt to commit rape
- s.351 Assault with intent to commit rape
- s.352 Sexual assault, if the circumstance in subsection (2) (involving any part of the mouth) or (3) (while armed, in company, or involving penetration) applies
- s.354 Kidnapping
- s.354A Kidnapping for ransom
- s. 355 Deprivation of liberty
- s.398 Stealing, if item 12 (a vehicle) or 14 (a firearm for use in another indictable offence) applies
- s.412 Attempted robbery, if the circumstance in subsection (2) (armed or in company) or (3) (armed and with violence) applies
- s.461 Arson
- s.462 Endangering particular property by fire

Drugs Misuse Act 1986

- s.5 Trafficking in dangerous drugs

Currently, a child who pleads guilty or is found guilty of one of these offences is sentenced under sections 175, 176 and 176A of the YJ Act. These sections place limits on the maximum periods of probation and detention orders that a sentencing court can impose.

Where the offence is a 'life offence' (an offence for which an adult would be subject to life imprisonment), the maximum for a child is generally 10 years, but is life if the offence involves the commission of violence against a person, and the court considers the offence to be particularly heinous in all the circumstances (YJ Act s.176(3)).

Life offences include attempt to murder, rape, certain sexual assaults, attempted robbery with violence, arson, and drug trafficking.

The Bill has the effect that young offenders will now be sentenced for the new offences under s175A rather than s176. If a child is sentenced to life for one of these offences, then part 7, division 10, subdivision 4 of the YJ Act and section 181(2)(d) of the *Corrective Services Act*

2006 operate together to provide that the child will have a minimum non-parole period of 15 years.

The Bill will result in more children who are found guilty of the new offences being sentenced to, and spending more time in, detention. Increasing the prospects of detention and increasing the length of detention limit the rights of a child to protection in their best interest (section 26(2) of the HR Act) and the right to liberty (section 29(1) of the HR Act).

The Government acknowledges that the proposed amendments are not consistent with international standards regarding the best interests of the child with respect to children in the justice system, and are therefore incompatible with human rights.

Relevantly, the United Nations (UN) *Convention on the Rights of the Child* provides that:

- the best interests of the child shall be a primary consideration (article 3(1));
- detention or imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time (article 37(b)); and
- a child recognised as having infringed penal law is to be treated in a manner ...which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society (article 40(1)).

The UN *Standard Minimum Rules for the Administration of Juvenile Justice* ('Beijing Rules') provides that:

- the reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society (rule 17.1(a));
- deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response (rule 17.1(c)); and
- the well-being of the juvenile shall be the guiding factor in the consideration of her or his case (rule 17.1(d)).

Adding further offences which have a maximum sentence of life detention will expose young offenders to the mandatory minimum non-parole period which applies if sentenced to life. In those cases, consideration of the child's best interests will not form part of the court's consideration of the appropriate non-parole portion of a life sentence. The amendments therefore impose limitations on the right to liberty (HR Act s.29(1)) and the right of children to protection in their best interests (HR Act s.26(2)).

Over time, the amendments may impose further strain on youth detention centres in Queensland and it is possible that this could result in increased numbers of children in watchhouses for extended periods of time. This would be a direct limitation to the right to protection from cruel, inhumane or degrading treatment (HR Act s.17(b)) and the right to humane treatment when deprived of liberty (HR Act s.30). This is because it is widely accepted that watchhouses are not appropriate or humane places to detain children, particularly for any lengthy period of time.

It is likely that Aboriginal and Torres Strait Islander children will be impacted more by these amendments, due to their overrepresentation in the criminal justice system. The Bill could

result in more Aboriginal and Torres Strait Islander children being imprisoned for longer periods of time. However, I do not consider that the amendments limit the right to equal protection of the law without discrimination (section 15(3) of the HR Act) or the right to equal and effective protection against discrimination in section 15(4) of the HR Act. I am satisfied that there is no direct or indirect discrimination on the basis of race. This is because the increased sentences will apply equally to all young offenders. Importantly, the court can still consider cultural considerations, and submissions from a community justice group, in relation to an Aboriginal and Torres Strait Islander child (YJ Act s.150(3)(ha) & (i)).

The purposes of the proposed amendments are punishment and denunciation. Those purposes are, in general, legitimate aims. The Government is committed to ensuring that young offenders who commit serious criminal offences are liable to be held accountable for their actions and the harm that they cause to others, to the same extent as an adult offender, and that courts can impose appropriate penalties that meet community expectations.

I recognise that there may be less restrictive options available to achieve the stated purpose, such as by increasing maximum penalties for specific offences to mirror the maximum penalties for adults, but, consistent with the current law, only exposing children who have committed particularly heinous offences which involve the commission of violence against a person to mandatory minimum non-parole periods.

I also recognise that, according to international human rights standards, the negative impact on the rights of children likely outweighs the legitimate aims of punishment and denunciation. The amendments may lead to sentences for children that are more punitive than necessary to achieve community safety. This is in conflict with international law standards, set out above, which provide that sentences for a child should always be proportionate to the circumstances of both the child and the offence.

While I acknowledge that these amendments are not compatible with human rights, these measures and the purposes to which they are directed are clearly supported by Queenslanders, and are a direct response to growing community concern and outrage over crimes perpetrated by young offenders. The provisions inserted by the amendments are subject to the override declaration in existing section 175A of the YJ Act which provides that the section has effect despite being incompatible with human rights, and despite anything else in the HR Act.

Because the Bill does not contain an override declaration, a statement of exceptional circumstances is not required by section 44 of the HR Act. However, I am of the view that the current situation with respect to youth crime in Queensland presents an exceptional crisis situation constituting a threat to public safety such that the addition of the new offences within the scope of the override declaration in section 175A of the YJ Act is justified.

The Government is committed to implementing a range of measures to deter young people from committing serious crimes in the community, and reducing the number of victims that are caused harm by these young offenders.

Conclusion

In my opinion, part of the Making Queensland Safer (Adult Crime, Adult Time) Amendment Bill 2025 is not compatible with the human rights protected by the *Human Rights Act 2019*.

In my further opinion, the remainder of the Bill is compatible with protected human rights.

Laura Gerber MP
Minister for Youth Justice and Victim Support and
Minister for Corrective Services

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