



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

Submission to Justice, Integrity and Community Safety
Committee

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Table of Contents

Introduction	3
Summary	3
Recommendations	5
Background	6
Bail tests and breach bail offences for adults	6
Bail tests and breach bail offences for children	7
Concerns about specific provisions	8
Mandatory sentencing for proposed breach bail offence	8
Refusal of bail unless high degree of confidence.....	13
Removal of requirement to consider diversionary options for children.....	16
Re-enactment of overrides and new disapplication provision	18
Overcrowding of detention facilities.....	20
Current overcrowding	20
Effects of overcrowding	21
Complaints received by the Commission	22
Human rights impacts of overcrowding.....	23
Human Rights Act should not be overridden	24

Introduction

1. Thank you for the opportunity to provide a submission on the Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026 (**the Bill**) which makes significant amendments to Queensland's bail laws.
2. The Queensland Human Rights Commission (**the Commission**) is an independent statutory body established under the *Anti-Discrimination Act 1991* with functions under that Act and the *Human Rights Act 2019* (**Human Rights Act**) to promote the understanding, acceptance, and public discussion of human rights in Queensland.

Summary

3. This Bill:¹
 - makes it an offence for adults and children who commit particular offences while on bail, unlawfully at large or failing to appear, and carries a mandatory minimum sentence of one year detention or imprisonment, to be wholly served in a detention centre or corrective services facility (**proposed breach bail offence**)
 - introduces a proposed bail test for adults and children charged with particular offences while on bail, unlawfully at large or failing to appear, who must be refused bail unless the defendant satisfies, to a high degree of confidence, that the defendant will not commit a further prescribed offence while released on bail (**proposed bail test**)
 - removes mandatory requirements for police to consider diversionary options before commencing proceedings against a child, and to consider alternatives to arrest in relation to breach of bail
 - disapplies section 58 of the Human Rights Act to acts and decisions reasonably necessary for the administration of the *Police Powers and Responsibilities Act 2000* (**PPRA**) that relate to a person in custody in a watch-house or the transfer of a person in custody in a watch-house from the watch-house
 - overrides the Human Rights Act in relation to the above provisions (except the removal of the requirement to consider diversionary options) and remakes existing human rights override declarations in the *Youth Justice Act 1992* (**Youth Justice Act**) in relation to detention of children and establishing new youth detention centres that were due to expire over the next 2 years.
4. The Bill's stated objectives are to:
 - protect the community from serious offending

¹ Explanatory Notes, Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026 (Qld) 1–2 (**Explanatory Notes**).

- deter offending while on bail and promote compliance with bail orders
 - ensure that offenders who commit serious offences while on bail are appropriately held accountable
 - strengthen community safety and improve public confidence in the bail system.²
5. The aim of the Bill to improve community safety is legitimate. Crime, including offences committed while a person is on bail, has a negative impact on the community. The government is obliged to promote the right to personal security and the right to life by protecting people from this form of preventable harm.
 6. However, this could be achieved more effectively through evidence-based and human rights-compatible initiatives that focus on prevention, diversion, and rehabilitation. The available evidence indicates the approach proposed will not improve community safety in the medium to long term.³
 7. Adult and youth detention facilities are already overcrowded.⁴ The cumulative effect of the Bill is likely to substantially increase prison numbers. Overcrowding can lead to dangerous and volatile situations in which detained people and staff experience significant harm.⁵
 8. The Bill will have a disproportionate impact on Aboriginal and Torres Strait Islander people and people with disabilities who are already overrepresented in the criminal justice system. The impact will be most significant for Aboriginal and Torres Strait Islander children with disabilities. The reasons for Aboriginal and Torres Strait Islander people's contact with the justice system are inextricably linked with dispossession, colonisation, discrimination, and experiences of systemic and institutional racism.⁶
 9. The Queensland Government acknowledges the proposed amendments to Queensland's bail regime are incompatible with human rights and has included override provisions that have the effect of ensuring the provisions continue to apply

² Explanatory Notes, 1.

³ Queensland Audit Office, *Rehabilitation and reintegrating prisoners* (Report 1: 2026-27) 1: 44% of sentenced prisoners released from Queensland correctional centres returned to custody within two years of their release indicating the approach prioritising punishment and detention is not improving community safety in the medium to long term.

⁴ See for example: Queensland Audit Office, *Rehabilitating and reintegrating prisoners* (Performance Audit Report 1: 2026–27, 7 July 2026); Thomas Chamberlin, 'Bursting at the Seams: Prisoner Numbers Explode across Qld Jails', *The Courier Mail*, 27 April 2024.

⁵ See United Kingdom Ministry of Justice, *Transparency Data: The impact of overcrowding on assaults in closed adult public prisons* (19 June 2025)

<<https://www.gov.uk/government/publications/the-impact-of-overcrowding-on-assaults-in-adult-public-prisons/the-impact-of-overcrowding-on-assaults-in-closed-adult-public-prisons>> finding that adult prisoners in overcrowded cells were 19% more likely to be involved in an assault over a 12-month period compared to non-overcrowded cells, with the range of likelihood between 15% and 24%.

⁶ Youth Justice Reform Select Committee, Queensland Parliament, *Interim Report: Inquiry into ongoing reforms to the youth justice system and support for victims of crime* (Report No 1, April 2024) 8; National Children's Commissioner, Australian Human Rights Commission, 'Help Way Earlier!' *How Australia can transform child justice to improve safety and wellbeing* (21 June 2024) 98–101.

despite being incompatible with human rights.⁷ The Commission recognises the importance of measures aimed at enhancing community safety. However, legislative reform is more likely to be effective if it is compatible with human rights. The Commission considers that exceptional circumstances for overriding the Human Rights Act have not been established.

10. In the past few years, there have been a large number of reforms to youth and adult justice legislation, including expanding the offence of breach of bail to children.⁸ The sufficiency of current settings is yet to be properly tested. In this environment, further legislative change risks compounding problems such as overcrowding in detention and corrections facilities without any guarantee that new amendments will add genuine protective value.

Recommendations

11. The Commission recommends:

- Mandatory sentencing should not apply to the proposed breach bail offence (**Recommendation 1**).
 - i. Alternatively, at a minimum, the Bill should be amended to allow for the court to exercise discretion where mandatory sentencing would result in a sentence that is manifestly unfair. (**Recommendation 1A**).
- Consideration should be given to amendments to remove the 'high degree of confidence' test from the Bill (**Recommendation 2**).
 - i. Alternatively, the Bill should be amended such that:
 1. the onus to establish that bail should be refused under section 48AG of the Youth Justice Act (and its equivalent in s 16AA of the Bail Act) is to rest with the prosecution (**Recommendation 2A**)⁹
 2. the matters in new section 48AG(4) of the Youth Justice Act (and its equivalent in s 16AA of the Bail Act) expressly include consideration of whether any bail conditions could reasonably be imposed to address the risk of the child or young person committing a further significant offence while released (**Recommendation 2B**).¹⁰

⁷ Statement about Exceptional Circumstances, Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026 (**Statement about Exceptional Circumstances**); see also Explanatory Notes, 11, 19.

⁸ Strengthening Community Safety Bill 2023 (Qld) cl 22 in relation to sections 150A, 150B, and 246A of the Youth Justice Act.

⁹ This recommendation is based on the operation of the high degree of confidence test that applies under s 22C of the *Bail Act 2013* (NSW): see 22C(3) of that Act.

¹⁰ This recommendation is based on the requirement that applies in considering a high degree of confidence under s 22C of the *Bail Act 2013* (NSW): see 22C(2)(b) of that Act.

- Section 48AG(4) of the Youth Justice Act provides that '[i]n making a decision under [the high degree of confidence test], a court or police officer must have regard only to matters that are relevant to the risk of the [person] committing a further significant offence while released'. This restriction is not in section 16AA of the Bail Act applying to adults. The purpose and intended operation of these provisions should be clarified to assist in its proper consideration and evaluation. (**Recommendation 3**).
- The Bill should be amended to retain the requirement for police officers to consider diversionary options for children (**Recommendation 4**).
- At a minimum, override declarations should not be made in relation to:
 - i. s 262A of the Youth Justice Act – acts and decisions reasonably necessary made in relation to a child in a relevant detention centre, or placing the child in a relevant detention centre
 - ii. new s 639AA of the PPRA – acts and decisions reasonably necessary made in relation to a person in custody in a watchhouse. (**Recommendation 5**).
- Parliament should not proceed with this Bill until consideration has been given to how impacts on adult prison and youth detention capacity will be managed, including preparation of a plan for management of capacity that safeguards the human rights of staff, adults, and children detained in these facilities. (**Recommendation 6**).

Background

Bail tests and breach bail offences for adults

12. Since enactment, the *Bail Act 1980* (Qld) (**Bail Act**) has provided that courts and police shall refuse bail:
 - if satisfied there is unacceptable risk of the defendant failing to appear, committing an offence or endangering safety; or
 - where the defendant has been charged with particular offences (including an indictable offence while on bail), unless the defendant shows cause why their detention is not justified.¹¹
13. In December 1988, the Bail Act was amended to include an offence of breaching bail conditions, applying only to adults.¹² Currently, the maximum penalty is 40 penalty units or 2 years imprisonment.¹³

¹¹ See Bail Act, s 16, as enacted.

¹² *Bail Act and Other Acts Amendment Act 1988, No. 105* (Qld) cl 281, amending s 29, Bail Act.

¹³ Bail Act, s 29.

Bail tests and breach bail offences for children

14. Prior to 2014, there was no offence of breach of bail for children.
15. In March 2014, amending legislation made it an offence for a child to commit a further offence on bail.¹⁴ This offence did not contain a minimum custodial sentence.¹⁵ The legislation also removed the principle that detention or prison is a sentence of last resort from both the Youth Justice Act and the *Penalties and Sentences Act 1992* (Qld).¹⁶
16. Some submissions to the parliamentary inquiry at the time criticised this offence as being unnecessary and unlikely to have any practical effect, that it could amount to double punishment, and would be less effective than other alternatives.¹⁷
17. In June 2016, these amendments were repealed based on ‘international evidence that increasing the severity of punishment is ineffective in reducing recidivism, particularly by children and young people.’¹⁸
18. In July 2020, the Youth Justice Act was amended requiring a child to be refused bail if judged to be an unacceptable risk of committing an offence that endangers a person or the community, and the risk cannot be adequately mitigated by bail conditions.¹⁹
19. In April 2021, the Youth Justice Act was amended to include a presumption against bail for a limited class of youth offenders, which required police or a court to refuse to release the child from custody unless the child can show cause why their detention is not justified.²⁰
20. In March 2023, the Bail Act offence of breaching bail conditions was amended to also apply to children. These amendments were assessed to be incompatible with children’s human rights, and an override declaration was included.²¹
21. In December 2024, legislation removed the youth justice principles of detention as a last resort and that a non-custodial order is better than detention in promoting a child’s ability to reintegrate into the community.²² The removal of the principle of detention as

¹⁴ *Youth Justice and Other Legislation Amendment Act 2014* (Qld) cl 5 inserting new s 59A in the Bail Act.

¹⁵ *Youth Justice and Other Legislation Amendment Act 2014* (Qld) cl 5.

¹⁶ Explanatory Note, Youth Justice and Other Legislation Amendment Bill 2014 (Qld), 5 and ss 9 and 34(1) of that Bill.

¹⁷ Legal Affairs and Community Safety Committee, Queensland Parliament, *Youth Justice and Other Legislation Amendment Bill 2014* (Report No. 58, March 2014) 10–12.

¹⁸ Explanatory Notes, Youth Justice and Other Legislation Amendment Bill 2015, 1.

¹⁹ *Community Services Industry (Portable Long Service Leave) Act 2020* (Qld) s 159 inserted new s 48AAA in the Youth Justice Act.

²⁰ *Youth Justice and Other Legislation Amendment Act 2021* (Qld) cl 21(1) amended Youth Justice Act ss 48AA; and cl 24 inserted new s 48AF.

²¹ Strengthening Community Safety Bill 2023 (Qld) cl 22 in relation to sections 150A, 150B, and 246A of the Youth Justice Act.

²² *Making Queensland Safer Act 2024* (Qld) s 15 amending Youth Justice Act s 150.

a last resort was recognised as being incompatible with human rights and an override declaration was made.²³

Concerns about specific provisions

22. The Commission makes the following submissions about specific provisions of the Bill.

Mandatory sentencing for proposed breach bail offence

23. Under the proposed breach bail offence, it will be an offence for children and adults to commit particular offences while on bail, unlawfully at large or failing to appear.²⁴ The offence will carry a mandatory minimum sentence of one year detention or imprisonment (maximum 3 years) to be wholly served in a detention centre or corrective services facility.²⁵ This proposed offence is one of the provisions subject to an override declaration.²⁶

24. As the statement of compatibility notes, imposing sentences in this way will limit the right to liberty because the court is required 'to impose a period of imprisonment, irrespective of the offender or the offending'.²⁷ The statement acknowledges this will also limit the rights of children to protection in their best interests.²⁸

25. Removing judicial discretion to consider the individual circumstances of the offender and the crime will also limit the:

- right for a child who has been convicted of an offence to be treated in a way that is appropriate for the child's age²⁹
- right of a child charged with a criminal offence to a procedure that takes account of their age and the desirability of promoting the child's rehabilitation³⁰
- right to not be treated or punished in a cruel, inhuman or degrading way³¹ and
- right to equality before the law.³²

²³ Statement of Compatibility, Making Queensland Safer Bill 2024 (Qld) 5-7.

²⁴ For children, these are 'significant offences', listed in section 175A of the Youth Justice Act, also known as an 'Adult Crime, Adult Time' offence. For adults, these are 'prescribed offences', listed in new Schedule 1 of the *Bail Act*. Prescribed offences include 'all significant offences as well as additional serious offences committed by adults (including coercive control and child sex offences)': Explanatory Notes, Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026 (Qld) 1.

²⁵ Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026 (Qld) cl 12, inserts s 29AA in the *Bail Act*.

²⁷ Statement of Compatibility, Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026 (Qld) 2 (**Statement of Compatibility**).

²⁸ Statement of Compatibility, Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026 (Qld) 2.

²⁹ *Human Rights Act 2019* (Qld) s 33(3).

³⁰ *Human Rights Act 2019* (Qld) s 32(3).

³¹ *Human Rights Act 2019* (Qld) s 17(b).

³² *Human Rights Act 2019* (Qld) s 15(2)-(4)

Nature of limits on rights

26. The right to liberty provides that every person has the right to liberty and security, and to protection from arbitrary arrest or detention. Mandatory sentencing necessarily risks arbitrary deprivation of liberty, given the court will be prevented from taking into account the individual circumstances of the case when sentencing.³³
27. In relation to children, mandatory sentencing means the best interests of the child will no longer be the primary consideration in decisions about them³⁴ and is at odds with longstanding international standards that arrest, detention, or imprisonment of children should be used only as a measure of last resort and for the shortest appropriate period of time.³⁵ This is because detention, regardless of the conditions in which children are held, is both counterproductive to community safety and harmful to children, because of their age and stage of development, and their future life prospects.³⁶
28. Mandatory sentencing will have an unequal effect on Aboriginal and Torres Strait Islander peoples, and people with disabilities.³⁷ This is because these groups are overrepresented in the criminal justice system.
29. The reasons for Aboriginal and Torres Strait Islander peoples' disproportionate representation in the justice system are inextricably linked with dispossession, colonisation, discrimination, and experiences of systemic and institutional racism.³⁸ Today, these historical injustices are reflected in significant disparities in health, education, and housing that can create conditions conducive to offending.
30. There is evidence of institutional racism within the Australian criminal justice systems.³⁹ In 2024-25, according to the Report on Government Services, Aboriginal and Torres Strait Islander people made up 41.7% of the adult prison population⁴⁰ and

³³ Explanatory Notes, Human Rights Bill 2018 (Qld) 24.

³⁴ *Convention on the Rights of the Child*, UN Doc A/RES/44/25 (20 November 1989, entered into force generally on 2 September 1990) art 3.

³⁵ *Convention on the Rights of the Child*, UN Doc A/RES/44/25 (20 November 1989, entered into force generally on 2 September 1990), art 37(b).

³⁶ Committee on the Rights of the Child, *General comment No. 24 (2019) on children's rights in the child justice system*, UN Doc CRC/C/GC/24 (18 September 2019) [22]-[23]; UN Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, UN Doc A/HRC/38/36 (10 April 2018) [63]-[69]; Juan E Mendez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc A/HRC/28/68 (5 March 2015) [33].

³⁷ Australian Law Reform Commission, *Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (ALRC Report 133, December 2017) 273. The ALRC report also noted at 277 that the UN Committee Against Torture has previously recommended that Australia abolish mandatory sentencing due to its 'disproportionate and discriminatory impact on the [I]ndigenous population'.

³⁸ Queensland Parliament, Youth Justice Reform Select Committee, *Interim Report: Inquiry into ongoing reforms to the youth justice system and support for victims of crime* (Report No 1, April 2024) 8; National Children's Commissioner, Australian Human Rights Commission, *'Help Way Earlier!' How Australia can transform child justice to improve safety and wellbeing* (21 June 2024) 98–101.

³⁹ Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report No 133, December 2017) 454.

⁴⁰ Productivity Commission, *Report on Government Services 2026* (Report, 3 February 2026) pt C, s 8 'Corrective Services', table 8A.4.

62% of the youth detention population,⁴¹ despite making up only 5.2% of Queensland's population.⁴² The Australian Law Reform Commission found that Indigenous children are more likely to be arrested than non-Indigenous children, 'even after factors such as the offence, offending history and background factors are taken into account'.⁴³ The Queensland Family and Child Commission found First Nations children in Queensland 'are less likely to receive a diversion decision, and less likely to be granted bail', as well as being disproportionately exposed to the watch house system.⁴⁴ Most relevantly, in Western Australia from 2000 to 2005 approximately 87% of all children sentenced under the mandatory sentencing laws for home burglary were Aboriginal and Torres Strait Islander children.⁴⁵

31. People with disabilities are also over-represented in the criminal justice system.⁴⁶ Research cited by the Disability Royal Commission found that approximately 40% of people entering prison in Australia have a mental health condition,⁴⁷ and that between 40 to 90% of adult prisoners may have an acquired brain injury.⁴⁸ The Royal Commission found that:

It is clear from the evidence that the disproportionate rate of imprisonment of people with disability is not the result of any inherent causal relationship between disability and crime. Rather it reflects the disadvantages experienced by many people with disability, such as poverty, disrupted family backgrounds, family violence and other forms of abuse, misuse of drugs and alcohol, unstable housing and homelessness.⁴⁹

32. Contact with the criminal justice system often becomes entrenched due to systemic failures within the justice system. For example, police and courts may fail to identify a person's disability, leading to inappropriate or heavy-handed responses to behaviour

⁴¹ Australian Institute of Health and Welfare, *Youth Justice in Australia 2024–25* (Web Report, 12 May 2026) 'First Nations young people in detention'.

⁴² Queensland Health, *Chief First Nations Health Officer Report* (Report, 25 September 2025) 'Our First Nations People'.

⁴³ Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report No 133, 28 March 2018) 453.

⁴⁴ Queensland Family & Child Commission, *Who's responsible: Understanding why young people are being held longer in Queensland watch houses* (30 November 2023) 5.

⁴⁵ Judge Dennis Reynolds, *Youth Justice in Western Australia – Contemporary Issues and its Future Direction* (University of Notre Dame, 13 May 2014).

⁴⁶ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Final Report: Volume 8, Criminal Justice and People with Disability (Report, 29 September 2023) ch 1 ('People with Disability in the Criminal Justice System'), 33

⁴⁷ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Final Report: Volume 8, Criminal Justice and People with Disability (Report, 29 September 2023) ch 1 ('People with Disability in the Criminal Justice System') citing Australian Institute of Health and Welfare, *The health of Australia's prisoners 2018*, Report, 2019, p 164.

⁴⁸ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Final Report: Volume 8, Criminal Justice and People with Disability (Report, 29 September 2023) ch 1 ('People with Disability in the Criminal Justice System') citing NSW State Government Justice Health and Forensic Mental Health Network, *2015 Network patient health survey: Aboriginal people's health report*, 2017, p 20; Australian Institute of Health and Welfare, *The health of Australia's prisoners 2018*, Report, 2019, p 106.

⁴⁹ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Final Report: Volume 8, Criminal Justice and People with Disability (Report, 29 September 2023) ch 1 ('People with Disability in the Criminal Justice System'), 33

that stems from the disability rather than criminal intent. People with disability may not always fully understand police questioning or be aware of their entitlement to legal representation and support persons. This can increase the risk of coerced or involuntary confessions and compromise their ability to participate effectively in legal proceedings. The effect is compounded by a lack of accessible diversion programs leading to fewer opportunities to redirect people away from prison and toward appropriate support.⁵⁰

33. Mandatory sentencing may contribute to systemic disadvantage by limiting judicial discretion to consider individual circumstances, such as a person's disability, cultural background, or other relevant factors, when determining an appropriate sentence, resulting in harsher or inappropriate penalties.

Unable to identify evidence that mandatory sentencing deters crime

34. Where a human right is limited, the limitation should help achieve the desired purpose.⁵¹
35. The statement of compatibility indicates the purpose of the proposed breach bail offence is 'to deter repeat offending while on bail, promote compliance with bail orders, [and] protect the community and victims from serious offending'.⁵² The statement asserts 'the prospect of a mandatory custodial sentence is capable of promoting deterrence'.⁵³ No evidence is provided to support this proposition.
36. The Commission has not been able to identify any empirical evidence that mandatory sentencing effectively deters offending.⁵⁴ Deterrence theory assumes potential offenders act after rationally weighing the likely consequences of their actions. However, most offending, particularly by children and by adults affected by cognitive impairment, disability, trauma, and/or drug and alcohol dependency, occurs in circumstances where decision-making is impaired, or is influenced by circumstances outside the offender's immediate control.⁵⁵ This means a mandatory penalty will typically have little bearing on a decision to offend.⁵⁶

⁵⁰ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report: Volume 8, Criminal Justice and People with Disability* (Report, 29 September 2023); Melissa Ryan, 'Over-representation of People with Disabilities Coming Into Contact With the Criminal Justice System as Offenders' on *Queenslanders with Disability Network* (11 August 2023).

⁵¹ *Human Rights Act 2019* (Qld), s 13(2)(c).

⁵² Statement of Compatibility, Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026, 2.

⁵³ Statement of Compatibility, Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026, 3.

⁵⁴ See for example, Michael Tonry, 'The Mostly Unintended Effects of Mandatory Penalties: Two Centuries of Consistent Findings' (2009) 38(1) *Crime and Justice* 65.

⁵⁵ Declan Roche, *Mandatory Sentencing* (Trends and Issues in Crime and Criminal Justice No 138, Australian Institute of Criminology, December 1999); Victoria Sentencing Advisory Council, 'Does imprisonment deter? A review of the evidence' (Web report, 2011) <<https://www8.austlii.edu.au/cgi-bin/viewdoc/au/other/vic/VicSAC/2011/2.html#>>.

⁵⁶ Victoria Sentencing Advisory Council, 'Does imprisonment deter? A review of the evidence' (Web report, 2011) <<https://www8.austlii.edu.au/cgi-bin/viewdoc/au/other/vic/VicSAC/2011/2.html#>>; Myths about sentencing children (Web page, 2023) <<https://www.sentencingcouncil.qld.gov.au/about-sentencing/sentencing-myths/myths-about-sentencing-children>>; Dr Emma Antrobus, Dr Joseph Lelliott, and Dr Rebecca Wallis, 'Tackling youth crime: Why a 'crackdown' isn't the answer' (Opinion

37. Limited evidence suggests that increasing the chances of detection may have a deterrent effect in relation to some types of crime.⁵⁷ However, a mandatory sentencing regime does not increase the chances of detection, only the likelihood of punishment, once detected. As such, imposing a mandatory sentence is unlikely to deter crime.
38. Evidence indicates that mandatory sentences typically lead to increased incarceration.⁵⁸ Incarceration is criminogenic. People who are incarcerated are more likely to offend than those who are not.⁵⁹ While some offending may be prevented in the short-term through incapacitation (arrest and detention), this impact is likely to be short lived. The impacts of increased incarceration, particularly in overcrowded, inappropriate facilities, is likely to worsen community safety in the medium to long term.⁶⁰
39. As submitted to the Australian Law Reform Commission's *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*:

Mandatory sentencing regimes are not effective as a deterrent and instead contribute to higher rates of reoffending... They also have no rehabilitative value, disrupt employment and family connections ... and diminish the prospects of people re-establishing social and employment links post release.⁶¹

Mandatory sentencing undermines trust in the justice system

40. A stated purpose of the Bill is to improve public confidence in the bail system.⁶²
41. Advocates of mandatory sentencing claim that a mandatory sentence eliminates inconsistency in sentencing and ensures fairness by treating people who commit the same offences alike.⁶³

and analysis, University of Queensland) <<https://stories.uq.edu.au/contact-magazine/tackling-youth-crime/index.html>>; Australian Law Reform Commission, *Pathways to Justice–Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (ALRC Report 133, December 2017) referring to a submission by NATSILS 276; Queensland Sentencing Advisory Council, 'Myth #6 Mandatory sentencing/harsher penalties would deter children from committing crime'.

⁵⁷ Victoria Sentencing Advisory Council, 'Does imprisonment deter? A review of the evidence' (Web report, 2011) <<https://www8.austlii.edu.au/cgi-bin/viewdoc/au/other/vic/VicSAC/2011/2.html#>>.

⁵⁸ Declan Roche, *Mandatory Sentencing* (Trends and Issues in Crime and Criminal Justice No 138, Australian Institute of Criminology, December 1999); Australian Law Reform Commission, *Pathways to Justice–Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (ALRC Report 133, December 2017) 276 [8.13].

⁵⁹ Jolliffe D and Hedderman C (2015) The impact of custody on reoffending using propensity score matching. *Crime & Delinquency* 61(8): 1051-1077; James M Ogilvie et al, 'Examining the characteristics of children who experience contact with the youth justice system in Queensland: implications for the minimum age of criminal responsibility' (2024) 36(4) *Current Issues in Criminal Justice* 408.

⁶⁰ Australian Law Reform Commission, *Pathways to Justice–Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (ALRC Report 133, December 2017) referring to a submission by Victorian Aboriginal Legal Service 129.

⁶¹ Australian Law Reform Commission, *Pathways to Justice–Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (ALRC Report 133, December 2017) 276 [8.14] submission by NATSILS. The Australian Law Reform Commission formed the view that those were principled reasons for opposing mandatory sentencing: 277 [8.17].

⁶² Explanatory Notes, Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026, 1.

⁶³ Law Council of Australia, 'Mandatory Sentencing' (Policy Discussion Paper, May 2014) 17.

42. However, two people convicted of the same offence may warrant very different sentences depending on their moral culpability, personal circumstances, and the harm caused. Mandatory sentencing removes the ability to give that consideration and therefore risks arbitrary or manifestly unfair outcomes that are incompatible with human rights. Such outcomes do not always foster respect for the law. Community trust in the justice system may be strengthened when courts are able to tailor sentences to the particular facts and circumstances before them.^{64 65}
43. In light of the above evidence, the Commission recommends that mandatory sentencing should not apply to the proposed breach bail offence (**Recommendation 1**). Alternatively, at a minimum, the Bill should be amended to allow for the court to exercise discretion where mandatory sentencing would result in a sentence that is manifestly unfair. (**Recommendation 1A**).

Refusal of bail unless high degree of confidence

44. The Bill proposes amendments to relevant legislation that would mean adults and children who are charged with certain offences⁶⁶ while on bail, unlawfully at large or having failed to appear, must be refused bail unless the defendant satisfies the court or police officer 'to a high degree of confidence, that the defendant will not commit a further prescribed offence while released on bail'.⁶⁷ The new provisions are subject to override declarations expiring in 5 years.
45. The proposed bail test will apply only after applying the existing bail test, which requires defendants to show cause that their detention is not justified.⁶⁸

Nature of limit on rights

46. Like the proposed breach bail offence, the proposed bail test limits the right to liberty and security; the rights of the child; the right for a child charged with a criminal offence to a procedure that takes account of their age and the desirability of promoting the child's rehabilitation; the prohibition against cruel, inhuman and degrading treatment; and the right to equality. The previous discussion of those rights is equally applicable here.
47. Our system of criminal justice reflected in the Human Rights Act typically starts from the premise that a person charged with a criminal offence is presumed innocent until proved guilty, with the prosecution bearing the onus to prove that guilt.⁶⁹ This is intended to protect individuals from misuse of power and acknowledges the uneven playing field that can exist between the state, which has extensive resources, and the individual. It ensures people who have not been convicted of any offence are not detained as though they were guilty. This preserves their ability to maintain

⁶⁴ Australian Law Reform Commission, *Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (ALRC Report 133, December 2017) referring to a submission by the National Association of Community Legal Centres 275.

⁶⁶ Adult Crime, Adult Time offences (for children) and prescribed offences (for adults).

⁶⁶ Adult Crime, Adult Time offences (for children) and prescribed offences (for adults).

⁶⁷ Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026 (Qld) cl 9 inserts a new s 16AA in the Bail Act; and cl 28 inserts a new s 48AG in the Youth Justice Act.

⁶⁸ *Bail Act 1980* (Qld) s 16(3); *Youth Justice Act 1992* (Qld) s 48AF(2).

⁶⁹ *Human Rights Act 2019* (Qld), s 32(1); *Woolmington v DPP* [1935] AC 462.

employment, housing, family connections, and legal representation while their matter is determined, and avoids the potential of serious harm that may arise from detention.

48. By placing the onus on the defendant to satisfy the court to a high degree of confidence that they will not reoffend (after having to firstly show cause that their detention is not justified) the Bill substantially increases the prospect an accused person will remain detained before their guilt is determined and erodes the right to be presumed innocent.
49. Additionally, as observed by the statement of compatibility, the introduction of the test will substantially increase the number of people held on remand.⁷⁰ This is evidenced in New South Wales, where the introduction of an equivalent test has led to a bail refusal rate of more than double the rate for offences committed by children and young people generally.⁷¹
50. Similar to the disproportionate effect of mandatory sentencing discussed above, these amendments will also disproportionately affect specific groups with protected attributes including Aboriginal and/or Torres Strait Islander people and people with disabilities.
51. The United Nations Working Group on Arbitrary Detention has recently expressed concern with restrictive bail tests (including the 'high degree of confidence' test), observing ^{72,73}

Many individuals are remanded not because they pose a genuine risk to community safety, but due to underlying social and economic disadvantage, with a disproportionate impact on First Nations people. These deficiencies may result in prolonged pretrial detention, undermining the right to liberty, the presumption of innocence, and equal protection and non-discrimination guarantees.

52. The United Nations Committee on the Rights of the Child⁷⁴ has emphasised that pre-trial detention should not be used except in the most serious cases, and even then, only after community placement has been carefully considered.⁷⁵ As noted by Bell J in *Woods v DPP*:

The detention of young people on remand can have deleterious consequences for them and the community which are out of all proportion to the purpose of ensuring appearance at trial and protecting the community. It separates them from their families

⁷⁰ Statement of compatibility, Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026 (Qld) 4.

⁷¹ Communities and Justice (NSW), 'Extension of strict bail laws for young people will strengthen community safety' (Media Release, 25 March 2025).

⁷² Human Rights Council, Report of the Working Group on Arbitrary Detention on its visit to Australia, UN Doc A/HRC/63/33/Add.1 (5 August 2026) 1.

⁷³ Human Rights Council, Report of the Working Group on Arbitrary Detention on its visit to Australia, UN Doc A/HRC/63/33/Add.1 (5 August 2026) 1, 16 [63(a)]. See also 6-7 [17]-[19].

⁷⁴ The Committee is the body of 18 independent experts that monitors implementation of the *Convention on the Rights of the Child* by its States parties.

⁷⁵ United Nations Committee on the Rights of the Child, *General Comment No 24 (2019) on children's rights in the child justice system*, UN Doc CRC/C/GC/24 (18 September 2019) [86]. See also: United Nations Rules for the Protection of Juveniles Deprived of their Liberty, UN Doc A/RES/45/113 (14 December 1990) (Havana Rules) r 17; *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (Beijing Rules) UN Doc A/RES/40/33 (29 November 1985) r 13.

and the community, disrupts their education and employment, causes them to associate with other young offenders at a vulnerable time in their lives, often (as in the present case) leads to them being held in a police lock-up rather than a youth detention facility, deprives them of access to therapeutic programs and increases the risk of them being given a sentence of incarceration.⁷⁶

Proposed bail test not clear and sufficiently precise

53. The Bill does not define the meaning of ‘high degree of confidence’. In other state and territory jurisdictions, the phrase has been interpreted as requiring confidence, to the requisite degree, that the young person will not commit an offence while on bail.⁷⁷ This necessarily involves a probabilistic assessment of future conduct, and may require a value assessment based on the evidence.⁷⁸ Such assessments can be inherently uncertain, particularly where they require a decision-maker to predict future conduct, and are made in the absence of expert evidence on risk.⁷⁹
54. ‘Under law’ in section 13 of the Human Rights Act encompasses both a procedural and substantive requirement.⁸⁰ While the test meets the procedural requirement of being prescribed by law, it does not meet the substantive requirement of being sufficiently certain and may lead to children being detained even where this is not reasonably necessary for community safety.

Test is unnecessary and lacks evidence for effectiveness

55. In Queensland, a high threshold for bail already exists when a person has been charged with committing an offence while on bail and defendants bear the burden of showing cause that their detention is not justified. Courts may also impose stringent conditions (curfews, electronic monitoring, reporting requirements) or refuse bail outright where risk is demonstrated.
56. The Commission has been unable to identify evidence that increasing the likelihood that a person will be remanded in custody prior to their trial will improve community safety, other than through short term incapacitation of potential offenders. As noted above, people who have been incarcerated are more likely to later re-offend than people who have not been incarcerated.⁸¹ The impact of increased incarceration is

⁷⁶ *Woods v DPP* (2014) 238 A Crim R 84, [95].

⁷⁷ *RB v R (No 2)* [2024] NSWSC 845, [69(7)].

⁷⁸ *RB v R (No 2)* [2024] NSWSC 845, [69(9)]; *R v BH* [2024] NSWSC 1577, [13]-[14]; *R v TB* [2025] NSWSC 38, [13]; *R v Abuelheish (aka Jorban)* [2025] NTSC 47, [26]-[29]. The equivalent provision in the Northern Territory is being challenged on constitutional law grounds before the High Court (*North Australian Aboriginal Justice Agency Limited v Northern Territory of Australia*, Case No. D15/2025).

⁷⁹ *R v TW* [2024] NSWSC 1504, [15].

⁸⁰ *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, [163], [165], [744].

⁸¹ Jolliffe D and Hedderman C (2015) The impact of custody on reoffending using propensity score matching. *Crime & Delinquency* 61(8): 1051-1077; James M Ogilvie et al, ‘Examining the characteristics of children who experience contact with the youth justice system in Queensland: implications for the minimum age of criminal responsibility’ (2024) 36(4) *Current Issues in Criminal Justice* 408.

likely to worsen community safety in the medium to long term, unless the underlying drivers of offending are addressed.⁸²

57. In light of the above evidence, the Commission recommends that consideration be given to amendments to remove the 'high degree of confidence' test from the Bill (**Recommendation 2**). Alternatively, the Bill should be amended such that:

- the onus to establish that bail should be refused under section 48AG of the Youth Justice Act (and its equivalent in s 16AA of the Bail Act) is to rest with the prosecution (**Recommendation 2A**)⁸³
- the matters in new section 48AG(4) of the Youth Justice Act (and its equivalent in s 16AA of the Bail Act) expressly include consideration of whether any bail conditions could reasonably be imposed to address the risk of the child or young person committing a further significant offence while released (**Recommendation 2B**).⁸⁴

58. Section 48AG(4) of the Youth Justice Act provides that '[i]n making a decision under [the high degree of confidence test], a court or police officer must have regard only to matters that are relevant to the risk of the [person] committing a further significant offence while released'. This restriction is not in section 16AA of the Bail Act applying to adults. Clarifying the purpose and intended operation of this provision would assist in its proper consideration and evaluation. (**Recommendation 3**).

Removal of requirement to consider diversionary options for children

59. Currently, Queensland police officers are required to consider alternatives before commencing a proceeding against a child for an offence other than a serious offence.⁸⁵ Similarly, where police suspect a child has contravened or is likely to contravene a condition of their bail, police must consider alternatives to arrest.⁸⁶ If the child is on bail for a prescribed offence, the police officer has discretion to consider alternatives.⁸⁷ The Bill proposes that police officers no longer be required to consider diversionary options for children.⁸⁸

⁸² Australian Law Reform Commission, *Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (ALRC Report 133, December 2017) referring to a submission by Victorian Aboriginal Legal Service 129.

⁸³ This recommendation is based on the operation of the high degree of confidence test that applies under s 22C of the *Bail Act 2013* (NSW): see 22C(3) of that Act.

⁸⁴ This recommendation is based on the requirement that applies in considering a high degree of confidence under s 22C of the *Bail Act 2013* (NSW): see 22C(2)(b) of that Act.

⁸⁵ See Youth Justice Act, s 11 (serious offences are life offences or offences that would, if committed by an adult, make the adult liable to imprisonment for 14 years or more and may not be dealt with summarily (s 8)).

⁸⁶ Youth Justice Act 1992 (Qld) s 59A.

⁸⁷ Youth Justice Act 1992 (Qld) s 59AA.

⁸⁸ Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026 (Qld) cls 24, 31, 32.

60. The practical impact of the amendments is that children will be more likely to be arrested or proceeded against, increasing the likelihood that children will have interactions with the justice system and be detained.
61. The statement of compatibility acknowledges these amendments will limit children's rights to protection in their best interests.⁸⁹ These amendments will additionally limit the following human rights:
- the right to liberty and security of person – by increasing the likelihood that children will be arrested and detained on arbitrary grounds
 - the right to privacy and reputation – by increasing the likelihood that children will be subject to arbitrary interferences with their privacy and harm to their reputation as a result of contact with the criminal justice system
 - the right to equality, particularly Aboriginal and Torres Strait Islander children and children with disabilities, given that policies which provide authorities with discretion in relation to charges or diversionary options are at higher risk of inequitable or discriminatory application and noting research that First Nations people are already more likely to be arrested and proceeded against, rather than diverted.⁹⁰
62. The statement of compatibility outlines the Minister's view that while these amendments will limit children's rights, these limitations are not incompatible with human rights because 'the limitation helps to achieve the purposes of delivering community safety and making Queensland safer.'⁹¹

Removing mandatory requirement to consider diversion may increase likelihood of repeat offending

63. The mandatory requirements to consider diversionary options before arrest or proceeding against a child is consistent with the 2018 recommended policy approach to reducing child recidivism by intervening early, keeping children out of court, and keeping children out of custody.⁹² Mandatory consideration does not mean diversionary options must be applied, but provides a safeguard to ensure these options are not forgotten or ignored.
64. It is well established that contact with the criminal justice system and detention has a criminogenic effect. Children who have frequent or multiple contacts with the justice system are at a higher risk of reoffending and of committing more serious offences.⁹³

⁸⁹ Statement of Compatibility, Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026 (Qld) 6.

⁹⁰ Australian Human Rights Commission, *National Anti-Racism Framework Scoping Report 2022* (Community Guide, 2023) 134.

⁹¹ Statement of Compatibility, Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026 (Qld) 6.

⁹² Bob Atkinson, *Report on Youth Justice* (Version 2, 8 June 2018).

⁹³ See for example: S J Prins, 'Criminogenic or Criminalized? Testing an Assumption for Expanding Criminogenic Risk Assessment' (2019) 43 *Law and Human Behaviour* 484.

65. Detention undermines children's psychological and physical wellbeing and their cognitive development.⁹⁴ These impacts may be exacerbated where children are detained in inappropriate facilities, such as overcrowded detention centres and watch houses. A child who has been harmed by their experience in detention is less likely to be rehabilitated and more likely to reoffend.⁹⁵ This is illustrated by the rate of reoffending in Queensland, where statistics for 2022-23 indicate 92.59% of children released from detention were returned to sentenced supervision within 12 months.⁹⁶
66. Accordingly, the amendments are unlikely to assist in achieving their stated purpose to improve community safety in the medium to long term.
67. In light of the above evidence, the Commission recommends that Bill should be amended to retain the requirement for police officers to consider diversionary options for children (**Recommendation 4**).

Re-enactment of overrides and new disapplication provision

Current Youth Justice Act overrides

68. The Youth Justice Act overrides the Human Rights Act in relation to:
- acts and decisions of police and youth justice regarding the transfer of a child from police custody to a youth detention centre following a court's decision to remand a child in custody or sentencing a child to a period in detention⁹⁷
 - establishment of a new youth detention centre, and disapplies section 58 of the Human Rights Act in relation to the Minister's recommendations to do so.⁹⁸
69. The Youth Justice Act also disapplies section 58 of the Human Rights Act in relation to acts and decisions that:
- are reasonably necessary for the administration of the Youth Justice Act; and

⁹⁴ Juan E Mendez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc A/HRC/28/68 (5 March 2015) 7 [33].

⁹⁵ Law Council of Australia, Submission No 195 to the Senate Legal and Constitutional Affairs References Committee, *Australia's Youth Justice and Incarceration System* (22 October 2024) 17; Queensland Family & Child Commission, *Exiting youth detention* (June 2024) 12; Australian Institute of Health and Welfare, *Young people returning to sentenced youth justice supervision 2023–24* (Web page, 4 September 2025); Committee on the Rights of the Child, *General Comment No. 24 (2019) on children's rights in the child justice system*, UN Doc CRC/C/GC/24 (18 September 2019) [2], [22]–[23]. UN Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, UN Doc A/HRC/38/36 (10 April 2018) [63]–[69]. Juan E Mendez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc A/HRC/28/68 (5 March 2015) 7 [33].

⁹⁶ Australian Institute of Health and Welfare, 'Data tables', *Young people returning to sentenced youth justice supervision 2023–24* (Web page, 4 September 2025) table S17 <<https://www.aihw.gov.au/reports/youth-justice/young-people-returning-to-youth-justice-2023-24/data>>.

⁹⁷ *Youth Justice Act 1992* (Qld) ss 56, 210.

⁹⁸ *Youth Justice Act 1992* (Qld) s 262.

- relate to a child in a relevant detention centre or the placing of a child in a relevant detention centre.⁹⁹
70. The statement of compatibility to the 2022 Bill inserting these provisions indicated that the overrides were necessary to address immediate capacity issues in youth detention centres, all of which were operating at or above capacity, and lack of alternative accommodation in the short term¹⁰⁰ and allow the chief executive to:
- meet their workplace health and safety obligations
 - prevent overcrowding (which has been shown to increase the risk of rioting and unrest in YDCs, lead to assaults and injury to young people and staff, and increase offending while in detention)
 - minimise separations, enabling young people to have access to rehabilitation and programs to the greatest extent possible; and
 - balance the safety and care of young people, YDC staff, and the community.¹⁰¹
71. The provisions allowed for the continued detention of children in places such as watch houses that have been found to not meet children's human rights,¹⁰² where there was insufficient capacity within youth detention centres.
72. These overrides and disapplications were due to expire on 31 December 2026, with an option to extend by regulation to 31 December 2027. The period provided for these overrides was intended to provide time for additional capacity to be made available via the Wacol Youth Remand Centre; and the Woodford Youth Detention Centre (due to be completed in 2027).¹⁰³

Overrides proposed by the Bill

73. The Bill proposes to remake the above override provisions and inserts a new provision that disapplies s 58 of the Human Rights Act, subject to override, that
- are reasonably necessary for the administration of the PPRA; and

⁹⁹ *Youth Justice Act 1992* (Qld) s 262A.

¹⁰⁰ Statement of Compatibility, Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022 (Qld) 9.

¹⁰¹ Statement of Compatibility, Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022 (Qld) 16.

¹⁰² *BA v State of Queensland* [2026] QCAT 298. See also Ombudsman, Inspector of Detention Services, *Cairns and Murgon watch-houses inspection report: Focus on detention of children* (September 2024) and Queensland Human Rights Commission, *Detention of a child in a watch house* (Unresolved complaint report, 11 April 2025).

¹⁰³ Queensland Parliament, *Question on Notice No 402*, Legislative Assembly, 22 April 2026, asked by Mr L McCallum of the Minister for Youth Justice and Victim Support and Minister for Corrective Services, Hon L Gerber; Queensland Parliament, *Question on Notice No 1173-2024*, Legislative Assembly, 10 December 2024, asked by Mr L Power of the Minister for Youth Justice and Minister for Corrective Services, Hon L Gerber

<<https://documents.parliament.qld.gov.au/tableoffice/questionsanswers/2024/1173-2024.pdf>>

<<https://documents.parliament.qld.gov.au/tableoffice/questionsanswers/2026/402-2026.pdf>>;

<<https://documents.parliament.qld.gov.au/tableoffice/questionsanswers/2024/1173-2024.pdf>>.

- relate to a person in custody in a watch house, or the transfer of a person in custody in a watch house from the watch house under s 640.¹⁰⁴
74. The statement about exceptional circumstances and explanatory notes to the Bill indicate the Minister's view that as a result of the reforms in the Bill, which will have a significant impact on capacity in watch houses and youth detention facilities, the overrides are required to be remade, and an additional override is required to disapply the Human Rights Act in relation to decisions made about adults incarcerated in police watch houses.¹⁰⁵ No further rationale or evidence is provided. Further rationale and evidence regarding the exceptional circumstances said to justify the proposed overrides would assist in evaluating whether the overrides are necessary and proportionate in the circumstances.
 75. The value of a human rights approach to legislation, and the impact of override declarations, is outlined later in this submission.
 76. It is possible to effectively address community safety without creating another problem that requires overriding human rights. The override provisions are intended to be used in an emergency, temporarily, until the Government can take further action to resolve the situation and return to a position that is compatible with human rights. In particular, overriding, and therefore eroding, the human rights of people in youth detention centres and watch houses may not have positive outcomes for anyone. Where limitations on human rights are reasonably necessary and justified, they can be accommodated within the framework of the Human Rights Act.
 77. In light of the above discussion, the Commission recommends that, at a minimum, override declarations should not be made in relation to:
 - s 262A of the Youth Justice Act – acts and decisions reasonably necessary made in relation to a child in a relevant detention centre, or placing the child in a relevant detention centre
 - new s 639AA of the PPRA – acts and decisions reasonably necessary made in relation to a person in custody in a watch house. (**Recommendation 5**)

Overcrowding of detention facilities

Current overcrowding

78. Adult and children detention centres in Queensland are already significantly over capacity.

¹⁰⁴ Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026 (Qld) cl 19 inserts a new s 639AA in the PPRA. This expands the existing override that just applies to transfers in relation to children: PPRA s 640.

¹⁰⁵ Explanatory Notes, Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026 (Qld) 1; Statement about Exceptional Circumstances, Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026 (Qld) 1.

79. In the past 10 years, the adult prison population in Queensland grew more than 50%.¹⁰⁶ The Commission understands most prisons are operating at over 150% capacity.¹⁰⁷
80. The Commission understands youth detention centres are also operating at over safe capacity.¹⁰⁸ As at 7 September 2026, there were also 69 children in adult watch houses, 30 of whom have been held for more than 7 days.¹⁰⁹

Effects of overcrowding

81. The impact of overcrowding on persons detained is significant. In adult facilities, for example, the most recent Inspector of Detention Services inspection report found that at Brisbane Correctional Centre prisoners are locked in their cells with their cellmate for around 20 hours each day.¹¹⁰ Additionally, due to the burdens of the environment, prisoners were often placed with another prisoner without proper risk assessment, leading to risks of violence and bullying.¹¹¹ Overcrowding was also resulting in detained people having limited access to healthcare.¹¹²
82. In youth facilities, ongoing staffing issues means children have been subjected to extended periods of isolation and confinement.¹¹³ In one case, a child who was detained for a total of 87 days, was confined in their cell for more than 20 hours per day for 78 of those days.¹¹⁴ Children in detention have limited access to education. For example, at Cleveland Youth Detention Centre, children had access to an average of 3 to 5 hours of face-to-face education a week (despite the target of 17 hours of education per week).¹¹⁵ Children also have limited access to rehabilitation programs. In

¹⁰⁶ Queensland Audit Office, *Rehabilitating and reintegrating prisoners* (Performance Audit Report 1: 2026–27, 7 July 2026).

¹⁰⁷ Thomas Chamberlin, 'Bursting at the Seams: Prisoner Numbers Explode across Qld Jails', *The Courier Mail*, 27 April 2024.

¹⁰⁸ Dan Holmes, 'Queensland youth detention workers strike over overcrowding' *The Mandarin* (online 26 August 2026) <<https://www.themandarin.com.au/319035-queensland-youth-detention-workers-strike-over-overcrowding/>>; Lucy Loram, 'Youth detention workers strike over safety concerns at Queensland centres' *ABC News* (online, 6 August 2026) <<https://www.abc.net.au/news/2026-08-06/youth-detention-workers-strike-at-queensland-centres/107002698>>.

¹⁰⁹ Queensland Police Union, 'Watch-house Data' (Web Page) <<https://watchhouse.qpu.asn.au/?view=trend>> (accessed 7 September 2026).

¹¹⁰ Queensland Ombudsman, Inspector of Detention Services, *Brisbane Correctional Centre* (Inspection report, April 2026) 5.

¹¹¹ Queensland Ombudsman, Inspector of Detention Services, *Brisbane Correctional Centre* (Inspection report, April 2026) 36.

¹¹² Queensland Ombudsman, Inspector of Detention Services, *Brisbane Correctional Centre* (Inspection report, April 2026) 5.

¹¹³ Queensland Ombudsman, Inspector of Detention Services, *Combined inspection report for youth detention centres: a report on our 2025 inspections of 3 Queensland youth detention centres – West Moreton, Brisbane and Cleveland* (August 2026). Overcrowding may also present a significant barrier to safe and effective purposeful activity to assist prisoners to rehabilitate and reintegrate into the community on release, such as through work, training or education: United Kingdom House of Lords, *Better prisons: less crime* (Justice and Home Affairs Committee, 1st Report of Session 2024–26, Paper 153) 82 [310].

¹¹⁴ Queensland Ombudsman, Inspector of Detention Services, *Combined inspection report for youth detention centres: a report on our 2025 inspections of 3 Queensland youth detention centres – West Moreton, Brisbane and Cleveland* (August 2026) 18.

¹¹⁵ Queensland Audit Office, *Reducing serious youth crime* (Performance Audit Report 15: 2023–24, 28 June 2024) 31–32.

2022 at Cleveland Youth Detention Centre, only 31 children completed a rehabilitation program (compared with 215 in 2018).¹¹⁶

83. Unsafe conditions for staff and children in youth detention centres have contributed to the Department of Youth Justice workers decision to strike multiple times in recent months.¹¹⁷ When discussing the strike action with the media, one worker noted ‘Over 500 serious staff assaults have occurred in these workplaces in the last 12 months. That is over one serious assault every single day.’¹¹⁸

Complaints received by the Commission

84. The Commission is receiving increasing numbers of complaints about overcrowding in prisons. Most complaints are about being required to sleep on the floor in custody, known as ‘doubling up’. The Commission has finalised the following numbers of complaints in recent years:¹¹⁹
85. 2026/27 financial year (to date): 56 complaints relating to overcrowding finalised, and 44 complaints are active.¹²⁰
- 2025/26 financial year: 132 complaints relating to overcrowding finalised
 - 2024/25 financial year: 2 complaints relating to overcrowding finalised
 - 2023/24 financial year: 2 complains relating to overcrowding finalised
86. Examples of alleged conditions given in those complaints include sleeping on the floor next to the toilet, damp bedding because of proximity to wet spaces, extended lockdowns of 20 hours or more, and sexual abuse. The Commission is often unable to accept complaints where the complainant has not first pursued the complaint with the relevant public entity in accordance with section 65 of the Human Rights Act.
87. Complaints about prison overcrowding are likely to increase if this Bill is passed.

¹¹⁶ Statistics for other detention centres were not accurately recorded. See: Queensland Audit Office, *Reducing serious youth crime* (Performance Audit Report 15: 2023–24, 28 June 2024) 32.

¹¹⁷ Dan Holmes, ‘Queensland youth detention workers strike over overcrowding’ *The Mandarin* (online 26 August 2026) <<https://www.themandarin.com.au/319035-queensland-youth-detention-workers-strike-over-overcrowding/>>; Lucy Loram, ‘Youth detention workers strike over safety concerns at Queensland centres’ *ABC News* (online, 6 August 2026) <<https://www.abc.net.au/news/2026-08-06/youth-detention-workers-strike-at-queensland-centres/107002698>>.

¹¹⁸ Courtney Kruk, “Absolute tinderbox” Youth detention centres at breaking point, unions say’, *Brisbane Times* (online, 24 August 2016) <<https://www.brisbanetimes.com.au/national/queensland/absolute-tinderbox-youth-detention-centres-at-breaking-point-unions-say-20260824-p60qxy.html>>.

¹¹⁹ This data was obtained by: filtering by complaints finalised per financial year, and searching the allegation summary for search terms: contains ‘sleep on’ or ‘double up’. Entries that contained those search terms that were not related to overcrowding were removed and have not been included in the final count. Data obtained at 3 September 2026.

¹²⁰ Note: some of the 44 active complaints may be complaints recorded as closed in previous years however the complainant has provided new information to be assessed.

Human rights impacts of overcrowding

88. Data provided by the Queensland Government to the media indicates that in the past 12 months, if in force, the new offence of committing particular offences while on bail would have applied to 5,248 adults and 859 children.¹²¹ The detention of this number of people for the mandatory minimum period of 12 months would outstrip available bed capacity in Queensland adult and children's facilities.
89. The mandatory sentences proposed by the Bill will reduce access to bail and remove the requirement to consider diversion, and inevitably increase capacity pressures on detention facilities, which exacerbates risks of harm for staff and detainees. In practical terms, this is likely to mean more prisoners and children forced into cell-sharing arrangements without adequate risk assessment, extended periods of isolation, and reduced access to healthcare, education, and rehabilitation programs. These conditions are also likely to compromise the physical and psychological safety of staff.
90. As acknowledged by the statement of compatibility, these impacts on capacity will result in limitations on children and adults' right to humane treatment when deprived of liberty,¹²² and where capacity pressures give rise to more acute impacts on detention conditions, their right to protection from cruel, inhuman or degrading treatment¹²³ may be limited. Limits on the right to access health services and education, children's rights to protection and age-appropriate treatment, privacy, and equality may be felt as detention facilities struggle to meet individual needs.
91. Given the significant costs associated with detention, any increase in its use is likely to result in additional expenditure of public funds. The average cost per day for keeping a young person in detention in Queensland is at least \$2,713.94.¹²⁴ The average cost per day for keeping an adult in prison is \$296.¹²⁵ Increased safety risks for youth detention and adult corrections staff, police officers, and other service providers will also result in human and financial costs, including WorkCover claims.
92. In light of the above evidence, the Commission recommends that Parliament should not proceed with this Bill until consideration has been given to how impacts on capacity will be managed, including preparation of a plan for management of capacity that safeguards the human rights of staff, adults, and children detained in these facilities. (**Recommendation 6**).

¹²¹ Taylah Fellows, 'More than 6000 Queenslanders to face jail under proposed bail law crackdown' *The Sunday Mail* (online, 23 August 2026) <<https://www.couriermail.com.au/news/queensland/qlc-politics/more-than-6000-queenslanders-to-face-jail-under-proposed-bail-law-crackdown/news-story/e9ec85988b5022b92e6b3bc45dbd3c12>>.

¹²² *Human Rights Act 2019* (Qld) s 30; Statement of Compatibility, *Human Rights Act 2019* (Qld) 3.

¹²³ *Human Rights Act 2019* (Qld) s 17(b); Statement of Compatibility, *Human Rights Act 2019* (Qld) 3.

¹²⁴ Drawn from Productivity Commission (Cth), Report on Government Services 2026 (Web Page, January 2026) 'Table 17 A.20: Cost per young person subject to detention-based supervision, 2024-25 dollars' < <https://www.pc.gov.au/ongoing/report-on-government-services/community-services/youth-justice/>>.

¹²⁵ Queensland Corrective Services, *Annual Report 2024–2025* (Report, 2025) 38.

Human Rights Act should not be overridden

93. The Bill makes a range of override declarations set out in **Appendix 2**.
94. The effect of an override declaration is that the amendments will have effect despite being incompatible with human rights and do not have to be interpreted in accordance with human rights.¹²⁶
95. The Human Rights Act aims to protect and promote human rights in recognition of the inherent dignity and worth of all human beings, and that human rights are essential in a democratic and inclusive society that respects the rule of law.¹²⁷ It is the intention of parliament that overriding human rights only occur in 'exceptional circumstances' such as where there is a war, state of emergency, or an exceptional crisis situation.¹²⁸ An example might be where a threat is so significant and imminent that a response is needed before it is possible to identify a human rights-compatible solution. Human rights overrides may only be made for a maximum period of five years,¹²⁹ long enough to accommodate a crisis, but not to extend beyond it.
96. The government has indicated its view that overriding human rights is necessary 'in response to the prevalence of serious repeat offending committed while on bail, and the very high risk of serious harm posed to members of the community by that offending'.¹³⁰ The government's view is that 'this constitutes an exceptional circumstance constituting a threat to public safety'.¹³¹
97. Data published by the government indicates that 38 per cent of children commit 'adult crime, adult time' offences while on bail.¹³² However, the total number of youth offenders in Queensland is small and has dropped significantly over the last decade.¹³³ Data provided by the government to the media indicates that in the last 12 months, only a small percentage of adults committed prescribed offences while on bail.¹³⁴ While

¹²⁶ *Human Rights Act 2019* (Qld) ss 43, 45.

¹²⁷ *Human Rights Act 2019* (Qld), Preamble 3.

¹²⁸ *Human Rights Act 2019* (Qld) s 43.

¹²⁹ *Human Rights Act 2019* (Qld) s 45(2).

¹³⁰ Statement about Exceptional Circumstances, Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026 (Qld) 1.

¹³¹ Statement about Exceptional Circumstances, Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026 (Qld) 1.

¹³² Stephen Clarke, 'Qld unions concerned by 'significant' bail reform proposal' *ABC News* (online, 23 August 2026) <<https://www.abc.net.au/news/2026-08-23/bail-reform-queensland/107068382>>.

¹³³ Australian Bureau of Statistics, *Recorded Crime – Offenders, 2024-25* (ABS, 18 March 2026): Youth offenders, Table 20: Youth offenders, Principal offence, States and territories, 2008–09 to 2024–25; Between 2008-09 and 2024-25, Queensland's youth crime offender rate has fallen from 3575.8 offenders per 100,000 children to 1,650.9 offenders per 100,000 children aged 10-17 years. Drawn from Australian Bureau of Statistics, *Recorded Crime – Offenders, 2024-25* (ABS, 18 March 2026): Youth offenders, Table 20: Youth offenders, Principal offence, States and territories, 2008–09 to 2024–25.

¹³⁴ Taylah Fellows, 'More than 6000 Queenslanders to face jail under proposed bail law crackdown' *The Sunday Mail* (online, 23 August 2026) <<https://www.couriermail.com.au/news/queensland/qld->

all offending is serious, the data does not indicate this form of offending is so prevalent, or increasing at such a rate, that it warrants an emergency response that overrides human rights.

98. Even if it were the case that these figures indicate an exceptional crisis situation, to override human rights in the way proposed by the Bill in order to achieve the government's stated purpose, is not an effective or least restrictive approach, as already discussed in relation to the specific provisions.
99. The Commission acknowledges the serious impacts of criminal offending, including offending by persons on bail, has on victims, their families and the broader community, and urges the Government to take appropriate action. Such action, which may include law reform, will be strengthened by an approach that carefully considers human rights impacts and is compatible with human rights so that it:
- is under law that is clear, accessible, and sufficiently precise (for laws) and authorised by law (for action)
 - limits rights for an identified purpose that is consistent with a free and democratic society based on human dignity, equality, and freedom
 - is effective in achieving the purpose and is based on evidence
 - does the least harm, and
 - ensures harm caused is proportionate to the purpose to be achieved.¹³⁵
100. Laws with these features respect everyone's rights, are more likely to be effective in improving community safety, and more likely to be accepted and complied with, and produce decisions that are fair and robust to challenge. Such laws promote trust in the legal system.

[politics/more-than-6000-queenslanders-to-face-jail-under-proposed-bail-law-crackdown/news-story/e9ec85988b5022b92e6b3bc45dbd3c12](https://www.queenslandhumanrightscommission.com.au/news/politics/more-than-6000-queenslanders-to-face-jail-under-proposed-bail-law-crackdown/news-story/e9ec85988b5022b92e6b3bc45dbd3c12)>.

¹³⁵ See factors relevant to assessing compatibility with human rights: *Human Rights Act 2019* (Qld) s 13(2).