

Youth Justice (Monitoring Devices) 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 Youth Justice (Monitoring Devices) Amendment Bill 2025.

In my opinion, the Youth Justice (Monitoring Devices) Amendment Bill 2025 is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The Youth Justice (Monitoring Devices) Amendment Bill 2025 (the Bill) amends the *Youth Justice Act 1992* (the YJ Act) to extend the current trial of electronic monitoring by a further twelve months.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The Bill extends the existing trial of electronic monitoring. Human rights issues were considered upon the introduction of electronic monitoring and subsequent trial extensions. The fundamental human rights issues remain the same as the Bill does not impose additional burdens or restrictions on children.

Section 52AA of the YJ Act allows a court, in prescribed locations and in certain circumstances, to impose on a grant of bail to a child who is at least 15 years, is charged with a prescribed indictable offence, and has either been charged with an unrelated prescribed indictable offence in the preceding twelve months or has been previously found guilty of at least one indictable offence, a condition that the child must wear a monitoring device while released on bail. The criteria were designed by the former government to target serious repeat offenders.

Section 52AA was introduced in 2021 to facilitate a trial of electronic monitoring as a bail condition, and included a two year sunset clause (subsequently extended by a further two years, to 30 April 2025). The electronic monitoring trial was intended to assess the advantages and disadvantages of electronic monitoring, and draw overall conclusions as to its effectiveness at reducing recidivism of serious repeat child offenders on bail.

A 2022 review found, among other things, that the effectiveness of electronic monitoring in deterring offending behaviour cannot be confirmed, either from the trial or from evidence from other jurisdictions, and that there was a need for further research with a larger sample size. In response, the previous Government progressed the *Strengthening Community Safety Act 2023* which expanded the trial to include 15-year-olds and extended it for a further two years to the

current expiry date, 30 April 2025; and the *Youth Justice (Monitoring Device Conditions) Amendment Regulation 2023* which added three new trial sites.

The former Government's approach in 2023 did not adequately increase the number of participants in the trial. Further measures to increase the number of participants in the trial were progressed by the previous Government in the second half of 2024. The *Youth Justice (Monitoring Device Conditions) Amendment Regulation 2024* added a further five sites commencing 28 August 2024, and from 30 August 2024 the *Queensland Community Safety Act 2024*:

- expanded the list of prescribed indictable offences under section 52AA to include specified offences involving violence or threats of violence. The nature of the new offences was intended to maintain the intended serious repeat offender target cohort for the trial; and
- expanded the criteria to include children who have been charged with a prescribed indictable offence in the preceding 12 months. This was intended to capture children who become serious repeat offenders very quickly, before even being found guilty of any indictable offence.

I am required to consider human rights, noting that Statements of Compatibility were also made for the Youth Justice and Other Legislation Amendment Bill 2021, the Strengthening Community Safety Bill 2023 and the Queensland Community Safety Bill 2024.

The relevant human rights protected under the *Human Rights Act 2019* (HR Act) are:

- the right to liberty and security of person (HR Act, s29(1));
- the protection of families and children (HR Act, s26);
- the right to privacy (HR Act, s25(a));
- the right of indigenous peoples to enjoy kinship ties (HR Act, s28(2)(c));
- the right to freedom of movement (HR Act, s19); and
- the right to freedom of association (HR Act, s20).

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

(a) the nature of the right

The right to liberty and security of person (HR Act, s29(1)) protects the personal physical liberty of all persons, including the right not to be arrested or detained except in accordance with the law. The fundamental value which the right to liberty expresses is freedom, which is acknowledged to be a prerequisite for equal and effective participation in society. The right is directed at all deprivations of liberty including, but not limited to, imprisonment in correctional facilities or detention in hospitals. It may also include where persons are deprived of liberty through supervision, protection, treatment, guardianship or similar orders made under various legislative schemes.

The protection of families and children (HR Act, s26) recognises that families are the fundamental group unit of society and entitles families to protection by the society and the State. The meaning of families is broad and recognises that families take many forms and accommodates the various social and cultural groups in Queensland whose understanding of family may differ. Cultural, religious and other traditions will be relevant when considering whether a group of persons constitute a ‘family’.

The right also protects the right of every child, without discrimination, to the protection that is needed by the child and is in the child’s best interests. This recognises the special vulnerability of children, and it is a right that is only held by children. The right requires the State to ensure the survival and development of every child to the maximum extent possible. ‘The concept of the child’s best interests is aimed at ensuring both the full and effective enjoyment of all the [child’s human rights] and the holistic development of the child.’¹

The right to privacy (HR Act, s25(a)) protects individuals from unlawful or arbitrary interference with their privacy, family, home and correspondence.

The protection extends to physical and mental integrity, including appearance, clothing, gender, sexuality and the home.

The right of indigenous peoples to enjoy kinship ties (HR Act, s28(2)(c)) recognises the significance of family and community in Aboriginal and Torres Strait Islander culture. For a First Nations child, their kinship network will become one of the two key ways in which their identity is constructed (the other being connection to country).

The right to freedom of movement (HR Act, s19) protects the individual’s right to move freely within Queensland and their right to live wherever they wish.

The right to freedom of association (HR Act, s20) protects individuals who wish to associate with others for whatever purpose and whatever reason, and this freedom applies to social, cultural and familial contexts.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The current provisions do not impose electronic monitoring on any child, and the Bill will not change those arrangements. At present, electronic monitoring may only be imposed by a court on a child offender in certain circumstances, after considering a suitability assessment prepared by the Department of Youth Justice and Victim Support, and on being satisfied it is necessary to mitigate a risk (YJ Act s52AA(1) and 52A(2)(a)).

The statements of compatibility referred to above acknowledged that the evidence relating to the effectiveness of electronic monitoring in reducing recidivism for child offenders on bail is equivocal. To date, the trial has focussed on addressing this evidence gap and enabling concrete conclusions as to whether electronic monitoring is an effective measure to reduce offending by children on bail for prescribed indictable offences. The proposed extension will serve this purpose but also an expanded purpose, including an examination of the contribution of

¹ Committee on the Rights of the Child, General Comment No 19 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art 3, para 1), UN Doc CRC/C/GC/14 (29 May 2013) 2

electronic monitoring to other aspects of community safety: reducing victim numbers, and the seriousness of victimisation. This aim is consistent with a free and democratic society based on human dignity, equality and freedom, as it is closely linked with protecting the community from crime.

The purpose of the amendments commencing on 30 August 2024 was to increase the sample size for the evaluation.² Even with the extension of the trial to include more participants, it is unlikely that there was ever going to be adequate time to evaluate data before the trial expired, which would have resulted in electronic monitoring of child offenders ending without any assessment of whether the use of electronic monitoring was more effective than other alternatives. The purpose of the twelve-month extension is to enable a substantive review of the trial to be completed, including drawing as far as practicable on data accumulated as a result of the August 2024 expansions, and focus on victims. This comprehensive review will inform government decisions about the longer-term use of the technology for child offenders. This is a legitimate purpose.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The proposed extension will directly help to achieve the purpose. Minimum timeframes are required for the efficacy of initiatives intended to reduce offending to manifest, and the time to date from the introduction of the new cohorts in August 2024 has been insufficient. Data are already available about victims and victimisation, but time is required to collate and analyse the data. The intention is to complete a comprehensive evaluation in the coming months, and allow time for Government consideration of the outcomes prior to decisions about electronic monitoring for child offenders. This would not be possible without the extension.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There is no other way to achieve the purpose. The current expiry date is 30 April 2025. An evaluation completed in time to inform a Bill that would establish permanent arrangements with commencement before the expiry date would be unable to properly consider the new cohorts emerging from the 2024 expansions, or consider victims.

It is important to emphasise, as noted above, that the power to impose electronic monitoring is subject to the court's discretion if it is satisfied that the condition would be appropriate in the circumstances. The note to the current s 52AA(1) of the YJ Act makes clear that the child's right to privacy and other human rights will be relevant to whether the condition would be appropriate in all the circumstances.

This ensures that any exercise of power to impose a tracking device condition will represent a proportionate limit on the child's human rights in the circumstances of the particular case.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

² Statement of compatibility, Queensland Community Safety Bill 2024, page 77

Again, the proposal does not impose electronic monitoring on any child. The proposal expands the current trial of electronic monitoring, which makes electronic monitoring available as an option which may be imposed by courts.

It is incumbent upon the Parliament and the Executive to provide to the Judiciary a range of options that may be used to manage risk when considering bail. Some of these options will necessarily have greater limits on human rights than others, for use where the risks are greater.

This does not mean that options which significantly limit human rights do not represent a fair balance. It is up to the courts to ensure a fair balance in the circumstances of each case.

It is not proposed to alter the framework under which the courts consider electronic monitoring, including the requirements of YJ Act s.52A(2) – including that there is a risk, that the condition is necessary to mitigate the risk, and that the condition does not involve undue management or supervision of the child.

On balance, the factors considered outweigh the harm or potential harm caused to human rights.

While the use of electronic monitoring limits human rights, it has benefits which may enhance human rights. For example, electronic monitoring avoids the need for intrusive police curfew checks (involving entering the child’s residence at night, waking someone in the household if necessary, to see the child in the home). In some appropriate circumstances, electronic monitoring keeps a child out of custody.

The most comprehensive evaluation practicable will assist in developing longer term arrangements for the use of electronic monitoring on child offenders that are compatible with human rights.

(f) any other relevant factors

Not applicable.

Conclusion

In my opinion, the Youth Justice (Monitoring Devices) Bill 2025 is compatible with human rights under the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

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