

Strengthening Community Safety Bill 2023

Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Mark Ryan MP, Minister for Police and Corrective Services and Minister for Fire and Emergency Services

Title of the Bill

The short title of the Bill is the Strengthening Community Safety Bill 2023.

Objectives of the Amendments

On 29 December 2022, the Queensland Government announced ten new measures aimed at keeping the community safe. Amongst the announced measures were amendments relating to certain motor vehicle offending, including increases in maximum penalties and the creation of new circumstances of aggravation.

The Strengthening Community Safety Bill 2023 (the Bill) was introduced on 21 February 2023. In addition to implementing the legislative measures announced by the Queensland Government on 29 December 2022, the Bill also seeks to respond to the small cohort of serious repeat young offenders who engage in persistent and serious offending with amendments to the *Bail Act 1980*, *Criminal Code 1899* (the Code), *Youth Justice Act 1992* (YJ Act) and *Police Powers and Responsibilities Act 2000*.

The amendments to be moved during consideration in detail of the Bill address four matters. These four matters are addressed across five amendments to the Bill. Apart from the amendment to clause 28 of the Bill which establishes a right of review, the amendments proposed to the Bill are technical in nature. The inclusion of a right of review in the clause 28 of the Bill is necessary to correct an inadvertent omission which was identified in the Queensland Law Society's submission to the Economics and Governance Committee made during their inquiry into the Bill.

Firstly, a reference to an incorrect section number in clause 10 (Insertion of new pt 9, ch 107) of the Bill is to be corrected. This amendment will ensure that new section 758 (Proceedings for charge for offence against former s 408A(1B)) of the Code properly

refers to section “8” of the Bill replacing the reference to section “3”. This amendment will ensure that new section 758 of the Code operates as intended to permit prosecutions under section 408A(1B) of the Code to be commenced or to continue where the offence was alleged to have been committed prior to the commencement.

Secondly, amendments to clause 23 (Amendment of s 240 (General options available on breach of order)) and clause 25 (Amendment of s 242 (General options available to court before which child found guilty of an indictable offence)) of the Bill will replace a reference to section 246A(2) which appears in clause 23(2) and clause 25(2) of the Bill. Where “section 246A(2)” appears in those subclauses, it is to be replaced with “section 246A(3)”.

Section 240 of the YJ Act sets out the powers exercisable by a court where a child has breached a community-based order, including a conditional release order (CRO).

Section 242 of the YJ Act sets out the power exercisable by a court where a child has breached a community-based order, including a CRO, by having been found guilty of committing a further indictable offence.

Both provisions of the YJ Act make an allowance for a court to deal with the breach of a community-based order, including a CRO, where the order was made by a higher court. A lower court may, under these provisions, deal with the breach of a higher court’s order by providing a further opportunity to comply with the order. However, if the lower court considers that the community-based order should be discharged (i.e. that it is not appropriate for the lower court to simply vary or extend the order), the lower court is to commit the child to appear before the higher court. The higher court that made the order may then revoke the community-based order (including a CRO). These amendments to clauses 23 and 25 will provide that when dealing with a CRO to which new section 246A applies, a lower court will be able to vary or extend a higher court’s CRO as permitted by section 246A(3).

These amendments to clauses 23 and 25 ensure that a breach of a CRO to which section 246A of the YJ Act applies is subject to the existing framework established in the YJ Act for dealing with breaches of community-based orders.

Thirdly, new clause 25A (Amendment of s 243 (Court may resentence child originally sentenced by lower court)) is to be inserted into the Bill. This amendment to the Bill will update section 243(2)(b) and (4)(b) of the YJ Act to replace references to ‘section 246(1)’ with renumbered ‘section 246(2)’ and insert references to section 246A(2). This will enable a higher court dealing with a CRO for a prescribed indictable offence that it did not make to revoke that conditional release order unless there are special circumstances.

As with the amendments to clauses 23 and 25 of the Bill, this amendment will ensure that a breach of a CRO to which section 243 of the YJ Act applies is dealt with consistently under the existing framework established by the YJ Act.

Finally, an amendment to clause 28 (Insertion of new s 246A) of the Bill confirms that the determination of whether *special circumstances* exist for the purpose of proposed new section 246A(2) of the YJ Act is a *sentence order* for the purposes of sentence reviews conducted by Childrens Court judges under YJ Act.

Achievement of the Objectives

As noted above, the amendments to the Bill to be moved during consideration in detail are technical in nature. The amendment to clause 28 of the Bill provides for a right of review. These amendments to the Bill will help ensure that the Bill meets its objectives.

Alternative Ways of Achieving Policy Objectives

There is no alternative way to achieve the policy objectives other than by legislative amendment.

Estimated Cost for Government Implementation

As noted in the Explanatory Notes for the Bill, the amendments in the Bill are likely to increase demand in both the adult and youth criminal justice system thereby resulting in operational impacts for Queensland Courts, the Queensland Police Service, the Office of the Director of Public Prosecutions, Legal Aid Queensland and Youth Justice Services. Funding required beyond existing agency resources is subject to normal budget processes

Consistency with Fundamental Legislative Principles

The amendments are consistent with Fundamental Legislative Principles.

The amendments will provide certainty required under legislation that orders made under new section 246A(2) of the YJ Act by a Childrens Court Magistrate can be subject to a sentence review.

Consultation

The issue addressed in amendment 5 was identified by the Queensland Law Society in its submission made to the Economics and Governance Committee during its inquiry into the Bill.

No other consultation was undertaken in relation to the amendments proposed to the Bill.

NOTES ON PROVISIONS

Amendment 1 amends clause 10 of the Bill by replacing the reference to ‘section 3’ to ‘section 8’ of the *Strengthening Community Safety Act 2023*.

Amendment 2 amends clause 23 of the Bill by replacing the reference to “246A(2)” at page 20, line 13 of the Bill to section “246A(3)”.

Amendment 3 amends clause 25 of the Bill by replacing the reference to “246A(2)” at page 20, line 26 to “246A(3)”.

Amendment 4 inserts new clause 25A into the Bill. This clause amends sections 243(2)(b) and (4)(b) of the YJ Act by replacing the reference to section 246(1) with renumbered section 246(2) and inserts reference to new section 246A(2).

Amendment 5 amends clause 28 of the Bill by inserting a new subsection (3A) into section 246A of the YJ Act which provides that an order under new section 246A(2) of the YJ Act made by a Childrens Court magistrate is a sentence order for the purposes of part 6, division 9, subdivision 4 of that Act.