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Committee Secretary
Community Support and Services Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Committee Secretary,

Thank you for providing the opportunity to make a submission regarding the Youth Justice and Other Legislation Amendment Bill 2021 (the Bill).

I appreciate the Bill's objective of protecting the community from harm and the government's commitment to putting measures in place to ensure the safety of the public. However, as a human rights agency committed to promoting the rights and interests of the children and young people we advocate for, the Office of the Public Guardian (OPG) is concerned that the proposed amendments pose an unreasonable limitation on their rights and interests, with no long-term benefits for the community as a whole.

I am particularly concerned that the changes to the youth justice bail framework outlined in the Bill will have a disproportionate impact on children and young people under both child protection orders and youth justice supervision. Notably, the amendments that will permit the court or a police officer to take into consideration whether a parent, guardian or another person has indicated a willingness to support a child or young person to comply with bail conditions. Based largely on their inherent disadvantage from early in life, many of these "dual order" children do not have ready access to the required supports. For children in these circumstances, the lack of suitable accommodation and care arrangements could be perceived by a court as significant risk factors relevant to decision-making regarding bail. This is notably so where the circumstances of the charges leading to the child/young person's remand in detention include unstable accommodation and care arrangements, as is the case for many of the children and young people in these matters.

While I acknowledge that the Explanatory notes to the Bill do provide for "another person" to include a volunteer or employee from a support service, people performing these roles may be unable to indicate a willingness to support a young person to comply with bail conditions or advise of breach of bail conditions in circumstances where they are aware that there is no permanent accommodation available. The Bill's limited presumption against bail will equally impact upon children and young people under dual orders as the risk factors associated with their disadvantage may hinder any attempts to "show cause" why bail should be granted. It is apparent that these additional considerations for the grant of bail proposed by the Bill will create yet another barrier to children who do not have a dedicated support network and who may otherwise be released from detention.

Further to this, in the OPG's experience, a significant proportion of children and young people within youth detention have a range of prejudicial circumstances that impact on their behaviour. The behaviours of children and young people that lead to incarceration are often a manifestation of childhood abuse and neglect. This is further exacerbated for children with cognitive or intellectual disability who have often experienced multiple system failures to identify and appropriately intervene before the child or young person enters detention. The detention environment is ill-

equipped to appropriately respond to their trauma, and in fact may often exacerbate or retrigger the trauma for the child or young person, leading to escalating behaviours of concern. The trauma based behavioural patterns displayed by children and young people require specialised therapeutic responses, not punitive responses from a policing and justice system. I fear that the Bill as it stands will have the perverse effect of compromising the safety of the community by further entrenching those most vulnerable in a criminal justice system that doesn't provide the tools needed to address the root causes of their offending behaviour.

I also urge the Committee to consider the inevitable flow on effect the amendments will have on the number of children being held in adult watchhouses for prolonged periods. OPG officers have observed in practice that, as a result of Queensland's youth detention centres reaching their bed capacity, along with changes in the youth justice system, watchhouses across the State are being utilised contingently to detain children and young people on remand for periods longer than what is deemed ordinarily acceptable. The OPG maintains that this environment is not conducive to the safety and wellbeing of children and young people and by nature and design is entirely inappropriate to meet their specific needs.

The proposed trial of electronic monitoring devices as a condition for bail appears to be a proposal that is not based on clear evidence. The associated stigma attached to the wearing of such a device might further isolate young people from the community and result in more anti-social behaviours being displayed. The logistics of sustaining such a device must also be considered. Young people who are homeless or without a permanent residence will face obstacles simply charging the device with no consistent adult support to operate it correctly.

While there is reasonable community expectation to be safe and protected from crime, it appears the measures in the Bill do not strike the correct balance between community safety and the rights and interests of children and young people. The most likely outcome is the perverse effect of perpetuating offending behaviour as these measures do not address the reasons behind the offending behaviour. Developing and investing in early intervention strategies that target the reasons behind youth offending should be the most important foci if we are serious about long term community safety.

The OPG is committed to protecting the rights and interests of children and young people in the child protection system and in youth detention and will continue to do so through any changes to the youth justice bail framework. Should the proposed amendments be passed I strongly recommend that the Bill provide for a review of all provisions after 12 months. This will allow for a comprehensive assessment of the effectiveness of the changes in reducing youth offending and to examine any adverse impacts on children and young people.

Yours sincerely



Shayna Smith
A/Public Guardian