

Youth Justice (Electronic Monitoring) Amendment Bill 2025

Statement of Compatibility

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

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

In my opinion, the Youth Justice (Electronic Monitoring) 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 (Electronic Monitoring) Amendment Bill 2025 (the Bill) amends the *Youth Justice Act 1992* (the Youth Justice Act) to:

- make electronic monitoring permanent by removing the expiry provision;
- make electronic monitoring statewide unless the court is advised the child does not live in a location with services to support the condition;
- remove the current eligibility criteria that the child must be at least 15 years of age, charged with a prescribed indictable offence and previously charged with certain offences; and
- simplify the matters a court must consider when determining if an electronic monitoring condition is appropriate.

The Bill also amends the Youth Justice Regulation 2016 to remove parts 2A (Geographical areas for monitoring device condition) and schedule 1AA (Geographical area for child to live in). These provisions are no longer necessary as the imposition of an electronic monitoring device condition will no longer be limited to specific geographical areas prescribed by regulation.

These amendments are based on key findings of an independent evaluation of the existing electronic monitoring youth bail provisions. Key findings of the independent evaluation were:

- Electronic monitoring conditions were associated with high bail completion (not having bail revoked), reduced reoffending, lower victimisation (less offences involving victims whilst on bail) and reduced time in custody.
- Uptake has been limited overall, has increased over time and has been concentrated in South East Queensland.
- Electronic monitoring conditions were almost always accompanied by curfew orders.
- Engagement with youth co-response teams and bail services was associated with increased compliance and reduced reoffending.

- There are operational challenges with electronic monitoring (as a result of changes made by the previous Government).

The independent evaluation incorporated the perspectives of relevant government agencies, Magistrates, youths and their families.

Human Rights Issues

The human rights below are already limited by the provisions that provide for electronic monitoring of youths. The limitations on these human rights are broadened and deepened by the proposed amendments because they propose to open up the potential cohort to which electronic monitoring might apply.

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

- Right to recognition and equality before the law (section 15)
- Right to freedom of movement (section 19)
- Right to freedom of association (section 22)
- Right to privacy, reputation and non-interference with family (section 25)
- Right of children to protection in their best interest (section 26(2))
- Right to Aboriginal and Torres Strait Islander people to develop and maintain kinship ties (section 25(a) and section 28(2)(c))
- Right to education (section 36)
- The right to liberty and security of person (section 29(1))

(a) the nature of the right

- *Right to recognition and equality before the law (section 15)*

Section 15(3) of the HR Act is known as the right to equality. It ensures that all laws and policies are applied equally, and do not have a discriminatory effect. Public entities, as well as courts and tribunals, are required to treat all people equally when applying the law. It also requires that the laws themselves provide equal protection for everyone. Sometimes it will be necessary for certain groups to be treated differently in order to have equal protection of the law.

Section 15(4) provides a right to equal and effective protection against discrimination. It gives people a separate and positive right to be effectively protected against discrimination.

The independent evaluation found that young people with poor mental health and First Nations status may require additional support to succeed with electronic monitoring devices, had lower completion rates and smaller reductions in reoffending.

However, the amendments do not directly or indirectly discriminate based on race or poor mental health. The electronic monitoring provisions will be applied equally to all children. The availability of the condition is subject to advice from the youth justice chief executive that the child lives in an area with services to support the condition. On that basis, these rights are not limited by that aspect of the Bill.

- *Right to freedom of movement (section 19)*

The purpose of the right to freedom of movement is to protect the individual's right to liberty of movement within Queensland, and their right to live where they wish. It is directed to restrictions on movements which fall short of physical detention coming within the right to liberty (section 29). The fundamental value which the right expresses is freedom, which is regarded as an indispensable condition for the free development of the person and society.

The right is limited by the proposal as electronic monitoring devices are often paired with bail conditions that impose geographical restrictions. For example, a child may be prohibited from entering certain areas or leaving designated areas. These restrictions limit the child's ability to move freely within Queensland. Electronic monitoring devices are often used to enforce curfews, requiring a child to remain at a specific location (e.g. their home) during designated times. This directly limits their freedom to move as freely as they wish.

The limit to the right to freedom of movement is ancillary only. Electronic monitoring does not directly limit this right but rather facilitates the monitoring and enforcement of other bail conditions which may limit this right.

- *Right to freedom of association (section 22)*

The freedom of association protects an individual when, for whatever reason and for whatever purpose, they wish to associate with others. Association is indispensable to a functioning democracy and the pursuit of other rights and freedoms. 'The rights to assemble and associate with other persons do not just apply in the familiar contexts of association for political and industrial purposes but also in the contexts of association for cultural, social and familial purposes. Bail conditions limiting or prohibiting contact between the accused and other persons may interfere with the exercise of these rights.'¹

This right is limited by the amendments because electronic monitoring can be used to enforce bail conditions which require a youth not to have contact with a particular person (for example a co-offender) or not to attend particular places, which may indirectly limit their ability to associate with other people.

The limit to the right to association is also ancillary only. Electronic monitoring does not directly limit this right but facilitates the monitoring and enforcement of other bail conditions which may limit this right.

- *Right to privacy, reputation and non-interference with family (section 25)*

The purpose of the right not to have one's privacy arbitrarily interfered with is to protect and enhance the liberty of the person – the existence, autonomy, security and well-being of every individual in their own private sphere. The right to privacy protects personal inviolability in the sense of the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent. This right protects the privacy of people in Queensland from 'unlawful' or 'arbitrary' interference. Arbitrary interference includes when something is lawful, but also unreasonable, unnecessary or disproportionate.

¹*Woods v DPP (Vic)* (2014) 238 A Crim R 84, 91 [17].

The scope of the right to privacy is very broad. It protects personal information and data collection, for example. It also extends to a person's private life more generally, so protects the individual against interference with their physical and mental integrity, including appearance, clothing and gender, sexuality and home.

The protection against an attack on someone's reputation is limited to unlawful attacks. This means attacks that are intentional and based on untrue allegations.

The right not to have one's family interfered with protects the intimate relations which people have in their family which is indispensable for their personal actuation.

The internal limitations of lawfulness and arbitrariness apply equally to the right to family as to the right to privacy. 'Arbitrary' means capricious, unpredictable, unjust or unreasonable in the sense of not being proportionate to the legitimate aim sought. Non-arbitrariness and proportionality are different standards, but if the impact is proportionate under section 13 of the HR Act, it will not be arbitrary.

This right to privacy is limited by the amendments because electronic monitoring bail conditions allow for surveillance and recording of a youth's movements and whereabouts. They are also an imposition on the physical bodily integrity of a youth because of the attachment of the device.

- *Right of children to protection in their best interest (section 26(2))*

These rights reflect that children are more vulnerable because of their age and are entitled to special protections. 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.

The content of the best interests of the child is informed by the Convention on the Rights of the Child (UNCRC) and the United Nations Standard Minimum Rules for the Administration of Justice (the Beijing Rules).

Relevantly, the UNCRC provides that:

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

The Beijing Rules provide that:

- the reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society (rule 17.1(a));
- deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of

- persistence in committing other serious offences and unless there is no other appropriate response (rule 17.1(c)); and
- the well-being of the juvenile shall be the guiding factor in the consideration of her or his case (rule 17.1(d)).

While neither the UNCRC nor the Beijing Rules explicitly address electronic monitoring, their principles suggest that such measures may be permissible if they respect the child's rights, and are implemented in a way that prioritises the child's best interests.

This right may be limited because electronic monitoring is an onerous bail condition that may be ordered because of a prioritisation of community safety over the individual best interests of the child.

- *Right to Aboriginal and Torres Strait Islander people to develop and maintain kinship ties (section 25(a) and section 28(2)(c))*

This right recognises that Indigenous children are born into a world of kin which is so vast they will probably be meeting new kin when they are old men and women. For an Aboriginal child, this network will become one of the two key ways in which their identity as a person is constructed. The other is through relations to country. Both are able to link the child to its ancestors and thus, by implication, to its descendants. Harm to kinship ties may lead to a loss of knowledge, a loss of identity with one's own kin and country, and loss of emotional, physical and social support.

According to the independent evaluation young people with First Nations status may require additional support to succeed with electronic monitoring devices, given lower completion rates and smaller reductions in reoffending.

The evaluation also said that views on cultural safety were mixed. Some stakeholders felt First Nations young people may be excluded due to suitability criteria, and participation rates were lower amongst First Nations young people. Conversely, others noted electronic monitoring devices can support connection to family and community by avoiding remand. Given this, to the extent that the former view is correct, there is a potential limitation of this right. To the extent that the latter view is correct, this human right is promoted.

- *Right to education (section 36)*

The right to education is modelled upon article 13 of the *International Covenant on Economic, Social and Cultural Rights*. It requires that functioning educational institutions and programmes be made available in sufficient quantity, and that these educational institutions and programmes be accessible to everyone, without discrimination. The value underlying the right to education is empowerment, in the sense of empowering the realisation of other human rights, empowering social mobility, empowering full participation in the community, and empowering the full enjoyment of human existence.

A child who leaves school to avoid bullying and stigmatisation from wearing an electronic monitoring device misses the opportunity to be empowered by education. There is at least one example, in the 2022 final report *Youth Justice Reforms*, by Bob Atkinson, of a Queensland child subject to an electronic monitoring condition on bail who 'refused an education enrolment

due to concerns about bullying and stigmatisation'. Some stakeholders also raised concerns in the most recent evaluation of these provisions suggested that electronic monitoring device stigma might limit pro-social participation in education.

- *The right to liberty and security of person (section 29(1))*

This right 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.

This right is limited to the extent that electronic monitoring constitutes supervision of youths.

- (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 purpose of the limitation

The purpose of the amendments is to lower rates of offending of children while on bail and keep the Queensland community safe.

Seeking to prevent or reduce crime is a proper purpose consistent with the values of society.

- (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

In light of the findings of the independent evaluation it is considered that there is a rational connection between the limitations on human rights as set out above and achieving this purpose.

The independent evaluation has shown that electronic monitoring conditions were associated with high bail completion (not having bail revoked), reduced reoffending, lower victimisation (less offences involving victims whilst on bail) and reduced time in custody.

These findings varied between young people with different demographics and characteristics, but overall, the independent evaluation provides evidence of the effectiveness of electronic monitoring. On that basis there is a rational connection between the limitations imposed by the amendments, and their purpose.

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

There are some existing safeguards of human rights that will be retained. 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. Human rights are explicitly relevant to this consideration. Furthermore, an electronic monitoring device condition may only be

imposed if the youth justice chief executive advises the court that all of the following services are available in the area in which the child lives:

- services necessary to support the effective operation of a monitoring device;
- services suitable to support the child's compliance with the condition;
- services suitable to support the monitoring of the child.

An alternative to opening up the eligibility criteria for electronic monitoring would be providing additional supports to children on bail. This alternative alone would not reduce offending. Instead, it is proposed that supports be provided alongside electronic monitoring.

Another alternative is to confine the availability of electronic monitoring to charges for more serious offences. This alternative would not be as effective in achieving the purposes of reducing offending rates and keeping the community safe, because it would confine electronic monitoring to a smaller cohort of offenders.

Accordingly, there are no less restrictive alternatives which would be as effective in achieving the purpose of reducing offending and keeping the community safe.

Limiting human rights by making electronic monitoring for children on bail permanent and statewide is therefore necessary to achieve this purpose.

(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

The decision to make electronic monitoring statewide, permanent and remove eligibility criteria means an increased number of children will be potentially subject to electronic monitoring devices. This means there will be a wider and deeper impact on human rights.

Some existing safeguards are retained including that the court must determine that an electronic monitoring device is appropriate in the circumstances, and the condition may only be imposed if the youth justice chief executive advises that the child lives in an area where services to support it are available.

The human rights of the child and others will also be relevant to the question of whether the condition is appropriate in the circumstances.

Keeping the community safe by reducing offending on bail by children is an important and proper purpose. The independent evaluation contains evidence that electronic monitoring is effective in achieving this purpose.

Further, victims of crime also have human rights which must be respected, including the right to property (section 24) and the right to security of the person (section 29(1)).

The right that is most deeply limited by the proposed amendments is the best interests of the child. As set out above, while neither the UNCRC nor the Beijing Rules explicitly address electronic monitoring, their principles suggest that such measures may be permissible if they respect the child's rights, and are implemented in a way that prioritises the child's best interests. On balance, the limitation on this right is justified because of the importance of the purpose of

the amendments to lower rates of offending of children while on bail and keep the Queensland community safe.

Weighing these various factors, it is considered that the limitation on human rights is justified, and the amendments are compatible with human rights.

(f) any other relevant factors

Not applicable.

Conclusion

In my opinion, the Youth Justice (Electronic Monitoring) Amendment 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

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