

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

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* (HR Act), I, Deb Frecklington MP, Attorney-General and Minister for Justice and Minister for Integrity, make this statement of compatibility with respect to the Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026 (the Bill).

In my opinion, part of the Bill is compatible with the rights protected by the HR Act for the reasons outlined in this statement. In my further opinion, part of the Bill is not compatible with the human rights protected by the HR Act. The nature and extent of the incompatibility is outlined in this statement.

Overview of the Bill

The primary objective of the Bill is to strengthen community safety by establishing clear, mandatory legislative consequences for offenders who commit serious additional offences while on bail. The Bill will address community concerns that bail laws do not adequately hold perpetrators to account by strengthening the legislative framework to address serious repeat offending that occurs whilst on bail.

To implement this, the Bill does the following:

- imposes a higher threshold for granting bail to certain youths and adults;
- creates a new offence of committing particular offences while on bail, unlawfully at large or failing to appear; and
- removes the requirement for police to consider diversionary options before commencing proceedings against youth for all types of offending.

Both the new offence and new bail threshold apply to youths who commit, or are charged with, what is known as an Adult Crime, Adult Time offence, and which the Bill refers to as a 'significant offence' and is defined as an offence listed in section 175A of the *Youth Justice Act 1992* (Youth Justice Act).

For adults, the new offence and new bail threshold apply to adults who commit, or are charged with a 'prescribed offence'. For the purposes of the Bill prescribed offences are set out at new Schedule 1 of the *Bail Act 1980* (Bail Act) and include the same offences as youths as well as additional serious offences committed by adults (including coercive control and various child sex offences).

Human Rights Issues

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 of the HR Act)

Offence to commit particular offences while on bail, unlawfully at large, or failing to appear

The Bill creates a new offence for a defendant, while on bail, unlawfully at large or failing to appear for any offence, to commit a prescribed offence (for adults) or an Adult Crime, Adult Time offence (for youths). This new offence is subject to a minimum penalty of 1 year's imprisonment, to be served wholly in a corrective services facility or youth detention centre, with a maximum penalty of three years imprisonment. The new offence, and penalties, will apply to adults under the Bail Act and youth offenders through the Adult Crime, Adult Time framework in the YJ Act by way of inclusion in section 175A of the YJ Act.

The amendments limit the right to liberty in section 29(1) of the HR Act. The amendments increase the likelihood that a person convicted of the new offence will be deprived of their liberty and require a court to impose a period of imprisonment, irrespective of the particular circumstances of the offender or the offending. The amendments also limit the rights of children to protection in their best interests in section 26(2) of the HR Act because the mandatory minimum sentence applies equally to children and prevents consideration of whether a lesser sentence may be sufficient in the circumstances of the particular child.

In my view, the amendments do not limit the right not to be punished more than once for an offence in section 34 of the HR Act, despite displacing section 16 of the Criminal Code. While liability for the new offence depends upon the commission of a prescribed offence (for adults) or an Adult Crime, Adult Time offence (for youths) while on bail, unlawfully at large or failing to appear, the new offence is legally distinct, with the additional element of the offender being on bail, unlawfully at large or failing to appear. A person convicted of the new offence is therefore not tried or punished twice for the same offence, but is liable for separate offending consisting of the breach of the obligations associated with their release on bail or appearing in accordance with a summons or Notice to Appear.

The purpose of the amendments is to deter repeat offending while on bail, promote compliance with bail orders, protect the community and victims from serious offending and ensure that persons who commit additional serious offences while on bail, unlawfully at large or failing to appear are appropriately held accountable for that conduct. These are important and legitimate purposes. Committing a prescribed offence (for adults) or an Adult Crime, Adult Time offence (for youths) while on bail, unlawfully at large or failing to appear demonstrates a disregard for the authority of the court and must be appropriately denounced. The amendments are intended to reflect the seriousness of that conduct and to reinforce the expectation that persons granted bail will comply with the law while released. Defendants who offend while unlawfully at large with respect to bail or after failing to appear in accordance with a summons or notice to appear are also captured to make sure these defendants are not in a better position than defendants who are subject to bail or attend court and may be released on bail.

The amendments are rationally connected to those purposes. The prospect of a mandatory custodial sentence is capable of promoting deterrence and denunciation and reinforcing the consequences of committing further serious offending while on bail. The amendments are also directed towards protecting the community from the risk of further offending by persons who have already demonstrated a willingness to offend while on bail.

The mandatory minimum sentence removes the court's ability to determine whether a lesser sentence would be sufficient to achieve the purposes of punishment, denunciation, deterrence and community protection in a particular case. While a sentencing court retains a role in determining the sentence beyond the mandatory minimum period, the amendments require imprisonment of at least 1 year, regardless of the circumstances of the offender or the offending.

It is also acknowledged that the requirement for adults and youths to serve a minimum period of 1 year in a corrective services facility or youth detention centre will affect the current capacity of those facilities. As a result, it is likely this will impact the conditions of detention engaging the right to humane treatment when deprived of liberty (section 30(1) of the HR Act). In limited circumstances, where capacity pressures give rise to more acute impacts on detention conditions, the amendments may also engage the right to protection from cruel, inhuman or degrading treatment (section 17(b) of the HR Act).

Accordingly, I acknowledge that the new offence is incompatible with the rights identified. An override provision has been included which declares the new offence has effect despite this incompatibility, and despite anything else in the HR Act.

To the extent that the new offence applies to children, the offence operates within the Adult Crime, Adult Time framework established by section 175A of the YJ Act, which is already subject to an override declaration. The existing override declaration will apply in relation to the operation of the mandatory minimum sentence, noting its incompatibility with human rights.

High degree of confidence test

As noted previously, the Bill is focused on deterring serious offending while a defendant is on bail. To achieve this, the Bill introduces a new high degree of confidence test which will require the relevant youth or adult to be refused bail unless the court or a police officer is satisfied to a high degree of confidence that they will not commit an Adult Crime, Adult Time offence (for youths) or a prescribed offence (for adults) while on bail. The amendments also apply if the relevant offence is committed after failing to appear or while unlawfully at large after bail has been revoked.

The amendments limit the right to liberty (section 29 of the HR Act), including the right under section 29(6) that persons awaiting trial should not automatically be detained in custody. By introducing a requirement that bail be refused unless a court or police officer is satisfied to a high degree of confidence that a person will not commit a further prescribed offence (for adults) or an Adult Crime, Adult Time offence (for youths) while on bail, the amendments increase the likelihood that both adults and children who are subject to the new threshold will be denied bail and detained pending the final determination of criminal proceedings. It is noted that the Bill does not prevent the person from testing the evidence before the court.

The amendments also limit the practical enjoyment of the presumption of innocence in section 32(1) of the HR Act because they apply to persons who have been charged, but not convicted, of an offence and increase the likelihood that those persons will remain in custody before conviction.

As the new threshold will also apply to children, the amendments are inconsistent with the best interests of the child under section 26(2) of the HR Act. The application of the high degree of confidence test to children limits the right under section 32(3) of the HR Act for a child charged with a criminal offence to procedures that takes account of the child's age and the desirability of rehabilitation, as neither of these factors form part of the consideration under the test.

For the same reasons identified above, impacts on the capacity of custodial facilities and conditions therein may engage the right to humane treatment when deprived of liberty (section 30(1) of the HR Act) and the protection from inhuman or degrading treatment (section 17(b) of the HR Act).

The amendments pursue a legitimate and important objective of protecting the community from serious, repeated offending committed while offenders are on bail and which significantly impacts the community and victims; and reducing the risk of further harm occurring pending the final determination of criminal proceedings. However, when considered together with the existing show cause and unacceptable risk requirements, the introduction of the additional high degree of confidence test creates a significantly more restrictive bail regime for a defined cohort of offenders who have allegedly committed serious offences while on bail and substantially increases the likelihood of pre-trial detention.

Accordingly, I acknowledge that the new threshold is therefore incompatible with the rights identified.

The Government considers that exceptional circumstances exist, namely the prevalence of serious repeat offending committed while on bail and the significant harm caused to victims and the broader community by that offending. The Government therefore considers it necessary that the operation of the amendments be supported by an override declaration to enable the reforms to achieve their intended community safety objectives from instances of repeated serious offending notwithstanding their incompatibility with human rights.

Re-enactment of override and exemption provisions in the YJ Act and introduction of new exemptions in *Police Powers and Responsibilities Act 2000*

Pursuant to section 46(1) of the HR Act, the Bill re-enacts for a further five years, the override declarations currently applying to sections 56, 210, 262 and 262A of the YJ Act. The Bill also continues the associated provisions in sections 262(5) and 262A of the YJ Act concerning the disapplication of section 58 of the HR Act.

The Bill also inserts new section 639AA of the *Police Powers and Responsibilities Act 2000* (PPRA) which provides that section 58 of the HR Act does not apply to acts and decisions reasonably necessary for the administration of the 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 under section 640 of the PPRA.

New section 639AA of the PPRA will include an override declaration, and for this reason the existing override declaration found within section 640 of the PPRA will be omitted upon new section 639AA commencing. This provision will operate for five years.

The Government is continuing to deliver its plan to make Queensland safer by expanding its Adult Crime, Adult Time approach to the youth and adult bail frameworks. The reforms are intended to ensure that persons who commit serious offences while on bail face stronger consequences and that persons who present an unacceptable risk to community safety are appropriately detained.

It is anticipated that these reforms will increase the number of children and adults held on remand or otherwise detained in youth detention centres or police watch-houses.

Increased detention in police watch-houses may affect decisions concerning the placement, classification, transfer and separation of detainees, movements within and between facilities, staffing and security arrangements, as well as access to health, rehabilitation, education and other services. These pressures can change quickly and require operational decisions to be made promptly in the interests of the good order and security of watch-houses, including the safety of detainees and staff, as well as the community.

The existing provisions in the YJ Act provide flexibility to safely determine which children cannot immediately be accommodated in a youth detention centre and to respond to exceptional pressures on capacity in youth detention centres.

Similar considerations arise in police watch-houses. The anticipated increase in the remand population will require the Queensland Police Service (QPS) to manage an increased prisoner population. QPS must be able to make operational decisions directed to the security and good order of watch-houses, the safe custody and welfare of prisoners, and the safety of police officers and others within watch-houses.

This new provision in the PPRA is modelled on section 262A of the YJ Act and is intended to provide an equivalent statutory disapplication of section 58 of the HR Act for acts and decisions relating to persons detained in watch-houses.

This will provide legal and operational certainty for QPS. It will ensure that QPS can make decisions necessary for the good order and security of those watch-houses without individual decisions being rendered unlawful because of the obligations in section 58 of the HR Act.

I acknowledge that section 58 provides an important mechanism for protecting human rights in executive decision-making and that its disapplication represents a significant departure from the ordinary operation of the HR Act. It is noted that the disapplication of section 58 in this context does not remove the substantive protections and safeguards otherwise applying under the PPRA or other laws regulating the treatment of prisoners as well as Australia's obligations under international law.

I consider that, applying different human rights obligations across the YJ Act and PPRA could result in inconsistent decision-making and increase uncertainty.

For this reason, despite being incompatible with human rights, it is necessary to extend the existing override provisions and introduce a consistent exemption for all watch-houses in Queensland.

Removal of requirement to consider diversionary options for youths

(a) the nature of the right

The right of the child to protection in the child's best interests (section 26(2) of the HR Act) is limited as the removal of the mandatory consideration of diversion for child defendants for any offence may result in youth having earlier interactions with the youth justice system. It is noted, however, that there is still a discretion for diversionary options for 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 amendments is to improve community safety by removing a mandatory requirement to consider diversionary options so that police may be more likely to exercise their discretion to commence proceedings against a youth, where appropriate. The amendments are intended to promote operational clarity and respond to instances where youth alleged to have committed offences of a serious nature have been dealt with under section 11 of the YJ Act, such as by issuing a caution.

(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 limitation helps to achieve the purposes of delivering community safety and making Queensland safer. Removing the mandatory requirement to consider diversion gives police greater discretion to commence proceedings where the circumstances of the alleged offending warrant a formal response.

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

Alternatives which were considered include additional training and education for police officers to ensure that they maintain the appropriate balance of commencing proceedings against youth offenders and taking action under section 11 of the YJ Act. Similarly, the QPS Operational Procedures Manual could be expanded or supplemented with external sources to provide clarity to police officers on situations where it is appropriate to commence proceedings against youth.

However, these alternatives would not be as effective as the amendments. I consider the amendments are likely to be more effective in achieving the policy intent of promoting community safety, as they remove the legal requirement for police officers to consider alternatives to commencing proceedings for all offences. The amendments may encourage police officers to commence proceedings for serious offences by removing concerns about contravening section 11. Also, they do not rely solely on the delivery of additional training and ensures that any additional training that is provided unambiguously reflects the statutory requirements.

Importantly, the proposal would not remove the ability of police officers to take any of the diversionary actions listed under section 11.

- (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 scope of the amendments is limited in that it does not remove the availability of diversion for children. Rather, it removes the mandatory requirement for police to consider diversion before commencing proceedings and permits police officers to exercise discretion as to whether diversion is appropriate.

Importantly, the amendments do not mandate prosecution or prevent police from diverting matters where appropriate. Having regard to the objective of ensuring that offending is dealt with appropriately, I consider that the benefit sought to be achieved by the amendments outweighs the resulting limitation on human rights.

- (f) any other relevant factors

Not applicable.

Conclusion

In my opinion, part of the Bill is not compatible with the human rights protected by the HR Act for the reasons set out above.

In my further opinion, the remainder of the Bill is compatible with protected human rights because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom and to make Queensland safer and deter repeated serious offending.

Deb Frecklington MP
Attorney-General and Minister for Justice and
Minister for Integrity

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

Statement about exceptional circumstances

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

In accordance with section 44 of the *Human Rights Act 2019* (HR Act), I, Deb Frecklington MP, Attorney-General and Minister for Justice and Minister for Integrity, make this statement about exceptional circumstances with respect to the Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026 (the Bill).

In the Bill, the following provisions include subsections which provides that the HR Act does not apply:

- new section 29AA of the *Bail Act 1980* (Bail Act) which inserts a new offence of committing particular offences while on bail, unlawfully at large or failing to appear;
- new section 16AA of the Bail Act and new section 48AG of the *Youth Justice Act 1992* (YJ Act) which introduce a high degree of confidence test for certain grants of bail;
- new section 639AA of the *Police Powers and Responsibilities Act 2000* (PPRA) which creates an exemption from section 58 of the HR Act for the management of watch-houses;
- amended sections 56, 210, 262 and 262A of the YJ Act which remake existing override provisions.

The Government accepts that these new provisions are incompatible with human rights and therefore the HR Act is being overridden and its application is entirely excluded.

This exceptional step has been taken 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. It is the Government's view that this constitutes an exceptional circumstance constituting a threat to public safety.

In addition, the Government considers that victims of crime are entitled to have their rights, safety and interests prioritised, before the rights of repeat offenders.

As a result of these strong reforms, it is necessary to remake existing override provisions and exemptions in the YJ Act, and to introduce a new exemption in the PPRA to ensure acts and decisions which are reasonably necessary for the administration of the PPRA that relate to a person in custody in a watch-house or the transfer of a person in custody in a watch-house are exempted from section 58 of the HR Act. These amendments arise out of the same exceptional circumstances which have necessitated the reforms in the Bill, namely the prevalence of serious repeat offending committed while on bail.

The above provisions are intended to serve as the override declaration envisaged by sections 43 and 45 of the HR Act. It makes clear that the HR Act has no application to these provisions, and a body performing functions or exercising powers under these provisions is not a public

entity within the meaning of the HR Act in respect of its performance of those functions or exercise of those powers.

Deb Frecklington MP

Attorney-General and Minister for Justice and
Minister for Integrity

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