

26 May 2022

Our ref: BDS:ChLC

The Honourable Leanne Linard MP
Minister for Children and Youth Justice and Minister for Multicultural Affairs
Locked Bag 3405
BRISBANE QLD 4001

By email: 

Dear Minister

Proposed amendments to the *Youth Justice Act 1992* regarding decisions to grant bail

We write in relation to the bail decisions affecting children and young people.

Our members have reported a significant increase in police seeking to review bail decisions of Childrens Court Magistrates in the Supreme Court pursuant to the section 19B(2) of the *Bail Act 1980*,¹ rather than seeking a revocation under section 59 of the *Youth Justice Act 1992* where the matter would be heard before a Judge of the Childrens Court of Queensland.

Since the amendments to the *Youth Justice Act 1992* in 2021 and the subsequent appointment of sixteen "special Childrens Court prosecutors" to the Queensland Police Service, Judges of the Supreme Court have observed a significant increase in applications to that court pertaining to children under section 19B(2) of the *Bail Act 1980*. Supreme Court Judges express a lack of familiarity with the *Youth Justice Act 1992*, as the only offences referred to the Supreme Court for children are those that are unable to be heard in the Childrens Court of Queensland. Those matters are charges that adults cannot have determined in the District Court; for children, these are generally murder, manslaughter, and drug trafficking matters, and their occurrence is exceptional. Consequently, the number of young people who appear in the Supreme Court has traditionally been about 0.1% of children in the youth justice court system, with the Childrens Court of Queensland dealing with approximately 10%.² The desirability of a Judge with specialist knowledge of children resolving children's matters is well established.

¹ See, eg, *Re JRP* [2022] QSC 33; *Re JTL* [2021] QSC 211.

² Childrens Court of Queensland, Annual Report 2019 - 20.

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We understand the Department of Children, Youth Justice and Multicultural Affairs is currently in the process of advancing amendments to the *Youth Justice Act 1992* to clarify the operation of section 59.

Section 59 of the *Youth Justice Act 1992* provides:

- (1) Subject to this part, a Childrens Court judge may—
 - (a) grant bail to a child held in custody on a charge of an offence; or
 - (b) enlarge, vary or revoke bail granted to a child in, or in connection with, a criminal proceeding within the meaning of the *Bail Act 1980*;
whether or not the child has appeared before the Childrens Court judge in, or in connection with, the offence or criminal proceeding.
- (2) Subsection (1)(a) applies even if the child has previously been refused bail by the Childrens Court.
- (3) Despite the *Bail Act 1980*, section 13(1), a Childrens Court judge may grant bail to a child in relation to whom that section applies.
- (4) This section does not limit the power a court or person ordinarily has to grant, enlarge, vary or revoke bail.

In our view, and the view of Youth Justice Services and Legal Aid Queensland, section 59 of the *Youth Justice Act 1992* can be relied upon in certain circumstances to bring an application in the Childrens Court of Queensland to enlarge, vary or revoke a grant of bail. However, we have been advised by the former Chief Justice and the Childrens Court Committee (chaired by the President of the Childrens Court of Queensland) that the Queensland Police Service has received legal advice suggesting that section 59 cannot be used to bring an application in the Childrens Court of Queensland to review a decision of the Childrens Court to grant bail. Consequently, the Queensland Police Service has brought a number of applications under section 19B(2) of the *Bail Act 1980* to the Supreme Court, which does not use the specialist jurisdiction of the Childrens Court of Queensland to seek to revoke bail.

This is of particular concern to the Queensland Law Society and our members, because bail applications involving young offenders are not being resolved in the specialist jurisdiction of the Childrens Court of Queensland. It is preferable for matters involving young offenders to be resolved in a specialised court, such as the Childrens Court of Queensland, where the judiciary are familiar with youth justice issues and the operation of the *Youth Justice Act 1992*.

As noted above, Judges of the Supreme Court have expressed a lack of familiarity with the *Youth Justice Act 1992*. Bringing matters in the Supreme Court inevitably requires additional formality and resources in a jurisdiction that relies on public funding. Given this, it is our view that conducting these types of matters in the Childrens Court of Queensland will increase the

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accessibility of legal services, whilst also alleviating the additional workload for the Supreme Court.

We also note that an independent Magistrate grants bail after careful consideration of the individual circumstances of the alleged offence and the child or young person. We are concerned that, as a result of greater resources to police prosecutions, more attempts are being made to revoke bail to young people who have been granted bail by a Magistrate. This concern is heightened where there does not appear to be any commensurate increase in legal services funding to organisations that support and act on behalf of these young people who may need to resist an attempt to have their bail revoked. This needs to be urgently addressed. It must be remembered that the right to apply for bail stems from the presumption of innocence which underpins our entire criminal justice system and is a right which this government committed to protect.³

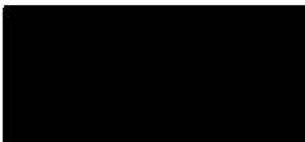
To clarify the operation of section 59 and to remove any doubt of the jurisdiction of the Childrens Court of Queensland, we propose the following amendment to section 59(2) of the *Youth Justice Act 1992* be enacted:

- (2) Subsection (1)(a) applies even if the child has previously been refused or granted bail by the Childrens Court.

We would be happy to meet with you to discuss these matters further.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on (07) 3842 5930.

Yours faithfully



Kara Thomson
President

³ See, eg, *Human Rights Act 2019* (Qld) s 32(1).