

Submission to Standing Committee on Legislation's Inquiry into the Criminal Code Amendment (Post and Boast Offence) Bill 2025

4 September 2025

The Western Australian Council of Social Service Inc. (WACOSS) welcomes the opportunity to make a submission to the Standing Committee on Legislation on the Criminal Code Amendment (Post and Boast Offence) Bill 2025.

WACOSS is the peak body for the community services sector in Western Australia and works to create an inclusive, just, and equitable society. We advocate for social and economic change to improve the safety and wellbeing of Western Australians. WACOSS is part of a network consisting of National, State and Territory Councils of Social Service, who advance the interests of people on low incomes and those made vulnerable by the systems that have been put in place.

Recommendations

- **Remove Chapter IX from the list of relevant offences under s221H**
 - Unlawful assembly, trespass and disorderly behaviour in public should be excluded as a priority.
- **Include dissemination of material for the purpose of political advocacy, industrial action or protest, that does not depict an offence against Chapter XI and 11A, as a defence under s221J**
- **Narrow the definition of 'dissemination'**
 - Limit the definition to making material available to the public.
- **Require a charge (preferably proven) for the underlying offence before the 'post and boast' offence can be prosecuted**
- **Require alternatives to incarceration be considered in sentencing, and exclude detention for people under 18**
 - Restorative justice and diversionary programs are more effective than punitive approaches in reducing reoffending and promoting accountability.
- **Set up independent monitoring**
 - By the Ombudsman (or equivalent body) with annual public reporting, disaggregated by age, Aboriginality, region, offence type and policing district.
- **Invest in effective prevention supports for young people**
 - Diversion, restorative, therapeutic, educational and community-based responses
 - Preventative resourcing such as investment in education and awareness programs, to help young people understand the impact of their online behaviour and avoid glorifying harm.
 - Disability and cognitive screening, early intervention, family support, youth diversion, and culturally-led programs in highly impacted communities.

WACOSS also endorses the recommendations submitted by Social Reinvestment WA to this inquiry.

Submission detail

WACOSS appreciates the opportunity to make a submission to this Committee however we are disappointed that the process that not been open publicly. Several organisations that we work with would have liked to submit their feedback on the Bill but have not been afforded the opportunity.

The Criminal Code Amendment (Post and Boast) Bill 2025 ('the Bill') proposes a new offence of 'disseminating material about particular offending conduct' for the purpose of boasting or glorifying the conduct, or encouraging others to engage in similar conduct. This proposed offence is punishable by three years' imprisonment. While the stated aim of the Bill is to prevent 'performance crime', there is little evidence the Bill will work as intended. Rather, the scope and application of the Bill raises serious concerns about its impact on democratic freedoms and the over-criminalisation on Aboriginal young people.

This submission focus on three key issues:

- The chilling effect on protest and public advocacy.
- The disproportionate impact on Aboriginal children and young people.
- The proportionality of the Bill.

Chilling Effect on Protest and Advocacy

The Bill risks restricting the ability of people, communities and organisations to engage in public advocacy, due to a real or perceived threat of charge of the proposed new offence.

The Bill's scope is unreasonably wide – both in its definition of 'dissemination' (section 221G), and the scope of relevant offences (section 221H). The proposed definition of 'dissemination' goes beyond publicly sharing an image or video. It would capture someone privately messaging content to a friend or colleague, or uploading content to a shared cloud storage platform. The list of relevant offences goes well beyond the offences included in equivalent laws in other jurisdictions by including unlawful assembly, trespass and disorderly behaviour in public. Under the Bill, West Australians could face prosecution for sharing images of protests with vigorous chanting or yelling, protesting that cause work to stop, or protests aimed at people going in or out of a public place. These are common features of peaceful protests.

We acknowledge assurances from the State Government that this Bill is not intended to impinge on the right to lawfully protest. Realistically, the wide scope of the Bill risks instilling fear and uncertainty for those engaging in public advocacy in good faith, resulting in a chilling effect on public protest. The Bill creates an onus on individuals to assess whether the content they are sharing depicts unlawful behaviour, even if the behaviour depicted has not resulted in a criminal charge (section 221I(4)). In instances of protest, this is an unreasonable and unfair expectation. In effect, the only way people and organisations can ensure they do not breach this proposed law, will be to not share any content – eroding participation in, and awareness of public advocacy.

Over-criminalisation of Aboriginal young people

The Bill is likely to disproportionately impact young Aboriginal people, drawing more children into the criminal justice system and causing significant harm. The framing of the Bill indicates it is a

reaction to concerns about the behaviour of young people, particularly in remote Aboriginal communities. Similar laws in NSW and Queensland have largely been used to charge children.¹ Most charges lodged in the Children’s Court of WA are against young Aboriginal people², and most children in detention are Aboriginal.³ The broad application of the proposed offence is likely to widen the net of the criminal justice system – for example, young people who may impulsively share a photo with a friend may be drawn into the criminal justice system for the first time.

There is no evidence that the Bill will effectively deter offending amongst young people, nor will incarceration improve community safety. Children’s brains are not sufficiently developed to enable them to understand long term consequences for their actions or risk-taking behaviour. Roughly nine out of ten children incarcerated have severe neurodevelopmental impairment – impacting their ability to relate cause and effect, or causing problems with their cognition, attention, social skills and adaptive behaviour.³ Evidence has demonstrated that severe punishment does not work as a deterrent for children or teenagers.⁴ Additionally, incarceration for young people has been shown to increase, rather than reduce, the risk of re-offending.⁵

WA has committed to Closing the Gap. This Bill will work against the aims of Closing the Gap, and is unlikely to improve community safety.

Proportionality of the Bill

In the Second Reading Speech, the State Government acknowledged that “*while there have been cases of content depicting illegal conduct being posted online in Western Australia, there is limited evidence that the issue is rife*”.⁶ This raises real concerns about the proportionality of the proposed offence. The Bill introduces a sweeping new criminal offence attracting a sentence of three year’s imprisonment; risks chilling West Australians’ engagement in democracy; and is likely to send more young Aboriginal West Australians to prison – despite the absence of a demonstrated, widespread problem.

The Second Reading Speech seeks to justify this by stating “*The government wants to keep it that way and send a strong message to the community that this conduct will not be tolerated*”.⁷ The Bill sets out a significant sentence of three years’ imprisonment, harsher than penalties imposed in other jurisdictions for equivalent offences. The assumption that harsher criminal penalties deter offending and make our community safer is not supported by evidence. Data from the NSW Bureau

¹ Nine News (19 March 2025), [High-visibility youth-crime operations to target NSW towns and social media boasting](#).

Nine News (7 February 2024), [Almost 150 Queensland youths charged with ‘boasting’ about crimes online](#).

² Western Australian Office of Crime Statistics and Research, [Report on Criminal Cases in the Children’s Court of Western Australia 2018-2019 to 2022-23](#).

Western Australian Office of Crime Statistics and Research, [Report on Indigenous Defendants in the Children’s Court of Western Australia 2018-2019 to 2022-23](#).

³ Office of the Inspector of Custodial Services (October 2024), [Australia’s Youth Justice and Incarceration System](#).

⁴ Ibid.

⁵ Ibid.

⁶ Hon. Dan Caddy, [Second Reading Speech](#), Criminal Code Amendment (Post and Boast) Bill 2025.

⁷ Ibid.

of Crime Statistics and Research demonstrates that incarceration does not deter offending and can increase the risk of offending.⁸ Indeed, there is no evidence that similar legislation in other jurisdictions has impacted 'performance crime'.

This Bill may result in the bizarre outcome of a West Australian imprisoned for three years for sharing imagery, while the behaviour depicted in said imagery never results in a charge, let alone conviction. Even where the behaviour portrayed does result in prosecution, the act of sharing the material may attract a harsher penalty than the depicted action.

The Bill risks suppressing the democratic right to protest, and further entrenching disadvantage for young Aboriginal people. Effective deterrence requires targeted, proportionate responses and investment in upstream supports, not broad punitive laws.

Yours sincerely,



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⁸ NSW Bureau of Crime Statistics and Research (August 2010), [The effect of prison on adult re-offending](#).
SBS News (21 September 2010), [Prison 'doesn't deter criminals'](#).