AUSTRALIAN LAWYERS FOR HUMAN RIGHTS

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Committee Secretary
Legal Affairs and Community Safety Committee
Parliament House
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Dear Committee Secretary

## Submission on the Youth Justice and Other Legislation Amendment Bill 2019

Australian Lawyers for Human Rights (**ALHR**) appreciates the opportunity to provide this submission to the Legal Affairs and Community Safety Committee in relation to the *Youth Justice and Other Legislation Amendment Bill 2019* (**the Bill**), which proposes to amend the *Youth Justice Act 1992* (Qld), the *Bail Act 1980* (Qld), and the *Police Powers and Responsibilities Act 2000* (Qld).

## Summary

ALHR welcomes the timely introduction of the Bill and its proposed amendments, which address some current challenges in the Queensland youth justice system. In particular, ALHR supports amendments aimed at:

- encouraging timely finalisation of legal proceedings involving young people;
- removing legislative barriers to ensure more young people are granted bail and fewer are remanded in custody.

These amendments reflect Queensland's international legal obligations regarding children and fundamental rule of law principles such as the presumption of innocence. ALHR joins with organisations like the Youth Advocacy Centre in acknowledging that the Department for Child Safety, Youth and Women, has been working towards early intervention strategies that might reduce the disadvantage which is the precursor to most offending.[1]

However, ALHR notes there are continuing deep systemic failures in Queensland's treatment of children and young people within criminal justice. As noted by the Queensland Law Society, "the detention and treatment of children and young people in Queensland runs contrary to the charter of youth justice principles in the *Youth Justice Act 1992* and the Queensland Police Service Operational

[1] Queensland Youth Advocacy Centre, Orange Paper #1 available at https://www.yac.net.au/wp-content/uploads/2019/04/YAC-Orange-Paper-on-Watch-houses-2019.pdf

Procedures Manual and Australia's obligations under international law and custom. We also note that the Queensland Parliament has recently passed the Human Rights Act 2019. Although this legislation is not yet in force, there is obviously an intention by the Queensland government to protect the rights of children in the criminal process."[2]

Unfortunately Queensland's youth justice system is frequently unsafe for children and too often fails to deliver on rehabilitative aims. It is the considered view of ALHR that aspects of Queensland's treatment of juveniles held in detention, are in breach of Australia's binding legal obligations under the:

1. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*[3];
2. *Convention on the Rights of the Child (**CRC**)*[4];
3. *UN Standard Minimum Rules for the Administration of Juvenile Justice (**the Beijing Rules**)*[5]*; and*
4. *UN Standard Minimum Rules for the Treatment of Prisoners (**the Nelson Mandela Rules**).*[6]

ALHR strongly urges the Queensland Government to urgently take the following steps to address systemic issues within its youth justice system and properly protect the rights of children in contact with the law pursuant to Australia's international legal obligations and global best practice:

1. Urgently take steps to legislate to increase the minimum age of criminal responsibility from 10 to 14 years of age, or at least 12 years of age, in line with international standards;
2. Ensure the availability of age appropriate, therapeutic, family strengthening and evidence based programs to prevent and address identifiable risk factors and anti-social behaviour for children between ten and 13 years of age; with priority for funding given to community controlled programs and services for Aboriginal and Torres Strait Islander children.[7]
3. Take steps to implement in Queensland all relevant recommendations of the Royal Commission into the Detention and Protection of Children in the Northern Territory[8];
4. Ensure respect for the principle that detention is a last resort for children. Where detention occurs, children should only be detained if 14 years of age or older and in purpose-built age-appropriate facilities with non-prison like environments, which are managed and staffed by specialists experienced and trained in dealing with children;
5. Further fund evidence-based diversionary and education programs to be rolled out in Queensland which recognise the principle that detention is a last resort for all children. These programs should provide youth offenders with targeted sustained support on a path to rehabilitation and reintegration into communities;
6. Consult with relevant departments and members of Aboriginal and Torres Strait Islander communities to consider development of culturally appropriate mechanisms, including diversionary programs and community owned strategies that address the underlying causes of offending by Aboriginal and Torres Strait Islander children and adopt evidence-based

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[2] Queensland Law Society Correspondence "Children and young people being detained in watch houses" dated 31 May 2019 file:///Users/Angus/Downloads/3828_-_Children_and_young_people_being_detained_in_watch_houses%20(1).pdf

[3] Signed by Australia on 10 Dec 1985 and ratified by Australia on 8 Aug 1989.

[4] Signed by Australia on 22 Aug 1990 and ratified by Australia on 17 Dec 1990

[5] Adopted by the United Nations General Assembly on 29 Nov 1985.

[6] Adopted by the United Nations General Assembly on 17 December 2015

[7] See Children's Report, Australia's NGO coalition report to the UNCRC recommendation 118 p68

[8] Royal Commission and Board Inquiry into the Protection and Detention of Children in the Northern Territory, 2017 available at https://www.royalcommission.gov.au/sites/default/files/2019-01/rcnt-royal-commission-nt-findings-and-recommendations.pdf

measures to reduce their very significant overrepresentation in Queensland's criminal justice system;

7. Complete the security upgrade at the Youth Detention Centres (**YDCs**) as a matter of urgency;
8. Take further specific immediate and urgent action to address the very serious violations of the human rights of children detained in Queensland watch houses, including ensuring that no no children under 14 years of age will be housed in watch houses and implementing measures to urgently ensure greater transparency and discussion with other stakeholders. ALHR acknowledges the Government's commitment to address this issue and endorses in full the recommended actions outlined by the Youth Advocacy Centre in its Orange Paper 1[9] and by the Queensland Law Society in its letter to the Minister for Child Safety, Youth and Women and the Minister for the Prevention of Domestic and Family Violence, dated 31 May 2019[10].
9. Commit to comprehensive child rights training for elected officials, senior decision makers across governments, members of the judiciary and other officials, with a focus on the guiding principles of the CRC and ensure all judicial officers hearing child related proceedings receive specialist training on children's cognitive development, adolescent behaviour, and communicating effectively with children appearing in court.

## Bail and reduction in unnecessary delays

Where children are concerned, presumptions against bail and the overuse of remand are inconsistent with the principle of detention as a last resort for juveniles and the overriding obligation to use the child's best interests as a guiding principle. Australia has adopted international obligations to honour these principles. The Convention on the Rights of the Child[11] (**CRC**) and the United Nations' Standard Minimum Rules for the Administration of Juvenile Justice[12] (**the Beijing Rules**) require that for juveniles, detention pending trial must only be used as a measure of last resort and for the shortest possible period of time. They also require that whenever possible, detention pending trial should be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.

ALHR notes that the Bill, if passed, will further Australia's compliance with its international legal obligations in respect of:

(A) Article 37 of the CRC which requires that:

…

*(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;*

*...*

*(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.*

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[9] Op. cit. at paragraphs 11 and 12 and
[10] Op. cit.
[11] Signed by Australia on 22 Aug 1990 and ratified by Australia on 17 Dec 1990
[12] Adopted by the United Nations General Assembly on 29 Nov 1985.

(B) The Beijing Rules which require that:

*13.1 Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.*

*20.1 Each case shall from the outset be handled expeditiously, without any unnecessary delay.*

(C) Australia also has obligations under the International Covenant of Civil and Political Rights (**ICCPR**), Article 9(3) of which stipulates that "*it shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial*..".

In accordance with Australia's human rights obligations set out in the CRC and the Beijing Rules, the Bill will assist to further entrench the principle of detention as a measure of last resort in Queensland.

ALHR therefore supports the Bill's amendment of section 48 of the *Youth Justice Act 1992* (Qld)[13] which will introduce an explicit presumption in favour of granting bail to children, with the presumption only rebutted where there is an unacceptable risk of the child not surrendering into custody in accordance with the conditions of the grant of bail, the child committing an offence or endangering the safety or welfare of a person, or the child obstructing the course of justice.[14] ALHR likewise welcomes the measures included in the proposed new section 48AA(5) of the *Youth Justice Act 1992* (Qld)[15] which will introduce protections of the presumption in favour of bail by requiring the relevant decision-maker to have regard to the child's age, maturity, cognitive capacity, health, and relationship with family, in circumstances where an unacceptable risk is found to exist.

ALHR welcomes the amendments to the extent that they will, in some circumstances, keep some vulnerable children out of custody, alleviating the adverse effects that these children might otherwise experience in detention. The measures are consistent with Australia's abovementioned international legal obligations pursuant to the CRC and the Beijing Rules' requirements that the detention of children occur only as a measure of last resort and is restricted to the shortest possible period of time. We note the measures are also consistent with the presumption of innocence; a basic principle of the rule of law.

However, ALHR notes that the Bill is not of itself is not a solution to the problem Queensland faces in respect of the unacceptably high numbers of children detained on remand. ALHR remains alarmed that more than 80% of children held in detention in Queensland are on remand. These children are entitled to the presumption of innocence and the statistics indicate that detention is not being used as a measure of last resort. Further, children on remand are being held in watch houses, by police without the necessary training and skills to deal with children in contravention of the CRC, the Beijing Rules, the ICCPR and the Nelson Mandela Rules..

Article 37(c) of the CRC requires that:

> *Every child deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain*

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[13] Clause 10 of the *Youth Justice and Other Legislation Amendment Bill 2019*.

[14] Section 48(4) of the *Youth Justice Act 1992* (Qld) to be introduced by clause 10 of the *Youth Justice and Other Legislation Amendment Bill 2019*.

[15] Clause 10 of the *Youth Justice and Other Legislation Amendment Bill 2019*.

*contact with his or her family through correspondence and visits, save in exceptional circumstances*[16]

ALHR urges the Queensland Government to take further specific immediate and urgent action to address the very serious violations of the human rights of children detained in Queensland watch houses, including ensuring that no children under 14 years of age will be housed in watch houses and implementing measures to urgently ensure greater transparency and discussion with other stakeholders.

ALHR endorses in full the recommended actions outlined by the Youth Advocacy Centre in its Orange Paper 1[17] and by the Queensland Law Society in its letter to the Minister for Child Safety, Youth and Women and the Minister for the Prevention of Domestic and Family Violence, dated 31 May 2019.[18]

Further, while welcoming the reforms in section 48 of the Youth Justice Act 1992 (Qld), ALHR urges the Queensland Government to urgently consider further policy and funding measures designed to address the systemic factors contributing to high numbers of unsentenced children in youth detention. Children should not be remanded in custody due to a lack of suitable and safe accommodation options. All too often children experiencing homelessness and housing instability are denied bail and remanded in custody. This is disproportionately the case for children living in regional, rural and remote areas, Aboriginal and Torres Strait Islander children, and children in out-of-home care.[19]

ALHR welcomes the proposed amendments to section 49 of the *Youth Justice Act 1992* (Qld), which, if passed, will require a child to be brought before the Children's Court within 24 hours of their arrest.[20] International law obliges Australia to ensure that legal proceedings involving children are conducted as quickly as possible and without any unnecessary delay.

## Body worn cameras

ALHR supports amendment of the *Youth Justice Act 1992* (Qld) to authorise the chief executive of detention centres to use, or authorise their employees to use, body worn cameras to record images or sounds in a detention centre.[21] However, our support for this amendment is predicated on the basis that the Queensland Government develop guidelines for the use of body work cameras, the detail of which will be made available to all stakeholders for comment, prior to proclamation of the relevant section. ALHR notes that this amendment is important in enabling the chief executive to ensure that there is transparency around the treatment of children in youth detention centres, as well as being consistent with section 263 of the *Youth Justice Act 1992* (Qld), which provides that "the chief executive is responsible for the security and management of detention centres and the safe custody and wellbeing of children detained in detention centres". However, ALHR notes that the provacy of children must be appropriately protected and respected. ALHR also encourages the Legal Affairs and Community Safety Committee to recommend the amendment of clause 5 of the Bill to place an additional obligation on the chief executive to retain all CCTV footage for at least 12 months, and to ensure that any footage is made available on a timely basis on lawful request of any government department or agency. This is in line with Recommendation 21.2 of the 2017 Royal Commission and

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[16] Op. cit.
[17] Op. cit. at paragraphs 11 and 12 and
[18] Op. cit.
[19] See Children's Report, Australia's NGO coalition report to the UNCRC page 71 and Law Council of Australia 2018, The Justice Project: Final Report–Part 1, Children and Young People, viewed 14 October 2018, <https://www. lawcouncil.asn.au/ les/web-pdf/Justice%20Project/Final%20Report/ Children%20and%20Young%20People%20%28Part%201%29.pdf>.
[20] Clause 13 of the *Youth Justice and Other Legislation Amendment Bill 2019*.
[21] Clause 5 of the *Youth Justice and Other Legislation Amendment Bill 2019*, introducing a new section 263A of the *Youth Justice Act 1992* (Qld).

Board Inquiry into the Protection and Detention of Children in the Northern Territory.[22]

## Access to legal representation

ALHR also strongly supports amendment of section 421 of the *Police Powers and Responsibilities Act 2000* (Qld), which requires a police officer to, as soon as reasonably practicable, notify or attempt to notify a legal aid organisation where it is sought to question a child in custody about an indictable offence. This requirement will protect the right of children deprived of their liberty to access prompt legal and other appropriate assistance, and the right to challenge the legality of their deprivation of liberty, consistent with Article 37(d) of the CRC.

## Terrorism provisions

ALHR urges the Legal Affairs and Community Safety Committee to recommend that provisions relating to a child's involvement in terrorism are removed from the Bill. These provisions include the proposed introduction of section 48AA(2) of the *Youth Justice Act 1992* (Qld) which requires a court or a police officer to, when making decisions about granting bail to a child or releasing that child from custody, have regard to any promotion of terrorism by the child or any association that the child has had with a terrorist organisation in the carrying out of a terrorist act or the promotion of terrorism. Whilst ALHR considers it appropriate that consideration should be had of the risks of children's association with terrorist groups, ALHR submits that this requirement for consideration in the context of determining whether a child should be released from custody is unwarranted and excessive. Limiting access to bail for minors charged with serious terrorism offences are inconsistent with Australia's international legal obligations under the CRC as they prevent judicial officers from having regard for the best interests of the child as a primary consideration. Concerns of this nature have been noted by the Independent National Security Legislation Monitor (INSLM) James Renwick, in his report The Prosecution and Sentencing of Children for Commonwealth Terrorism Offences.[23]

## Sentencing Provisions.

ALHR does not support clause 4 of the Bill which proposes to reform sentencing principles applicable to children such that in determining the appropriate sentence for a child convicted of the manslaughter of a child under 12 years, a court must treat the victim's defencelessness and vulnerability, having regard to the victim's age, as an aggravating factor. Again, ALHR submits that these measures interfere with judicial discretion and disproportionately impede application of the guiding principles of the CRC, particularly the best interests of the child as the primary consideration.

## Information sharing regime

ALHR supports the amendment of the *Youth Justice Act 1992* (Qld) to introduce an information sharing framework in which confidential information about children who have been charged with offences may be shared between relevant service providers,[24] for example between relevant government departments, education specialists, mental health practitioners and case workers who provide services to children. This is important to enable children to have the necessary support they need whilst being involved in the youth justice system, and to permit the necessary coordinated responses which are often required to provide for those complex needs. However, there must be sufficient protection of, and balance with the right to privacy of the child. ALHR acknowledges that the Bill in part addresses

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[22] Royal Commission and Board Inquiry into the Protection and Detention of Children in the Northern Territory, 2017, Findings and Recommendations, p. 38. <https://www.royalcommission.gov.au/sites/default/files/2019-01/rcnt-royal-commission-nt-findings-and-recommendations.pdf>

[23] https://www.inslm.gov.au/reviews-reports

[24] Clause 30 of the *Youth Justice and Other Legislation Amendment Bill 2019*, introducing a new section 297B of the *Youth Justice Act 1992* (Qld).

this balance through its requirement for the child's consent to be sought whenever possible and practical in the introduction of section 297C of the *Youth Justice Act 1992* (Qld) .

## The Bill and the 'Four Pillars' for youth justice reform

In 2018, the Queensland Government released the *Working Together Changing the Story: Youth Justice Strategy 2019-2023*, which adopted the 'Four Pillars' for youth justice reform recommended by Robert Atkinson AO in his *Report on Youth Justice*, being: intervene early; keep children out of court; keep children out of custody; and reduce reoffending.

Whilst ALHR agrees that the Bill will assist in ensuring that children's involvement in legal proceedings is expedited as well as ensure children are granted bail where possible, ALHR does not consider that these reforms go far enough to address other underlying issues in the Queensland youth justice system. Importantly the Bill also does not implement reforms which will assist with early intervention or that will reduce the risk of reoffending. The Bill also does not go far enough to keep children out of detention.

## Further reforms required by the Queensland Government

**1. The Queensland government should continue to adopt practices that respect the principle that detention is a last resort for children and ensure that in all juvenile criminal matters alternatives to detention are favoured. Where detention occurs, children should only be detained in purpose-built age-appropriate facilities with non-prison like environments, which are managed and staffed by specialists experienced and skilled in dealing with children.**

Over the last decade, disturbing mistreatment and human rights abuses have been revealed, of children involved in the Queensland youth justice system, including: mistreatment of youth held in adult prisons;[25] children as young as ten being held alongside adult criminals in maximum security facilities for weeks at a time;[26] mistreatment in detention of youth at risk of suicide[27] and most recently serious human rights violations experienced by children detained in Queensland watch houses.[28]

That 80% of children held in detention in Queensland are on remand, indicates that children in Australia are not being detained in youth detention facilities as a measure of last resort. ALHR remains deeply concerned that the Queensland Government has not taken necessary action to ensure that detention facilities for children are adequately resourced or essential safeguards implemented to ensure that children's rights are protected in detention. The documented mistreatment of children in detention facilities in Queensland evidence an unacceptable failure to afford these children treatment appropriate to their age and legal status.

Article 37(c) of the CRC requires that:

> *(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment...*
>
> *(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;*

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[25] https://www.abc.net.au/news/2016-08-30/images-show-17yo-in-spit-mask-at-brisbane-prison/7796936

[26] https://www.abc.net.au/4corners/inside-the-watch-house/11108448

[27] https://www.sbs.com.au/nitv/nitv-news/article/2017/04/26/queensland-government-criticised-silencing-young-prisoners-cover-report

[28] Op Cit and at https://www.yac.net.au/wp-content/uploads/2019/04/YAC-Orange-Paper-on-Watch-houses-2019.pdf

> *(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so...*

Article 26.3 of the Beijing Rules require that juveniles be detained in a separate institution or in a separate part of an institution also holding adults.

In March 2015, the United Nations Special Rapporteur on Torture, Juan Mendez, tabled a report outlining the current international benchmarks that are expected of countries when it comes to detaining children.[29] Juan Mendez, in interpreting and setting standards under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the context of Australia's youth detention policies said:

> *"…Australia's youth detention policies are out of date. We're allowing a number of physically and psychologically harmful practices to continue, and permitting punitive policies and practice, which do not priorities young people's rehabilitation or reintegration"*[30]

It is not surprising that young children who enter the youth justice system, are more likely to reoffend later in life, notably however, the likelihood of this increases substantially, where children are subject to mistreatment whilst in detention. Further, taxpayers spend hundreds of thousands of dollars every year on youth detention, yet the detention of juvenile offenders has not been shown to reduce juvenile crime rates or rates of reoffending. In fact, research indicates that time spent in a juvenile justice centre is the most significant factor in increasing the odds of recidivism.

Systemic human rights abuses within the current youth justice system lead to the traumatisation of children with significant adverse life impacts and ultimately results in a waste of community resources and money. Accordingly, ALHR urges the Queensland Government to consider adopting the recommendations made in the 2017 Royal Commission and Board Inquiry into the Protection and Detention of Children in the Northern Territory (**NT Royal Commission**) regarding the use of force in youth detention centres. The Legal Affairs and Community Safety Committee should recommend that the Bill adopts Recommendation 13.4[31] of the NT Royal Commission by amending the *Youth Justice Regulation 2016* (Qld) to expressly prohibit the use of force or restraint for the purposes of maintaining the 'good order' of a youth detention centre or to 'discipline' a detainee.

Further, ALHR uges the Legal Affairs and Community Safety Committee to recommend that the Queensland government adopts Recommendation 13.5[32] of the NT Royal Commission by amending the *Youth Justice Act 1992* (Qld) and the Y*outh Justice Regulation 2016* (Qld) to require that the use of force:

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[29] Human Rights Law Centre, Torture Convention Standards (March 2015), http://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/58169937bb7f1e05acdfbeea/581699fcbb7f1e05acdfcfa8/1477876220766/TortureConventionStandards_March2015.pdf?format=original

[30] Human Rights Law Centre, *UN Report a Reminder That Australia's Youth Justice Practices Are Failing to Meet International Standards* (17 April 2015) <https://www.hrlc.org.au/news/ausyouthjusticepracticesarefailing>. See also UN Human Rights Council, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 28th sess, UN Doc A/HRC/28/68 (5 March 2015).

[31] Royal Commission and Board Inquiry into the Protection and Detention of Children in the Northern Territory, 2017, Findings and Recommendations, p. 30 <https://www.royalcommission.gov.au/sites/default/files/2019-01/rcnt-royal-commission-nt-findings-and-recommendations.pdf>

[32] Royal Commission and Board Inquiry into the Protection and Detention of Children in the Northern Territory, 2017, Findings and Recommendations, p. 31 <https://www.royalcommission.gov.au/sites/default/files/2019-01/rcnt-royal-commission-nt-findings-and-recommendations.pdf>

- be permitted only in circumstances where all other measures have failed;
- be proportionate in the circumstances, and take into account the detainee's background, age, physical and mental circumstances;
- must be accompanied by a verbal warning prior to its used, and the detainee be given a reasonable period of time to comply, except in emergency circumstances;
- resulting in injury of any detainee be documented by the chief executive, who must ensure injured detainees are examined by a treating doctor or nurse as soon as possible and clinical notes be recorded.

Where alternatives to detention are not possible, the Government needs to take immediate action to ensure that youth detention facilities are adequately resourced to handle demand and that all staff are experienced and skilled in working with vulnerable children. The release of information exposing the mistreatment of children in detention facilities in Queensland demonstrates that urgent changes must be made in the operation and management by staff in these facilities. Children who offend require the necessary support and care to be guided through a path to rehabilitation, and staff in detention centres should be adequately equipped to manage vulnerabilities as well as assist with rehabilitation.

**2. We call for appropriately funded, evidence-based diversionary and education programs to be rolled out in Queensland which recognise the principle that detention is a last resort for children. Queensland programs should be providing a therapeutic environment that can help youth offenders on a path to rehabilitation and reintegration upon release back into society.**

ALHR urges the Queensland Government to consider the development of evidence-based diversionary and education programs for child offenders. Restorative justice conferencing has had significant success in Queensland, with over 70% of victims reporting that the conference process helped them to 'manage the effects of crime', and young people being highly compliant in completing their agreements (with 96% finalised agreements in 2016-17).[33]

ALHR urges the Government to consult with relevant stakeholders and organisations to further consider the development of other programs outside of detention which may be able to assist young offenders to both realise their wrongdoings as well as guide and support them through a path of rehabilitation. These programs should be developed in a way that ensures young people are able to reintegrate into society and are less likely to reoffend.

**3. We call for the minimum age of criminal responsibility of juveniles to be increased to 14 years of age, or at least 12 years of age in Queensland. This is a change that would reflect internationally recognised standards in juvenile justice.**

ALHR urges the Queensland Government to increase the minimum age of criminal responsibility from 10 to 14 years of age, or at least 12 years of age at a minimum.

Currently in Australia for children aged 10 to 14 years, the presumption of *doli incapax* is seen to protect children from the harshness of criminal proceedings. However, it is abundantly clear from the findings and unequivocal recommendations of the NT Royal Commission that the doctrine of *doli incapax* alone is not providing an adequate safeguard for children between the ages of 10 and 14 years.

Over the past 20 years the United Nations Committee on the Rights of the Child (**UNCRC**), has repeatedly stated that Australia's minimum age of criminal responsibility is too low and recommended Australia consider raising the age to an internationally acceptable level.[34] The UN Committee on the

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[33] Restorative Justice Project: 12-Month Program Evaluation, Department of Child Safety, Youth and Women, 2018, https://www.csyw.qld.gov.au/resources/dcsyw/youth-justice/conferencing/restorative-justice-evaluation-report.pdf

[34] CRC/C/AUS/CO/4 para 84(a) and (CRC/C/15/Add.268, para. 74(a));

Elimination of Racial Discrimination[35], the UN Human Rights Committee[36], and the UN Special Rapporteur on the rights of Indigenous peoples[37] have also made this recommendation. The global average minimum age of criminal responsibility is 12 years of age, with some nations, such as Norway, Finland, and Sweden, legislating the age of criminal responsibility as 15 years of age.

ALHR appreciates that the Bill's proposed amendment of section 48 of the *Youth Justice Act 1992* (Qld[38] recognises that children under 14 years of age are particularly vulnerable and deserve special care and attention. ALHR submits, however, that this recognition does not go far enough and should be extended from a presumption that children under 14 years of age be kept out of custody, to also exempt children under 14 years of age from being held criminally responsible.

There is significant evidence to indicate that the younger a child has their first contact with the criminal justice system, the greater their chances of future offending. As noted in the Children's Report, Australia's NGO coalition report to the UNCRC, in 2014–15, 100% of those aged ten to 12 years at the start of their first supervised sentence returned to some form of sentenced supervision before they turned 18. This decreased slightly with successive age groups, to around 80% of those aged 14 and 15, 56% of those aged 16, and 17% of those aged 17.[39]

The child's brain is different to that of an adult because children are still developing, accordingly, children may lack the cognitive capacity and maturity to understand, interpret and respond to situations in the way that many adults can t.[40] For example, there is strong long-standing scientific evidence that teenage brains are still developing[41] and that young people may be highly subject to reward and peer-influence. Adolescence is a period of significant changes in the brain structure and function and at the age of 10, "the brain is developmentally immature, and continues to undergo important changes linked to regulating one's own behaviour".[42] As the Australian Law Reform Commission highlighted more than 18 years ago:

> *"[Children] tend to have a reduced fear of danger and display 'acting out' behaviours. They may have volatile behavioural patterns and emotional states, self- harming behaviour, different perceptions of time and shorter concentration spans. They are also more vulnerable*

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[35] United Nations Committee on the Elimination of Racial Discrimination, Concluding observations on the eighteenth to twentieth periodic reports of Australia UN Doc CERD/C/AUS/CO/18- 20 (26 December 2017), para 26

[36] United Nations Human Rights Committee, Concluding observations on the sixth periodic report of Australia, UN Doc CCPR/C/AUS/CO/6 (1 December 2017), para 44

[37] United Nations Human Rights Council 2017, Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Australia, 36th sess. UN Doc A/HRC/36/46/Add.2, 8 August 2017, viewed 11 October 2018, <https://documents-dds-ny.un.org/doc/ UNDOC/GEN/G17/234/24/PDF/G1723424.pdf?OpenElement>.

[38] Clause 10 of the *Youth Justice and Other Legislation Amendment Bill 2019*, which will introduce section 48AD(2)(j) of the *Youth Justice Act 1992* (Qld).

[39] Australian Institute of Health and Welfare, Young people returning to sentenced youth justice supervision 2014–15 (2016), p 6 <https://www.aihw.gov.au/getmedia/febb0806-d623-46d7-902a-412e27f76d47/20043.pdf.aspx?inline=true>

[40] This is recognised in The Integrated Approach: The Philosophy and Directions of Juvenile Detention Qld Corrective Services Commission Brisbane 1997, 16. See also for example, H Blagg & M Wilkie Young People and Police Powers Australian Youth Foundation Sydney 1995 rec 22.

[41] For an extensive list of references on this see: Massachusetts General Hospital Centre for Law, Brain and Behaviour at: http://clbb.mgh.harvard.edu/juvenilejustice/

[42] Fried, C. and Reppucci, N., 2001. 'Criminal Decision Making: The Development of Adolescent Judgement, Criminal Responsibility, and Culpability,' Law and Human Behaviour, Vol. 25, No. 1, pp.45–61, p.46.

*to contamination from criminal influences they encounter. Their different behavioural and emotional characteristics require different approaches..."*[43]

Queensland should act and lead the way as a role model for other states and territories by bringing its law and practice into line with international standards and raising the age of criminal responsibility.

This reform would be particularly significant for Aboriginal and Torres Strait Islander children, who constitute over 70% of the population of juvenile detention facilities in Queensland.

**4. We call on the Queensland Government to Consult with relevant departments and members of Aboriginal and Torres Strait Islander communities to consider development of culturally appropriate mechanisms, including diversionary programs and community owned strategies that address the underlying causes of offending by Aboriginal and Torres Strait Islander children and adopt evidence-based measures to reduce their very significant overrepresentation in Queensland's criminal justice system.**

Twenty-five years ago the Royal Commission into Aboriginal Deaths in Custody made recommendation that imprisonment should only be utilised as a sanction of last resort. However, the current overrepresentation of Aboriginal young people in detention, especially on remand is a national crisis. In 2017–18, the rate of Indigenous children aged 10 to 17 under youth justice supervision on an average day was 187 per 10,000, compared with 11 per 10,000 for non-Indigenous young people, meaning Indigenous young people aged 10–17 were about 17 times as likely as non-Indigenous youth to be under supervision on a given day.[44] This level of Indigenous over-representation is also higher in detention than in community-based supervision.[45]

ALHR urges the Queensland Government to collaborate with relevant members of the Aboriginal and Torres Strait Islander community, as well as the Department of Aboriginal and Torres Strait Islander Partnerships, to further consider alternative mechanisms for addressing overrepresentation of Indigenous young people in the youth justice system. Culturally appropriate services such as a specialised Aboriginal and Torres Strait Islander children's court, or community based youth conferencing, are examples of mechanisms which could be further explored.

ALHR also requests that the Queensland Government considers how recommendations made in the 2017 NT Royal Commission regarding Aboriginal and Torres Strait Islander youth in detention can be implemented in a Queensland context. Recommendation 18.1 of the NT Royal Commission should be closely considered in consultation with Aboriginal and Torres Strait Islander communities, particularly in respect of its calls for the following:

- implementation of policies to incorporate Aboriginal cultural competence and safety in the design and delivery of education, programs, activities and services for children and young people in detention;
- case management assessments to ascertain a detainee's personal, family and cultural background, including skin or language group and competence in the English language; and
- establishment of a working party comprised of representatives of relevant Aboriginal organisations, the department responsible for youth detention and senior representatives of the detention centres to explore the development, funding and implementation of an enhanced Elders Visiting Program and other culturally appropriate activities and programs.

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[43] Australian Law Reform Commission Report: Seen and heard: priority for children in the legal process (ALRC Report 84) 19 November 1997: http://www.alrc.gov.au/publications/20-detention/separation-adults-and-juveniles- detention#_ftn230

[44] Youth justice in Australia 2017–18, The Australian Institute of Health and Welfare,2019, p 9 https://www.aihw.gov.au/getmedia/f80cfcb3-c058-4c1c-bda5-e37ba51fa66b/aihw-juv-129.pdf.aspx?inline=true.

[45] Youth justice in Australia 2017–18, The Australian Institute of Health and Welfare,2019, p 9 https://www.aihw.gov.au/getmedia/f80cfcb3-c058-4c1c-bda5-e37ba51fa66b/aihw-juv-129.pdf.aspx?inline=true.

## Conclusion

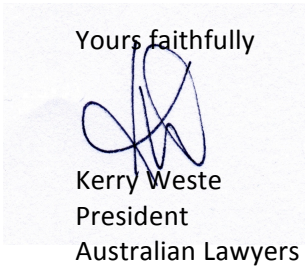
ALHR commends the Queensland Government's introduction of the *Youth Justice and Other Legislation Amendment Bill*. The Bill will assist to expedite legal proceedings involving children in the youth system and ensure that children are granted bail where appropriate, conceivably reducing the numbers of children held in detention prior to finalisation of legal proceedings. ALHR congratulates the Government for taking steps to implement these important and necessary reforms.

However, as discussed above, there are measures within the Bill not supported by ALHR. Further, ALHR continues to calls on the Queensland Government to take further action to address ongoing serious systemic failures in the Queensland youth justice system. Steps should be taken to investigate and improve the treatment of children in detention, including the introduction of an Independent Custodial Inspector in Queensland. Further education or community based programs should also be developed for young offenders, in order to effectively reduce the adverse impacts of detention on children. Consideration should also be had with relevant stakeholders as to alternative mechanisms to reduce the overrepresentation of Aboriginal and Torres Strait Islander youth in detention. ALHR also continues to urge the Queensland Government to increase the minimum age of criminal responsibility to 14 years, or at the very least, 12 years of age.

ALHR is committed to advocating for the protection of children's rights in Queensland and Australia more widely.

If you would like to discuss any aspect of this submission, please email me at: [redacted]

Yours faithfully



Kerry Weste
President
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## ALHR

ALHR was established in 1993 and is a national association of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and specialist thematic committees. Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas.



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