ANTI DISCRIMINATION
COMMISSION QUEENSLAND

13 January 2016

The Research Director
Legal Affairs and Community Safety Committee
Parliament House
BRISBANE QLD 4000

Dear Sir/Madam

INQUIRY INTO THE YOUTH JUSTICE AND OTHER LEGISLATION AMENDMENT BILL 2015

The Anti-Discrimination Commission welcomes the opportunity to make a submission to the Legal Affairs and Community Safety Committee on its inquiry into the Youth Justice and Other Legislation Amendment Bill.

The Bill reflects the government's election commitment to repeal the youth justice reforms made in 2014 by the previous Government. The Commission has made previous submissions to the department and to the Committee, in which the Commission has opposed reforms that impact human rights principles and focused on sentencing principles, the publication of identifying information, and 17-year-olds in prison.[1]

Human rights and children

The *Universal Declaration of Human Rights* at Article 25 asserts that 'childhood is entitled to special care and assistance', and children are specifically provided for in a number of the international human rights instruments to which Australia is a party. The *International Covenant on Civil and Political Rights* provides that every child shall have the right to such measures of protection as are required by their status as a minor, and the *International Covenant on Economic, Social and Cultural Rights* recognises that special measures of protection and assistance should be taken on behalf of children and young persons.

The *Convention on the Rights of the Child* sets out a number of rights and protections of children. Importantly, 'child' is defined to mean every human being below the age of 18 years.

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[1] These submissions are available on the Commission's website at www.adcq/qld.gov.au - Review of the *Youth Justice Act 2003*, dated June 2013; and Inquiry into the Youth Justice and Other Legislation Amendment Bill 2014, dated February 2014.

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Sentencing principles

The Bill restores to the *Youth Justice Act 1992* sentencing principles, namely that detention should be imposed only as a last resort and for the shortest appropriate period, and that detention must be the only appropriate sentence. The Bill also restores the principles that a sentence of imprisonment should only be imposed as a last resort, and a sentence that allows the offender to stay in the community is preferable for sentencing adults and children aged 17 years and over.

The Commission supports these amendments, and agrees that the principles should apply to the sentencing of a child, or other offender, where the offence or conviction happened before commencement of the amendments, as provided for in the transitional provisions.[2]

Sentencing as a last resort is embedded in the common law. It is also specifically provided for in the *Convention of the Rights of the Child*. Article 37(b) states:

> 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.

The principle of arrest and detention as a last resort has long been recognised as best practice policy. Over 20 years ago, the Royal Commission into Aboriginal Deaths in Custody recommended that imprisonment should be utilised only as a sanction of last resort[3], that Governments should ensure an appropriate range of non-custodial sentencing options is available[4], and that resources be available to ensure that non-custodial sentencing options are capable of implementation in practice[5].

Research and studies consistently show that detention is the least effective option to reduce re-offending, and an effective pathway to adult offending.[6]

Publication of identifying information

The 2014 reforms allowed the identity of repeat offenders to be published, and required proceedings involving a child with a previous conviction to be held in public. The Bill restores the prohibition on publication of information identifying repeat offenders while maintaining the discretion for the court to allow publication in relation to violent and particularly heinous crimes, when it is in the public interest to do so.

The Commission supports the restoration of the general prohibition on the publication of identifying information of children dealt with under the *Youth Justice Act 1992*. The removal of the prohibition was inconsistent with the

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[2] Clauses 55 (section 384) and 65.
[3] Recommendation 92.
[4] Recommendation 109.
[5] Recommendation 112.
[6] See for example the research and studies referred to in: Appendix A to the Australian Institute of Criminology 2007 report *Recidivism in Australian: findings and future*; Balanced Justice factsheet *Busting the myths – the facts about addressing youth offending – Part 2*.

Convention on the Rights of the Child and the United Nations *Standard Minimum Rules for the Administration of Juvenile Justice 1985* (the Beijing Rules). The *Convention* requires that every child accused of having infringed the penal law has the guarantee that their privacy will be fully respected at all stages of the proceedings[7], and the Beijing Rules prohibit the publication of identifying information, and require records of juvenile offenders to be kept strictly confidential[8].

Young people are particularly susceptible to stigmatisation, and may experience adverse effects from being labelled as 'delinquent' or 'criminal', and from publication in the media of information about the case.

The Commission notes that the Bill is the first stage of legislative reform of youth justice, and that the second stage in early 2016 will include the repeal of open proceedings of the Childrens Court.[9] This will be another important measure for ensuring the privacy of young people in the criminal justice system.

17-year-olds in adult prisons

Queensland is the only jurisdiction in Australia where 17-year-olds are treated as adults in the criminal justice system. This is contrary to the *Convention on the Rights of the Child*, which requires that children in detention are separated from adults, unless it is considered in the child's best interest not to do so.[10] Australia's reservation to the article is limited to maintaining contact with families, having regard to the geography and demography of Australia.

When the Juvenile Justice Bill 1992 (now the *Youth Justice Act 1992*) was introduced in 1992, the government of the day intended that 17-year-old children would be dealt with in the juvenile, rather than the adult, justice system in accordance with the 1988 Kennedy report into prisons. In the second reading speech the then Minister for Family Services and Aboriginal and Islander Affairs, Mrs Anne Warner, said:

> ...This is consistent with the age of majority and avoids such children being exposed to the effects of adults in prisons, thereby increasing their chances of remaining in the system and becoming recidivists. This change will occur at an appropriate time in the future.

That intention is evident in the drafting of section 6, and in the definition of 'child' in the *Youth Justice Act 1992*. These provisions have not been changed and still contemplate the removal of 17-year-olds from the adult criminal justice system to the youth justice system.[11]

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[7] Article 40.
[8] Rules 8 and 21.
[9] First reading speech by the Attorney-General and Minister for Justice and Minister for Training and Skills, 1 December 2015.
[10] Article 37(c).
[11] Section 6 was amended in 1993, shortly after the Act commenced, by adding subsection (6) to clarify that subsections (2) to (5) (transitional provisions) only apply to person under 18 years of age who is sentenced after the commencement of the regulation.

Twenty-two years after commencement of the *Youth Justice Act 1992*, 17-year-olds remain subject to the adult criminal justice system. Queensland has been criticised by the United Nations Committee on the Rights of the Child in this regard. In the 2012 Concluding Observations, the United Nations Committee noted with regret that previous recommendations had not been accepted, and again expressed concern that in Queensland 17-year-old child offenders continue to be tried under the criminal justice system. It again recommended that the juvenile justice system be brought fully in line with the *Convention on the Rights of the Child* and other relevant standards, and reiterated its previous recommendation to remove children who are 17 years old from the Queensland adult justice system.[12]

The Commission urges the Legal Affairs and Community Safety Committee to recommend the making of the regulation under section 6 of the *Youth Justice Act 1992* to change the age at which a person will be a child for the purposes of the Act to under 18 years.

Justice reinvestment

The Commission notes that the first and second stage legislative reforms will be complemented by the development of a comprehensive youth justice policy that will guide investment in the youth justice system based on evidence of what works to effectively rehabilitate and deter young people from further entrenchment in the criminal justice system.[13]

The *Convention on the Rights of the Child* requires there to be a range of options available to ensure children are dealt with appropriately and proportionately to their circumstances and the offence, such as care, guidance and supervision orders, counselling, probation, education and vocational programs and other alternatives to institutional care. There should also be measures for dealing with children without resort to judicial proceedings.[14]

There is a great deal of research available to guide the government in developing evidence-based policy for youth justice. The development and implementation of a range of diversionary and early intervention strategies, including justice reinvestment, would be consistent with the principles of the *Convention on the Rights of the Child,* which requires that the primary consideration is the best interests of the child.

Yours sincerely

Neroli Holmes

NEROLI HOLMES
Acting Anti-Discrimination Commissioner

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[12] *UN Committee on the Rights of the Child: Concluding Observations, Australia,* 28 August 2012, CRC/C/AUS/CO/4.
[13] First reading speech by the Attorney-General and Minister for Justice and Minister for Training and Skills, 1 December 2015.
[14] Article 40.