

**AMNESTY  
INTERNATIONAL**

9 May 2016

Mr Mark Furner MP  
Chair  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
Brisbane QLD 4001

AMNESTY INTERNATIONAL AUSTRALIA ABN 64 002

Street address:

79 Myrtle Street

Chippendale

NSW 2008

T: (02) 83967618

W: [www.amnesty.org.au](http://www.amnesty.org.au)

Postal address:

Locked bag 23

Broadway

NSW 2007

F: (02) 83967677

Dear Chair

**Amnesty International submission to the parliamentary inquiry into the *Youth Justice and Other Amendments Bill 2016***

Amnesty International Australia (Amnesty) is pleased to make a submission to the to the Legal Affairs and Community Safety Committee (LACSC) inquiry into the *Youth Justice and Other Amendments Bill 2016* (the Bill).

Amnesty is a global organisation principally concerned with researching, monitoring and reporting on human rights issues, both in Australia and internationally. Amnesty is independent of any government, political ideology, economic interest or religion, and does not accept money from governments or political organisations.

In Queensland, Amnesty has a regional office located in Brisbane and approximately 78,000 supporters.

Our supporters in Queensland are deeply concerned at the over-incarceration of Indigenous children. While this is a national human rights crisis, in 2014-2015 Queensland had the largest number of children under supervision on an average day,<sup>1</sup> and 56% of those children were Indigenous (despite only being 8% of the youth population).<sup>2</sup> The overrepresentation of Indigenous children is even higher in detention in Queensland – on an average day, nearly two-thirds of those aged 10 – 17 years in detention are Indigenous (65%).<sup>3</sup> Many of our supporters have taken action to call for change on this issue by signing petitions, writing emails, and meeting with their local MPs.

In May 2015, Amnesty published its national overview of the issue in a report<sup>4</sup> and launched our campaign 'Community is Everything', which highlights the extent of the overrepresentation of Indigenous children in the justice system in Australia and the need for Indigenous-led solutions. In particular, our research finds that Indigenous-run early intervention and diversionary programs, alongside community-based approaches such as justice reinvestment, are needed to break the cycle of incarceration.

<sup>1</sup> Australian Institute of Health and Welfare (AIHW), *Youth Justice in Australia 2014-2015* (2016), Table S1a.

<sup>2</sup> Australian Institute of Health and Welfare (AIHW), *Youth Justice in Australia 2014-2015* (2016), Table S3a.

<sup>3</sup> Australian Institute of Health and Welfare (AIHW), *Youth Justice in Australia 2014-2015* (2016), Table S132.

<sup>4</sup> Amnesty International Australia, *A brighter tomorrow: Keeping Indigenous kids in the community and out of detention in Australia* (2015) <[http://www.amnesty.org.au/images/uploads/aus/A\\_brighter\\_future\\_National\\_report.pdf](http://www.amnesty.org.au/images/uploads/aus/A_brighter_future_National_report.pdf)>.

To understand these issues in the Queensland context, Amnesty has conducted over 100 interviews with Elders, community leaders, magistrates, police, Indigenous and non-Indigenous organisations and services providers, community justice groups and government. We have been working with Indigenous communities in Logan, Townsville, Mount Isa and Palm Island.

Amnesty has been an active contributor to Queensland's youth justice reforms. To date, we have made submissions to the *Youth Justice and Other Amendments Bill 2015*, DJAG's Issues Paper and DJAG's Discussion Paper. We are supportive of these reforms, which will reverse the damaging impact of the *Youth Justice and Other Legislation Amendment Act 2014* (Qld).

Similarly, Amnesty welcomed the introduction of this Bill.<sup>5</sup> Amnesty considers this Bill a second step in the youth justice reform process towards a fairer justice system that is human rights compliant, founded in evidence-based policies and international best practice.

The Convention on the Rights of the Child (CRC) outlines several key human rights obligations binding upon Australian governments, including that:

- the best interests of the child is a fundamental principle to be observed, including in the context of criminal justice;<sup>6</sup>
- arrest and detention must be measures of last resort and for the shortest appropriate period of time;<sup>7</sup>
- all children must have access to prompt and adequate legal representation, as well as the capacity to challenge charges brought against them;<sup>8</sup> and
- a variety of appropriate alternatives to detention should be in place to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.<sup>9</sup>

Amnesty supports the Bill as it promotes the best interests and rights of children, and will contribute to reducing the number of Indigenous children in detention. The Bill will ensure greater protection of a child's identity in youth justice matters by closing Childrens Magistrates Court hearings, will cease the automatic transfer of children to adult prison facilities and implement a restorative justice approach, by restoring the power to order youth conferencing to courts.

Amnesty supports the proposed amendments outlined in the Bill and offers some commentary on the importance of these changes from a human rights perspective, to be read in conjunction with our earlier submissions and recommendations to the Issues Paper and Discussion Paper (annexed).

### **Protecting a child's identity**

Amnesty welcomes the amendments to close hearings in the Childrens Magistrates Court, to the exception of victims and designated persons. Under the CRC, States must ensure that the child's right to privacy is fully respected at all stages of the proceedings.<sup>10</sup> The Committee on the Rights of the Child has instructed that the protection of the best interests of the child means that the 'traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives'.<sup>11</sup>

---

<sup>5</sup> Amnesty International Australia, 22 April 2016, *Queensland MPs given chance to right wrongs*, <http://www.amnesty.org.au/news/comments/41634/>.

<sup>6</sup> Convention on the Rights of the Child, art 3(1).

<sup>7</sup> Convention on the Rights of the Child, art 37.

<sup>8</sup> Convention on the Rights of the Child, art 37(d).

<sup>9</sup> Convention on the Rights of the Child, art 37(c).

<sup>10</sup> Convention on the Rights of the Child, art 40(2)(vii).

<sup>11</sup> Committee on the Rights of the Child, General Comment No 10: Children's Rights in Juvenile Justice, 42nd session, UN Doc CRC/C/GC/10 (25 April 2007) [6566].

Similarly, the *Beijing Rules*<sup>12</sup> require a child's right to privacy is ensured at all stages of juvenile justice proceedings 'in order to avoid harm being caused to her or him by undue publicity or by the process of labelling'.<sup>13</sup> The Committee on the Rights of the Child recommends that:

- all hearings of a child in conflict with the law occur behind closed doors, with very limited exceptions clearly stated in law;
- the identity of the child should still be protected in open hearings;
- all records of child offenders be kept strictly confidential and closed to third parties.<sup>14</sup>

The identification of the child has the potential to lead to stigmatisation, and impact access to education, work, housing or safety. The President of the Childrens Court noted that 'naming and shaming' has little impact on recidivism and can significantly hinder rehabilitation, and advised that the measures introduced under the 2014 amendments to open the courts and identify child offenders be reconsidered.<sup>15</sup>

### Ending the automatic transfer to adult prison

The CRC defines a child as any person below the age of eighteen unless majority is obtained earlier in the domestic laws applicable to the child. However, although the age of majority in Queensland is 18,<sup>16</sup> 17 year-olds are currently treated as adults in its criminal justice system.<sup>17</sup> In April 2016, there were 58 children held in adult prisons in Queensland.<sup>18</sup> In 2012, the Committee on the Rights of the Child reiterated its recommendation, first made in 2005, that Australia remove children who are 17 years old from the adult justice system in Queensland.<sup>19</sup> This is an issue that Amnesty and other organisations have raised repeatedly with the Queensland Government.

Amnesty welcomes that the Bill will cease the automatic transfer of 17 year olds to adult prisons in certain circumstances, by raising the age of transfer to 18. However, 17 year olds will continue to be treated as adults in the justice system, and a large number of 17 year olds will continue to be held in adult prisons. All children should be held in facilities appropriate to their age, separate from adults, and with access to the support they need to rehabilitate. Amnesty maintains that Queensland must put forward a timeline to transition all 17 year-olds into the youth justice system as a matter of priority.

Further, Amnesty recommends the Government increase the minimum age of criminal responsibility to 12 years, in line with international standards and the position of the Committee on the Rights of the Child. In addition to ensuring the justice system is appropriately tailored for very young children, who do not belong in detention, this would remove concerns about holding 10 and 11 year olds in the same facilities as 17 year olds.

<sup>12</sup> *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*, GA Res 40/33, UN GAOR, 96<sup>th</sup> plen mtg, UN Doc A/RES/40/33 (29 November 1985), r 8.1.

<sup>13</sup> *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*, GA Res 40/33, UN GAOR, 96<sup>th</sup> plen mtg, UN Doc A/RES/40/33 (29 November 1985).

<sup>14</sup> Committee on the Rights of the Child, General Comment No 10: Children's Rights in Juvenile Justice, 42nd session, UN Doc CRC/C/GC/10 (25 April 2007) [6566].

<sup>15</sup> Childrens Court of Queensland, *Annual Report 2013-2014* (2014), 7.

<sup>16</sup> *Law Reform Act (Qld)*, s 17.

<sup>17</sup> See *Youth Justice Act 1992 (Qld)*, sch 4.

<sup>18</sup> Queensland Government Data, *Custodial Offender Snapshot as at 01 04 2016* (2016), <https://data.qld.gov.au/dataset/custodial-offender-snapshot-statewide/resource/4bad7fe4-5a0e-4c47-98d5-2a0608e7ae53>.

<sup>19</sup> 1 Committee on the Rights of the Child, *Concluding Observations: Australia*, 60th session, UN Doc CRC/C/AUS/CO/4 (28 August 2012) [84.d]

## Justice Conferencing

Amnesty is supportive of elements of the Bill that reintroduce youth justice conferencing and other alternative diversionary programs as a diversionary option for courts and police. The CRC requires that States parties take measures for dealing with children in conflict with the law without resorting to judicial proceedings as an integral part of their juvenile justice system.<sup>20</sup> The Committee on the Rights of the Child has identified conferencing as a form of restorative justice that States should adopt.<sup>21</sup> The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) has also highlighted the benefits of a flexible and participatory nature of restorative justice processes developed by Indigenous Peoples.<sup>22</sup>

Children have the right to be treated in a way that promotes their reintegration into society and development, and to be dealt with in a manner appropriate to their wellbeing.<sup>23</sup> States also have obligations to pursue culturally appropriate and community-led solutions for Indigenous children.<sup>24</sup> States are required to consult with Indigenous communities and children to 'develop policy and programming efforts in a culturally sensitive manner'.<sup>25</sup> The Committee on the Rights of the Child has encouraged States to support Indigenous Peoples to design and implement restorative justice systems and community-based programs and services that consider the needs and cultures of Indigenous children, their families and communities.<sup>26</sup>

In Queensland, the removal of the power of the courts to order youth conferencing has resulted in a dramatic decrease of the number of children referred to conferencing: from a yearly average of 2900 referrals prior to 2013 to 870 after 2013.<sup>27</sup> This is despite evaluation showing participants in youth conferencing reached agreement most of the time and reported high levels of satisfaction with the process.<sup>28</sup> Amnesty International is concerned about the large decrease in the use of conferencing as well as the low rates of Indigenous children being referred to conferencing.<sup>29</sup>

Amnesty recommends that 'alternative diversionary programs' in the Bill include those designed and led by Aboriginal and Torres Strait Islander organisations and communities. We refer to our submissions on the Issues Paper and Discussion Paper for further discussion and examples of this.

Amnesty recommends that the Government explore, in consultation with Aboriginal and Torres Strait Islander communities, how to tailor youth conferencing to be more culturally appropriate and how to increase the number of Indigenous children participating in youth conferencing.

---

<sup>20</sup> Convention on the Rights of the Child, art 40(3)(b); Committee on the Rights of the Child, General Comment No 10: Children's Rights in Juvenile Justice, 42nd session, UN Doc CRC/C/GC/10 (25 April 2007) [26].

<sup>21</sup> Committee on the Rights of the Child, General Comment No 10: Children's Rights in Juvenile Justice, 42nd session, UN Doc CRC/C/GC/10 (25 April 2007) [26].

<sup>22</sup> Expert Mechanism Advice No. 6 (2014): Restorative justice, indigenous juridical systems and access to justice for indigenous women, children and youth, and persons with disabilities A/HRC/EMRIP/2014/3/Rev.1, [17].

<sup>23</sup> Convention on the Rights of the Child, arts 3(1), 37(b), 40(1), 40(3).

<sup>24</sup> Convention on the Rights of the Child, arts 2, 3, 4, 37(b), 42; Committee on the Rights of the Child, *General Comment No 10: Children's Rights in Juvenile Justice*, 42nd session, UN Doc CRC/C/GC/10 (25 April 2007) [25].

<sup>25</sup> Committee on the Rights of the Child, *General Comment No 10: Children's Rights in Juvenile Justice*, 42nd session, UN Doc CRC/C/GC/10 (25 April 2007) [80].

<sup>26</sup> Committee on the Rights of the Child, General Comment No. 11, Indigenous children and their rights under the Convention (2009), [75].

<sup>27</sup> Queensland Government, 'Proposed reforms to the Youth Justice Act 1992 and Childrens Court Act 1992: Issues paper' (2015).

<sup>28</sup> Childrens Court of Queensland, Annual Report 2014/2015 (2015), 22; Childrens Court of Queensland, Annual Report 2013/2014 (2014), 30.

<sup>29</sup> Queensland Department of Youth Justice, *Youth Justice annual summary statistics: 2010-11 to 2014-15, Miscellaneous data* (2015), data based on 31 July 2015 snapshot.

## Conclusion

Amnesty encourages all members of the LACSC and the Queensland Parliament to support the passage of this Bill and adopt a better approach to youth justice that protects the rights of children and promotes restorative justice that is culturally appropriate. While further reforms are needed to bring Queensland into compliance with international human rights obligations and to reduce the overrepresentation of Indigenous children in detention, this Bill is a welcome step towards a fairer justice system.

Yours sincerely,

[Redacted signature]

**Roxanne Moore**

Indigenous Rights Campaigner  
Amnesty International Australia

[Redacted signature]

**Paul Toner**

Branch President, QLD and Northern NSW Branch  
Amnesty International Australia