Parliamentary Committees

Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Bill 2016

Report No. 23, 55th Parliament

Education, Tourism, Innovation and Small Business Committee

October 2016

Parliamentary Committees

Youth Justice and Other Legislation (Inclusion of 17-year old Persons) Amendment Bill 2016

Report No. 23, 55th Parliament

Education, Tourism, Innovation and Small Business Committee

October 2016

Education, Tourism, Innovation and Small Business Committee

Chair	Mr Scott Stewart MP, Member for Townsville
Deputy Chair	Miss Verity Barton MP, Member for Broadwater
Members	Mr Mark Boothman MP, Member for Albert
	Mr Steve Dickson MP, Member for Buderim
	Mr Bruce Saunders MP, Member for Maryborough
	Mr Rick Williams MP, Member for Pumicestone
Staff	Ms Sue Cawcutt, Research Director
	Ms Maureen Coorey, Principal Research Officer
	Ms Joanne Walther, Committee Support Officer
Technical Scrutiny Secretariat	Ms Renee Easten, Research Director
	Mr Michael Gorringe, Principal Research Officer
	Ms Kellie Moule, Principal Research Officer (part-time)
Contact details	Education, Tourism, Innovation and Small Business Committee Parliament House George Street Brisbane Qld 4000
Telephone	+61 7 3553 6657
Fax	+61 7 3553 6699
Email	etisbc@parliament.qld.gov.au
Web	www.parliament.qld.gov.au/etisbc

Contents

Abbreviations iii

Chair's foreword iv

1 Introduction 1

1.1 Role of the committee 1
1.2 Referral of the Bill 1
1.3 Committee inquiry process 1
1.4 Should the Bill be passed? 1

2 Examination of the Bill 2

2.1 Introduction 2
2.1.1 Purpose of the Bill 2
2.1.2 Background 2
2.1.3 Increasing the age of a child to 17-years-of-age 2
2.2 Implementation of the Bill 3
2.2.1 Governance 3
2.2.2 Costs 3
2.3 Definition of a child in Queensland - Clauses 4 and 6 4
2.4 Transitional arrangements - Clause 5 4
2.4.1 Seventeen year olds for whom proceedings have not commenced – proposed section 387 4
2.4.2 Seventeen year olds who committed an offence prior to commencement and a sentence for the offence has been imposed and is still operational – proposed section 389 5
2.4.3 Seventeen year olds who are the subject of current court proceedings – proposed section 390 5
2.5 Administrative arrangements – Clause 5 6
2.6 Amendments of other legislation – Clauses 7 to 10 7

3 Compliance with the Legislative Standards Act 8

3.1 Fundamental legislative principles 8
3.1.1 Amendment of an Act only by another Act 8
3.2 Explanatory notes 9

Appendices 10

Appendix A – List of submissions 10
Appendix B – List of witnesses at public briefings and public hearings 10

Statements of Reservation 11

Abbreviations

department	Department of Justice and Attorney-General
QFCC	Queensland Family & Child Commission
the Bill	Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Bill 2016
YAC	Youth Advocacy Centre Inc
YJ Act	*Youth Justice Act 1992*

Chair's foreword

On behalf of the Education, Tourism, Innovation and Small Business Committee of the 55th Parliament of Queensland, I present this report on the Youth Justice and Other Legislation (Inclusion of 17-year old Persons) Amendment Bill 2016.

The Bill was introduced into the Legislative Assembly by the Attorney-General on 15 September 2016. The committee was required to report to the Legislative Assembly by 27 October 2016.

In considering the Bill, the committee's task was to consider the policy to be given effect by the Bill, and whether the Bill has sufficient regard to the fundamental legislative principles in the *Legislative Standards Act 1992.* The fundamental legislative principles include whether legislation has sufficient regard to the rights and liberties of individuals and to the institution of Parliament.

On behalf of the committee, I thank the individuals and organisations that made written submissions on this Bill. Thanks also to officials from the Department of Justice and Attorney-General who briefed the committee, the committee's staff, and the Technical Scrutiny Secretariat.

Scott Stewart MP
Chair

1 Introduction

1.1 Role of the committee

The Education, Tourism, Innovation and Small Business Committee (the committee) was established by resolution of the Legislative Assembly on 27 March 2015. The committee consists of three government and three non-government members.

The committee's areas of portfolio responsibility are:

- education
- tourism and major events
- innovation
- science, and
- the digital economy and small business.[1]

In relation to a portfolio committee's responsibility for examining legislation, section 93 of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the Bill, and
- the application of the fundamental legislative principles to the Bill.

1.2 Referral of the Bill

The Youth Justice and Other Legislation (Inclusion of 17-year old Persons) Amendment Bill 2016 (the Bill) was introduced into the Legislative Assembly on 15 September 2016 by the Attorney-General, Hon Yvette D'Ath. The committee was required to report to the Legislative Assembly by 27 October 2016.

1.3 Committee inquiry process

The committee received an oral briefing on the Bill by the Department of Justice and Attorney-General on 21 September 2016. A transcript of the briefing is available on the committee's website.

The committee visited the Townsville Correctional Centre and the Cleveland Youth Detention Centre to familiar itself with arrangements for 17-year-olds.

The committee invited submissions by notice on its website and by email to subscribers and 52 stakeholder organisations. Submissions closed on 4 October 2016 and 16 submissions were received.

The submissions are available on the committee's webpage at:
www.parliament.qld.gov.au/work-of-committees/committees/ETISBC

1.4 Should the Bill be passed?

Standing Order 132(1) requires the committee to recommend whether the Bill should be passed. The committee considered the Bill, information provided by the department and the information and views expressed in submissions.

The committee was unable to reach agreement on whether the Bill should be passed.

[1] Schedule 6 of the *Standing Rules and Orders of the Legislative Assembly*, effective from 31 August 2004 (amended 17 July 2015).

2 Examination of the Bill

2.1 Introduction

2.1.1 *Purpose of the Bill*

The purpose of the Bill, as set out in the Explanatory Notes, is to implement the Queensland government's policy objectives. The objectives of the Bill are to:

- increase the upper age of who is a child for the purposes of the *Youth Justice Act 1992,* from 16 years to 17 years and
- establish a regulation-making power to provide transitional arrangements for the transfer of 17-year-olds from the adult criminal justice system to the youth justice system.[2]

To achieve these policy objectives the Bill makes amendments to the *Youth Justice Act 1992* (YJ Act), the *Corrective Services Act 2006*, and the *Transport Operations (Passenger Transport) Act 1994*. Minor or consequential amendments are made to various other Acts, mostly to omit definitions of `child' which referenced the definition in the YJ Act. These include amendments to the *Bail Act 1980, Criminal Code, Criminal Law Amendment Act 1945, Criminal Organisation Act 2009, District Court of Queensland Act 1967, Drugs Misuse Act 1986, Mental Health Act 2000, Mental Health Act 2016, Penalties and Sentences Act 1992, Police Powers and Responsibilities Act 2000*, *South Bank Corporation Act 1989*, and *State Penalties Enforcement Act 1999*.

Clause 2 of the Bill provides that the Act commences on a day to be fixed by proclamation. The State government intends commencement to be 12 months from the Bill being passed by Parliament.[3]

2.1.2 *Background*

The inclusion of 17 year-olds into the youth justice system has been considered by successive Queensland governments since the Juvenile Justice Bill 1992 was introduced into the Legislative Assembly in 1992.

During its briefing to the committee, the department advised:

> *This issue has literally been on the books since 1992, as you know, so it is something that is talked about constantly in youth justice. A constant feature of the work program of Youth Justice is, 'What would happen if we could bring in the 17-year-olds?'*[4]

2.1.3 *Increasing the age of a child to 17-years-of-age*

The age of majority in Australia is 18. Despite a significant body of State and Commonwealth legislation defining adulthood at 18-years-of-age, 17-year-olds who are alleged to have committed offences are currently treated as adults in Queensland's criminal justice system. The Explanatory Notes state that Queensland's youth justice system only applies to young people between the ages of 10 and 16.[5] This approach is different to all other Australian States and Territories.

In their briefing to the committee, the department described the key features and protections of the youth justice system compared to the adult corrective services system. These include:

- reduced exposure to adult criminals
- increased ability to divert young people from the court system via rehabilitative diversionary strategies, interventions and options
- improved access to more age-appropriate education, training and specialised programs

[2] Explanatory Notes, Youth Justice and Other Legislation (Inclusion of 17-year old Persons) Amendment Bill, p 3

[3] Explanatory Notes, p 4

[4] Public briefing transcript, Brisbane, 21 September 2016, p 6.

[5] Explanatory Notes, p 1

- more intensive staff supported supervision and custody which characterises youth detention centres, and
- sentencing principles of the YJ Act which prioritise support and rehabilitation in the community where practicable and appropriate.[6]

The department advised at the committee's public briefing that there would be approximately 55 17-year-olds transferring from adult prisons into the youth justice system. Ten of these young people would be sentenced, and the remainder would be on remand awaiting a court hearing. There were 210 17-year-olds on community based orders at the time of the department's briefing, and they would be transferred over to youth justice community based management supervision.[7]

Submitter's views

Submitters supported the amendment to increase the age of a child to 17 under the YJ Act and reasoned that it will:

- bring Queensland's treatment of 17 year olds into line with the rest of Australia and in accordance with the UN *Convention of the Rights of the Child*
- remove inconsistencies within Queensland law (such as the *Child Protection Act 1999 (*Qld) which defines a `child' as a person under 18 years old[8])
- protect 17-year-olds from the risks associated with being among adults in adult correctional facilities and
- provide this group of young offenders with the benefits associated with the youth justice system including more suitable sentences and orders, and developmentally appropriate programs and controls.

2.2 Implementation of the Bill

2.2.1 *Governance*

In her introductory speech the Attorney-General and Minister for Justice and Minister for Training and Skills advised of the establishment of a whole of government panel (the Panel) to lead implementation of the Bill.

The department clarified that the Panel, which will report to a Cabinet subcommittee, will include the Department of the Premier and Cabinet, Queensland Treasury, Youth Justice in the department, Corrective Services, Queensland Police Service, Queensland Health, Department of Housing and Public Works, Education and Training, Communities, Child Safety and Disability Services, and Aboriginal and Torres Strait Islander Partnerships. These departments were initially nominated by the Attorney General, and other agencies may be included once the Panel is finalised.[9]

2.2.2 *Costs*

The operating costs associated with including 17-year-olds in the youth justice system are estimated at $44 million per annum plus the cost of remand reduction strategies.[10] The average cost per day per young person in youth detention in 2014-15 was $1,445 ($527,425 per annum) compared to $178 ($64,970 per annum) in Queensland correction facilities.[11] The ratio of offender to staff in a youth

[6] Public briefing transcript, Brisbane, 21 September 2016, p. 2.

[7] Public briefing transcript, Brisbane, 21 September 2016, pp 5-6.

[8] *Child Protection Act 1999*, s 8.

[9] Public briefing transcript, Brisbane, 21 September 2016, p 2, p 9.

[10] Explanatory Notes, p 3.

[11] Department of Justice and Attorney-General, Correspondence, 23 September 2016, p 2.

detention centre in Queensland is 4:1 compared to a prisoner to custodial staff ratio of 35:1 in adult correctional facilities.[12]

The Explanatory Notes acknowledge that the costs of implementing the Bill will be substantial without accompanying youth justice reforms that reduce offending and reoffending, and the numbers of young people in custody on remand. The department advised that approximately 80 per cent of young people in the youth justice system are on remand, and have a median stay of around 14 days in detention centres. [13]

Submitter's views

The costs associated with transitioning 17-year-olds from the adult criminal justice system to the more resource intensive youth justice system were noted and accepted by submitters.[14]

2.3 Definition of a child in Queensland - Clauses 4 and 6

The Bill changes the definition of a 'child' for the purposes of the YJ Act. Clause 6 of the Bill achieves the policy objective of including 17 year olds into the youth justice system by omitting the first mention of the definition of an 'adult' and the definition of a `child' in schedule 4 of the YJ Act. Consequently the definition of a child in the *Acts Interpretation Act 1954* will apply where a 'child' is defined as 'an individual who is under 18.'[15]

Clause 4 omits section 6 of the YJ Act. Section 6 provides that a regulation can be made to enable 'a person who has not turned 18 years' to be treated as a child for the purposes of the YJ Act. Any regulation made would be limited to young people who commit offences after commencement of the regulation and would not apply to those currently in the adult correctional system.[16] The Explanatory Notes state that 'activation of section 6 will not achieve the government's policy objective'.[17]

2.4 Transitional arrangements - Clause 5

Clause 5 of the Bill provides for the transitioning of 17-year-olds into the youth justice system and is therefore the most significant clause in the Bill. The clause inserts new part 11, division 15, into the YJ Act and identifies three separate cohorts of 17-year-olds, providing separate transitional arrangements for each cohort.

Proposed section 388 of the new division provides regulation making powers to facilitate the transition of 17-year-olds from the adult criminal justice system to the youth justice system. Due to the transitional nature of these arrangements subsection 388(2) provides the regulations will expire two years after commencement.

2.4.1 *Seventeen year olds for whom proceedings have not commenced – proposed section 387*

Section 387 provides that a 17 year old who committed an offence prior to the commencement of this Act and whose offence proceedings have not started, will be treated under this Act (or another Act) as if they had committed the offence as a child. The Explanatory Notes state that other Acts include, for example, the *Police Powers and Responsibilities Act 2000*.[18]

[12] Department of Justice and Attorney-General, Correspondence, 23 September 2016, p 1.

[13] Public briefing transcript, Brisbane, 21 September 2016, p 8.

[14] Submissions 6, 9, 11 and 13.

[15] *Acts Interpretation Act 1954*, Schedule 1

[16] Queensland Parliament, Record of Proceedings, 15 September 2016, p 3580

[17] Explanatory Notes, pp 2, 4

[18] Explanatory Notes, p 4

2.4.2 *Seventeen year olds who committed an offence prior to commencement and a sentence for the offence has been imposed and is still operational – proposed section 389*

Proposed section 389 provides transitional arrangements for 17-year-olds who have committed an offence, prior to commencement of the amended YJ Act and who are the subject of a current court order or sentence. This group would include 17-year-olds who have been sentenced and are in adult correctional facilities or in the community on community based orders under the supervision of Queensland Corrective Services.[19]

Proposed section 389(2) allows a transitional regulation to provide for the application of the YJ Act or another Act to the person as if the sentence or a subsequent order about the sentence were a corresponding child sentence or order.[20] Subsection 389(3) states that the transitional regulation may include provision for certain matters. The Explanatory Notes give the following examples of the matters that a transitional regulation made under proposed section 389(2) could include:

- preservation of the applicability of appeal provisions to an adult sentence order, even though the order is being administered as a youth justice order
- the availability of section 73 of the *Penalties and Sentences Act 1992* (payment of a fine) in circumstances where a fine option order has converted a fine into community service and the community service is being administered in the youth justice system
- providing for a person who is serving a term of imprisonment, who is not yet on parole, to be released under a supervised release order as though they had serviced a period of detention in the youth justice system
- prescribing the operational arrangements and responsibilities necessary for effecting transfers from adult correctional facilities to youth detention centres. [21]

While the Bill aims to transition all 17-years-olds to the youth justice system there may be exceptional circumstances where it is in the individual's best interests to stay in the adult correctional facility. This includes circumstances where a person's release date is close to the date of commencement of the Act or where an individual's special needs are better supported by the specialist providers in the adult correctional facility. [22] In these instances subsection 389(3)(c)(ii) provides that a regulation may be made to apply a provision of the YJ Act to the person in the adult correction facility as though they were accommodated in a detention centre.[23]

Proposed subsection 389(4) provides a court with the authority to make orders or give directions it considers necessary to facilitate the application of the YJ Act or another Act. The subsection also provides a court with the power to vary sentences or subsequent orders, or discharge them and substitute a corresponding child sentence or order. The Explanatory Notes explain that the scope of the subsection is 'deliberately broad, to allow the courts to resolve issues about any aspect of the transition'.[24]

2.4.3 *Seventeen year olds who are the subject of current court proceedings – proposed section 390*

Proposed section 390 provides for transitional arrangements to be made for 17-year-olds who have committed, or are alleged to have committed, an offence and are the subject of current court proceedings. Most of this cohort will already be in the adult justice system awaiting finalisation of their court proceedings.[25]

---

[19] Public briefing transcript, Brisbane, 21 September 2016, p 2

[20] See the table in subsection 389(6) for the child sentence or order that corresponds with the adult sentence or order.

[21] Explanatory Notes, pp 6 - 7

[22] Explanatory Notes, p 6.

[23] Explanatory Notes, p 6.

[24] Explanatory Notes, p 7.

[25] Explanatory Notes, p 7.

Proposed subsection 390(2) allows for a transitional regulation to provide that the YJ Act or another Act apply to a person, who is the subject of a current court proceeding, as if the person committed the offence as a child. The Explanatory Notes state that the other relevant Acts that apply include the *Children's Court Act 1992* and the *Bail Act 1980.*[26]

Subsection 390(3) states matters for which the transitional regulations may provide such as (a) removing current proceedings to the Children's Court under the YJ Act; (b) applying a provision of the YJ Act to the proceeding if it cannot be removed to the Children's Court; (c) applying a provision about bail under the YJ Act to the person; (d) if the person is being held on remand, or otherwise being held in custody, in a corrective services facility on the commencement- (i) providing for the transfer of the person to a detention centre; or (ii) applying a provision of the YJ Act to the person as if the person were being held on remand in the chief executive's custody, or otherwise held in custody in a detention centre; and (e) applying a provision of the YJ Act to any sentencing for the offence.

The department advised the committee that a regulation made under proposed section 390:

> *… will need to provide certainty for a range of different scenarios-including, for example, the case where a lengthy hearing is part heard at commencement or a joint trial of a 17-year-old with a co-accused who is 18--so section 390(3) will provide a broad power for the court to make an order or give directions to facilitate the transition to ensure that any of these scenarios or other unanticipated scenarios can be managed in a sensible and appropriate way.*[27]

Subsection 390(4) provides that a court may make orders or give directions it considers necessary to facilitate the application of the YJ Act or another Act to the person under the transitional regulation. According to the explanatory notes this provision will allow the courts to provide guidance and to resolve issues.[28]

2.5 Administrative arrangements – Clause 5

Clause 5 inserts proposed section 391 which concerns the administrative arrangements of transitioning young people from corrective services to the youth justice system. Proposed section 391(1) allows a transitional regulation to be made that provides for administrative arrangements to facilitate the operation of the regulation. Proposed section 391(2) states the matters for which the transitional regulation may provide, including:

(a) the staged transfer to a detention centre of persons to whom the regulation applies, who, at the commencement, are being held on remand, serving a term of imprisonment, or otherwise being held in custody, in a corrective services facility

(b) the chief executive (corrective services) giving to the chief executive information about a person to whom the regulation applies.

Proposed subsection 391(3) states that a transitional regulation providing for a matter mentioned in subsection (2)(a) applies to a person despite any provision of this Act providing that the person must be detained in a detention centre. Proposed section 391(4) states that a transitional regulation providing for a matter in subsection (2)(b) applies to information about a person despite any provision of an Act preventing the chief executive (corrective services) giving the information to the chief executive.

The potential fundamental legislative principle issue in proposed section 391 is discussed in chapter 3 of this report.

[26] Explanatory Notes, p 7.

[27] Public briefing transcript, Brisbane, 21 September 2016, p 2.

[28] Explanatory Notes, p 8.

2.6 Amendments of other legislation – Clauses 7 to 10

The Bill amends the *Corrective Services Act 2006*. Clause 8 omits subsection 18(2) which provides that a prisoner who is under 18 years must be kept separate from other prisoners who are 18 years and over unless it is in the prisoner's best interests not to be kept apart. Section 18(2) is omitted because it will be made redundant upon commencement of the Bill.

Clause 9 provides for the safety of 17 year old prisoners during the transitional phase of the Bill by ensuring that they continue to remain apart from adult prisoners despite the repeal of subsection 18(2). Subsection 490L(1) provides that the repealed section 18(2) continues to apply to a prisoner who is under 18 years on the commencement; or who becomes a prisoner in a corrective services facility after the commencement in relation to a proceeding that was decided before the commencement, or in relation to a proceeding that had not been finally dealt with before the commencement.

Schedule 1 makes minor consequential amendments to various Acts including the *Bail Act 1980,* the *Criminal Code, Criminal Law Amendment Act 1945, Criminal Organisation Act 2009, District Court of Queensland Act 1967, Drugs Misuse Act 1986, Mental Health Act 2000, Mental Health Act 2016, Penalties and Sentences Act 1992, Police Powers and Responsibilities Act 2000*, *South Bank Corporation Act 1989*, and *State Penalties Enforcement Act 1999*. As stated in chapter two of this report, most of those amendments omit the definition of `child' with the effect that the definition in the *Acts Interpretation Act 1954* apply.

Clause 10 also makes minor amendments to the *Transport Operations (Passenger Transport) Act 1994*. Driver disqualifying offences that refer to 17-year-olds are replaced with reference to 18-year-olds.

3 Compliance with the Legislative Standards Act

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that 'fundamental legislative principles' are the "principles relating to legislation that underlie a parliamentary democracy based on the rule of law". The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill and brings the following to the attention of the Legislative Assembly.

3.1.1 *Amendment of an Act only by another Act*

Clause 5 inserts new section 391 into the YJ Act to allow a transitional regulation to be made that provides for administrative arrangements to facilitate the operation of the regulation. Proposed section 391(2) outlines the matters for which the transitional regulation may provide, including:

(c) the staged transfer to a detention centre of persons to whom the regulation applies, who, at the commencement, are being held on remand, serving a term of imprisonment, or otherwise being held in custody, in a corrective services facility;

(d) the chief executive (corrective services) giving to the chief executive information about a person to whom the regulation applies.

Proposed section 391(3) states that a transitional regulation providing for a matter mentioned in subsection (2)(a) 'applies to a person despite any provision of this Act providing that the person must be detained in a detention centre.' Proposed section 391(4) states that a transitional regulation providing for a matter in subsection (2)(b) applies to information about a person despite any provision of an Act preventing the chief executive (corrective services) giving the information to the chief executive.

Potential FLP issue

A Bill should only authorise the amendment of an Act by another Act.[29] A clause which enables the Act to be expressly or impliedly amended by subordinate legislation or executive action is known as a 'Henry VIII' clause. The former Scrutiny of Legislation Committee's (SLC) approach to Henry VIII clauses was that if an Act purported to be amended by subordinate legislation in circumstances that were not justified, the SLC would voice its opposition by requesting that Parliament disallow the part of the instrument that breached the fundamental legislation principle that legislation have sufficient regard for the institution of Parliament.[30]

The circumstances when the use of Henry VIII clauses are potentially acceptable are:

- to facilitate immediate executive action
- to facilitate the effective application of innovative legislation
- to facilitate transitional arrangements
- to facilitate the application of national scheme legislation.[31]

Those circumstances do not automatically justify the use of Henry VIII clauses, and, if the clause does not fall within any of the above circumstances, the SLC classified the clause as 'generally objectionable'.[32]

[29] Legislative Standards Act 1992, section 4(4)(c).

[30] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 159.

[31] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 159.

[32] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: The OQPC Notebook, p 159; Alert Digest 2006/10, page 6, paras 21-24; Alert Digest 2001/8, p 28, para 31.

Transitional regulations covering the matters outlined in proposed section 391(2) will apply to a person despite any contrary provision of an Act. While the transitional regulation is not strictly a Henry VIII clause as it would not amend the Act, it would prevail over a contrary provision in an Act. It could be argued that proposed section 391, inserted by clause 5, fails to have sufficient regard to the institution of Parliament as it allows a regulation to prevail despite a contrary provision in an Act. Proposed section 388 provides that a transitional regulation made under section 391 expires two years from commencement of this Bill.

3.2 Explanatory notes

Part 4 of the *Legislative Standards Act 1992* relates to Explanatory Notes. It requires that an Explanatory Note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an Explanatory Note should contain.

Explanatory Notes were tabled with the introduction of the Bill. The Notes contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

The committee notes however that the Explanatory Notes did not address the concerns raised above about a potential issue with the fundamental legislative principle, that legislation have sufficient regard to the institution of Parliament.

Appendices

Appendix A – List of submissions

Sub No.	Submitter
001	Queensland Council of Civil Liberties
002	*not accepted*
003	Rev Dr Wayne Sanderson
004	Professor Kerry Carrington
005	Queensland Family & Child Commission
006	Youth Advocacy Centre Inc
007	UQ Pro Bono Centre
008	Anti-Discrimination Commission Queensland
009	Anglican Church Southern Queensland Social Responsibilities Committee
010	Amnesty International
011	Queensland Legal Aid
012	Associate Professor Terry Hutchinson
013	The Salvation Army – Australian Eastern Territory
014	Queensland Law Society
015	Australian Lawyers for Human Rights
016	Community Legal Centres Queensland

Appendix B – List of witnesses at public briefings and public hearings

Public briefing - 21 September 2016 - Department of Justice and Attorney General
Mr Mark Lynch, Director, Youth Justice Policy, Research and Partnerships
Mr Phil Hall, Manager, Policy, Youth Justice
Ms Kirsten Gudzinski, Senior Policy Officer, Youth Justice Policy

Statements of Reservation

Statement of Reservation – Government Members

I write to lodge a statement of reservation with respect to the Inquiry into the Youth Justice and Other Legislation (Inclusion of 17-year old Persons) Amendment Bill 2016. I will briefly detail some of the Government member's views with respect to the report. The areas listed below are not exhaustive and Government members will detail additional views during the parliamentary debate on the Bill.

Background to the Bill

The department explained that the *Juvenile Justice Act 1992* (now the *Youth Justice Act 1992*) had a 'built-in commitment to move over time to include 17-year-olds in the youth justice system.'[1] During the parliamentary debate on the Bill, then family services minister Hon Ann Warner told the Legislative Assembly:

> *It is the intention of this Government, as it was of the previous Government, to deal with 17-year-old children within the juvenile, rather than adult, justice system, as per the 1988 Kennedy report into prisons. 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.*[2]

The Explanatory Notes of the Juvenile Justice Bill 1992 explained that there were 'significant resource implications associated with including 17-year-old persons in the juvenile justice system [and] it was not possible to give effect to this commitment immediately'.[3] The costs of implementation and the complexity of the task meant that this commitment was not given effect and the law was not amended.

Increasing the age of a child to 17 years of age

Queensland's current approach differs from all other Australian states and is inconsistent with the United Nations *Convention on the Rights of the Child* (the Convention).[4] Australia signed the Convention on 22 August 1990 and ratified it on 17 December 1990.[5]

Article 1 of the Convention states:

> *For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.*[6]

There is broad recognition that 17-year-olds benefit from being included in a youth justice system rather than being treated as adults in a criminal justice system, specifically in relation to young people's neurological and cognitive development and the need for a justice a system that responds to young people in a developmentally appropriate way.[7]

---

[1] Public briefing transcript, Brisbane, 21 September 2016, p. 1.

[2] Queensland Parliament, Record of Proceedings, 5 August 1992, p 6130.

[3] Explanatory Notes, Juvenile Justice Bill 1992, p 3.

[4] Explanatory Notes, p 3

[5] *CRC25 Australian Child Rights Progress Report: A report on 25 years of the UN Convention on the Rights of the Child in Australia*, Australian Child Rights Task Force, 2016, p 4.

[6] Australian Human Rights Commission, https://www.humanrights.gov.au/convention-rights-child.

[7] See K Richards, What makes juvenile offenders different from adult offenders? *Trends & issues in crime and criminal justice 409*, Australian Institute of Criminology, Canberra, 2011. See also Terry Hutchinson and Jamie Nuich, Drawing the line: the legal status and treatment of 17-year-old accuseds in Queensland, *Australian Journal of Human Rights*, 17(2), 2011, pp. 91-130.

The department advised the committee that the youth justice system was a better fit for 17-year-old offenders especially in terms of outcomes and reducing recidivism:

> *Our view is that, in terms of reducing the likelihood of reoffending, those young people are much better served by the intensive support and wraparound services they are able to access in a youth detention centre than they have access to in the adult system.*[8]

Stakeholders' views on the Bill

All submitters supported the objectives of the Bill and most acknowledged that the reforms were long overdue.

For example the Queensland Council for Civil Liberties 'applauds' the government for `finally taking steps' to address the issue of bringing 17-year-olds into the youth justice system and under the authority of the Youth Justice Act, submitting that `the failure of successive governments to deal with this issue over the last 24 years is unjustified.'[9] The Youth Advocacy Centre (YAC) was `extremely pleased' to hear that the government's commitment to treat 17 year olds as children under the Youth Justice Act was to be actioned. They submitted that ` this had been under discussion for nearly 30 years and we congratulate Premier Palaszczuk and Attorney-General D'ath on being the ones to move from discussion to action.'[10]

Amnesty International is 'strongly supportive of the Bill' submitting that it 'will bring Queensland into line with other jurisdictions in Australia as well as Australia's obligations under the United Nations Convention on the Rights of the Child.'[11]

In expressing its support, Community Legal Centres Queensland submitted:

> *…there should be a consistent definition of a 'child' across State and Federal legislation. It is incomprehensible that a 17 year old is not old enough to vote, get married, obtain a passport in their own right or be sued but is old enough to face the adult criminal justice system.*[12]

The UQ Pro Bono Centre submitted that the inconsistency between states was arbitrary and problematic and that `it was difficult to justify children being granted few fundamental rights depending on where they reside.' [13]

The YAC's submission advised of the need for uniformity across all jurisdictions and was concerned about the anomalies created by the current inconsistencies:

> *Queensland is the only jurisdiction in Australia that continues to treat 17 year olds as adults…It is not acceptable that how a child is treated in the criminal justice process depends on where they live in Australia…It cannot make sense that a 17 year old can be charged, tried and possibly detained as an adult in Coolangatta in Queensland while their mate literally across the road but who is technically in Tweed Heads in New South Wales is dealt with as a juvenile. The 17 year olds from Victoria and New South Wales coming to Queensland for "schoolies" celebrations will not be aware that if they should get into trouble, they will be treated as adults.*

---

[8] Public briefing transcript, Brisbane, 21 September 2016, p. 7.

[9] Submission 1, p 1.

[10] Submission 6, p 2.

[11] Submission 10, p 2.

[12] Submission 16, p 2.

[13] Submission 7, p 5.

Associate Professor Terry Hutchinson welcomed the introduction of the Bill and submitted that the amendments have implications for young offenders that go beyond the place of detention.

> *This is not an issue pertaining to where the young people should be housed if they are convicted of an offence. It relates to the protections and different rules provided for any child charged with an offence. The YJA covers children charged with minor offences and provides a framework for how children are treated by the police and the courts.*[14]

Associate Professor Hutchinson believes the current approach of treating 17-year-olds as adults is `contrary to the finding of psychological studies on adolescent development and maturity and of the importance of drawing a line between adulthood and childhood'.[15]

Implementation

Governance arrangements

When introducing the Bill the Attorney-General and Minister for Justice said:

> *The focus going forward for all government agencies will be on concrete and measurable strategies to reduce reoffending and remands in custody. A whole-of-government panel will be convened to oversee the development and implementation of programs and practices necessary to achieve these aims and safely integrate 17-year-olds within the youth justice service system. A stakeholder advisory group will also support and advise the government panel on this work. A cabinet subcommittee has been formed to oversee the progression of this work.*[16]

The department advised:

> *The work of the multiagency group gets underway and we start establishing, identifying and preparing the various strategies that will be implemented. It will not just be one; it will be a number. We might find that we are ready for different cohorts at different times. There might be geographic differences. There are a whole range of options that are on the table. The way that this has been progressed provides for the flexibility for us to move with whatever works at the time. We will not be picking up 50 17-year-olds in a bus on day one and taking them to detention centres; a whole range of different options will be considered.*[17]

Submitter's views

YAC noted the complexity of the transition but believes the approach proposed in the Bill `seems a reasonable and practical way to proceed'. In particular, YAC welcomed the government's commitment to working with stakeholders on the detail that will be involved during the Bill's transitionary phase.[18]

In addition to supporting the Bill, Amnesty International recommended that:

> *…the Parliament ensure the cabinet subcommittee, whole-of-government panel and Stakeholder Advisory Group charged with overseeing the transitional arrangements for the transfer of 17-year-olds from the adult criminal justice system are advised and guided by relevant bodies including the First National Action Board, the Queensland Child and Family Commission and the Office of the Public Guardian.*[19]

---

[14] Submission 12, p 3.

[15] Submission 12, p 3.

[16] Queensland Parliament, Record of Proceedings, 15 September 2016, p 3581.

[17] Public briefing transcript, Brisbane, 21 September 2016, p6.

[18] Submission 6, p 11.

[19] Submission 10, p3.

Queensland Family & Child Commission (QFCC) believes the 12 month implementation timeframe will allow the 'appropriate consideration of establishing or strengthening safety measure for young detainees prior to the introduction of 17-year-olds to youth detention.'[20]

Cost of implementation

The department advised that approximately 80 per cent of young people in the youth justice system are on remand, requiring a median stay of around 14 days in detention centres.[21] Notably, Aboriginal and Torres Strait Islander youth are 23 times more likely to be held in detention than non-Indigenous young people.[22]

The department acknowledged that remand reduction strategies and reducing the over-representation of Aboriginal and Torres Strait Islander youth in detention were key strategies to meeting the challenge of including 17-year-olds in the youth justice system.[23]

The department advised:

> *Central to this bill and one of the reasons it is such a transformational initiative really is that it does envisage a change to the way in which youth justice operates, and that is why it needs to be a multiagency approach. The aim is to not have to build, not have to immediately go to a $400 million build because you are doing things like the remand reduction strategies.*[24]

Submitter's views

Youth Advocacy Centre Inc (YAC) submitted:

> *There will clearly be costs involved in changing the situation (although presumably this was the same for Tasmania in 1998, the NT in 2000 and Victoria in 2004): however, these costs need to be balanced against the financial costs of ongoing involvement with the criminal justice system and the personal costs to victims of crime. Where a young person is sentenced to incarceration, the youth detention centre provide opportunities to attend the therapeutic program and participate in education which are not available in prison and therefore there is more likelihood that young people can be diverted. That is not to say that this is operating to its greatest potential at the moment, but monies invested appropriately here could save the significant cost of keeping an adult in prison for years into the future. Further, there is evidence to suggest that those going to prison are more likely to offend than those kept in the youth justice system with the costs that accompany that.*[25]

The Anglican Church Southern Queensland Social Responsibilities Committee believed the costs of implementing the Bill was an investment that will benefit the community as a whole:

> *It is critical therefore that support for this Bill is not derailed by a preoccupation with possible short term budget implications… national and international evidence demonstrates that investing in rehabilitative and therapeutic responses that will help children in trouble – including 17 year olds – to become contributing members of our community, is both cost effective and future thinking.*[26]

---

[20] Submission 5, p 2.

[21] Public briefing transcript, Brisbane, 21 September 2016, p 8.

[22] Public briefing transcript, Brisbane, 21 September 2016, p 4.

[23] Public briefing transcript, Brisbane, 21 September 2016, p 4.

[24] Public briefing transcript, Brisbane, 21 September 2016, p 5.

[25] Submission 6, p 11.

[26] Submission 9, p 4.

The Community Legal Centres Queensland contended that the costs of the change `are not prohibitive', submitting:

> *'Considering the cost of imprisonment of one young person is approximately $237, 980 per year then diverting this to better funding diversionary methods would be more cost effective. By adopting preventative, therapeutic and rehabilitative approaches, it is possible to achieve far better outcomes than punitive measures.'*[27]

Transitional arrangements – clause 5

The Minister advised that the Bill:

> *…provides a broad power for a court to ensure that any unanticipated scenarios can be managed in the most appropriate way…I anticipate a discharge would only occur in an extreme case where, for example, the intention of a sentencing court would otherwise be thwarted and could not be achieved by way of an order, direction or variation of the sentence order. These powers the bill gives to the courts will ensure flexibility and the preservation of the intention of sentencing courts through this transition process.*[28]

The department clarified that the Bill:

> *…does not in any way interfere with sentence orders made prior to commencement; rather, it simply provides for the administration of those orders for 17-year-olds in the youth justice system rather than adult system. By way of example, an adult probation order will be able to be administered as though it were a youth justice probation order. The adult order would stand, but the person would report to a youth justice service centre and take direction and receive support from a youth justice case worker…*[29]

Submitter's views

The transitional arrangements in the Bill were supported by submitters.

The UQ Pro Bono Centre supported the flexibility evident in the arrangements, submitting that there is `still a degree of flexibility allowed by the transitional provisions to accommodate different scenarios. Flexibility is desirable considering the complex logistical implications of the transition'.[30]

The Salvation Army supported the objectives of the Bill and recognised that a regulation-making power would be 'well-suited to best satisfy current and future justice system arrangements, and transitions. This would ultimately provide greater opportunities for age-appropriate rehabilitation.'[31]

The Queensland Law Society submitted that is `does not apprehend any issues with the introduction of this legislation, provided that, upon its passage, the processes of providing necessary infrastructure and services to meet the increased demands on the youth justice system are comprehensive, as intended'.[32]

Amendments to other legislation – clauses 7 to 10

The Explanatory Notes state that:

> *…the effect of this amendment is that a person who is currently ineligible for driver authorisation having committed a Category A driver disqualifying offence when the person was 17 years old may, after commencement, become eligible for driver*

[27] Submission 16, p 4.

[28] Queensland Parliament, Record of Proceedings, 15 September 2016, p 3580.

[29] Public briefing transcript, Brisbane, 21 September, p 2.

[30] Submission 7, p 4.

[31] Submission 13, p 3.

[32] Submission 14, p 2.

authorisation due to the Category A driver disqualifying offence being reclassified as a lesser Category B driver disqualifying offence.[33]

Fundamental legislative principles

The government members of the committee noted the fundamental legislative issues raised by proposed section 391, inserted by clause 5, and consider the provision justified as it enables the making of a regulation to facilitate transitional arrangements and would be limited to two years duration.

Conclusion

The Government members of the committee strongly support the Youth Justice and Other Legislation (Inclusion of 17-year old Persons) Amendment Bill 2016 as did every submitter to the Bill.

Scott Stewart MP
Member for Townsville

[33] Explanatory Notes, p 9.

The non-government members of the Education, Tourism, Innovation and Small Business Committee cannot support the passage of the Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Bill 2016. There are a number of concerns the non-government members of the committee have which will be identified in this statement of reservation with more detail provided during the House's consideration of the bill.

It is clear from the evidence provided to the committee by the department that this asleep-at-the-wheel Palaszczuk Labor Government does not have a transition plan developed and in place. The Explanatory Notes state that a regulation making power will be given to the government; however, during neither the Attorney's introductory remarks nor the departmental briefing were any details provided about what this regulation might contain. Evidently, the government has been rushed into a motherhood statement piece of legislation with no tangible plan on how to deal with the practicalities of any change.

It is obvious, from evidence provided to the committee, the government has no plan on how to manage 17-year-olds in youth detention facilities alongside 10-year-olds. This is of particular concern to non-government members of the committee who are worried about the impact such interactions might have on those aged 10 to 13. At this stage, it appears this asleep-at-the-wheel Palaszczuk Labor Government has no more than a plan to have a plan. For the non-government members of the committee this simply is not good enough. It is concerning there would be any attempt by the Palaszczuk Labor Government to abrogate the sovereignty of the Parliament with respect to matters of grave importance such as this; the use of a regulation making power is a slap in the face to the Westminster traditions we hold dear.

The department, in its briefing, indicated a Cabinet subcommittee would be established as well as a whole-of-government panel which reports to it. It seems half of Cabinet will be members of said subcommittee, and a number of Directors-General and other departmental and agency representatives would be members of the multiagency group. The department advised the Attorney-General 'was keen' to have eight Ministers involved in the Cabinet subcommittee, but it was not an exclusive list. Given this non-exclusive list equates to 47 per cent of the Cabinet, it follows that it might have been prudent for Cabinet to have actually determined its transition plans ahead of the premature introduction of this bill to the House. For a policy issue which has been on the books since 1992, in the department's words, it beggars belief that the Parliament is still only considering a motherhood statement of principle rather than a genuinely prepared and planned framework.

The other significant concern held by non-government members of the committee is with respect to the cost of this change. Of course, if the Parliament is unable to consider how the transition will be effected it is equally unable to consider the credibility of costing advice provided by the department. It is clear that if the provisions of this bill are put into effect and no other provisions or changes are enacted or made with respect to the way the youth justice system works in Queensland then a new youth justice facility will have to be built at a cost of $400 million. However, there has been no detail provided as to what change the department or the attorney thinks is required. The department advised that central to this bill and one of the reasons it is such a transformational initiative is that it envisages change. What change that is remains to be determined. The department, in its briefing, acknowledged that, at best, it is 300 per cent more expensive to keep people in youth detention facilities as opposed an adult prison.

The Explanatory Notes make reference to a cost, per annum, of $44 million. However, the department itself acknowledge that it's difficult to put a cost on this transition, both initially and over the forward estimates. When pressed, the department acknowledged the $44 million per annum figure quoted in the Explanatory Notes does not include the additional costs of staff.

Further, the department advised that the true cost of this change will not be known until the multiagency group works out its transition strategy. Further, any attempt by the government to argue there would be savings within Corrective Services was nullified by the departmental officers' acknowledgement that adult correctional centres will still have the same number of personnel and associated infrastructure running costs.

Given the department acknowledged, in its briefing, that the costs quoted in the Explanatory Notes did not take into account any additional staffing required at youth detention facilities, the non-government members were keen to see if, at least, the number of additional personnel required had been determined. Again, we were informed this will be guided by the transition plan which is still to be determined.

Additionally, non-government members of the committee are concerned about the lack of vocational education opportunities available at youth detention centres and the impact this will have on recidivism rates of youth offenders. Evidence from the department showed that 52 per cent of those currently in youth detention facilities had a 'prior admission to detention', though the department said they did not collect data of rates of recidivism for those currently in detention facilities so it is unclear how many prior admissions there may have been. Non-government members of the committee feel it's important to ensure there are educational opportunities for those currently in detention to help curb recidivism.

The non-government members will expand on their concerns during the House's consideration of the bill. Very clearly, we are concerned there has been no detail provided on the transition strategy – at best there is a plan for a plan. There is no comfort or security provided to the non-government members, the House or the people of Queensland with respect to how 17-year-olds who've committed serious offences will be managed alongside 10 to 13-year-olds. Further, the lack of certainty or clarity with respect to the true cost of any transition plan can inspire no confidence in this asleep-at-the-wheel Palaszczuk Labor Government and can only give rise to increased concern amongst Queenslanders who are frustrated with this do-nothing government's approach to the Queensland economy. It is for these reasons, and more, the non-government members of the committee will not be able to support passage of the bill.

Verity Barton
Member for Broadwater

Mark Boothman
Member for Albert

Steve Dickson
Member for Buderim