AUSTRALIAN
LAWYERS
FOR
HUMAN RIGHTS

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Re: Bail Amendment Bill 2016

We write on behalf of Australian Lawyers for Human Rights (ALHR) to express our alarm and disappointment with your government's recent introduction of the Bail Amendment Bill 2016 which seeks to amend the Bail Act to create a presumption against bail for persons charged with certain property and vehicle-related offences.

ALHR was established in 1993 and is a national network 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 a secretariat at La Trobe University Law School in Melbourne. Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas.

ALHR is deeply concerned that the Bail Amendment Bill 2016:

- **(i) is inconsistent with a number of Australia's international human rights obligations;**
- **(ii) is inconsistent with long held common law principles such as the presumption of innocence;**
- **(iii) will disproportionately target Aboriginal and Torres Strait islander juveniles and adults;**
- **(iv) will come at a significant cost to the tax payer and will further stress an already overburdened juvenile detention and adult prison system in the Northern Territory;**
- **(v) is not evidence based and will in fact have the effect of increasing rates of recidivism, ignoring proven alternatives to detention.**

(i) Inconsistencies with Australia's International Human Rights Obligations

ALHR is concerned that presumptions against bail contained within the Bail Amendment Bill 2016 are inconsistent with a number of Australia's international human rights obligations, particularly those relating to the treatment of children.

The Convention on the Rights of the Child (***CRC***) and the United Nations' Standard Minimum Rules for the Administration of Juvenile Justice (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."

Where children are concerned any arbitrary use of remand in custody is 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.

A legislative presumption against bail which results in the arbitrary detention of persons charged with a certain category of offence and excludes any opportunity for judicial discretion may also be inconsistent with Australia's obligations under the International Covenant of Civil and Political Rights (ICCPR), article 9(3) 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.."*.

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(ii) **Inconsistencies with Common Law principles**

The proposed legislation would undermine the presumption of innocence, a principle that is integral to the rule of law.

The *Northern Territory Bail Act* already requires a court or police officer considering the grant of bail to take into account the risk of the alleged offender re-offending. Creating a legislative presumption against bail will remove the court's ability to consider other factors including the age of an alleged offender and "any needs relating to the person's cultural background, including any ties to extended family or place, or any other cultural obligation".

We request that you take particular note of the fact that only a small proportion of young people on remand are ultimately convicted and sentenced to a custodial order. These reforms are not reasonable because they do not allow specialised youth courts to assess the risks of granting bail based on the circumstances of the offence. They instead introduce arbitrary provisions dealing with all crimes in certain categories in the same way, irrespective of the facts of the case. The practical effect will be to make the pre-trial detention of children the norm for certain offences. This is clearly unjust and inconsistent with the presumption of innocence to which all members of society are entitled.

(iii) Disproportionate impact on Aboriginal and Torres Strait Islander Peoples

ALHR is deeply concerned that this Bill will disproportionately target already vulnerable and disadvantaged Aboriginal and Torres Strait Islander children. Coupled with other inequities and challenges already within the system the measures will further condemn Aboriginal children to a life of institutionalisation.

The Northern Territory already has a juvenile detention rate that is 6 times the national average and 97% of these children are Aboriginal. Almost three quarters of the youths detained in the Northern Territory are on remand after bail has been refused. Internationally the NT tops all countries in the United Nations figures for imprisonment rates. If passed this Bill will only increase these nationally and internationally unprecedented figures.

The proposed measures also disregard the recommendation made by the Royal Commission into Aboriginal Deaths in Custody that imprisonment should only be utilised only as a sanction of last resort.

The Vita Review commissioned by the NT government last year stated that the juvenile justice system existed in *a climate of daily crisis*. These proposals will only serve to significantly deepen that crisis.

ALHR reminds you that earlier this year the Northern Territory Government stated that it was going to cut Indigenous incarceration by an extraordinary 50 per cent by 2030. These measures are totally inconsistent with that target and worse still, will be counterproductive.

(iv) The measures will have a significant cost to the taxpayer and will further stress an already overburdened juvenile detention and adult prison system in the Northern Territory

Whilst the indirect social costs of losing generations of the Northern Territory's indigenous youth to the cycle of imprisonment are immeasurable, we note that the proposed measures and the resultant spiraling youth incarceration rates, will come at a significant cost to the budget and therefore the taxpayer.

In the NT, youth detention costs $350,000 per year or $87,500 for three months per young person.

We note that the Northern Australian Aboriginal Justice Agency (NAAJA) has funding for just one Indigenous Youth Justice Worker who works with Aboriginal young people to address the issues that have brought them into contact with the criminal justice system. Similarly, the Central Australian Aboriginal Legal Aid Service (CAALAS) has funding for just one Youth Justice Worker to cover all of Central Australia. We would ask that you consider how many youth justice workers could be employed for the cost of imprisoning a single young person, being $350,000 per year? How many early intervention and diversion programs could be funded with the millions of dollars that will be spent arbitrarily remanding the numerous individuals who will be subjected to these measures?

(v) The proposed measures are not evidence based, may increase rates of re-offending and ignore proven alternatives to detention.

The use of detention for juvenile offenders has not been shown to reduce crime rates or rates of reoffending. Locking-up children and adults on remand unnecessarily risks exposing them to the criminal justice system; which in turn generally increases their chances of becoming repeat offenders.

Research indicates that time in a juvenile justice centre is the most significant factor in increasing the odds of recidivism. For example, research from the Australian Institute of Health and Welfare has shown that children who are placed in detention are three times more likely to end up back in detention within 12 months than those who get a community-based sentence.

Periods of detention represent missed opportunities to intervene in juveniles' lives with constructive programs. A more responsible and cost effective approach would be the introduction of proven and effective early intervention and diversion programs and restorative justice approaches.

The Northern Territory's increasingly punitive approach to juvenile justice is out of step with the rest of Australia and globally comparative jurisdictions. Jurisdictions like Victoria, the ACT and even Western Australia and the United States of America are really looking to change their youth justice systems to focus more on intervening early in the lives of young

people. They have recognised that principles of justice reinvestment should guide youth justice policy.

(vi) Recommendation

The proposed Bill will establish a regime that is not only costly and inefficient but inhumane and deeply inconsistent with the principles and values set out in the Universal Declaration of Human Rights, the Convention on the Rights of the Child and the United Nations' Standard Minimum Rules for the Administration of Juvenile Justice.

NATSILS has called on the Territory and Federal Governments to develop and fund justice reinvestment initiatives that can allow community led solutions to dramatically turn around justice outcomes in Aboriginal and Torres Strait Islander communities and at a fraction of the cost. We take this opportunity to echo that call.

ALHR urges the Northern Territory Government to reconsider the facts, the costs and the voluminous evidence and immediately withdraw the Bail Amendment Bill 2016. Instead we urge you to adopt a more proven and cost effective approaches to youth crime by investing in tried and tested early intervention and diversion programs which reflect the higher morality of a human rights-based approach.

Please note that we also intend to raise our concerns with the NT Children's Commissioner and the Shadow Attorney-General.

We thank you for your consideration of this letter and we look forward to hearing from you.

Yours faithfully,

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