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The Hon. Anastacia Palaszczuk, Premier of Queensland
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Via email: thepremier@premiers.qld.gov.au;

CC: [Queensland Attorney-General - attorney@ministerial.qld.gov.au](mailto:attorney@ministerial.qld.gov.au);
[Deputy Premier - deputy.premier@ministerial.qld.gov.au](mailto:deputy.premier@ministerial.qld.gov.au);
[Minister for Children - communities@ministerial.qld.gov.au](mailto:communities@ministerial.qld.gov.au)

Dear Premier,

RE: [Queensland must increase the age of a child from 17 to 18 years under the Juvenile Justice Act 1992 \(Qld\)](#)

In the wake of the recent decision by the federal government to commence a Royal Commission into the Child Protection and Youth Detention Systems of the Northern Territory, Australian Lawyers for Human Rights (ALHR) urges the Queensland government to reconsider its own laws and policies affecting children. ALHR calls on you not to miss the opportunity to address the deep systemic failures that exist in Queensland's treatment of children within the criminal justice system. We urge you to take immediate steps to ensure this state is complying with the *UN Convention on the Rights of the Child (CRC)*.

ALHR commends your Government for the recent improvements to youth justice laws in Queensland introduced via the *Youth Justice and Other Amendment Bills*. In particular we welcome the removal of military-style boot camps, return of privacy safeguards and the Children's Court power to review sentences, the reinstatement of youth justice conferencing powers to courts, the provision of restorative justice pathways and ending the automatic transfer of 17 year olds on youth charges to adult prison. We note also that importantly, these Bills have restored the principle that detention is a last resort for children, as required under the CRC.

We now call on the Queensland Government to urgently take the further necessary steps to protect children's internationally recognised human rights and increase the age of a child under the *Juvenile Justice Act 1992* from 17 years to 18 years old. Queensland is the only state in Australia to treat 17 year olds as adults in the criminal justice system and, as a consequence, Queensland imprisons 17-year-old children in adult prisons. Not only is this in clear contravention of Australia's obligations under the CRC, but it is also contrary to everything the available research tells us we should be doing to reduce rates of recidivism and rehabilitate young people.

Parliament's intention at the outset was to increase the age to 18 years

When the *Juvenile Justice Act* was passed by Parliament in 1992, the then Queensland Minister for Family Services and Aboriginal and Islander Affairs, Mrs Anne Warner, stated:

"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 the adult system, as per the 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."

24 years after this statement was made in Parliament, Queensland continues to incarcerate 17-year-old children in adult prisons under arcane laws.

This treatment of children as adults is unprecedented in Australia. In every other jurisdiction,, 18 is the age which must be reached before a person can be held in an adult prison.

Putting children in adult prisons causes irreversible harm, ignores the difference between children and adults and increases rates of recidivism.

The recent damning Four Corners report on juvenile detention in the Northern Territory left Australians shocked and disturbed about what happens when we leave our 17-year-old children with corrective service officers in juvenile detention centres.

In Queensland, our legislative scheme is far worse because it compels the leaving of 17-year-old children alone with hardened adult criminals, in institutions designed to cater for adults not children. The available data irrefutably evidences¹ that this exposes those children to **a drastically increased risk of:**

- irreversible emotional and psychological harm;
- physical abuse;
- sexual abuse;
- recidivism when released back into the community;
- entrenchment in a life of crime; and
- suicide.

The juvenile justice system was developed a century ago, precisely because it was recognised that placing young offenders with adult prisoners not only subjected those children to very serious abuse in adult jails, but it returned them to society as hardened criminals.² Placing a young offender in an adult prison does little to advance the rehabilitative aims of juvenile justice. It is clear that housing young offenders with adult prisoners is self-destructive and self-defeating.³

Further, children are not little adults. Their behavior is different because their brains are

¹ *The Risks Juveniles Face When They Are Incarcerated With Adults*, Youth Justice Policy Institute http://www.justicepolicy.org/images/upload/97-02_rep_riskjuvenilesface_jj.pdf; 5 Sullivan, James M., "From Monkey Bars to Behind Bars: Problems Associated with Placing Youth's in Adult Prisons" (2014). Law School Student Scholarship. Paper 587. http://scholarship.shu.edu/student_scholarship/587

² see: *The Risks Juveniles Face When They Are Incarcerated With Adults*, Youth Justice Policy Institute http://www.justicepolicy.org/images/upload/97-02_rep_riskjuvenilesface_jj.pdf;

³ see: *The Risks Juveniles Face When They Are Incarcerated With Adults*, Youth Justice Policy Institute http://www.justicepolicy.org/images/upload/97-02_rep_riskjuvenilesface_jj.pdf

different.⁴ That Queensland currently calls a 17-year-old child offender an adult, does not in fact transform that child into an adult. Scientists know that the adolescent brain is still developing, that it is highly subject to reward- and peer-influence. There is now long-held scientific support that teenage brains are developing throughout adolescence.⁵ The current treatment of children under the age of 18 years as adults in the Queensland criminal justice system, fails to acknowledge the fundamental differences between adults and children and the way in which these differences impact upon both criminal responsibility and rehabilitative and therapeutic needs.

As was pointed out by the Australian Law Reform Commission more than 18 years ago:

“Children have particular needs that are very different from those of adult offenders. For instance, they tend to have a reduced fear of danger and display 'acting out' behaviours. They may have volatile behavioural patterns and emotional states, self-harming behaviour, different perceptions of time and shorter concentration spans. They are also more vulnerable to contamination from criminal influences they encounter. Their different behavioural and emotional characteristics require different approaches than those for adult offenders.

Separating juveniles from adult offenders is important in preventing criminalisation of children through contact with adult offenders. It recognises that children have developmental needs that require different programs and services than those for adults. It protects the well-being and safety of children.”⁶

Disproportionate impact on Indigenous children

ALHR is particularly concerned that Queensland’s treatment of 17 year-old children as adults disproportionately affects Indigenous youth.

Twenty-five (25) years ago the Royal Commission into Aboriginal Deaths in Custody included a recommendation that imprisonment should only be utilised only as a sanction of last resort yet the current over-representation of Aboriginal young people in detention, especially on remand has been described as a national crisis. According to the most recent statistics⁷, Indigenous children are 26 times more likely to be imprisoned than non-Indigenous children, yet Indigenous Australians account for only 3% of Australia’s population. Australian Institute of Health and Welfare data reveals that Indigenous juveniles in QLD are 16 times more likely to be imprisoned than their white peers⁹.

Queensland is breaching its human rights obligations to its children

It is the considered view of ALHR that Queensland’s treatment of 17 year olds as adults under the Queensland criminal justice system is in breach of Australia’s binding legal obligations under the:

⁴ This is recognised in *The Integrated Approach: The Philosophy and Directions of Juvenile Detention* Qld Corrective Services Commission Brisbane 1997, 16. See also for example, H Blagg & M Wilkie *Young People and Police Powers* Australian Youth Foundation Sydney 1995 rec 22.

⁵ For an extensive list of references on this see: Massachusetts General Hospital Centre for Law, Brain and Behaviour at: <http://clbb.mgh.harvard.edu/juvenilejustice/>

⁶ Australian Law Reform Commission Report: *Seen and heard: priority for children in the legal process* (ALRC Report 84) 19 November 1997: http://www.alrc.gov.au/publications/20-detention/separation-adults-and-juveniles-detention#_ftn230

⁷ Australian Institute of Health and Welfare, *Juvenile Justice National Minimum Data Set* (2015)

⁸ <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4517.0>

⁹ *Ibid.*

- a) *Convention on the Rights of the Child (CRC)*;¹⁰
- b) *UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)*;¹¹ and
- c) *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*;¹²
- d) *UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*.¹⁵

Article 37(c) of CRC requires that:

[e]very child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person...In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so...

Article 26.3 of the Beijing Rules require that juveniles in institutions be kept separate from adults and be detained in a separate institution or in a separate part of an institution also holding adults.¹⁶

The CRC defines children as persons under the age of 18 years. It also stresses the importance of young people who come into conflict with the law being afforded treatment appropriate to their age and legal status. 17 year olds remain children for all other legal purposes in Queensland, yet are treated as adults within the criminal justice system. ALHR submits that this does not afford them treatment appropriate to their age and legal status.

The failure of Queensland to extend protection to 17-year-olds in detention has not escaped the attention of the United Nations Committee on the Rights of the Child. In its Concluding Observations in 2005 the Committee recommended the removal of children who are 17 years old from the adult justice system in Queensland.¹⁷ In their 2012 Concluding Observations the Committee noted with regret that the previous recommendations had not been accepted and again expressed concern that 17 year-old child offenders continue to be tried under the criminal justice system in Queensland.¹⁸

In March 2015, the United Nations Special Rapporteur on Torture, Juan Mendez, tabled a report outlining the current international benchmarks that are expected of countries when it comes to detaining children¹⁹.

Juan Mendez, in interpreting and setting standards under the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* in the context of Australia's youth detention policies said,

"...Australia's youth detention policies are out of date. We're allowing a number of physically and psychologically harmful practices to continue, and permitting punitive

¹⁰ Signed by Australia on 22 Aug 1990 and ratified by Australia on 17 Dec 1990.

¹¹ Adopted by the United Nations General Assembly on 29 Nov 1985.

¹² Signed by Australia on 10 Dec 1985 and ratified by Australia on 8 Aug 1989.

¹⁵ Adopted by the United Nations General Assembly on 17 December 2015.

¹⁶ United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") Adopted by General Assembly resolution 40/33 of 29 November 1985 Article 26.3.

¹⁷ *UN Committee on the Rights of the Child: Concluding Observations, Australia*, 20 October 2005, CRC/C/15Add.268. See also submission by the Anti-Discrimination Commission Queensland to the Legal Affairs and Community Safety Commission (Qld), Inquiry into the Youth Justice and Other Legislation Amendment Bill 2014, submitted February 2014.

¹⁸ *UN Committee on the Rights of the Child: Concluding Observations, Australia*, 28 August 2012, CRC/C/AUS/CO/4

¹⁹ Human Rights Law Centre, Torture Convention Standards (March 2015) <http://hrhc.org.au/wp-content/uploads/2015/04/TortureConventionStandards_March2015.pdf>.

*policies and practice, which do not priorities young people's rehabilitation or reintegration*²⁰.

Further, Mr. Mendez specifically raised concerns with respect to the mandatory sentencing of young people and imposing life sentences without parole in Australia and asserted that no circumstances warrant these practices. His report makes it clear that the use of practices such as strip searches and solitary confinement on children in Australia are inherently dangerous, cause irreversible psychological trauma and are completely inconsistent with Australia's legal human rights obligations.

Mr. Mendez's report states that children should be charged as minors until they are 18 years old, not 17 as is the current practice in Queensland. His report once again highlights the fact that children are different to adults – they are less emotionally and psychologically developed and are less culpable for their actions.

A change needs to happen now

The latest figures show 50 17-year-olds imprisoned in adult correctional facilities in Queensland. Your obligations under international law apply just as much to these children as they do to those below the age of 17.

ALHR now urges the Queensland Government to:

- (a) expedite the making of a regulation under section 6 of the *Youth Justice Act 1992* fixing a day after which for the purposes of the Act a child will be a person who has not turned 18 years;**
- (b) ensure that all 17 year-olds, whether on remand or serving sentences, are as soon as practicably possible removed from adult prisons, or where that is not possible in remote areas, are held entirely separately from adult prisoners in a purpose built part of the facility.**

ALHR notes that use of the legislative scheme created within the provisions of the *Youth Justice Act 1992*, could be very swift and does not require a legislative amendment.

Doing this will mean that all 17-year-olds in Queensland can access the rights laid out in the Act such as:

- entitlement to have a support person with them during police interviews;
- diversionary sentencing mechanisms such as access to community-based rehabilitation that address the causes of offending behaviour, with detention being a last resort; and
- access to bail support programs that target at-risk youth to prevent re-offending.

Other reforms also need to be made

While the primary purpose of this letter is to call on the Queensland government to urgently increase the age of a child under juvenile laws to 18 years of age, further immediate steps are also required to protect the rights of children in Queensland's youth justice system.

²⁰ Human Rights Law Centre, *Australian Youth Justice Practices are Failing* (17 April 2015) <hrc.org.au/ausyouthjusticepracticesarefailing/>.

1. We urgently ask the Queensland Government to call on the Federal Government to ratify the *Optional Protocol to the Convention against Torture*.
2. We urgently ask the Queensland Government to continue to prioritise the passage of a Queensland Human Rights Act and call on the Federal Government to adopt a Federal Human Rights Act so that the human rights of all Australian citizens, including our youth, can be legally protected.
3. We call for the Queensland government to continue to adopt practices that respect the principle that detention is a last resort for children and ensure that in all juvenile criminal matters alternatives to detention must be favoured.
4. Where detention is undertaken, we call for children to be detained in purpose-built age-appropriate facilities with non-prison like environments which are run by specialised staff trained in dealing with children.
5. We call for the immediate appointment of an Independent Custodial Inspector in Queensland with unfettered access to youth extension centers to ensure that national and international standards are being complied with (such as in NSW and WA).
6. We call for the immediate repeal of legislative provisions in Queensland which enable the use of chemical weapons (tear gas), solitary confinement, mechanical chairs, cable ties, weight belts, shackles and spit hoods on children in detention.
7. We call for higher standards of training and skills of personnel that work with juvenile detainees with a focus on rehabilitation of children as opposed to punitive measures.
8. We call for appropriately funded, evidence - based diversionary and education programs to be rolled out in Queensland which recognise the principle that detention is a last resort for children. Queensland programs should be providing a therapeutic environment that can help youth offenders on a path to rehabilitation and reintegration upon release back into society.
9. We call for the minimum age of criminal responsibility of juveniles to be increased to 12 years, not 10 years, in Queensland. A change that would reflect internationally recognized standards in juvenile justice.
10. We call on the Queensland Government to urgently address the current funding crisis in legal aid so as to ensure access to legal representation for youth offenders, particularly Queensland's Indigenous children.
11. We call on the Queensland Government to utilise justice reinvestment as a means of funding programs which address the underlying social issues responsible for the overrepresentation of Queensland's Indigenous children in the criminal justice system.

Following the federal government's call for a Royal Commission into juvenile detention in the Northern Territory, it is overwhelmingly clear that Queensland has serious problems of its own.

The Queensland juvenile detention system is in crying need of further reform. Increasing the age of a child under the *Juvenile Justice Act* to 18 years of age would be a simple and effective way of addressing one of the long-standing scourges in the current system.

We note that in a recent statement, a spokesperson for Attorney-General Yvette D'ath said your Government was committed to reforming the youth justice system to ensure it balanced community safety with evidence-based responses to rehabilitating young offenders and reducing crime.²¹ Recognition that children are different to adults does not mean that young people are not dealt with for the offences they commit.

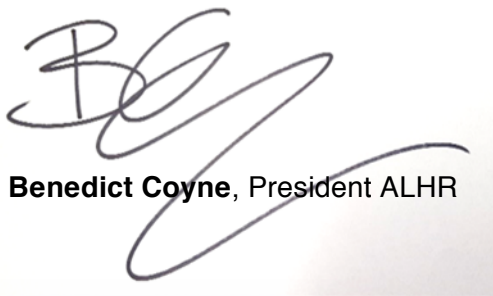
Regardless of what they have done, a 17-year-old child is still a child and incarcerating them in adult prisons is in fundamental breach of Australia's human rights obligations.

The Queensland government must reflect on the damage that is occurring to our children as a consequence of arcane laws and policies relating to youth justice. The trauma that they are receiving in juvenile detention and adult jails not only is in fundamental breach of Australia's human rights obligations to these children, but is doing a damage so profound and irreversible that it may entrench within these children a criminal mindset and create a pathway for an adult life of crime.

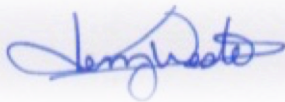
Australia is better than this and our children deserve much better.

We urge you to demonstrate a genuine commitment to all Queensland children by ensuring that adequate legislative and policy reforms be effected to bring the juvenile justice system in Queensland in line with the international human rights laws that Australia has ratified and committed to implementing.

Yours faithfully,



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Kerry Weste, Vice President ALHR vicepresident@alhr.org.au

Australian Lawyers for Human Rights

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.

²¹ <http://www.abc.net.au/news/2016-03-23/queensland-youth-justice-laws-under-pressure-over-17yo-offenders/7269076>