

5 October 2016

Research Director  
Education, Tourism, Innovation and Small Business Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

By email only: [ETISBC@parliament.qld.gov.au](mailto:ETISBC@parliament.qld.gov.au)

Dear Sir/Madam

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

Community Legal Centres Queensland welcomes the opportunity to respond to the *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Bill 2016* (the **Bill**). We congratulate the Queensland Government on progressing a 30 year old issue to actual legislative amendment.

**About Community Legal Centres Queensland**

Community Legal Centres Queensland is the peak body representing funded and unfunded community legal centres across Queensland. Community legal centres are independently operating not-for-profit, community based organisations that provide free legal advice to the public, focusing on the disadvantaged and people with special needs. Some community legal centres are generalists, serving a particular region, while others are specialists in a particular area of law.

**Community legal centres meeting the legal needs of young Queenslanders**

In 2015-16, Queensland's community legal services assisted 57,171 clients with legal advice and representation (and thousand more with legal information and education). Only 1052 (or 1.84%) of these clients were aged under 18. In the first six months of the new National Partnership Agreement on Legal Assistance Services (July 2015-January 2016), only 229 representation services were provided to young people, making the proportion of representation services to this priority group just 13.09% of total representation services. Given that people aged 10 to 24 constitute one-third of Queensland's population, this group is significantly under-served by community legal centres, which reflects a lack of resources committed to supporting the legal needs of young Queenslanders.

The Law and Justice Foundation of NSW, which has completed the world's largest population survey identifying people's experiences of legal problems, notes that<sup>1</sup>

certain types of legal problems tend to peak in the younger age groups before 25 years of age – notably crime problems (including crime victim problems), rights problems (including student bullying and harassment) and personal injury problems. These problems may in part reflect stage of life, including greater risk-taking behaviour and greater opportunity to experience certain types of problems, such as motor vehicle accidents while driving skills are still developing and education-related problems.<sup>2</sup> Nonetheless, young people can experience a wide range of legal problems, including problems not related to juvenile justice or child welfare.<sup>3</sup> Further, the problems young people experience can be severe, resulting in considerable adverse consequences.<sup>4</sup>

Importantly, 'at risk' or 'disengaged' youth have increased vulnerability to legal problems compared to other young people. For example, those who have been homeless or in out-of-home care and those with a mental illness or physical disability have apparently higher levels of legal problems, including substantial legal problems.

Several of our members, including the Youth Advocacy Centre, South West Brisbane Community Legal Centre and YFS Legal (Logan) are specialist community legal centres that deliver services to young people in the youth justice system, and with other legal problems.

### Comments on the Bill

Community Legal Centres Queensland endorses the submission provided by the Youth Advocacy Centre with respect to the Bill and reiterates the following points:

1. Internationally accepted principles dictate that children up to the age of 18 years should be subject to a separate system of criminal justice which recognises their inexperience and immaturity. It needs to be remembered that juvenile offenders are still children and cannot be expected to act in the logical and rational manner which is expected of an adult.
2. 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.

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<sup>1</sup> Christine Coumarelos, Hugh M. McDonald, Suzie Forell and Zhigang Wei, Collaborative Planning Resource- Service Planning (Law and Justice Foundation of NSW, Sydney, November 2015) 30. Available at [http://www.lawfoundation.net.au/ljf/site/templates/reports/\\$file/CPR\\_Service\\_Planning\\_Nov2015.pdf](http://www.lawfoundation.net.au/ljf/site/templates/reports/$file/CPR_Service_Planning_Nov2015.pdf)

<sup>2</sup> Coumarelos, C, Macourt, D, People, J, McDonald, HM, Wei, Z, Iriana, R & Ramsey, S 2012, *Legal Australia-Wide Survey: legal need in Australia*, Law and Justice Foundation of NSW, Sydney. Available at <http://www.lawfoundation.net.au/ljf/app/&id=FC6F890AA7D0835ACA257A90008300DB>.

<sup>3</sup> Macourt, D 2013, 'Youth and the law: it's not all about juvenile justice and child welfare', *Updating justice*, no. 35, Law and Justice Foundation of NSW, Sydney. Available at [http://www.lawfoundation.net.au/ljf/site/templates/UpdatingJustice/\\$file/UJ\\_35\\_Youth\\_and\\_the\\_law\\_FINAL.pdf](http://www.lawfoundation.net.au/ljf/site/templates/UpdatingJustice/$file/UJ_35_Youth_and_the_law_FINAL.pdf).

<sup>4</sup> Macourt, D 2014, 'Youth and the law: the impact of legal problems on young people', *Updating justice*, no. 38, Law and Justice Foundation of NSW, Sydney. Available at [http://www.lawfoundation.net.au/ljf/site/templates/UpdatingJustice/\\$file/UJ\\_38\\_Youth\\_and\\_the\\_law\\_gender\\_FINAL.pdf](http://www.lawfoundation.net.au/ljf/site/templates/UpdatingJustice/$file/UJ_38_Youth_and_the_law_gender_FINAL.pdf).

3. It is vital that child protection and youth justice legislation is aligned. In 2011 69% of young people in the youth justice system were known to the child protection system.<sup>5</sup> Young people in care have a greater risk of involvement in the criminal justice system. If they happen to be 17 years old they may be still under a child protection guardianship order and be facing the adult criminal justice system.
4. There is a need for consistency and uniformity on a national level in relation to the youth justice system. Harmonisation of youth justice legislation would correct the inequality of a 17 year old in Queensland facing a different criminal justice system than a 17 year old in any other State or Territory of Australia.
5. It is unacceptable to place a 17 year old in an adult prison with seasoned criminals. Research has found that the more restrictive the intervention on juveniles the greater its' negative impact on the child and leads to an increased involvement in crime.<sup>6</sup>
6. There is overwhelming community support for change to the Youth Justice system in Queensland in light of the recent media attention on the treatment of youth offenders in adult prisons.

### **Don't retain 17 year olds in the adult criminal justice system**

For decades, a number of arguments have been put forward for treating 17 year olds as adults in the criminal justice system. We support the Youth Advocacy Centre's position in countering these arguments:

1. Young people are already dealt with seriously by the criminal justice system. Magistrates can sentence a child to up to 1 year in detention and a Judge can sentence a child up to 5 years.<sup>7</sup> A child as young as 10 years of age can be (and are) held accountable for breaking the criminal law. In reality, the sentences for young offenders are very similar to those imposed on adults; it is generally the length of the term which is different.
2. A 17 year old offender's personality, brain and cognitive ability is still developing and the criminal justice system needs to recognise these differences and immaturity. Despite committing the same offence as an adult, a 17 year old has less capacity for forward planning, and regulating impulse. Impulsivity is a commonly observed element in juvenile offending and raises questions as to the culpability of juveniles in relation to criminal behaviour.<sup>8</sup>

<sup>5</sup> Evidence of Mr Steve Armitage, Assistant Director General (Youth Justice), Department of Justice and Attorney General to the Carmody Inquiry, August 2012; *Safer Streets* Discussion Paper 2012.

<sup>6</sup> Richards, K 'What makes juvenile offenders different from adult offenders?' (2011) *Australian Institute of Criminology: Trends & Issues in Crime and Criminal Justice* (No. 409) at 5.

<sup>7</sup> *Youth Justice Act 1992*

<sup>8</sup> *The prohibition of the publication of names of children involved in criminal proceedings/ Standing Committee on Law and Justice*. [Sydney, NSW]: The Committee, 2006 (Report no. 35).

3. The cost of changing the system to remove 17 year olds from the adult criminal justice system is not prohibitive. Considering the cost of imprisonment of one young person is approximately \$237,980 per year<sup>9</sup> 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. The *2014-15 Youth Justice Pocket Stats* show an increase in youth justice conference referrals in addition to the 99% participant satisfaction rate (including victims) in the outcome of the conferences indicates the value of these diversionary methods.

We hope this information is useful, and would be happy to contribute further if it would assist the Committee. Please contact me on (07) 3392 0092 or [director@communitylegalqld.org.au](mailto:director@communitylegalqld.org.au) if you would like to discuss our views.

Yours sincerely,



**James Farrell OAM**

Director

Community Legal Centres Queensland Inc.

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<sup>9</sup> Vumbaca, G. 2012. *Prevention is the only hope for young offenders because the cure is failing.* YAPRAP Youth Issues and Youth Work.