Our Ref: BNE3412902

4 October 2016

Research Director

Education, Tourism, Innovation and Small Business Committee

Parliament House

George Street

Brisbane Qld 4000

Dear Madam/Sir

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

On 15 September 2016 the Attorney-General (Hon D’Ath) introduced the *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Bill* 2016 into the Queensland Parliament.

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.

The Anti –Discrimination Commission has long advocated for the removal of 17 year olds from the adult criminal justice system to the youth justice system and supports the objectives of this Bill.[[1]](#footnote-1) The reasons why the Commission supports the objectives of this Bill is set out below.

**Human rights and children**

Children are specifically provided for in a number of the international human rights instruments to which Australia is a party.  The *Convention on the Rights of the Child* sets out rights and protections of children.  Importantly, ‘child’ is defined to mean every human being below the age of 18 years. The *International Covenant on Civil and Political Rights* provides that every child shall have the right to such measures of protection as are required by their status as a minor, and the *International Covenant on Economic, Social and Cultural Rights* recognises that special measures of protection and assistance should be taken on behalf of children and young persons.

**Queensland’s current Youth Justice System**

The youth justice system in Queensland currently applies to young people aged between 10 and 16 years of age, with young people alleged to have committed offences as 17-year-olds treated as adults in the criminal justice system. Queensland is the only jurisdiction in Australia where 17-year-olds are treated as adults in the criminal justice system.  This is contrary to the *Convention on the Rights of the Child*, which requires that children in detention are separated from adults, unless it is considered in the child’s best interest not to do so.[[2]](#footnote-2) Australia’s reservation to the article is limited to maintaining contact with families, having regard to the geography and demography of Australia.

Queensland has been criticised by the United Nations Committee on the Rights of the Child in this regard.  In the 2012 Concluding Observations, the United Nations Committee noted with regret that previous recommendations had not been accepted, and again expressed concern that in Queensland 17-year-old child offenders continue to be tried under the criminal justice system.  It again recommended that the juvenile justice system be brought fully in line with the *Convention on the Rights of the Child* and other relevant standards, and reiterated its previous recommendation to remove children who are 17 years old from the Queensland adult justice system.[[3]](#footnote-3)

The *Convention on the Rights of the Child* requires there to be a range of options available to ensure children are dealt with appropriately and proportionately to their circumstances and the offence, such as care, guidance and supervision orders, counselling, probation, education and vocational programs and other alternatives to institutional care.  There should also be measures for dealing with children without resort to judicial proceedings. Children and young people’s neurological and cognitive development is immature and incomplete to a degree, warranting a criminal justice system that responds to this group in a developmentally appropriate manner.

The Anti-Discrimination Commission recommends the Committee endorses the passing of this Bill to the Parliament.

Thank you for the opportunity to comment on the Bill.

Yours sincerely



**KEVIN COCKS AM**

**Anti-Discrimination Commissioner**

**Queensland**

1. These submissions are available on the Commission’s website at [www.adcq/qld.gov.au](http://www.adcq/qld.gov.au) - Review of the *Youth Justice Act 2003*, dated June 2013; and Inquiry into the Youth Justice and Other Legislation Amendment Bill 2014, dated February 2014. [↑](#footnote-ref-1)
2. Article 37(c). [↑](#footnote-ref-2)
3. UN Committee on the Rights of the Child: Concluding Observations, Australia, 28 August 2012, CRC/C/AUS/CO/4. [↑](#footnote-ref-3)