

AGE DOES MATTERS

SISTERS INSIDE SUBMISSION

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JUVENILE JUSTICE AMENDMENT BILL 2001 CONSULTATION DRAFT

INTRODUCTION

Policy makers have only to turn to International Conventions, which impose on Queensland obligations under international law, to find the fundamental principles of human decency which should inform the juvenile justice system in this state. Treating children in a manner contrary to the precepts in international human rights instruments is indefensible.

In the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance. For the purpose of the UN Convention on the Rights of the Child, Article 1 of that Convention declares that a child is every human being below the age of 18. Article 3 proclaims that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. Article 37 prohibits torture or other cruel, inhuman or degrading treatment or punishment. It prescribes that detention or imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate time. Paragraph (c) of Article 37 provides:

Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interests not to do so ...

Australia has made a reservation to paragraph (c) to the extent that the obligation to separate children from adults in prison is accepted on the basis that it is consistent with the obligation that children be able to maintain contact with their families, having regard to the geography and demography of Australia.

A major way in which the Queensland government violates the human rights of children is by treating some children as adults in the criminal justice system. People recognised as children in international human rights instruments and in nearly every other Australian jurisdiction are incarcerated in adult prisons in Queensland.¹

Section 5 of the Juvenile Justice Act 1992 (Qld) defines "child" as a person who has not turned 17 years; or, who after a day fixed under section 6 - a person who has not turned 18 years. Section 6 permits the Governor in Council to fix a day after which a person shall be a child for the purposes of the Juvenile Justice Act if the person has not turned 18. No such regulation has been made and the Amendment Bill Consultation Draft does not propose to alter the definition of child. In the Brisbane Women's Correctional Centre at Wacol, there is currently a 17 year old female - vulnerable, disturbed and incarcerated in the Crisis Support Unit which is located in one of the men's prisons. Such treatment is not the "special care and attention" that children are entitled to according to the United Nations.

WHY DOES IT MATTER?

The problem with treating 17 year olds as adults is that moves them out of the operation of the Juvenile Justice Act which, whatever its shortcomings, expresses some of the basic precepts of international human rights instruments. Section 4 of the Act (and Schedule 2 of the Amendment Bill) acknowledge the special vulnerability of children in dealing with enforcement agencies, proclaims that detention of children should be only as a last resort and that detention should be in facilities suitable for children. Section 4 and the amendment Bill also support diversionary programs unless the nature of the offence and the child's criminal history indicate that a criminal proceeding should be started. This is appropriate and conforms with our obligations at international law.

¹ In Victoria, the Children and Young Persons Act defines "child" for the purposes of the Childrens Court as a person who was under 17 when the offence was committed but not over 18 when brought before the Court.

The breach of our obligations at international law arises because in Queensland, a 17 year old who is not at law an adult for important purposes such as the capacity to enter into contracts or to participate in the political process by voting or who is regarded as too immature to drink alcohol, is deprived of important protections in the criminal justice system. The 17 year old, a child for every other important legal purpose, is not dealt with on the basis of detention as a last resort.

Detention is the most extreme end of the child's contact with the processes of the criminal law. Their heightened vulnerability to physical and emotional harm make detention a more confronting and difficult experience for them than for adults.² The Australian Law Reform Commission (ALRF) reports that the ability of detention to rehabilitate young offenders increasingly is in doubt and that prisons often create institutionalisation or dependency, are a perfect training ground for criminal activity and leave children with no knowledge of basic life skills for reintegration into society. Some commentators point to evidence that punitive measures such as detention have a destructive effect in that they actually worsen rates of recidivism. So as well as failing to address the underlying causes of criminal activity, it also appears that detention does not protect community safety.³

Detaining young offenders in adult prisons in Queensland renders nugatory Queensland's commitment to the National Quality of Care Standards (QOC Standards) and Design Guidelines for Juvenile Justice Facilities in Australia and New Zealand. These have been endorsed by Queensland since 1996 and were explicitly referred to in "The Integrated Approach: The Philosophy and Directions of Juvenile Detention" Queensland Corrective Services Commission 1997.

The QOC Standards were developed with reference to several international instruments and a broad consultation process. They cover issues relating to drug and alcohol services, recreation, education, employment and training programs, and health services. Generally their provisions are designed to ensure quality treatment and to protect the rights of children. While the ALRC has noted the shortcomings in implementation of QOC Standards across Australia, there is no reason why one group of Queensland children, the 17 year olds, should be removed from the rehabilitative and protective principles of the QOC Standards.

² Australian Law Reform Commission *Seen and Heard: Priority for Children in the Legal Process* 1997 par 20.1

³ *ibid* pars. 20.14 – 20.16

In addition to the fact that offenders who are 17 years old are not "children" for the purpose of the Juvenile Justice Act, section 211 of that Act permits incarcerated offenders who turn 17 to be transferred to an adult prison. Section 38 provides that child and adult offenders will be separated. This might ensure the safety of juvenile detainees and it might prevent them being exposed to the influence of adult repeat offenders. However it can significantly impede the child's rehabilitation.

The ALRC Inquiry heard evidence that the use of the protection unit to house a child in an adult prison can seriously stigmatise the young offender. The requirement for separation can mean that young offenders in adult prisons effectively endure their sentence in isolation.⁴ The ALRC stressed the importance of young people who come into conflict with the law being afforded treatment appropriate to their age and status and expressed serious concerns about the placement of 17 year old children (and younger) in adult prisons. The ALRC was also concerned that juvenile offenders could be transferred to adult prisons by administrative action without any right to have decisions reviewed.⁵

The ALRC noted that some jurisdictions (NSW and Victoria) recognise that the welfare of young offenders is best served by keeping them in juvenile detention centres up to the age of 21. Appropriately there is provision for the separation of children and young adults in some of these centres. This recognises the different developmental needs of children that require different programs and services than for young adults.⁶

The ALRC recommended that no child under the age of 18 should be placed in an adult prison unless a court decides that it is in the best interests of the child to do so.⁷ The ALRC also made recommendations concerning procedures for transferring offenders from juvenile detention to adult prisons to permit the young offender to make submissions with the assistance of an advocate and to have a right of review.⁸ The ALRC also recommended that juvenile detention centres establish separate sub-units for detainees aged 18 and over.⁹

⁴ *ibid* pars. 20.110 – 20.112

⁵ *ibid* pars 20.113 – 20.114

⁶ *ibid* par 20.104

⁷ Recommendation 273

⁸ Recommendations 274 to 276

Sisters Inside endorses the ALRC views on the detention of 17 year old offenders and young adult offenders and notes that the detention of young female offenders in a Queensland adult prison is uniquely cruel and inhuman. This is because of Queensland's use of mandatory and arbitrary strip searching. In Brisbane Women's Correctional Centre, strip searches of prisoners are mandatory and conducted after every contact visit irrespective of whether there is a reasonable and honestly held suspicion that the prisoner might have received contraband. Research by Sisters Inside indicates that 89% of female prisoners are victims of sexual abuse¹⁰. There is powerful anecdotal evidence that such women experience a strip search as revictimisation - as sexual assault by the state. A strip search is intrusive, debasing and humiliating. Some years ago when it was suggested that lawyers visiting prisoners be strip searched there were vociferous, outraged (and effective) objections. The prisoner, particularly a young prisoner, is as entitled to human dignity as the lawyer. Unless there is a reasonable and honestly held suspicion that a prisoner has concealed drugs, a strip search is cruel and inhuman treatment. It is appalling that a 17 year old female prisoner (who is more likely than not to be a victim of prior sexual abuse) is subjected to this treatment on a mandatory basis. On the one hand Queensland policy makers recognise the need for young offenders to maintain contact with their family. On the other hand they impose on 17 year old women prisoners a powerful disincentive for receiving visits - a mandatory strip search.

CONCLUSION

Sisters Inside submits that the Juvenile Justice legislation in Queensland should be amended to implement the following recommendations of the Australian Law Reform Commission:

Recommendation 272. The national standards for juvenile justice should provide that each State and Territory establish separate sub-units within some centres for detainees aged 18 years and over. These units should be managed using rules and routines more appropriate to young adults.

Recommendation 273. No child under the age of 18 should be placed in an adult prison unless a court decides that it is in the best interests of the child to do so.

⁹ Recommendation 272

¹⁰ Kilroy, D (2000) When Will You See The Real Us? Women in Prison. *Women in Prison Journal* Vol 2 No1 2001.

Recommendation 274. The national standards for juvenile justice should include a list of general principles and factors to be considered in the determination of all prison transfer decisions, including

- * that the safety and interests of the young person should be respected
- * the capacity of the prison system to protect the young person
- * the most suitable environment for the young person and his or her future and
- * the right of the young person to be consulted and represented.

Recommendation 275. The national standards for juvenile justice should provide that transfer policies and procedures in each jurisdiction recognise that young people for whom a transfer is being considered should

- * have the assistance of an advocate in making any written or oral submissions concerning the transfer application
- * be provided with accurate information about the operation of the adult system
- * be given reasons for the decision and a right of review of the decision.

Recommendation 276. The national standards for juvenile justice should provide that the departments in each State and Territory dealing with juvenile justice and adult corrections centres should establish greater links so that any young person transferred to an adult institution may continue the programs commenced in the juvenile justice system. Long term case plans should be developed for those detainees likely to be transferred to the adult system.