



**CHILDREN DON'T
BELONG IN
ADULT PRISONS**

TIME TO ACT

Stop Locking up Children in Queensland Adult Prisons

Queensland is the only state in Australia to treat 17 year olds as adults in the criminal justice system.

In 1992 when the Juvenile Justice Act was passed by Parliament, the State Government said:

“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.”

The purposes cited by the Government expressing its intention to stop dealing with 17 year old children in the adult system still ring true today. Eighteen is the age of majority in Queensland and throughout Australia, yet 17 year olds in Queensland continue to be exposed to the deleterious effects of adult prisons. It is time to make this change and stop treating children as adults in the criminal justice system.

It is unfair that 17 year olds are treated as adults by the criminal law because:

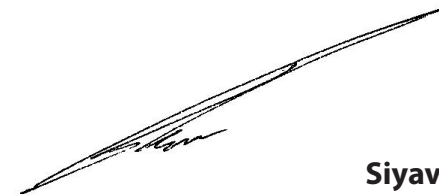
- 17 year olds are often still physically and mentally immature, and ought to be dealt with by a legal system that understands that developmental immaturity;
- if children cannot vote, drink alcohol, buy cigarettes, or otherwise participate fully in society until they become 18, they should not be treated as adults by the criminal law;
- Children should not be kept in adult jails;
- the Child Protection system treats 17 year olds as juveniles; so should the

- Youth Justice system;
- year 12 students should be treated the same way by the criminal law, irrespective of whether they happen to be 16 or 17;
- Queensland 17 year olds should not be worse off than 17 year olds in every other Australian state

There have been numerous reports raising concern that Queensland continues to treat 17 year old children as adults rather than juveniles, including:

- the 1988 Kennedy Review Into Corrective Services
- the UN Convention on the Rights of the Child
- the 1997 Australian Law Reform Commission Report
- the 2002 Youth Justice Conference in Brisbane
- the 2002/03 Annual Report of the President of the Children’s Court
- the 2005 UN Consideration of the Report Submitted by Australia for the 40th Session
- the 2006 Anti-Discrimination Commission Queensland recommendations
- the 2010 Commission For Children and Young People and Child Guardian policy position on 17 year old children in adult prisons

After 20 years, it is time for the juvenile justice system to include 17 year olds.



Siyavash Doostkhah
Director

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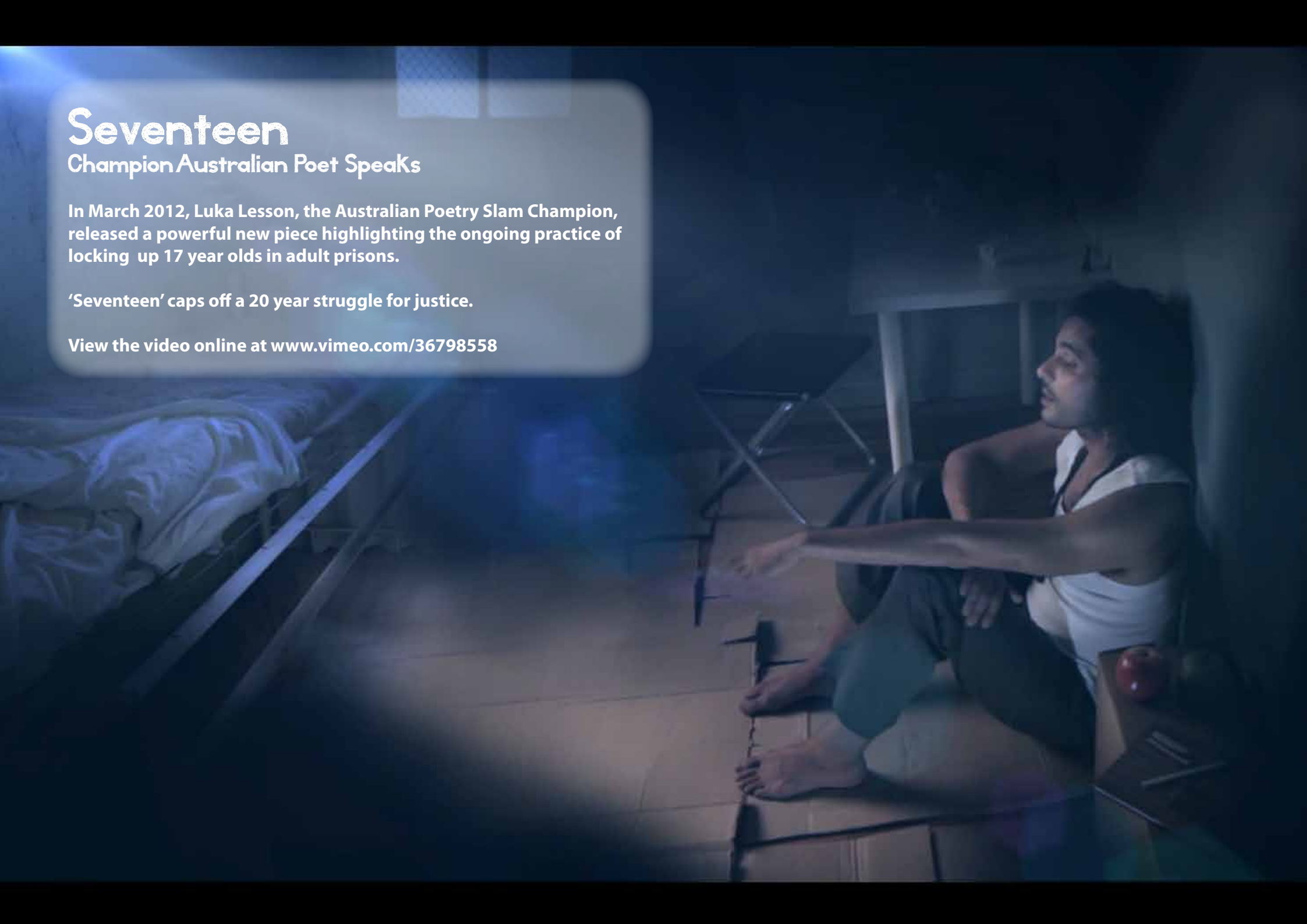
Seventeen

Champion Australian Poet Speaks

In March 2012, Luka Lesson, the Australian Poetry Slam Champion, released a powerful new piece highlighting the ongoing practice of locking up 17 year olds in adult prisons.

'Seventeen' caps off a 20 year struggle for justice.

View the video online at www.vimeo.com/36798558



Including Seventeen Year Olds in the Juvenile Justice System Background Paper

Prepared by Legal Aid Queensland, Logan Youth Legal Service, Youth Advocacy Centre, Youth Affairs Network of Queensland Inc & Sisters Inside Inc

INTRODUCTION

Seventeen year old children are currently treated as adults by the criminal law in Queensland.

When the Juvenile Justice Act (Qld) 1992 ("the JJA") was assented to on 25 August 1992, it was envisaged that its scope would subsequently be extended to cover 17 year olds. In this respect, section 6(1) of the JJA was drafted so that this extension could take place simply, by regulation, rather than by way of legislative amendment. Twenty years have now passed since the JJA was assented to without the requisite regulation having been implemented.

This paper seeks to outline the various inquiries, recommendations and legislative amendments, which have addressed the importance of treating 17 year olds as juveniles for the purposes of the criminal law in Australia.

The paper then outlines some of the reasons for implementing this change to the system now.

Ricky has also spent time in an adult facility at the age of 17 years. He has experienced both the Boys Yard facility in Brisbane and the environment of the Capricorn Correctional Facility. He states that as younger prisoners, in the latter facility, there is no designated segregated area for 17 year olds. "You can ask for protection but why would you?" To enter into protective custody in these facilities you are either perceived as a 'Dog' (informer) or a 'Rock Spider' (Child Molester). For this reason Ricky took his chances with the main prison population.

Joel was at a Schoolies party. Most partygoers were consuming alcohol. Joel and his friend were involved in a fight out the front. This resulted in police being called and charges being laid.

Joel was charged with Grievous Bodily Harm and was sentenced to 18-months imprisonment at the Capricorn Correctional Facility. This was Joel's first offence.

He served 3 months of the sentence and is now out in the community on parole.

His family stated "one day we are signing permission slips for school excursions, the next we are visiting our son and brother in an adult prison". Joel's experiences in the prison were not good. His parents had concerns that he may take his own life.

Joel has two working parents, one brother in university and a younger sister in high school. The family was devastated and the impact continues for Joel. He has a mechanical apprenticeship but cannot gain insurance for his vehicle due to his criminal history...public perceptions still trouble him greatly.

Joel is also now responsible for a \$37,000.00 criminal compensation bill.

**PUTTING KIDS IN
ADULT JAILS
IS HARMFUL**

1965 The Children's Services Act (Qld) 1965

The predecessor of the JJA, the Children's Services Act (Qld) 1965, had the intention of promoting, safeguarding and protecting the wellbeing of the children and youth of the Queensland through a comprehensive and coordinated program of child and family welfare. Under this legislation the definition of a "child" was a person under or apparently under the age of 17 years.

1988 The Kennedy Commission of Review into Corrective Services in Queensland

In 1988 the Kennedy Commission which reviewed the Corrective Services System in Queensland handed down its final report. That report contained specific reference to the operation of the juvenile justice system at that time. The Report found:

"Queensland is one of only two states in the Commonwealth that has legislation that nominated 17 years as the age at which a person is treated as an adult in criminal proceedings. All other States use 18 years as the age of majority in criminal matters.

It is a matter of common sense that the system [in place in 1988] segregate persons under the age of eighteen while these people continue to be imprisoned. This is only a short term solution. In my view people under 18 just should not be in adult prisons. They are children in law, children in terms of rights and responsibilities. In other States they are in law required to go into juvenile institutions. This should be the case in Queensland. They just should not come into the prison system. To stop the entry of these young people into prison requires a redefinition of "child" in Queensland legislation. Amending the appropriate legislation would remove this small vulnerable group of people from the prison environment."¹

1990 The United Nations Convention of the Rights of the Child

The UN Convention on the Rights of the Child ("CROC") was ratified by Australia on 17 December 1990 and came into force on 16 January 1991. Ratification was preceded by a detailed process of consultation with State and Territory governments and was the subject of unanimous agreement by all Australian governments.

Article 1 states:

"For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier."

The age of majority in Australia is 18. The rights articulated in CROC are expected to apply to all children, including 17 year old children.

¹ Commission of Review into Corrective Services in Queensland 1988 – Final Report – JJ Kennedy, p126, para 20.2

1992 The Juvenile Justice Act (Qld) 1992

As noted above, when the Juvenile Justice Act was passed it was intended to subsequently include 17 year olds. The Minister then responsible for the passage of the legislation, The Hon Ann Warner, said in the course of Parliamentary debate at the time of passage:

"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."²

1995 - 97 UN Consideration of Australia's First Report under Convention on the Rights of the Child

Australia's First Report under CROC was produced by the Commonwealth Attorney-General's Department in 1995 and lodged with the United Nations Committee on the Rights of the Child in January 1996. The Report was considered by the Committee in September 1997, in conjunction with the Non-Government Organisations' Report. The NGO Report noted in response to Australia's First Report, the anomaly that "in some jurisdictions 16, 17 and 18 year old offenders are classed as adults."

The UN Committee stated in its Report:

"21. The situation in relation to the juvenile justice system and the treatment of children deprived of their liberty is of concern to the Committee, particularly in the light of the principles and provisions of the Convention and the other relevant standards such as the Beijing Rules, the Riyadh Guidelines and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

22. The Committee is also concerned about the unjustified, disproportionately high percentage of Aboriginal children in the juvenile justice system [...]"³

1997 Australian Law Reform Commission

The Australian Law Reform Commission in its seminal 1997 Report "Seen and heard: priority for children in the legal process" considered the upper age for inclusion of children in juvenile justice systems, as part of its wide-reaching Inquiry. The ALRC Report stated:

"In the Northern Territory, Victoria, Tasmania and Queensland, children are dealt with in the adult criminal system once they turn 17. In all other States, in the ACT and under federal criminal law all children are juveniles for the purposes of the criminal law, that is until they turn 18.

² Hansard, Legislative Assembly, 5 August 1992, p 6130, per The Hon Ann Warner, Minister for Family Services and Aboriginal and Islander Affairs.

³ UN Committee on the Rights of the Child, Concluding Observations: Australia, 10 October 1997

The Inquiry considers that there should be national consistency on when a young person is dealt with in the juvenile justice or adult criminal system. An Australian child of a particular age should not be able to be tried as a juvenile in one jurisdiction and as an adult in another.[...] Children should not be treated as adults by the criminal justice system. The age of majority for the purposes of the criminal law should be 18, the age at which a child becomes an adult under general Australian law and under CROC.⁴

The ALRC recommended as follows:

“Recommendation 196. The age at which a child reaches adulthood for the purposes of the criminal law should be 18 years in all Australian jurisdictions. Implementation. All States and Territories that have not already done so should legislate to this effect.”

1998 Tasmania

On 14 January 1998, the Tasmanian Youth Justice Act 1997 received royal assent. The Act defined a child as a person over the age of 10 and under the age of 18. Prior to that their legislation set the age of criminal responsibility at 7 and the age of majority at 17, two facts which were noted with concern by both the United Nations, and the ALRC in “Seen and Heard”. The Youth Justice Act 1997 was passed in response to those concerns.

1998 Queensland Evaluation of the Juvenile Justice Act 1992

In February 1998, the Evaluation of the Juvenile Justice Act (Qld) 1992, considered the issue of raising the age for dealing with children in the juvenile justice system to include 17 year old children. After describing the current regime, the Evaluation stated:

“There is, however, a significant body of opinion to the effect that the age of child regulation should be in accordance with the (then) Public Sector Management Commission recommendations and UN Conventions. This would mean an increase in the age definition of “adult” for criminal justice purposes to 18 years.

The implications of the inclusion of 17 year olds into the Children’s Court system would have substantial resource implications for the [then] DFYCC which administer[ed] childhood orders and for the [then] Queensland Corrective Services Commission which [then] administer[ed] childhood detention orders. It would ensure that 17 year olds would be sentenced to detention rather than imprisonment in the adult prisons. Significantly, it would introduce a desirable measure of consistency across State legislation [...]”⁵

2000 The Northern Territory

On 10 April 2000, the Prime Minister and the Chief Minister of the Northern Territory issued a joint statement regarding efforts to divert juveniles from the criminal justice system. A central element of the Northern Territory reforms was to include 17 year olds in the juvenile justice system. The Sentencing of Juveniles (Miscellaneous Provisions)

⁴ Report No 84, Recommendation no 196

⁵ “An Evaluation of the Juvenile Justice Act 1992, Juvenile Justice Branch, Criminal Justice Program, Department of Justice, February 1998.

Act 2000, which gave effect to the reforms commenced on 1 June 2000.

2002 Juvenile Justice Amendment Act (Qld) 2002

Significant amendments to the Act were passed in 2002. Prior to the drafting and passage of the legislation the Government undertook a “targeted” consultation process with the youth sector. A significant portion of the submissions provided to Government at that time expressed support for the expansion of the Act to cover 17 year olds.

2003 Youth Justice Conference, Brisbane, February 2003

The need to extend the Juvenile Justice Act 1992 to cover 17 year old children was identified as one of the key recommendations of the national Youth Justice Conference held in Brisbane in February 2003.⁶

Following a detailed consideration of a range of issues related to the treatment of 17 year olds in the criminal justice system, the following recommendation was made:

“The Juvenile Justice Act 1992 should be amended to increase the age of a child to 18 years so that it is consistent with other Australian states and in line with Australia’s International Treaty obligations.”

The previous Minister responsible for administration of the juvenile justice system, the Hon Judy Spence, agreed to consider all of the recommendations of the Conference.

2003 President, Children’s Court of Queensland Annual Report 2002-03

The President of the Children’s Court of Queensland, Judge O’Brien, in his most recent 2002-03 Annual Report referred to the issue of inclusion of 17 year olds in the juvenile justice system under the heading “The Definition of Adulthood and Other Issues” and made the following comment:

“In February of this year Legal Aid Queensland hosted a Youth Justice Conference in Brisbane. The conference brought together a large number of individuals and organisations involved in various ways with youth justice throughout the State. One of the recommendations to emerge from the conference was that the Juvenile Justice Act be amended such that the age of a child for the purposes of the Act should be increased to 18 years. Section 6 of the Act does contain provision for the age of 18 to be fixed by regulation but this provision has never been utilised.

In Queensland, young people are not lawfully permitted to vote or to drink alcohol until they reach the age of 18, yet, at the age of 17, their offending exposes them to the full sanction of the adult criminal laws. There are I believe real concerns involved with the potential incarceration of 17 year olds with more seasoned and mature adult offenders. The United Nations Convention on the Rights of the Child considers a person as a child until he/she reaches the age of 18 and other Australian States have adopted a similar

⁶ The “Making the Youth Justice System Work Better” Conference, Brisbane, 21-22 February 2003

approach. The recommendation deserves careful consideration.”⁷

2004 Victoria

On 27 May 2004 the Victorian Attorney General announced that Victoria will amend its legislation to provide for the removal of 17 year olds from the adult criminal justice system. In this respect, the Victorian Attorney General’s “Justice Statement” contained the undertaking that it would:

“Implement the commitment to increase the age limit of the Children’s Court from 17 years to 18 years so that young people are not caught up in the adult criminal system.”⁸

Since the Amendment took effect, Queensland is isolated as the only remaining Australian jurisdiction which treats 17 years olds as adults.

2005 United Nations Consideration of Australia’s Joint Second and Third Reports on CROC, and the Parallel Non-Government Organisation Report

The United Nations expressly stated concern about Queensland’s practice of treating 17 year olds as adults in the criminal justice system.⁹

It specifically recommended that the State party remove 17 year olds from the adult justice system in Queensland.¹⁰

“The Committee recommends that the State party bring the system of juvenile justice fully in line with the Convention, in particular articles 37, 40 and 39, and with other United Nations standards in the field of juvenile justice, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty and the Vienna Guidelines for Action on Children in the Criminal Justice System; and the recommendations of the Committee made at its day of general discussion on juvenile justice.”

2006 Anti-Discrimination Commission Queensland

The Anti-Discrimination Commission Queensland March 2006 report, Women in Prison, highlighted the issues involved in housing 17 year olds in adult prisons and made two recommendations:

⁷ Children’s Court of Queensland 10th Annual Report, 2002/03, p5

⁸ New Directions for the Victorian Justice System – Attorney-General’s Justice Statement, May 2004, p11, Initiative 21

⁹ UN Consideration of the Report Submitted by Australia for the 40th Session. Administration of Juvenile Justice, 73

“Furthermore, the Committee is concerned that: ... (c) in Queensland, persons of 17 in conflict with the law may be tried as adults in particular cases” (See, pp 14, Administration of Justice, 73 (c)).

¹⁰ UN Consideration of the Report Submitted by Australia for the 40th Session (CRC/C/46, § 202-238

Recommendation 48:

The Queensland Government immediately legislate to ensure that the age at which a child reaches adulthood for the purposes of criminal law in Queensland be 18 years.

Recommendation 49:

It is not in the best interest of 17 year old offenders to be placed in an adult prison, or for correctional authorities to place a female 17 year old offender in a protection until of an adult prison. The Queensland Government and correctional authorities should take immediate steps to cease this practice.

The recommendations concluded that placing a 17 year old female prisoner in specific prison areas based solely on her age is prima facie direct discrimination on the basis of age.¹¹

2010 Commission For Children and Young People and Child Guardian

In November 2010 the Commission for Children and Young People released their policy position on 17 year old children in adult prisons and called upon the Queensland Government to make:

- a time specific commitment by 1st March 2011 to transfer 17 year olds from adult prisons to youth detention; and
- the necessary legislative amendments to ensure that all young people under the age of 18 years fall within the jurisdiction of the Youth Justice Act 1992 and have access to the Charter of Youth justice Principles.
- <http://www.ccypcg.qld.gov.au/pdf/publications/papers/17-year-olds-Policy-Position-Paper.pdf>

2012 United Nations Consideration of Australia’s Fourth Report to the CROC, and the Parallel Non-Government Organisation Report

The United Nations continued to call on Queensland to raise the minimum age of criminal responsibility to an internationally acceptable level.

“The Committee regrets that despite its earlier recommendations, the juvenile justice system of the State party still requires substantial reforms for it to conform to international standards ... The Committee recommends that the State party bring the system of juvenile justice fully in line with the Convention, in particular articles 37, 40 and 39 ... the Committee reiterates its previous recommendations to consider raising the minimum age of criminal responsibility to an internationally acceptable level.”

¹¹ 17 year old women are kept in a segregated unit called “S4”. S4 houses women with mental illness, women who have a disciplinary breach or problems, and juveniles. Sisters Inside reports that two women have been diagnosed with post-traumatic stress disorder as a result of their experience in the S4 unit. (In Corrections, pp121).

RATIONALE FOR TREATING 17 YEAR OLDS AS CHILDREN FOR THE PURPOSES OF THE CRIMINAL LAW

The reasons for including 17 year old children in the juvenile justice system include the following:

Recognition of the development vulnerability of children – desirability of the principles underpinning the JJA to apply to 17 year olds

Many 17 years old children are still “physically and mentally immature.”¹²

Developments in scientific research have made it possible to study the brain using magnetic resonance imaging (MRI) instead of x-rays.¹³ This advancement allows scientists to safely scan children’s brains over many years without causing harm. Scientists have since conducted extensive research on the adolescent brain making significant findings in the area of adolescent brain development.

Law makers are being asked to reconsider juvenile justice policies in light of evidence that the adolescent brain is a work in progress.

¹² UN Declaration of the Rights of the Child, 1959, Preamble

¹³ See, Adolescent, Brain Development and Legal Culpability, Juvenile Justice Center, American Bar Association, Jan 2004 citing Elkhonon Goldberg, The Executive Brain: Frontal Lobes and the Civilized Mind, Oxford University Press (2001).

Steven also entered an Adult Correctional Facility in the regions at the age of 17 years. Steven was often mistaken for a much younger person. He stood at around 160cm tall and was of very slight build.

Despite the efforts of advocacy agencies from his own community there was no guarantee of his safety.

Development

Research indicates that the human brain develops well into a person’s 20s. The frontal lobe, the area of the brain that is responsible for planning and impulse control, is the last to develop.¹⁴ Furthermore, this area of the brain undergoes more change during the teenage years than any other time in a person’s life. Studies of the relationship between brain development and adolescent behaviour indicate that adolescents tend to rely on emotional areas of the brain, rather than the frontal lobe.¹⁵

Competency

Many studies have shown that by the age of sixteen adolescents’ cognitive ability is similar to that of adults. This means that adolescents’ intelligence mirrors adults. Although adolescents are intellectually mature, other developmental traits impact their decision making capacity. Common developmental traits of juveniles include impulsivity, short-sightedness, and susceptibility to peer influence.

These traits, in conjunction with the developmental stage of adolescents arguably make juveniles less responsible for their actions than adults.¹⁶

Culpability

Criminal punishment should be based not only on the harm caused, but on the blameworthiness of the offender. To determine how blameworthy a person is the criminal justice system must take into consideration the circumstances of the crime and of the person committing it. Historically courts consider mitigating factors when considering culpability for a crime. Mitigating factors include: impaired decision-making capacity; circumstances of the crime; and the individual’s personal character. These factors do not make a person exempt from punishment, but they do indicate that the punishment should be less than it would be for a different person committing a similar crime under different circumstances.¹⁷

The underpinnings of the juvenile justice system are based on the notion that juveniles are less morally responsible for their actions and more capable of change and rehabilitation. The growing body of scientific evidence supports this premise.

¹⁴ See, Adolescent, Brain Development and Legal Culpability, Juvenile Justice Center, American Bar Association, Jan 2004 citing Sowell, Elizabeth R, Paul M. Thompson, Kevin D. Tessner and Arthur W. Toga. Mapping continued brain growth and gray matter density reduction in dorsal frontal cortex: inverse relationships during postadolescent brain maturation, 21 Journal of Neuroscience 22 (2001).

¹⁵ Adolescent, Brain Development and Legal Culpability, Juvenile Justice Center, American Bar Association, Jan 2004 quoting Dr. Deborah Yurgelun-Todd of Harvard Medical School.

¹⁶ Less Guilty by Reason of Adolescence, Issue Brief 3, MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice.

¹⁷ See, Less Guilty by Reason of Adolescence.

Risk Factors

The American Academy of Pediatrics identified a number of risk factors that increase the likelihood that an adolescent will engage in violent behaviour. Risk factors include: exposure to domestic violence or physical abuse, being poorly or inappropriately supervised, or being a victim of physical or sexual abuse.¹⁸ The presences of any of these risk factors compound the likelihood that an adolescent will engage in violent behaviour.

Nearly all young people convicted of criminal offences in Queensland report history of abuse, neglect, and assault.¹⁹ Incarcerating these youth is not going to help them become functioning and contributing members of society. According to the Queensland Government Department of Corrective Services, in the 2005/06 financial year there were 105 17 year olds in corrective services facilities. Over the preceding 5 years, a total of 629 17 year olds were in prison. A disproportionate number of these youth are from communities with low socio-economic indicators and most likely come from extremely disadvantaged backgrounds.²⁰

The principles articulated in The Charter of Juvenile Justice Principles²¹ should apply to 17 year old children as they do to younger children.

In this respect, for example, it is desirable that:

- Because many 17 year old children are vulnerable in dealings with a person in authority, such children who are under investigation or proceeding in relation to an alleged offence be given the usual special protections for children (such as the right to an independent person during a police interview) (cl 4 of the Charter);
- Diversionary strategies and sentencing options such as cautioning and referral to youth justice conferences be available as responses in appropriate circumstances (cl 5, 8, 9);
- Parents of 17 year old children should be encouraged to fulfill their responsibility for the care and supervision of the child (cl 10);
- 17 year old children should be detained in custody for an offence, whether on arrest or sentence, only as a last resort and for the least time that is justified in the circumstances (cl 17);

¹⁸ American Society of Pediatrics, Policy Statement, 1 Pediatrics, 103 (1999).

¹⁹ See also, Pathways from Child Maltreatment to Juvenile Offending, Anna Stewart et al., Australian Institute of Criminology, Trends and Issues in Crime and Criminal Justice, No. 241 (Oct 02).

²⁰ In Corrections: Investigating Prison Release Practice and Policy in Queensland and its Impact on Community Safety, by Tamara Walsh (Nov. 2004), pp 113. According to a survey conducted by Boystown, 62% of respondents identified as Indigenous; 24% report having a mental illness, and as many as 70% were homeless. All of the respondents had lost their parents at a young age and had been either a ward of the state or in foster care.

²¹ Schedule 1, Juvenile Justice Act 1992

It is current government policy, at both state and federal level, to encourage young people to remain at school in order that young people individually (and the community collectively) achieve higher educational and training standards. One likely effect of this worthy policy goal is that more 17 year olds will remain in more protected environments such as school rather than in the more predominantly “adult” environments of the workplace or managing other “adult” systems associated with greater personal independence.

In this respect, retention rates for Year 12 have been steadily increasing. The retention rate from Year 10 to Year 12 in Queensland has, for example, risen from 38.9% in 1976 to 81.1% in 2002.²²

Alignment of Age of Adulthood in Queensland

It is highly desirable, from a public policy perspective, that the age at which a young person is dealt with as an adult by the criminal system, is aligned with the age at which it is lawful for a person to vote, drink alcohol, marry without parents’ consent, and participate fully in society in other ways.

Queensland law treats people under the age of 18 differently than adults. Civil law recognizes that people under the age of 18 do not have full capacity; therefore, laws regulate various activities that span almost every aspect of a youth’s life.

- **Jury Duty** – You must be 18 years old to serve on a jury.
- **Voting** – You must be 18 years old to vote.
- **Marriage** – You must be 18 years old or have parental consent to marry.
- **Foreign travel** – You must be 18 years old to obtain a passport without the written consent of your parents.²³
- **Contracts** – You must be 18 years old to enter into a contract for anything other than necessities (goods and services needed to maintain the lifestyle of a child).²⁴
- **Wills** – You must be 18 years old or married to make or witness a will.
- **Gambling** – You must be 18 years old to gamble.

²² OESR. Bulletin: Education in Queensland (Census 2001) at http://www.oesr.qld.gov.au/queensland_by_theme/society/education_training/bulletins/census2001/education_in_qld_c01_html.shtml#retention

²³ It is a requirement of the Australian Passports Act 2005 that before a passport may be issued to a child (anyone under 18 years who has never married) the written consent of all people with parental responsibility for the child is needed.

²⁴ Children and Civil Law, Legal Aid Queensland. People under the age of 18 do not have full capacity and a contract entered into by a child cannot be enforced against a child unless it is a contract for necessities (goods and services needed to maintain the lifestyle of the child) or a beneficial contract of service such as an apprenticeship

- **Tattoos** – You must be 18 years old to get a tattoo.
- **Alcohol** - People under the age of 18 cannot purchase liquor or drink in public places. Liquor Act of 1992
- **Tobacco** – You must be 18 years old to purchase cigarettes or other tobacco products.
- **Medical Treatment** – Generally 16 year olds are assumed to have full legal capacity to consent to medical treatment, however, doctors and hospitals can require the consent of the parent of a person under 18 years-old.
- **Tort (Lawsuits)** – People under the age of 18 can be sued, but the degree of reasonableness required for them is that normally required of a child of that age.

Consistent Treatment of Peers in Queensland

A great many 17 year old Grade 12 students in Queensland are currently treated as adults by the criminal justice system, while some of their 16 year old classmates are dealt with as children. The effect of this is that two classmates, one 16 and the other 17, involved in the same offending behaviour will be treated differently, despite their circumstances being equivalent in every other respect. (By way of example, the 16 year old might be police cautioned and diverted from the criminal justice system, whereas the 17 year old student may face the prospect of community-based orders.) This inconsistency is undesirable.

Alignment of Child Safety and Juvenile Justice Systems

In an effort to restructure the child safety system the Commission for Children and Young People and Child Guardian was created. The Commission is charged with promoting and protecting the rights, interests and wellbeing of all Queenslanders under 18. It is desirable that there be alignment between the child safety system and the youth justice system in relation to who those systems regard as children, and how those two systems interact.

Removing 17 year olds from Adult Jails

All 17 year old child offenders sentenced to imprisonment or remanded in custody are incarcerated in adult jails. A number of case-studies are described at Annexure “A”. The consequences of incarceration of children in adult facilities include that:

- 17 year old children are exposed to a potentially dangerous environment;
- They are exposed to the negative influence of “seasoned, mature offenders.”²⁵

²⁵ Judge O’Brien, President of the Children’s Court of Queensland, 2003-04 Annual Report

It is understood that most 17 year olds are placed in what is known as “the boys’ yard” at Arthur Gorrie Correctional Centre. In this respect s13(2) of the Corrective Services Act 2000 is an attempt to limit the exposure of 17 year old children to the adult system. We understand, however, that it is not uncommon for 17 year old children to be placed at other jails within the mainstream adult population.

Adult prison is a dangerous and violent place. Juveniles in adult jails and prisons are at a greater risk of being violently victimized than their counterparts in juvenile detention facilities. According to research conducted in the United States, in 1988 47% of juveniles in prison were victims of violent assaults.²⁶ Juveniles in adult facilities were eight times more likely to commit suicide; five times more likely to report being raped or sexually attacked; twice as likely to report being beaten by prison staff; and 50% more likely to be attacked with a weapon.²⁷

A limited amount of research is available about the experiences of Queensland youth in adult prisons, however, according to In Corrections, young prisoners report having “extremely traumatic prison experiences.”²⁸ Former prisoners report that fights, bullying, and sexual assault are wide-spread in prison.

There is also evidence to suggest that youth detained in adult prisons are more likely to re-offend than those sentenced to the juvenile justice system.²⁹

Consistency Across Australian Jurisdictions

It is desirable that there be consistency between Australian jurisdictions. Increasing the age in Queensland would remove the injustice that currently sees a 17 year old who would be charged, tried and possibly detained as an adult in Coolangatta (Qld), dealt with as a juvenile several metres away across the border in Tweed Heads (NSW).

Queensland is isolated as the only jurisdiction in the country that continues to treat 17 year olds as adults.

²⁶ Juveniles in Adult Prisons and Jails: A National Assessment, United States Department of Justice, Office of Justice Programs, Bureau of Justice Assistance (Oct. 2000).

²⁷ Juveniles in Adult Prisons and Jails: A National Assessment, pp 8.

²⁸ In Corrections, pp. 113.

²⁹ See, “The Transfer of Juveniles to Criminal Court: Does it make a difference?” Donna M. Bishop, et al. Crime & Delinquency, Vol. 42, No. 2, April 1996. A study of juveniles in the State of Florida, U.S.A. found that youth transferred to the adult court were a third more likely to re-offend than youth sentenced to the juvenile justice system.

Consistency with UN Convention on the Rights of the Child

Current Queensland practice is not consistent with the UN Convention on the Rights of the Child. Queensland practice should be brought into line with the provisions of CROC.

No Requirement for Legislative Amendment

When the Juvenile Justice Act 1992 ("the Act") commenced. It was always envisaged that its scope would subsequently be extended to cover 17 year olds. In this respect, section 6(1) of the Act was drafted so that this extension could take place by regulation, rather than by way of legislative amendment.



youth affairs network qld

The Youth Affairs Network of Queensland Inc (YANQ) is the peak community youth affairs organisation in Queensland, representing approximately 400 individuals and organisations from Queensland's youth sector.

We promote the interests and well being of young people across the state by:

- disseminating information to members, the youth sector, and the broader community
- undertaking campaigns and lobbying
- making representations to government and other influential bodies
- resourcing regional and issues-based networks
- consulting and liaising with members and the field
- linking with key state and national bodies
- initiating projects
- hosting forums and conferences
- input into policy development
- enhancing the professional development of the youth sector

We advocate on behalf of young people in Queensland, especially disadvantaged young people, to government and the community.

We promote and support cultural diversity.

We encourage the development of policies and programs that respond to the rights and needs of young people.

YANQ employs a small team in its Brisbane based secretariat. The organisation is managed by a committee. Your membership and support is vital in providing a voice for young people's issues in Queensland. Please note, we ask all members to sign off on a values statement to support the directions of YANQ.

If you would like to become a member of YANQ or would like further information please visit the YANQ website www.yanq.org.au or contact the office 30 Thomas Street, West End Q 4101 Telephone: 07 3844 7713 Fax: 07 3844 7731 or Email: admin@yanq.org.au



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