

Queensland Family and Child Commission Submission

To: Education, Tourism, Innovation and Small Business Committee Date: 30 September 2016

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

Submission summary:

The Queensland Family and Child Commission (QFCC) is pleased to provide a submission to the Education, Tourism, Innovation and Small Business Committee (the Committee) on the Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Bill 2016 (the Bill).

The QFCC has previously provided submissions to Parliamentary Committees and Queensland Government departments on the Youth Justice and Other Legislation Amendment Bills. These submissions strongly advocated for the inclusion of 17-year-olds in the youth justice system.

This submission outlines the QFCC's position on the Bill.

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The QFCC supports:

- The policy objectives of the Bill to increase the upper age of who is a child for the purpose of the *Youth Justice Act 1992* and establish a regulation-making-power.

The QFCC recommends:

- 17-year-olds who are subject to a criminal justice sentence or are involved in criminal proceedings at the time of the commencement of the Bill be transferred to the youth justice system, wherever possible, as a matter of priority.

The QFCC welcomes the objective to include 17-year-olds in the youth justice system and has consistently recommended this occur in previous submissions to Parliamentary Committees and Queensland Government departments.

The QFCC is pleased to note the amendments proposed within the Bill would bring Queensland into line with other states and territories' legislation.

The Bill is also consistent with Australia's obligations under the United Nations *Convention on the Rights of the Child* (CRC), in particular, articles 3 and 37 (c):

- Article 3 states that the best interests of the child should be a primary consideration in all actions concerning children.
- Article 37 (c) provides if a child is deprived of his or her liberty it must be done in a manner which takes into account his or her needs and age and that children should be separated from adults unless it is in their best interests not to do so.

The Bill also negates criticism from the United Nations (UN) regarding the inclusion of 17-year-olds in the adult criminal justice system and takes action to address the UN's repeated calls for 17-year-olds to be transferred to the youth justice system.¹

Implementation and regulation

The QFCC notes the Bill provides for a 12 month implementation timeframe. The QFCC believes this timeframe will allow the transitional period to include appropriate consideration of establishing or strengthening safety measures for young detainees prior to the introduction of 17-year-olds to youth detention.

The QFCC has previously advised of the need to consider the security requirements for transitioning 17-year-olds to youth detention centres and is pleased the proposed Bill takes into account these concerns. Addressing safety requirements for young detainees is important given recent publications, including a report by the Australian Children's Commissioners and Guardians group, which have condemned the use of isolation and segregation in youth detention centres.

The QFCC supports the objective of establishing a regulation-making power to provide transitional arrangements. The QFCC notes section 389 allows the judiciary to determine appropriate sentences

¹ UN Committee on the Rights of the Child, *Consideration of reports submitted by parties under article 44 of the Convention*, 40th sess, CRC/C/15/Add.268 (20 October 2005) p.16; UN Committee on the Rights of the Child, *General Comment No.10: Children's rights in juvenile justice*, CRC/C/GC/10, (25 April 2007) p.12; UN Committee on the Rights of the Child, *Consideration of reports submitted by parties under article 44 of the Convention*, 60th sess, CRC/C/AUS/CO/4 (28 August 2012), p.21.

for 17-year-olds subject to sentences at the time of commencement of the Act. The QFCC also notes that section 390 allows the judiciary to give directions in relation to current proceedings for offences committed while the offenders were 17-years-old. While the QFCC acknowledges these provisions are intended to maintain the independence of the judiciary and appreciates the difficulties associated with transferring 17-year-olds currently in the criminal justice system, the QFCC considers this should be the preferred option wherever possible.

The QFCC looks forward to providing input to the regulation during consultation.