

Your Ref:

Our Ref: 21000339/109: Criminal and Children's Law Committee

30 September 2011

The Honourable Paul Lucas MP
Attorney-General, Minister for Local Government
and Special Minister of State
PO Box 15009
CITY EAST QLD 4002

Dear Attorney

17 YEAR OLDS IN THE QUEENSLAND CRIMINAL JUSTICE SYSTEM

We write on behalf of the Criminal Law and Children's Law Committees of the Queensland Law Society ("the Society") in relation to the treatment of 17 year old offenders in Queensland. In this regard, please find **enclosed** a copy of an article published in the Courier Mail on 29 September 2011 entitled, '17-year-old thief shouldn't be sentenced as an adult, court hears'. We note that the article states:

"The Court of Appeal's President Justice Margaret McMurdo said after she had previously mentioned 17-year-olds being treated as adults in Queensland and it had been referred to the Attorney General."

The Society writes to request information about the steps that your Department has undertaken in response to this referral and whether this issue is on the Government's law reform agenda.

The Society considers that this is an important issue and has long advocated for change in this area. The Society has written on numerous occasions to the Minister for Community Affairs and Housing, the Honourable Karen Struthers MP, consistently calling for the removal of 17 year old offenders from Queensland's adult criminal justice system and the placement of these young people within the jurisdiction of the *Youth Justice Act*. Please find **enclosed** these submissions for your information.

The Society would be happy to meet with you to discuss our concerns further. Please contact our Policy Solicitors, Ms Binny De Saram on (07) 3842 5885 or b.desaram@qls.com.au or Ms Raylene D'Cruz (07) 3842 5884 or r.dacruz@qls.com.au to arrange a suitable meeting time.

Yours faithfully

Bruce Doyle
President

Courier Mail

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Queensland

17-year-old thief shouldn't be sentenced as an adult, court hears

- by: Mark Oberhardt
- From: The Courier-Mail
- September 29, 2011 1:33PM

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A SEVENTEEN-YEAR-OLD first offender who was jailed for five years on armed robbery charges would have been treated as a child anywhere else in Australia, a court heard today.

It was the second Court of Appeal hearing in a week in which Gold Coast District Court Judge Clive Wall's tough line on armed robbery sentences was appealed.

The hearing again raised the issue of Queensland laws which deem a 17-year-old as an adult for sentencing when the age limit is 18 in all other Australian states and territories.

In the Southport District Court in May, Judge Clive Wall sentenced Alistair Pentara Gordon to serve almost double what the prosecution had submitted for two armed robberies.

Gordon pleaded guilty to the armed robbery of a supermarket at Upper Coomera on December 3, last year and a fast food outlet at Helensvale on January 4, this year.

At the time he also pleaded guilty to robbing a 13-year-old boy in Brisbane on August 2, last year.

Gordon used a taser gun and mace to threaten staff at the stores and got about \$5000 in total from the robberies.

The prosecutor asked for a sentence of 18-months to three years while Gordon's barrister Chris Wilson submitted immediate parole after time served on remand was taken into account.

Judge Wall, who has made several public statements about cracking down on Gold Coast armed robbers, sentenced Gordon to five years in jail with a parole after 16 months.

In the Court of Appeal today, Mr Wilson said the sentence should be reduced because no one could find a precedent case where a 17-year-old first offender was sentenced to five years jail for armed robbery.

He pointed out that Queensland was the only state where a 17-year-old was sent to an adult jail and anywhere else Gordon would be in juvenile detention.

The Court of Appeal's President Justice Margaret McMurdo said after she had previously mentioned 17-year-olds being treated as adults in Queensland and it had been referred to the Attorney General.

She said, however, at the moment courts had to sentence under the current laws.

Mr Wilson said Judge Wall had made statements on previous occasions about getting tough with Gold Coast armed robbers but a District Court judge should not be setting sentencing tariffs.

Prosecutor Ross Martin, SC, said the range for armed robberies by first offenders was three to five years and Judge Wall had not gone outside the range.

"He is entitled to take a robust view of armed robberies just as some other judges might take a view on sex offences," Mr Martin said.

Mr Martin said Gordon's offences were cunning, involving two robberies while on bail, and the use of a taser.

The Court of Appeal reserved its judgment.

Last week the Court reserved a judgment in a case where a man was jailed for nine years on armed robbery charges on the Gold Coast.

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Quote in reply: Criminal Law Section and Children's Law Section

11 February 2010

The Hon Karen Struthers MP
Minister for Community Services and Housing and Minister for Women
GPO Box 806
BRISBANE QLD 4001

Email: communityservices@ministerial.qld.gov.au

Dear Minister

REVIEW OF THE INCARCERATION OF 17 YEAR OLD CRIMINAL OFFENDERS IN ADULT CORRECTIONAL FACILITIES

I write to you today regarding the continuing debate as to the classification of 17 year old offenders as adults in the Queensland criminal justice system. At its proclamation in 1992 the *Juvenile Justice Act* contemplated the imminent inclusion of these youth within the juvenile justice system. This has not yet come to pass.

The Society commends the Government for announcing its reconsideration of the treatment of 17 year olds as adults in the criminal justice system. We note that such consideration is timely as it is now over 17 years since the ratification of United Nations Convention on the Rights of the Child ('CROC') and the Queensland Government's initial intention to review and change the applicable law.

United Nations Recommendations

As you are no doubt aware, the actions of the Queensland Government as to the imprisonment of 17 year old criminal offenders in adult detention facilities has been admonished by the United Nations in a series of reports. The most recent being the Fortieth Session of the Committee on the Rights of the Child (the 'Committee') (CRC/C/15/Add.268) on 20 October 2005. In this report, the Committee recommended that:

[Australia] bring the system of juvenile justice fully into line with the Convention [on the Rights of the Child], in particular articles 37, 40 and 39, 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 with the recommendations of the Committee made at this day of general discussion on juvenile justice... :



...
(g) Remove children who are 17 years old from the adult justice system in Queensland;
...

(2005, [74]).

The Government's continued resistance to the identification of a juvenile as being under the age of 18 is particularly concerning in light of the fact that it results in the *Juvenile Justice Act 1992* no longer applying to the 17 year old offender. In effect this means that the key elements of the CROC are negated, including detention as a last resort and that such detention be in facilities that are suitable for children. Juvenile detention centres are inherently different to adult correctional facilities, and as such, detaining or incarcerating 17 year olds in adult facilities is a natural contradiction to the ratification of CROC.

Current Position

As evidenced by the attention the issue has recently received in the media, the incarceration of 'youths' within the adult prison system is a source of tension within the legal community.

Queensland's treatment of 17 year old offenders is unique in that it remains the only Australian jurisdiction that incarcerates 17 year old offenders within the adult criminal justice system. However, we note that this was not always the case. Prior to 1 July 2005, a minor in Victoria was defined as a person *under the age of 17*. To bring Victoria into line with the majority of Australia's states and territories and with CROC, the age of a minor was raised to that of 18 years of age with the implementation of the *Children and Young Persons (Age Jurisdiction) Act 2004*.

As it stands, it is interesting to compare the respective ages of criminal culpability across all Australian jurisdictions. National uniformity exists in relation to two points of law:

- the age by which a child cannot be charged with a criminal offence; and
- the age by which the presumption *doli incapax* (the rebuttable presumption that a child is incapable of committing a crime) applies.

Furthermore there is a continued uniformity with regard to the age by which a person ceases to be considered a juvenile amongst the State and Territories, with the position adopted in Queensland being the exception.

The Society advocates for national uniformity in respect to this issue and submits that such uniformity should be reflected in the making of a regulation by the Governor fixing a day under section 6 of the *Juvenile Justice Act 1992*. The Act currently contemplates the inclusion of 17 year olds as juveniles and has done so since its inception in 1992. No legislative change is required to effect this.

According to statements made by Anne Warner in 1992, within her capacity as the Labor Family Services Minister, the Labor Government's explicit intention was for 17 year olds to be dealt with within the juvenile justice system. Such statements were made post-ratification of CROC.

It is disappointing that the spirit of the legislation has not been implemented.

While we commend the Government's recent decision to reconsider the current position, we note that we do not support the statement made to the media on 22 December 2009 suggesting that the introduction of 17 year old offenders into juvenile facilities will negatively influence the actions of younger adolescents detained within those corectional facilities. In the Society's mind, it is of more pressing concern that 17 year old offenders are being negatively influenced by older offenders in the adult criminal justice system.

As adolescence is a time of great physical and emotional evolution, the strength of the peer group and the relative support offered in familial, educational and other institutions is of high importance. In this regard we refer to a U.S. study by Bayer, Pintoff and Pozen (2003)¹, which suggested that grouping juveniles in non-crime specific 'communities' acted as an effective tool in slowing crime-related information, which the Society understands is a key concern with the inclusion of 17 year olds in the juvenile justice system. As juveniles are undergoing such a dynamic time of change, they are more likely, especially when grouped with older offenders who have had more time to perfect their criminal craftsmanship, to learn behaviours that will advance their criminal careers post-release.

We note that the U.S study focused on juvenile offenders aged 18 years and below, the study makes no representations about categorising 17 year old offenders within the adult justice system.

Aboriginal and Torres Strait Islander Youth Offending

The adverse effects on the inclusion of 17 year olds in the adult justice system are significant, however when this is considered in the context of Aboriginal and Torres Strait Islander (ATSI) youth, it is both especially distressing and amplified. In terms of juvenile detention, as at June 30 2002, ATSI youth in Australia² were 19 times more likely to be detained in the justice system than non-ATSI youth and, in Queensland, 23 times more likely to be detained in the system than non-ATSI youth.

The Society is cognisant of the Government's commitment to the Justice Agreement formed in 2000 with the Aboriginal and Torres Strait Islander Advisory Board, aimed at reducing the incarceration of ATSI people by 50% by 2011.

With this in mind, the Society urges the Government to address both:

- the characterisation of 17 year old ATSI offenders as juveniles; and
- the over-representation of the ATSI population in the criminal justice system, by means of diversionary programs and other efforts to prevent ATSI youth receiving sentences of a custodial nature.

Moving Forward

The Society is aware that it is commonly cited that the cost of the initiation of such policies and the movement of 17 year olds into the juvenile justice system is a deterrent to giving effect to the intention of

¹ The study conducted by Bayer, Pintoff and Pozen (2003) showed that in instances where juveniles were grouped within their specific crime types and allowed to intermingle, an increased likelihood of learning behaviours was created. As such, grouping juveniles in crime specific categories or allowing such juveniles to interact within their specific crime types is not productive in the reduction of juvenile crime or delinquency. This was found to be especially true in the case of theft, burglary, drug law violations committed in conjunction with indictable offences and crimes involving weapons.

² These statistics do not include the representation of ATSI youth in the state of Tasmania. In the Australian Institute of Criminology Technical and Background Paper on the Statistics on Juvenile Detention in Australia: 1981-2002, which analysed the rates of incarceration of ATSI and non-ATSI youth in Australia as a whole as well as the States and Territories, Tasmanian figures did not include a division of ATSI and non-ATSI youth.

the legislation. In this regard, it is disappointing that the rights of Queensland youth are being deprived due to funding considerations, especially in light of the fact that a mere regulation is needed to bring the current Queensland legislation into line with the United Nations recommendations.

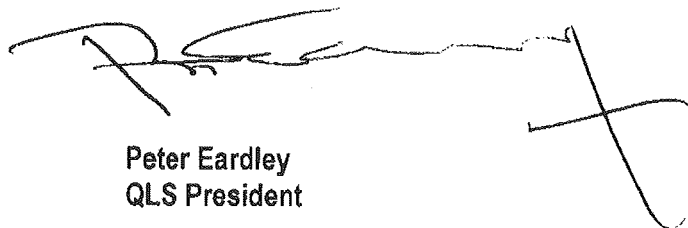
Further, it is our opinion that efforts should be directed towards effectively re-integrating juvenile offenders into their communities post-release, whether through rehabilitation within the juvenile detention facilities or through programs aimed specifically at providing juveniles with the necessary tools and support needed once they are released. As with adult criminal offenders, many issues within the juveniles' base communities are a catalyst in their offending behaviours, and where such catalytic elements are not adequately addressed, offending behaviour may be incubated and lead to recidivism.

In light of the above, the Society urges consideration be given to proclaiming section 6 of the *Juvenile Justice Act 1992*, with a view to ending the detention of 17 year olds in adult correctional facilities in Queensland.

We would be happy to meet with you or a member of your staff to discuss this important issue further. To schedule a meeting please contact Ms Lisa Duncan, a Policy Solicitor with our office, on 3842 5872.

We look forward to your response.

Yours faithfully



Peter Eardley
QLS President

Your Ref:

Quote in reply: Criminal Law and Children's Law Committees

20 September 2010

The Hon Karen Struthers MP
Minister for Community Services and Housing and Minister for Women
GPO Box 806
BRISBANE QLD 4001

Email: communityservices@ministerial.qld.gov.au

Dear Minister

IMPRISONMENT OF 17 YEAR OLDS IN QUEENSLAND'S ADULT PRISONS

We write to once again highlight the issue of the imprisonment of 17 year olds in Queensland's adult correctional facilities. When the legislation was proclaimed in 1992, it contemplated the imminent inclusion of these young people within the juvenile justice system. In this regard, the Society commends the Government for announcing its reconsideration of the treatment of 17 year olds as adults in the criminal justice system.

Due to the practice areas and expertise of our members, specifically those dealing in the area of Criminal Law and Children's Law, the Queensland Law Society has a strong interest in any developments in this area. We would therefore be happy to be involved in any legislative reform process or committee convened to review this policy.

If you would like to discuss any of the issues above in more detail, please do not hesitate to contact our Policy Solicitor, Ms Binny De Saram, on (07) 3842 5885 or via email b.desaram@qls.com.au

Yours faithfully



Peter Eardley
President

Your Ref: Ms Helen Warneke

Quote in reply: Direct Advocacy: Children's Law and Criminal Law Committees

16 June 2011

The Honourable Karen Struthers MP
Minister for Community Services and Housing and Minister for Women
GPO Box 806
BRISBANE QLD 4001

Email: communityservices@ministerial.qld.gov.au

Dear Minister

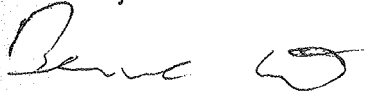
THE INCLUSION OF 17 YEAR OLD OFFENDERS IN QUEENSLAND'S ADULT CRIMINAL JUSTICE SYSTEM

Thank you for your letter dated 18 October 2010 which we **enclose** for your reference.

We note that in your letter you stated that it was your intention to discuss options for including 17 year olds in the youth justice system with your Cabinet colleagues at the end of 2010. Could you please advise whether these discussions have taken place and if yes, what the outcomes of these discussions were. We once again strongly urge your Department to implement the recommendations from the Commission and Children and Young People and Child Guardian's policy position paper entitled, "removing 17 year olds from adult prisons and including them in the youth justice system." This action is essential for us to accord with our international human rights treaty obligations and customary international law.

We also understand that a stakeholder reference group has been formed to undertake a comprehensive review of the implications of including 17 year olds in Queensland's adult correctional facilities. This group does not include a representative from the Queensland Law Society which is disappointing, especially due to our strong interest and numerous submissions on this issue. We would be grateful to be included in future discussions on this issue.

Yours faithfully



Bruce Doyle
President



Your Ref: H/10/00185 COM 08007-2011 – Ms Kelly Murdock

Quote in reply: 21000339/109 – Ms Binny De Saram

28 July 2011

The Hon Karen Struthers MP
Minister for Community Services and Housing
Minister for Women
GPO Box 8069
BRISBANE QLD 4001

By Post and Email: communityservices@ministerial.qld.gov.au

Dear Minister

INCLUSION OF 17 YEAR OLD YOUNG PEOPLE IN QUEENSLAND'S ADULT CRIMINAL JUSTICE SYSTEM

Thank you for your letter dated 20 July 2011. We are pleased to hear that your Department is making enquiries regarding the necessary policy, legislative amendments and budget implications that would be required to remove 17 year olds from Queensland's adult criminal justice system.

The Society has a Children's Law Committee and Criminal Law Committee, consisting of legal practitioners with extensive experience with this issue. Due to their expertise, these Committees are regularly consulted on various Government law reform issues and are regularly provided with confidential legislative drafts for comment.

Given their practical experience in youth justice issues and their ability to provide useful comment to Government consultation, these Committees would be able to positively contribute to the Senior Officers Group. We request that representatives from the Society's Children's Law Committee and Criminal Law Committee be permitted to take part in the Senior Officers Group.

We look forward to hearing from you in response to our proposal.

Yours faithfully



Bruce Doyle
President

