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31 October 2016

Michael Drane
Director
Youth Detention Review
GPO Box 149
Brisbane QLD 4001

***Via email only:* enquiries@youthdetentionreview.qld.gov.au**

Dear Director,

RE: Submission to the Independent Review of Youth Detention in Queensland

Australian Lawyers for Human Rights (ALHR) thanks the Youth Detention Review for the opportunity to make this Submission on the Independent Review of Youth Detention Discussion Paper.

ALHR was established in 1993 and is a national network of Australian solicitors, barristers, academics, judicial officers and law students who practice and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and a secretariat at La Trobe University Law School in Melbourne. Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas.

1. Introduction

Australian Lawyers for Human Rights (ALHR) congratulates the Queensland government on its decision to conduct an independent review of youth detention in Queensland.

We note that the review is occurring at a time when your government has promised to take the significant step of removing 17-year-olds from adult prisons. This is a vital step in bringing Queensland into line with other Australian states and territories, none of whom treat 17-year-olds as adults in the criminal justice system. ALHR commends this action as a positive step in Queensland's compliance with the UN *Convention on the Rights of the Child (CRC)*.

There do, however, remain very significant concerns over important aspects of the treatment of all children currently held in Queensland's prisons and youth detention facilities. Lateline and Amnesty International have exposed a culture of mistreatment of juveniles in detention, lack of proper oversight mechanisms and systemic failure all at the expense of Queensland's children. In ALHR's submission these reports evidence deep systemic failures within the Queensland youth justice system. We call on you not to miss this opportunity to address them.

Australia is bound by international human rights laws that oblige your Government to ensure every child deprived of their liberty is treated with humanity and no child is subjected to torture or other cruel, inhumane or degrading treatment or punishment.

2. International Law

It is the considered view of ALHR that many aspects of Queensland's treatment of juveniles held in detention are in breach of Australia's binding legal obligations under the:

- a) *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*;
- b) *Convention on the Rights of the Child*;
- c) UN Standard Minimum Rules for the Administration of Juvenile Justice (the *Beijing Rules*);
- d) UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)

3. Specific Reports of human rights abuses committed against children in detention

Lateline and Amnesty International have exposed a culture of mistreatment of juveniles in detention, lack of proper oversight mechanisms and systemic failure all at the expense of Queensland's children. The specific human rights abuses exposed by Lateline and the 1000 pages of documents detailing abuse and mistreatment against children in detention uncovered by Amnesty International evidence include:

- **The use of brutal force, without reporting of the incident and without ordering an internal review**

A 17-year-old boy, identified as being a high suicide risk, who refused to return to his room and sat on a bench with his arms folded resulted in 14 staff responding to the situation with several staff members holding him down on the floor, putting him in handcuffs and leg cuffs. The staff members then took the child to a very small isolation cell where they cut his clothing and underpants off with a knife. The boy was left naked in the cell for over an hour before being given a gown to wear.

This incident was not reported as an 'incident of concern', an internal review was not held immediately afterwards and though the inspectorate later recommended an internal review – the documentation did not show whether it was carried out or not.

- **The use of dogs to intimidate, increase anxiety in at risk youth and instil fear**

In 2014, a child on a roof threatened to harm herself or commit suicide by hanging. A security guard and his dog were sent to the youth which was found to increase the youth's anxiety.

In August 2015, a guard allowed an un-muzzled dog to approach an Indigenous girl in an aggressive manner while she was attempting to get out of a pool.

- **The use of solitary confinement**

In March 2012, eight Indigenous children were held in isolation for 10 days in “near-continuous cell confinement” (approximately 22 hours a day). For the first two days of solitary confinement, the youth were not allowed to leave their rooms at all.

- **Frequent attempts at self harm or suicide – particularly at CYDC**

The documents released by Amnesty International evidence 31 incidents of children in the centre attempting to commit suicide by “tying ligatures around their necks”. This was an increase from 20 instances at the same centre in 2014.

- **Excessive use of force**

The documents further evidence that in 2010, there were four incidents of children suffering fractured wrists as a result of control and restraint techniques.

- **Use of prohibited squatting and lifting on youth**

Partially clothed searches were undertaken where children were required to squat with young girls asked to lift their breasts and young boys to lift their genitals prior to squatting. These practices are prohibited in adult prisons, yet were used on children

The degree of abuse committed by persons entrusted with the care and protection of some of the Queensland’s most vulnerable children is truly shocking and distressing. However, it is clear that these serious violations of Australia’s international human rights obligations are not an isolated incident.

In March 2015, the United Nations Special Rapporteur on Torture, Juan Mendez, tabled a report outlining the current international benchmarks that are expected of countries when it comes to detaining children.

Juan Mendez, in interpreting and setting standards under the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* in the context of Australia's youth detention policies said,

"...Australia's youth detention policies are out of date. We're allowing a number of physically and psychologically harmful practices to continue, and permitting punitive policies and practice, which do not priorities young people's rehabilitation or reintegration"

His report makes it clear that the use of practices such as strip searches and solitary confinement on children in Australia are inherently dangerous, cause irreversible psychological trauma and are completely inconsistent with Australia's legal human rights obligations.

It is unfathomable that a democratic developed State such as Queensland could allow a level of abuse against juveniles that includes the use of physical abuse like squatting and lifting, spit hoods, intimidation with dogs, and extended periods of solitary confinement. Such measures are a clear breach of internationally recognised standards on the treatment of children in youth detention. All of these abusive measures have been used on children. Our children.

4. Recommendations

While ALHR congratulates the Queensland government on its commitment to remove children from adult jails within the next 12 months, ALHR calls for further immediate steps that are required to protect the rights of children in Queensland's youth justice system:

1. We urge the Queensland Government to ensure that any changes recommended as a result of this Review are formulated so as to comply with the international standards relevant to the treatment of children in the criminal justice system, namely the:
 - a. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;*
 - b. *Convention on the Rights of the Child;*

- c. UN Standard Minimum Rules for the Administration of Juvenile Justice (the *Beijing Rules*);
 - d. UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)
2. We call for the immediate appointment of an Independent Custodial Inspector in Queensland with unfettered access to youth extension centres to ensure that national and international standards are being complied with (such as in NSW and WA) and publicly report on any breaches.
3. We urgently ask the Queensland Government to call on the Federal Government to ratify the *Optional Protocol to the Convention against Torture*.

8. We call for the immediate suspension of any staff suspected of being involved in abuse of their powers until such time as investigations are completed and an outcome reached.

9. We call for the immediate repeal of legislative provisions in Queensland which enable the use of chemical weapons (tear gas), solitary confinement, mechanical chairs, cable ties, weight belts, shackles and spit hoods on children in detention.

10. We call for higher standards of training and skills of personnel that work with juvenile detainees with a focus on rehabilitation of children as opposed to punitive measures.

11. We call for appropriately funded, evidence - based diversionary and education programs to be rolled out in Queensland which recognise the principle that detention is a last resort for children. Queensland programs should be providing a therapeutic environment that can help youth offenders on a path to rehabilitation and reintegration upon release back into society.

12. We call for the minimum age of criminal responsibility of juveniles to be increased to 12 years, not 10 years, in Queensland. A change that would reflect internationally recognised standards in juvenile justice.

13. We call on the Queensland Government to urgently address the current funding crisis in legal aid so as to ensure access to legal representation for youth offenders, particularly Queensland's Indigenous children.

14. We call on the Queensland Government to utilise justice reinvestment as a means of funding programs which address the underlying social issues responsible for the overrepresentation of Queensland's Indigenous children in the criminal justice system.

5. Detention is Not an Effective Deterrent for Juveniles

The use of detention for juvenile offenders has not been shown to reduce crime rates or rates of reoffending. Locking-up children and adults on remand unnecessarily risks exposing them to the criminal justice system; which in turn generally increases their chances of becoming repeat offenders.

Research indicates that time in a juvenile justice centre is the most significant factor in increasing the odds of recidivism. For example, research from the Australian Institute of Health and Welfare has shown that children who are placed in detention are three times more likely to end up back in detention within 12 months than those who get a community-based sentence.

Periods of detention represent missed opportunities to intervene in juveniles' lives with constructive programs. A more responsible and cost effective approach would be the introduction of proven and effective early intervention and diversion programs and restorative justice approaches.

The Queensland Government must reflect on the damage that it is enabling people in a position of power to do against our children. The trauma that they are receiving in juvenile detention not only is in fundamental breach of Australia's human rights obligations to these children, but is doing a damage so profound and irreversible that it may entrench within these children a criminal mindset and create a pathway for an adult life of crime.

If you would like to discuss any aspect of this Submission, please contact ALHR President, Benedict Coyne, on president@alhr.org.au or ALHR Vice President, Kerry Weste, on vicepresident@alhr.org.au.

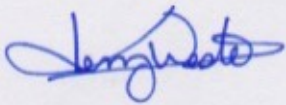
Yours faithfully,

A handwritten signature in black ink, appearing to be 'Benedict Coyne', written over a white background.

Benedict Coyne, President ALHR

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A handwritten signature in blue ink, appearing to be 'Kerry Weste', written over a light grey background.

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