

Ms Julia Knight
Secretary, Social Policy Scrutiny Committee
GPO Box 3721
Darwin NT 0810

Via email: SPSC@nt.gov.au

17 April 2019

Dear Ms Knight

RE: AMSANT response to the Youth Justice and Related Legislative Amendment Bill 2019

Thank you for the opportunity to provide a submission in response to the *Youth Justice and Related Legislation Amendment Bill*. AMSANT would like to acknowledge our involvement to date in providing feedback on earlier versions of this Bill through the Legislative Amendment Advisory Group (LAAC). Many of the changes included in this amendment Bill are demonstrative the kind of reform that can be achieved through a proper process of co-design.

We do however note our disappointment that no such process occurred in developing the Youth Justice Amendment Act 2019 (Serial No 84) which was introduced on an 'urgent basis' to Parliament on 19 March 2019. The lack of consultation or allowance for scrutiny in the process of passing an Act that is clearly inconsistent with the recommendations of the Royal Commission is deeply concerning.

In relation to the current *Youth Justice and Related Legislation Amendment Bill 2019* AMSANT would like to express our support for the positions and recommendations expressed in the substantive submissions provided by Danila Dilba Health Service, and the Human Rights Law Centre.

Particularly, we express our support for the following provisions included in the Amendment Bill:

- Changes to the Bail Act that introduce youth-specific criteria for bail applications and conditions, including a presumption in favour of bail;
- Legislating for consideration of the cognitive capacity, health and developmental needs of children and young people;
- Facilitating access to legal assistance earlier for young people and requirements to ensure young people understand their rights;
- Legislating that all Youth Justice Proceedings are held in closed courts to protect the privacy of children and support rehabilitation;
- Reinforcing arrest as a measure of last resort.

AMSANT would also like to take this opportunity to reiterate our position on a number of matters related to this Bill which we feel do not reflect a primary focus on the best interest of the child.

Raising the minimum age of criminal responsibility

AMSANT was disappointed to see that this Amendment Bill has not included changes to raise the minimum age of criminal responsibility from the current age of 10 to 12, with a minimum age of detention of 14, except for serious violent offences. This was a priority recommendation of the Royal Commission that sought to bring the law into step with contemporary understandings of adolescent brain development and reduce the number of children brought before our courts.

Children aged 10 to 14 lack emotional, mental and intellectual maturity and research has demonstrated that the child's brain is still developmentally immature at this age, causing children to exhibit a greater propensity for engaging in risk taking behaviours¹. While most children will grow out of these behaviours, we also know that the younger children are when they enter the youth justice system, the more likely they are to reoffend². Therefore, criminalising children under the age of 12 increases their likelihood for a life time of offending.

Recommendation 1: To include additional amendments to the Criminal Code (NT) to raise the minimum age of criminal responsibility 12 and minimum age of detention to 14.

Offense of breach of bail to be repealed in its entirety

We welcome the removal of the offence of breach of bail conditions. These reforms will work to reduce the high remand rates, which currently sit around 77%³, and reduce pressures on both youth detention centres.

However, it is AMSANT's position that criminalising breach of bail undertaking is counterproductive and not in line with the intention of Recommendation 25.19 of the Royal Commission. In instances where a young person breaches their bail undertaking, the focus should be on engaging that young person, their family, carers or relevant service providers to ensure that adequate supports are put in place to ensure the young person's compliance with the bail undertaking.

Recommendation 2: That the offense of breach of bail for young people be repealed in its entirety.

Time in police watch house without charge

In relation to proposed amendments to S137 of the *Police Administration Act*, AMSANT notes the Senior Sergeant has the power to authorise the holding of a young person in custody without charge,

¹ The Royal Society (December 2011), Brain Waves Module 5: Neuroscience and the Law, report: https://royalsociety.org/~media/Royal_Society_Content/policy/projects/brain-waves/Brain-Waves-4.pdf

² Queensland Family & Child Commission (2017) the Age of Criminal Responsibility in Queensland, information paper: <https://www.qfcc.qld.gov.au/sites/default/files/For%20professionals/policy/minimum-age-criminal-responsibility.pdf>

³ AIHW, Northern Territory: youth justice supervision in 2016-17, table S109a

without the approval of a judge, for up to 24 hours. This is not in line with Recommendation 25.3 of the Royal Commission.

We are also concerned to note that there is no inclusion of a finite limitation to how long a young person can be held in custody without charge given evidence about the harmful effects of keeping young people in police holding cells.

Recommendation 3: That S137 of the Police Administration Act be amended in line with Recommendation 25.3 of the Royal Commission.

Thank you for your consideration of this submission.

Kind Regards



Erin Lew Fatt

Acting CEO AMSANT