

Inquiry into the Youth Justice and Related Legislation Amendment Bill 2019

Submission to the Social Policy Scrutiny Committee

15 April 2019

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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal of the Eora Nation.

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to have input into the inquiry being undertaken by the Social Policy Scrutiny Committee into the *Youth Justice and Related Legislation Amendment Bill 2019* ('the Bill').
2. This submission will address the following:
 - a. General support for key measures in the Bill that implement recommendations from the Royal Commission into Protection and Detention of Children in the NT ('the Royal Commission') that aim to reduce the rate of incarceration of young people in the NT;
 - b. The need to raise the age of criminal responsibility in the NT;
 - c. Concerns about the recently passed *Youth Justice Amendment Act 2019*.

General support for key measures to reduce rate of incarceration of young people

3. The ALA supports the key changes in the Bill, which aim to reduce the rate of incarceration of young people in the NT. These include:
 - Making youth diversion more accessible to young people by removing legislative barriers to its use;
 - Confirming arrest as a measure of last resort;
 - Reducing the time young people spend in police custody;
 - Ensuring that appropriate youth-specific consideration is given to bail options;
 - Decriminalising breach of bail conditions as an offence;
 - Facilitating earlier access to legal assistance for young people in police custody.
4. The ALA notes that several of these measures were recommended by the Royal Commission.

Age of Criminal Responsibility

4. The ALA notes that following the Royal Commission recommendations, the NT Government committed to raising the age of criminal responsibility of children from 10 to 12. The ALA is disappointed that the NT Government has not used the opportunity presented by this Bill to legislate for such a change. Moreover, the ALA notes that it is now over 12 months since the NT Government committed to make this change and considers the delay to be unacceptable.
5. The ALA considers that that raising the age of criminal responsibility is a key measure in reducing the rate of incarceration of young people, who should be detained only as a last resort. The ALA notes that in the Northern Territory, over 90 per cent of young people in detention are Aboriginal and Torres Strait Islander children.
6. The ALA submits that no child under the age of 14 should be sentenced to detention, except in the most serious cases, in accordance with the recommendations of the Royal Commission.
7. The ALA agrees with the Australian Medical Association that the age of criminal responsibility should be raised to 14 years of age, in accordance with the recommendations of the United Nations Committee on the Rights of the Child.

Concerns about the *Youth Justice Amendment Act 2019*

8. The ALA also takes this opportunity to record its strong opposition to the recently passed *Youth Justice Amendment Act 2019*, which was rushed through Parliament without consultation. The amendments are retrospective to 24 May 2018.
9. The ALA is concerned that the Act not only unwinds the protections that were put in place following the Royal Commission report, but actually gives detention centre officers more power than they had prior to the Royal Commission. These new laws actually give officers a licence to do all the things that came to light in the Royal Commission without stepping outside the law.
10. The amendments weaken the restrictions on the use of force in youth detention from an objective test to a subjective test. In effect, this means that only the person who is using force has to perceive it to be necessary; alternately, that the use of force does not need to seem reasonable to anyone else other than the person deploying force. This is an extremely unusual and sweeping power in legal terms – the standard test is the objective test.

11. The ALA is concerned that officers will no longer be required to take into account factors that they previously had to consider, such as the age, gender, physical and mental health of the detainee. For example, a girl with a broken collarbone (broken by officers in arresting her) had her sling taken away by officers, who then ignored the fact that she had an injury while they threw her to ground and restrained her. If something similar occurred today, under the new laws, that detainee would have no legal recourse.
12. The legislation is retrospective so that any detainee experiencing unreasonable force or restraint from 24 May 2018 may no longer be able to claim damages. The ALA submits that the threat of civil proceedings against officers provides an important deterrent to the exercise of unreasonable force or restraint. Under the new laws there is a licence for youth detention officers to use force – so long as they subjectively believe it to be necessary.
13. Officers were previously prohibited from using force and restraints for the purposes of discipline and maintaining order, and could only use restraints in an emergency situation and if someone was going to inflict harm on themselves/others/property. Under the new legislation, officers can now use force and restraints to maintain order and can do so pre-emptively (i.e. even if an emergency situation has not yet arisen).
14. The ALA is also concerned about changes to the isolation provisions. The restrictions that were tightened in response to the Royal Commission have been relaxed, and there is now uncontrolled power to isolate in some circumstances. For example, these new provisions would permit the isolation of detainees in an emergency situation such as that described in the 4 Corners program about Don Dale, when boys were held in isolation for 17 days because of a lack of facilities.
15. Finally, the ALA notes that the new legislation allows other officers in addition to the superintendent to determine if force is necessary. There is no information or clarification about what training is required to make those decisions. The lack of adequate training of officers was a major issue in evidence put to the Royal Commission and has not been properly addressed. These new laws create the potential that minimally trained people will be exercising these sweeping powers.

Conclusion

13. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input into the Committee's consideration of the *Youth Justice and Related Legislation Amendment Bill 2019*. The ALA is available to provide further assistance to the Committee in further developing the legislation to implement these reforms.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Michael Grove', with a stylized flourish at the end.

Michael Grove

Northern Territory President & Director

Australian Lawyers Alliance