Northern Territory
Anti-Discrimination Commission

Ms Julia Knight
Committee Secretary
Social Policy Scrutiny Committee
Legislative Assembly of the Northern Territory
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Dear Ms Knight,

YOUTH JUSTICE AND RELATED LEGISLATION AMENDMENT Bill 2019

The NT Anti-Discrimination Commission (ADC) appreciates the opportunity to provide a submission about the *Youth Justice and Related Legislation Amendment Bill 2019* (Bill).

Introduction

The progression of these reforms is very welcome and is to be commended. The ongoing safety of the whole community necessitates that we as a community assist all children and young people to lead full lives and contribute to the community. Punitive and damaging/ tough on crime approaches to Youth Justice do not make our community safer but will lead to damaged young people who are much more likely to have a lifelong involvement with the criminal justice system.

The ADC will not comment on the full array of reforms but rather on those that evoke non-discrimination and human rights of the child. Firstly commending those that protect the rights of children and young people and commenting on missed opportunities to protect children and/or to advance equality of opportunity for children and young people in our community.

The report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory[1] (Royal Commission Report) provided

[1] https://www.royalcommission.gov.au/royal-commission-detention-and-protection-children-northern-territory

the evidence base and road map for reform of the Youth Justice system, both via legislation and broader reform in the Northern Territory.

ADC commentary

(a) Closed Courts

The Bill implements Recommendation 25.25 – Volume 2B, Chapter 25, page 308 and is to be commended. It brings the NT into line with all other jurisdictions in Australia.

The Bill changes the approach from there being a requirement for an application and criteria to be established to close the Court to it being the standard position.

The research as indicated in the Royal Commission Report is clear that the current 'name and shame" approach has particularly adverse effects on young people.

The Bill incorporates Article 40 of the United Nations Convention on the Rights of the Child which provides: children accused of a criminal offence must be treated in a manner which takes into account the child's age; the desirability of promoting the child's reintegration and the child assuming a constructive role in society; and to have his or her privacy fully respected at all stages of the proceedings.

In the work the ADC does we see the stigma, stereotypes applied and discrimination that can occur in work places for those known to have a criminal record.

The ADC commends the approach taken in the Bill.

(b) Bail

The Royal Commission Report comments extensively on Bail and recommendation 25.19 sets out five areas for implementation.

The current Bill is to be commended for including a presumption in favour of bail for Youth. Also to be commended is the inclusion of section 24A – Criteria to be considered in bail applications for youths. Having the criteria in one place and clearly articulated is a step forward. It is positive recognition of children's and youths' different needs and capacity.

These criteria will direct judicial officers and police considering bail to age appropriate considerations and highlight the different considerations that are required for children and youth.

However, it is disappointing that the full scope of the Royal Commission Report recommendation 25.19(4) has not been implemented and that there remains the offence of breach of bail. It is noted that the Bill does remove as an offence the non-compliance with bail conditions, which is a positive development.

It is clear from the Royal Commission Report that the aim of the recommendation was to keep children and young people out of detention. As set out in the Royal Commission Report there are an array of adverse impacts on children and young people of custodial remand. Further, there is a link between the earlier a child is remanded and subsequent periods of detention.

The offence of breach of bail is regarded as a key contributor to the conveyor belt of further contact with criminal justice system and likelihood of further time in detention. This is an offence only introduced in 2011, which has a disproportionate impact on Aboriginal children (Royal Commission Report page 292) and it is known that the younger a person is, the more likely they are to breach bail.

(c) *Time limits for children & youth being in police watch houses.*

It is clear that Police watch houses are not appropriate places for children and young people. The Royal Commission Report was concerned with the length of time children have been held in watch houses before being charged and bailed or charged and brought before a Judge.

The *Police Administration Act* 1978 currently refers to a "reasonable period" and the Royal Commission Report recommended at 25.3;

> *"'Provision be made in either the Police Administration Act (NT) or the Youth Justice Act (*NT) that children and young people may be held in custody without charge for no longer than four hours. Any extension up to a further four hours may only be granted by a Judge."

The Bill introduces a time frame which is narrower and more precise than the current "reasonable period". However, the time period allowed in the Bill far exceeds that in the

Royal Commission Report recommendation. The Bill provides for the detention of a young person for 24 hours before Police have to apply to a Local Court Judge for additional 4 hour periods.

The 4 hour recommended period makes its way into the Bill only in the form that a police offices of rank of Senior Sergeant or above must review and record the necessity of holding the youth for the purpose of enabling the youth to be questioned or investigations to be carried out.

This is not the implementation of the Royal Commission recommendation and whilst providing some checks and balances does not bring external scrutiny to the harmful practice of detaining children and young people in police watch house until after 24 hours. It far exceeds the time period for young people being detained in other jurisdictions in Australia such as Queensland, NSW and South Australia.

(d) Raising the Age of Criminal Responsibility

The Royal Commission Report Recommendation 27 is to raise the age of criminal responsibility in the Criminal Code to 12 and also to amend the Youth Justice Act so that youth under 14 may not be ordered to serve time in detention other than in three specific circumstances, including serious and violent offence against a person, present a serious risk to the community etc.

The NT Government in its public documents supported this in principle in the preliminary response to the Royal Commission Report in October 2017 and again in March 2018. The community expected this reform to be in the current Bill. It is not.

The earlier a child is detained, the more likely is their ongoing involvement with the criminal justice system and follow up detentions of longer duration. (Reference)

As was clearly set out in the Royal Commission Report raising the age of criminal responsibility from 10 years of age reflects the greater knowledge and understanding we have on brain development.

Further, it goes some way to complying with Article 40(3) of the United Nations Convention on the Rights of the Child which Australia ratified on 17 December 1990 which requires states to promote the establishment of laws, procedures including

"(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected."

Further as set out in Royal Commission Report the United Nations Committee on the Rights of the Child has recommended that 12 years of age be the minimum age. This is linked to research and minimum standards that state in determining the age it should recognise "emotional, mental and intellectual maturity".

Australia and NT are out of step with other countries we regard as peers, noting that New Zealand has for most crimes 14 as the age of criminal responsibility.

It is clear from material collated in the Royal Commission Report and dialogue with those who advocate for the human rights of children that there is widespread support for the age of criminal responsibility being raised to 12 years and that children should not be remanded in detention below the age of 14 years.

Both measures are aimed at the long term safety of the community being achieved by ensuring that children are given every opportunity to thrive and be a valued part of their family and the wider community. Further when children and young people do offend against the criminal law they are treated with dignity and with the aim of promoting the child's reintegration and constructive role in society.

The ongoing commitment and a time line for the implementation of the two components of recommendation 27.1 is necessary, as it is a vital and significant structural reform which will divert children from the criminal justice system.

We thank you for an opportunity to make this submission.

Yours sincerely,

Sally Sievers

Anti-Discrimination Commissioner
Northern Territory Anti-Discrimination Commission
17 April 2019