

Submission to the Social Policy Scrutiny Committee regarding the Youth Justice and Related Legislation Amendment Bill, 2019

April 2019

We welcome the opportunity to provide a submission to the Social Policy Scrutiny Committee on the Youth Justice and Related Legislation Amendment Bill.

Australian Red Cross has been delivering humanitarian services to vulnerable people in the Northern Territory for over 100 years. We achieve our purpose by mobilising the power of humanity and building the capacity and resilience of individuals and communities to reduce vulnerability and maximise life opportunities regardless of nationality, race, religious beliefs, class or political persuasion. These services are guided by seven Fundamental Principles: Humanity, Impartiality, Neutrality, Independence, Voluntary Service, Unity and Universality.

Since the release of our Vulnerability Report, 'Rethinking Justice', in March 2016, Red Cross has been calling for a rethink of Australia's justice systems at a national and state/territory level. We seek to contribute to safer and more socially cohesive communities through getting better outcomes from more effective criminal justice systems. While we acknowledge the need for a prison system for those who break serious laws, it is our contention that our prison system is overused and that there are more effective alternatives. The humanitarian impact of punitive detention on our young people, their families and their communities is detrimental and dire and we must find other solutions.

I would welcome the opportunity to discuss this submission further.



Andrew Kenyon

Director, Northern Territory

Australian Red Cross supports amendments to legislation in the Northern Territory to allow for implementation of the Recommendations of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory (the Royal Commission). Australian Red Cross in particular welcomes proposed amendments including:

- The access by children and young people to an interpreter in their own language
- The introduction of youth-specific bail considerations under the *Bail Act* that create a presumption in favour of granting bail for young people.
- The removal of breach of a bail condition as a criminal offence for young people.
- That all court proceedings under the *Youth Justice Act* be held in a closed Court and that publication of a report of proceedings not be permitted to include information that would tend to identify the offender without the leave of the court.

With regards to the Terms of Reference of the Social Policy Scrutiny Committee, Australian Red Cross requests that the Committee:

- i) Recommends that the Assembly amend the Bill. This is to ensure that the Recommendations of the Royal Commission, committed to in their entirety by the Northern Territory Government, are fully addressed.
- ii) Acknowledges that the proposed amendments do not sufficiently regard the rights and liberties of individuals.

In the Letters Patent, the effective terms of reference for the Royal Commission, the Royal Commission was asked to consider whether any treatment of young people is *'inconsistent with or contrary to a human right or freedom'* and so the extent to which the proposed amendments acknowledge the Royal Commission evidence and Findings and enact the Royal Commission Recommendations is of direct interest to the Committee.

It is notable and of significant concern that this Bill does not address:

- The Royal Commission Recommendation 27.1 which states:
*'Section 38(1) of the Criminal Code Act (NT) be amended to provide that the age of criminal responsibility be 12 years.
Section 83 of the Youth Justice Act (NT) be amended to add a qualifying condition to section 83(1)(l) that youth under the age of 14 years may not be ordered to serve a term of detention, other than where the youth:*
 - *Has been convicted of a serious and violent crime against the person*
 - *Presents a serious risk to the community, and*
 - *The sentence is approved by the President of the proposed Children's Court'*

The proposed amendments are silent on any changes to the age of criminal responsibility or limits being placed on the power to sentence children under 14 years of age to a period of detention.

- The exclusion of children and young people from the full operation of an offence to breach of bail (as per Recommendation 27.1 of the Royal Commission report), in particular the breach of a bail undertaking by failing to attend court
- The Royal Commission Recommendation 25.3 which states:
"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 proposed amendments to section 137 of the *Police Administration Act* in its current form permit police to allow children and young people to be held for up to 24 hours with review by a Senior Sergeant, and without requiring review by a Judge.

Australian Red Cross also proposes that the *Police Administration Act* better reflects the amended *Youth Justice Act* and confirms that the arrest of children and young people is to be used as a measure of last resort. This would provide consistency and emphasise the imperative to address the findings of the Royal Commission (Royal Commission Report, Volume 2b, page 230).

Finally, the recent amendments to the Youth Justice Act could be a backward step in implementing the recommendations of the Royal Commission, and in particular changes to sections on the use of force and the use of restraints may conflict with Recommendation 13.5. Australian Red Cross urges the Committee to recommend to the Assembly that these recent amendments are rescinded.

We thank the Social Policy Scrutiny Committee from considering our submission.

