

Submission/Report

from Civil Liberties Australia (CLA)

To: Social Policy Scrutiny Committee (SPSC), NT Parliament

Issue:

Youth Justice and Related Legislation Amendment Bill 2019

<https://parliament.nt.gov.au/committees/spsc/85-2019>

Summary:

The Bill aims to change how the NT legal/justice system treats young people (youths/children) in a major way. The Bill requires considerable amendment according to 24 or the 25 submissions made to the Scrutiny Committee¹.

Core problem:

The Bill is being rushed through Parliament **because** action to build new youth centres in Darwin and Alice Springs is delayed (see Submission 21: NT Legal Aid Commission, points 22-26, where this fact² is publicly acknowledged, or Appendix B). The Bill is so rushed that it shows obvious flaws. Rushed law is never a good idea, and always produces unforeseen problems later.

Methodology:

Civil Liberties Australia was able to analyse the 25 submissions to the SPSC as of 15 May 2019. Unfortunately, we started at Submission 1 and ended at Submission 25. No 25 was from the Strong Grandmothers' Group of the Central Desert Region. Had we started there, the recommendations of these wise woman would have summed up most of the changes required (and suggested by other submitters):

1. Children should be in COUNTRY not in CUSTODY
2. NO children should be punishable under the age of 12
3. NO detention to children
4. Children to be released in care of families on country
5. Youth Justice services must work together with families
6. Breach of bail to be scrapped
7. NO police CELL
8. NO children to be arrested after hours
9. Interpreter services to be available at all times for families
10. NO closed door courts.

¹ The odd one out is the submission from the NT Police Force, who should have no role in advising the NT Parliament on whether or not to pass legislation. Unfortunately, they offer gratuitous advice in their submission. They also clearly indicate that the NT Police Force completely fails to understand what the legislation is about, and what submitters/the community want. See discussion at Appendix A.

² Relevant extract is at Appendix B

RECOMMENDATIONS CLA BELIEVES THE SCRUTINY COMMITTEE SHOULD MAKE:

After analysing the submissions from 25 groups, CLA believes the Scrutiny Committee should propose to the Parliament/Government:

- NT should put its bill on hold for 9-12 months, for reasons put forward by many submitters.
- If there is urgent, immediate need, use regulations for the next 6-12 months, and/or pass an emergency Bill that deals only with the immediate need(s). Such a Bill should have a sunset clause operative in 12 months.
- This Bill – if it proceeds in the short term – must be amended in three areas:
 - age of criminal responsibility: to be raised to at least 12, preferably 14, possibly 16 (Note: further research is needed, in NT and nationally, on this issue);
 - age before a young person may be detained: to be at least 14, possibly 16;
 - holding a young person in police custody beyond four (4) hours: not to be permitted without judicial approval.

(These changes are supported by an overwhelming majority of submitters).

- The NT should seek to ensure a national approach to young people's laws by March 2020 by engaging with COAG and the relevant Ministerial Councils. CLA understands a process is under way³. Even if a draft national law is not finalised by March 2020, there should be sufficient agreement on core matters across the nation for the NT to then legislate with confidence that its law(s) will be consistent with others throughout the nation.
- The NT laws need to be internally consistent in setting the ages at which young people become responsible and have rights and liberties. For that reason – and before the proposed Bill is enacted – the NT Government needs to ensure that all NT laws of this nature are considered, and amended to be aligned if changes are needed.

NOTE: States and territories are now introducing laws at which young people can give consent to texting sexual images from age 16: it is obvious that other laws in the NT and nationally should confer rights and responsibilities on young people at the same age (including consent to sexting images).

- **The Government and the Parliament must be put on notice that this is not so much a 'law and order' issue as it is a cultural issue (that is, the culture among police, detention officers, etc, more than other cultures, though they are relevant also). See Appendix A.**

³ A national approach is far preferable (albeit that the NT will always have some issues more peculiar to it, given that 100% of young people in detention in the NT are Indigenous). The NT shares a similar but larger dilemma with WA and Queensland in regard to Indigenous detainees.

CLA notes that:

- Detention issues (youth and adult) are of rising national concern, particularly in terms of costs to taxpayers.
- There is a major new inquiry under way in Queensland, following the 13 May 2019 revelations about youth detention in that state on Four Corners on ABC TV.
- There is an 18-month long, seminal, cost benefit study into detention under way by the Queensland Productivity Commission. The final report is due in August 2019. CLA believes this study will set a benchmark for all states and territories, and for the federal jurisdiction, for the next two decades at least.

ISSUES HIGHLIGHTED in the submissions:

The 25 submissions cover a wide range of issues, comprising mostly common themes:

Passage of the proposed Bill under consideration should be delayed so amendments can be made.

The Bill **does not safeguard the rights and liberties** of young people.

Young people should be arrested **ONLY AS A LAST RESORT**.

A diversionary – and a **therapeutic (ie health) – approach should be tried first.**

Interpreters must be provided for young people.

Young people should not be placed in **police cells** unless unavoidable.

Young people must **not be held beyond 4 hours** without approval from either a Superintendent-level police officer or – preferably – a judicial officer.

A judge must give approval when holding extends **beyond** a certain number of hours, say 8 hours.

There **needs to be an upper limit on how many hours a young person can be held** without charge (8 hours is proposed).

Children under 12 should not be held criminally responsible (many submitters believe the lower limit should be 14 or more: 14 is recommended by the Australian Medical Association).

No young person should be jailed until they are at least 14 years old (possibly 16).

Traffic (and related) offences must be removed from the “prescribed offences” list.

There should be a **presumption in favour of bail**.

There should be **no breach-of-bail provisions** in legislation for young people.

Restrictions on publication are supported by all commenting submitters.

Key stakeholders (the media, some legal/liberties groups, and the very wise Strong Grandmothers Group of the Central Desert Region) believe reporters should have customary access to youth courts unless a judge rules otherwise. In other words, **courts must remain open**.

Not only this proposed Bill, but the ***Youth Justice Amendment Act 2019*** as well **require amendment** so that detention centre officers do not have increased powers, and the test about use of force reverts to being a standard objective test rather than the current subjective test.

There is concern that **minimally-trained people are now exercising sweeping powers** that have been extended AFTER the Royal Commission findings, when the recommendations went in the other direction.

NT provisions should be aligned with those of, say, NSW and ACT (and Qld).

Laws should consider the cognitive capacity, health and developmental needs of young people.

Access to legal assistance is needed earlier for young people.

Young people need to know – or be able to be quickly informed of – **their rights and liberties**.

There needs to be **better training for police officers, caseworkers, etc.**

There needs to be **better collaboration and communication between** child protection and youth justice systems.

There is a need for a **Custody Notification Scheme** to operate across the NT on the **arrest of any Aboriginal person** (Note from CLA: Given that expanding e-solutions is usually not cost prohibitive, this could be a national alert scheme proposed and promoted by the NT government).

Quote from Minister for Territory Families, Dale Wakefield

"Every child deserves a childhood where they are safe and connected with their culture and identity."

– media release, 'Budget 2019: Creating Generational Change and Transforming the Territory's Out of Home Care System', 16 May 2019

Appendix A

From the submission by the NT Police Force:

Heading: YOUTH JUSTICE AND RELATED LEGISLATION AMENDMENT BILL 2019

I refer to the Youth Justice and Related Legislation Amendment Bill 2019 (hereafter 'the Bill') that was referred to the Social Policy Scrutiny Committee.

The NT Police Force (NTPF) supports the Government's intent to improve the conditions and treatment of vulnerable children and young people in detention. (underline added)

The NTPF notes the significant complexities and challenges faced by Territory Families in developing this legislative response to the Royal Commission. The NTPF submits that the Legislative Assembly should pass the Bill.

The second paragraph indicates that the NT Police Force and the Commissioner completely miss the point of what the Royal Commission recommendations were primarily about, what the Government mainly wants and what the vast majority of submitters are asking for, that:

Young people are NOT taken in to detention in the first place.

No new law will achieve what most parties want unless there is an enormous effort put into changing the understanding and culture of NT Police Force officers and staff.

Achieving the change requires a large, widespread and decade long re-education and training program for police officers and others in official positions (eg, corrective services officers, youth services staff, etc) throughout the NT.

The Government and the Parliament can legislate until their hands are black with heavily-inked new laws, but the legislation will be of virtually no avail without the accompanying re-education and training package to change the mindset and thinking of the “first responders” to young people with life, cultural, physical and mental health, and behavioural problems.

Until police and others understand they are faced with children’s sicknesses more than their criminality, there will always be too many young people in detention.

Appendix B

From the **submission of the NT Legal Aid Commission:**

THE NEED FOR URGENCY

22. The Royal Commission's sense of urgency to have Don Dale and the Alice Springs Youth Detention Centre replaced when it published its Final Report on 17 November 2017 was palpable. At the time, the Government appeared to share that sense of urgency. However, both of these critically important projects have recently been shelved. It is now clear that the Alice Springs Youth Detention Centre will continue to operate for years to come, and it is likely that the closure of Don Dale will also be delayed for a substantial period.

...

With the prospect of the existing detention centres being maintained well into the future, NTLAC submits that it is imperative that the Bill be enacted and commenced as soon as practicable, and in any event, well before the end of the current year. (p6-7)

This is a dangerous argument. Legislation cannot replace appropriate infrastructure. Like buildings, the design and specifications of the law must be well planned and specified, otherwise the law will fall over and suffer the fate of its facade burning, just as may happen to a badly-designed and specified building.

While temporary measures can be introduced to ameliorate immediate problems, in the long-term, both new buildings and sound, well-considered laws are needed to deal with a major problem in the NT which is replicated nationwide.

Longer and deeper thought needs to go into this draft Bill, as the overwhelming majority of submitters indicate. The NT Legal Aid Commission says of the Bill:

21. By contrast, the Bill authorises police to detain children and young people for up to 24 hours without judicial oversight and approval. This is not only completely out of step with Australian standards, but it flies in the face of the alarming picture painted by the Royal Commission of the actual experience of children and young people in watch house detention in the Northern Territory, as graphically described in Volume 2B of the Commission's Final Report, commencing at page 232.4 As the Royal Commission observed, section 4(c) of the Youth Justice Act establishes the principle that a youth should only be kept in custody on arrest "as a last resort and for the shortest appropriate period of time". It is submitted that Clause 21 of the Bill fails to support that principle. (*Underline added*)

The NT Legal Aid Commission also says:

5. In summary, NTLAC accepts and embraces both the findings and recommendations of the Royal Commission, and is strongly of the view that this broken system must be fixed and can be fixed, but only if all of the recommendations are fully implemented. (*Underline added.*)

Appendix C

The excellent Human Rights Law Centre submission sums up the issues about offending, arrest and detention:

‘Contrary to media reporting and outspoken public figures, there has been a significant decrease in offending by children aged 10-17 over the last 10 years. From 2008–09 to 2017-18, the NT child offender rate decreased by 52%. Despite this decrease, youth detention rates in the NT have continued to remain relatively stable.¹³ Inappropriate and punitive laws and policies are contributing to this, particularly those relating to the age of criminal responsibility, bail, diversion and policing powers.’

(p6 of un-numbered submission).

“On an average night in the June quarter 2018, the rate of children in detention ranged from 2 per 10,000 in Victoria and South Australia to 16 per 10,000 in the NT.

“Noting police overuse the power to arrest without warrant on children in the Northern Territory, the Committee may wish to consider amendments in line with the Queensland provisions and legislative scheme. *(p12)*

NOTE: The HRLC quoted a then-accurate figure of 97% of children detained as being Aboriginal. Since then, the figure has risen to 100%.

The astute HRLC, like Civil Liberties Australia, is pointing to the need for the NT to give serious consideration to aligning its approach and laws with Queensland. As Queensland has two major and completely on-issue inquiries under way (probably for another three months) the proposed NT Bill should be put on hold until significant research and “intelligence” is available from the neighbouring state.

Appendix D

Should courts be open to the media?

The first and last submissions (Nos 1 and 25) eloquently argue for the courts to be kept as open as possible.

The first submission, by the Committee of the Darwin Press Club, makes the irrefutable point that NONE of Don Dale problems, the new (May 2019) issues in detention centres in Queensland, or the mistreatment of young people by police and corrective services officers, is likely to have become public knowledge without media reporting.

Without media reporting, there would have been no Royal Commission. Without media reporting, there will be guarantee that the RC recommendations and the new legislation has any positive effect on the situation of young people in the NT in future.

Without media reporting, police, detention officers, caseworkers, government employees, Ministers and political parties can hide the truth from the people of the NT and from young people.

There should be some restrictions on media reporting, and the judicial officer in charge of a particular case should have the power to prevent publication when and where necessary. The Darwin Press Club Committee acknowledges as much.

The wise women of the Strong Grandmothers Group of the Central Desert Region (submission 25) sum up what should happen in four words:

NO closed door courts

That's as eloquent and meaningful a statement as sometimes contained in legal and academic tomes with hundreds of pages written by eminent professors.

ENDS

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