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Ms Julia Knight
Secretary, Social Policy Scrutiny Committee
GPO Box 3721
Darwin NT 0801

Via email: SPSC@nt.gov.au

17 April 2019

Dear Ms Knight

Response to the Youth Justice and Related Legislative Amendment Bill 2019

Thank you for the opportunity to provide a submission to the *Youth Justice and Related Legislation Amendment Bill 2019*. Danila Dilba has been part of an ongoing co-design process in relation to the Bill through the Legislative Amendment Advisory Committee (**LAAC**). Overall, Danila Dilba supports the Bill and its provisions. However, there are some important measures that are absent from the Bill and a number of others that could be improved in line with the expert advice brought to bear during co-design but not fully reflected in the Bill. Please find attached our detailed submission regarding the Bill.

Concerns regarding *Youth Justice Amendment Act 2019* (Serial No 84)

While not the subject of this inquiry, I wish to take this opportunity to address the process and content of the *Youth Justice Amendment Act 2019* (Serial No 84) which was introduced on an 'urgent basis' to Parliament on 19 March 2019 and passed soon thereafter. We are extremely concerned that this Act is inconsistent with the recommendations of the Royal Commission and goes well beyond the "technical clarifications" described in the Assembly. Indeed, it undoes, retrospectively, the small gains made in detention conditions through the 2018 amendments to the Youth Justice Act. In addition to the content of the Act, Danila Dilba is disappointed that the established and effective co-design process adopted by Government for other legislation in relation to youth justice and child protection reforms was bypassed in the case of this Act. No substantive or compelling reasons for this bypassing have been shared with us. Given the close relationship between the Bill under examination and the recently passed *Youth Justice Amendment Act 2019* (Serial No 84), Danila Dilba argues that it is entirely appropriate for this committee to consider issues of both content and process in relation to the latter and we recommend that the Act should be repealed.

Comments regarding the *Youth Justice and Related Legislative Amendment Bill 2019*

We welcome the Bill, which we believe represents a significant shift towards creating a more therapeutic and child development focused youth justice system, consistent with the recommendations of the Royal Commission. In particular, we welcome the following important amendments:

- Introduction of youth-specific criteria for bail applications and conditions (including presumption in favour of bail for youth), and legislating consideration of the cognitive capacity, health and developmental needs of the youth;
- Strengthening of young people's right to privacy through the requirements for closed Courts and restriction of publication of information;
- Changes to facilitate earlier legal assistance for young people and requirements to ensure young people understand their rights;
- Confirming arrest as a measure of last resort.

There are key features of the proposed amendments where operational or other considerations appear to have superseded the focus on the best interests of the child, which the Chief Minister has committed to placing at the center of government decision making.[1] Key amendments recommended in our submission cover the following areas:

Raising the minimum age of criminal responsibility

We recommend the inclusion of additional Amendments to the *Criminal Code* (NT) to raise the minimum age of criminal responsibility 12 and minimum age of detention to 14. This consistent with the recommendations and intent of the Royal Commission and reflects the evidence relating to how best to deal with very young people including those with a neuro disability. In our view, Territory Families is operationally ready for this important legislative change, and it should form part of this current tranche of reforms.

Repeal of the offence of breach of bail *in its entirety*

Whilst we welcome the removal of the offence of breach of bail condition for young people, we maintain our earlier feedback through the LAAC that s 37B of the Bail Act should be amended to remove the offence of breach of bail for young people *in its entirety* as per Recommendation 25.19(4) of the Royal Commission. The Royal Commission highlighted that a major contributor to escalating remand rates was the introduction of the offence of breach of bail (section s7B) in 2011, noting that since this provision came into effect 91% of young people charged with breach of bail have been Aboriginal.

Criminalizing breach of bail is counterproductive. It can lead to the entrenchment of children and young people in the youth justice system and the detention of children and young people who would otherwise not be detained. Where a young person breaches their bail undertaking, the focus should be on engaging with the

[1] Safe, Thriving and Connected: Generational change for children and families 2018-2023, April 2018, 4.

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. The current proposal to retain the offence of bail undertaking, is inconsistent with Recommendation 25.19(4) of the Royal Commission and should be amended to reflect this.

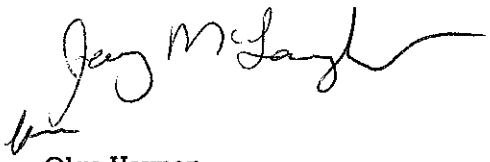
Time in the police watch house without charge

We recommend further amendment to s 137 of the *Police Administration Act*, which gives the Senior Sargeant the power authorize the holding of a young person in custody without charge, without the approval of a judge, for up to 24 hours. Given the evidence about the harmful effects of keeping young people in police holding cells, we strongly reiterate that any extension up to a further four hours should only be granted by a judicial officer (as per the Recommendation 25.3). If additional resources are needed to give effect to this provision, they should be provided rather than adapting the legislation to the current resources. An example raised by police at the LAAC related to a situation where a young person is too intoxicated to be dealt with within four hours in the middle of the night. In our opinion, a young person in such condition is vulnerable and should not be detained in police cells but should be medically supervised.

I look forward to the opportunity to appear before the Committee to expand on our submission.

If you have any questions regarding our submission, please feel free to contact me.

Kind regards,



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Youth Justice and Related Legislation Amendment Bill 85

Danila Dilba Health Service Submission to Social Policy Scrutiny Committee

17 April 2019

Danila Dilba Biluru Butji Binnilutlum Health Service Aboriginal Corporation
ABN: 57 024 747 460 / ICN: 1276

Contents

Executive Summary

1. Danila Dilba Health Service (**DDHS**) supports the development of legislation that addresses the health, developmental and cultural needs of children and young people in the Northern Territory, consistent with the recommendations of the Royal Commission into the protection and detention of children and young people in the NT (**Royal Commission**).

2. We note our support for the co-design process through which the *Youth Justice and Related Legislation Amendment Bill 85* (**The Bill**) was developed. We were grateful for the opportunity to provide feedback on earlier working proposals through the Legislative Amendment Advisory Committee (**LAAC**), and throughout this submission we note our support for many amendments that were developed and refined through the LAAC.

3. The NTG has committed to put children at the centre of decision making in implementing the Royal Commission's recommendations.[1] We consider that there are some proposed amendments that do not go far enough in implementing the recommendations of the Royal Commission, which seem to have been drafted based on operational, financial or other considerations rather than on prioritising the best interests of the child.

Recommendations

4. In summary, DDHS urges that the Social Policy Scrutiny Committee takes the actions set out in the following table in relation to the Bill:

Act/Provision Amended:	Recommendation:	Submission:
***Bail Act 1982* (NT)**		
S 3 amended	Support	
S 3B inserted	Support	
S 4 amended	Support	
S 7A amended	Support	See [22]-[29]
S 8 amended	Support	See [23]-[28]
S 8A inserted	Support	See [22]-[28]
S 12	Support	
S 24A inserted	Support	See [29] – [39]
S 28 amended	Support	See [40] – [44]
S 37A and s 37B replaced	Amend	See [90]-[95]
S 38	Amend	See [90]-[95]
Part 9, Division 5 inserted	Amend	See [**Error! Reference source not found.**]
Amendment of *Bail Regulations 1983* (NT)		
Regs 2A and 2B inserted	Amend 2A, Support 2B	See [24]
***Amendment of Police Administration Act 1978* (NT)**		
S 123 amended	Support	
S 135 amended	Support	
S 137 amended	Amend	See [96]-[102]
***Amendment of Youth Justice Act 2005* (NT)**		
S 5 amended	Support	
S 15 amended	Amend	See [50]

[1] *Safe Thriving and Connected: Generational change for children and families 2018 – 2023*, April 2018, 4.

Act/Provision Amended:	Recommendation:	Submission:
S 16 replaced	Support	See [45] – [48]
S 18 amended	Amend	See [50]-[58]
S 27 replaced	Support	
S 38 amended, s 38 inserted	Support	
S 39 amended	Support	See [59]-67]
S 42A inserted	Support	See [59]-[69]
S 43 amended	Support	See [68]-[69]
S 49 and 50 replaced	Support	See [70]-[78]
S 53 amended	Support	
S 61 amended	Support	
S 64 replaced	Support	
S 123 amended	Support	
S 140L amended	Support	
S 150 amended	Support	
S 161 amended	Support	
S 215B amended	Support	
***Amendment of Youth Justice Regulations 2006* (NT)**		
Reg 3 replaced	Support	
3A inserted	Amend	See [**Error! Reference source not found.**]
Reg 31	Support	
Reg 73	Support	
Amendment to Criminal Code		
S 38 (Immature age)	Additional Amendment	See [79]-[89]
S 43AP (Children under 10)	Additional Amendment	See [79]-[89]
S 43AQ (Children over 10 but under 14)	Additional Am endment	See [79]-[89]

Background

Danila Dilba youth justice work

Youth Social Support Program

5. DDHS is an Aboriginal community controlled comprehensive primary health care service offering a wide range of health and related services to Aboriginal people in the Greater Darwin Region. Comprehensive primary health care encompasses the range of health care generally offered by general practice but extends beyond that to provide:

- Primary health care clinics for children, youth, women and men
- Specialist and allied health professionals
- Health promotion to help people get more control over their health
- Care coordination for clients with complex health needs
- Social and emotional wellbeing services
- Drug and alcohol services

- Outreach services to clients
- Support services for young people including young people at Don Dale
- Family support and strengthening through the Australian Nurse Family Partnership Program.

6. DDHS previously delivered a range of youth activities in the old Don Dale facility as part of its broader youth service, which was funded as a specific activity by the Commonwealth Department of Health from about 2002 to 2012 when this funding ceased. Following this, the service was funded by DDHS until 2015, until the DDHS board was forced to consider priorities in light of tight primary health care funding.

7. Following the Four Corners program, 'Australia's Shame' in July 2016, the former Northern Territory Department of Children and Families, now Territory Families, approached DDHS to develop a proposal to support the social and emotional wellbeing of 'youth detainees' at Don Dale and to provide an "observer" and information gathering role focusing on youth wellbeing while in detention (at Don Dale).

8. DDHS's function at Don Dale has evolved over time since it started in this role. DDHS called the program "Youth Social Support Program," (**YSSP**). The YSSP Team continue to provide social emotional wellbeing support and programs to young people in Don Dale, as well as limited post-release and, as needed, support to young people attending court. Youths often self-refer or are referred (with consent) by NAAJA and/or NTLAC.

9. DDHS appointed two experienced Aboriginal youth officers (male and female) at the start of the YSSP. Training in Monitoring and Observation was delivered by Australian Red Cross for the DDHS team.

10. The DDHS youth team developed a tailored program of activities built on its previous work with young people in detention. It's objectives direct the staff to:

- Engage with youth through activities and through being present and available at the detention centre.
- Deliver meaningful and therapeutic activities targeted to the needs and interests of youth.
- Observe, during the delivery of services to young people, their care and treatment, responses and mood, any risks arising and report to DDHS management for consultation with Territory Families.
- Liaise with the young people's families and communities to better understand the circumstances, history and challenges facing individual youth and support them to maintain and improve their social connections:
- Work with NAAJA through care program and other service agencies to contribute to advocacy in court, release planning and post release support for young people.
- The YSSP team also continue to observe, monitor and report on the care and treatment of youths in detention – reporting to DDHS and Territory Families management.

Legislative Amendment Advisory Committee

11. The NTG has stated its commitment to co-design, stating that "*given that Aboriginal children are over-represented in the child protection and youth justice systems, Aboriginal people, communities and organisations will have a central role in shaping the design and delivery of local reforms*."[2]

12. Given the overrepresentation of Aboriginal children and young people in the youth justice system, we believe that Aboriginal people and organisations must be central in the drafting of new legislation.

13. Danila Dilba has played a key role in legislative reform, and has been an active member of the LAAC since 2017. The key role of LAAC is to assist government in the identification of legislative solutions to support policy and system reforms to the youth justice and care and protection systems.

Youth in detention in the Northern Territory

14. When considering the appropriateness of the proposed legislation, it is important to understand the cohort of young people in the youth justice system.

15. Aboriginal children and young people are vastly over-represented in the youth justice system. The Final report of the Royal Commission observed:

    Only 25.5% of the Northern Territory's population are Aboriginal and yet in 2015–16, around 94% of children and young people admitted into the Northern Territory's youth detention population were Aboriginal, with young Aboriginal males representing approximately three quarters of those.[3]

16. This degree of over-representation in the Northern Territory Youth Justice system is a reflection both of underlying risk factors that give rise to offending and re-offending and to the structure and operation of the NT youth justice system. As we submitted to the Royal Commission, underlying risk factors include:

    - systemic failure to address economic and social disadvantage of Aboriginal people in the Northern Territory;
    - high incidence of health issues associated with disadvantage, such as hearing disorders, foetal alcohol spectrum disorders (FASD), childhood trauma and injury;
    - pathways into detention and offending – including the significant proportion of youth in detention who have experienced neglect or abuse, and/or have been placed in Out of Home Care (OOHC);
    - developmental and behavioural disorders of children who have experienced trauma (factors which contribute to disengagement and subsequent youth offending);
    - impact of detention on young people isolated from their families, communities, culture and language.

[2] Safe Thriving and Connected: Generational change for children and families 2018 – 2023, April 2018, p 5.
[3] Royal Commission Final Report (Vol 2A).

17. The system itself compounds over-representation and the likelihood of further offending and detention through:

- The lack of mechanisms for early identification of young people at risk of offending or reoffending;
- The operation of police powers to determine whether to divert from the youth justice system;
- The high proportion of children and young people held in detention on remand, rather than on bail;
- Failure to provide appropriate treatment and support to children and young people in regard to their health, behavioral issues or past trauma.

18. We consider that the amendments in the Bill represent a significant shift towards creating a more therapeutic and culturally strengthening youth justice system, with provisions designed to better meet the needs of developmentally vulnerable young people.

19. We recognise that further substantive changes to law and policy are intended to form a part of the wholesale reform (**Single Act for Children**) however throughout this submission we highlight some ways in which this Bill could be amended to better meet the particular needs of young people coming into the youth justice system.

Key child rights principles under international law

20. Australia is obliged to comply with principles and procedural safeguards set out in the international instruments to which Australia is a party. Relevantly, these include:

(1) Laws, procedures, authorities and institutions are to be specifically developed for, and be applicable to, children;[4]

(2) In all actions concerning children, the best interests of the child shall be a primary consideration;[5]

(3) The arrest and detention of a child should be only as a measure of last resort for the shortest possible period of time;[6]

(4) Every child accused or found guilty of a crime shall be treated in a manner which takes into account the desirability of promoting the child's reintegration and assuming a constructive role in society;[7]

(5) Youth Justice proceedings are to be held in closed courts.[8]

[4] Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) (**'CROC'**) art 40; Standard Minimum Rules for the Administration of Juvenile Justice **(Beijing Rules**), 29 November 1985, rules 1.6, 22.
[5] CROC, art 3
[6] CROC art 37(b).
[7] CROC art 40(1).
[8] Beijing Rules, rule 8.

21. The Report of the Special Rapporteur on torture and other cruel, inhumane or degrading treatment or punishment,[9] notes:

16. Children deprived of their liberty are at a heightened risk of violence, abuse and acts of torture or cruel, inhumane or degrading treatment or punishment. Even very short periods of detention can undermine a child's psychological and physical well-being and compromise cognitive development. Children deprived of liberty are at a heightened risk of suffering depression and anxiety, and frequently exhibit symptoms consistent with post-traumatic stress disorder. Reports on the effects of depriving children of liberty have found higher rates of suicide and self-harm, mental disorder and developmental problems.

[9] *The Report of the Special Rapporteur on torture and other cruel, inhumane or degrading treatment or punishment* (5 March 2015) A/HRC/28/68 at https://www.refworld.org/docid/550824454.html

Part A – Support for provisions in the *Youth Justice and Related Legislation Amendment Bill 85*

Presumption in favour of bail

Supported

22. We support the proposed amendment to s 7 of the *Bail Act,* which removes the presumption against bail for all youths.

23. We also support the insertion of s 8A, which establishes that there is a presumption in favour of bail except where:

    a) The youth has been charged with a *prescribed offence* AND;

    b) they present an ongoing and serious risk to the community.

24. We recommend that the following should be excluded from this list of 'prescribed offences' in s 3B for the reasons noted in the following table.

Section:	Offence:	Why should this be removed?
S 127(1)	Sexual intercourse or gross indecency involving a child under 16 years	DDHS recommends that s. 127(1) be removed from this list. We have concerns about the criminalisation of consensual sex between young people and the impact that this has on restricting health seeking behaviours and access to health services. A decision not to grant bail for an offence under s 127(1) should be made based on the offence, whether there was a consensual act, ongoing relationship, etc. We note that appropriate diversion that encompasses counselling, education and supportive gender education is likely to have better outcomes for the young person's rehabilitation.[10]
125B(1)	Possession of child abuse material	The seriousness in respect to the level of the images should be the determinative factor. In many instances the sharing of images by young persons of 'sexting' would be detrimental to their future prospects. Appropriate diversion that encompasses appropriate counselling, education and supportive gender education.
181	Serious harm	A decision not to grant bail should be made based on the seriousness of the offending and harm caused, ongoing risk to community safety and views of the victim.
211 212(2) or (3)	Robbery Assault with intent to steal.	A decision not to grant bail should be made based on the circumstances and seriousness of offending. There are many minor examples of conduct, without weapons and minimal physical contact or threatened application of force.

[10] Warner and Bartels 'Juvenile Sex Offending: Its Prevalence and the Criminal Justice Response' 3 UNSW Law Journal (2015) 38(1), 48.

189A(1)	Assaults against police	A decision not to grant bail should be made based on the circumstances and seriousness of offending. There are many minor examples of conduct, without weapons and minimal physical contact or threatened application of force.

Rationale

25. The Beijing Rules make it clear that 'detention before trial shall be avoided to the extent possible and limited to *exceptional circumstances.*'[11]

26. The overrepresentation of Aboriginal young people in the youth detention system can be attributed in part to the high number of young people being held on remand. Most children and young people held in detention in the NT are there because they have been remanded in custody awaiting a hearing or outcome in their case. At 4 April 2019, approximately 70% of young people in detention in the NT are on remand.[12]

27. The Royal Commission heard evidence that ongoing contact with the youth justice system exacerbates underlying causes of crime by stigmatising children and young people and perpetuates ongoing, more serious criminal behaviour. The Royal Commission also heard evidence that children and young people in the NT are regularly refused bail, even where offending is not sufficiently serious. In light of this evidence, the Royal Commission recommended that the *Bail Act* be amended to provide that a youth should not be denied bail unless charged with a serious offence and a sentence of detention is probable if convicted, they present a serious risk to public safety, there is a serious risk of the youth committing a serious offence while on bail, or they have previously failed to appear without a reasonable excuse.[13]

28. We support these amendments which implement the above Royal Commission Recommendations.

Introduction of youth-specific bail criteria

Supported

29. We strongly support the insertion of the following:

- S 24A(2) additional criteria to be considered in bail applications for youths; including (among other criteria):
    - consideration of youth's prior exposure to, experience of and reaction to trauma;
    - the cognitive capacity, health and developmental needs of the youth; and
    - any issues that arise due to the youth's Aboriginality, including the youth's cultural background, including the youth's ties to extended family or place; and any other relevant cultural issue or obligation.

[11] Beijing Rules, Rule 17.
[12] Daily Census, 4 April 2019.
[13] Royal Commission Recommendation 25.19(1).

- s 24A(3), which states that the court must take into account any recommendation or information provided by a bail support service;
- s 24A(4) which establishes that the court must not refuse to grant bail to a youth 'on the sole ground that the youth does not have any, or any adequate, accommodation.'

Rationale

Additional criteria

30. The criteria listed in s 24A are consistent with Royal Commission recommendation 25.19(2) and were refined through discussions at the LAAC.

31. Considering effects of prior exposure to, experience of and reaction to trauma is essential. There is growing evidence that a high proportion of young people in juvenile justice systems have histories of complex trauma which adversely affects early childhood bio-psychosocial development and places youth "at risk for a range of serious problems (e.g. depression, anxiety, oppositional defiance, risk taking, substance abuse) that may lead to reactive aggression".[14] Brain structures that regulate emotion, behaviour and impulsivity are less developed in young people who have experienced trauma.[15]

32. An expert witness to the Royal Commission described the effects of early life trauma and trans-generational trauma on childhood development, "producing an offspring of sufferers of physic trauma with a high risk of mental ill-health, particularly depression and its risk of suicide, a high risk of alcohol and drug use, and incarceration for violent crime.'[16] Early life trauma is associated with family violence, physical or emotional abuse and neglect that may disrupt a child's emotional development and is a significant risk factor for depression, suicide and anti-social criminal behaviour.[17]

33. International and Australian research indicates that a high proportion of children and young people who have come into contact with the criminal justice system have experienced trauma, and that trauma is frequently an underlying cause of offending behaviour.[18] Studies in the UK, USA and Australia also indicate that a significant majority of incarcerated young people, up to 70 – 90%, have mental health or substance abuse problems.[19]

34. Consideration of the cognitive capacity, health and developmental needs of the youth is particularly relevant given the high number of young people that come into contact with the young justice system that have cognitive and developmental issues. A recent study

[14] Ford et al, (2012), "Complex trauma and aggression in secure juvenile justice settings", *Criminal Justice and Behaviour,* Vol. 39, No. 6, June 2012, 694-724.
[15] Samantha Buckingham. *Legal Studies Paper No. 2016-2017.* 'Trauma Informed Juvenile Justice'. 53 American Criminal L. Rev. 641. 2016.
[16] Professor John Boulton, Statement to the Royal Commission, 6 October 2016, 56 (ii).
[17] Ibid, p.6
[18] An American study reported that between 75-93% of children entering the juvenile justice system had experienced at least one traumatic event, see Samantha Buckingam. *Legal Studies Paper No. 2016-2017.* 'Trauma Informed Juvenile Justice'. 53 American Criminal L. Rev. 641. 2016. Research in Australia (NSW juvenile detention centres) indicated that 60% of youth offenders had experienced child abuse or neglect: see Moore E, Gaskin C and Indig, D (2013), "Childhood maltreatment and post-traumatic stress disorder among incarcerated young offenders", *Child Abuse and Neglect* (37) 861-870
[19] Moore et al (2013), "Childhood maltreatment and post-traumatic stress disorder among incarcerated young offenders", *Child Abuse and Neglect*, 37, pp 861-870

conducted by the Telethon Kids Institute in WA found that 89% of young offenders at the Banksia Hill detention facility have a severe neurodevelopmental impairment, and 39% FASD.[20]

35. We also note that young people coming into contact with the system should, at the earliest possible stage be comprehensively assessed to identify these issues. Legislating access to comprehensive assessment upon entry into the system, should be considered in the development of the Single Act.

Appropriate bail accommodation

36. We support the proposed amendments s 24A(3) and (4), which recognise that children and young people should not be disadvantaged due to a lack of government services to support them to comply with their bail conditions.

37. Amnesty International have previously noted that pre-trial remand of children due to a lack of alternatives is contrary to Australia's human rights obligations.[21] The Committee on the Rights of the Child outlines that alternatives must be 'carefully structured to reduce the use of pre-trial detention… rather than "widening the net" of sanctioned children.[22]

38. The Royal Commission heard evidence that common reasons for young people being remanded in custody include a lack of suitable accommodation for bail purposes, difficulties locating responsible adults to support young people on bail and a lack of access to support services and programs. The Royal Commission also made a finding that the NT has inadequate bail support services, including bail accommodation services, for children and young people.[23]

39. In our view the proposed amendments are necessary as children and young people should not be punished and remanded in detention because they are vulnerable and have no supports. Supported bail accommodations have been established in Alice Springs and Darwin including Saltbush and Bushmob, which will assist in circumstances where children and young people do not have suitable accommodation or a responsible adult.

Youth-specific bail conditions

Supported

40. We strongly support the amendment to s 28, which operates to ensure that the court sets bail conditions that are appropriate to needs and capacity of the young person to comply.

[20] Carol Bower et al, 'Fetal alcohol spectrum disorder and youth justice: a prevalence study among young people sentenced to detention in Western Australia' BJM Open (19 February 2018) http://bmjopen.bmj.com/content/8/2/e019605

[21] Amnesty International, A Brighter Tomorrow: Keeping Indigenous Kids in the Community and Out of Detention in Australia, p 31.

[22] Committee on the Rights of the Child, General Comment No. 10 (2007) 'Children's rights in juvenile justice' [80]: Where there is no alternative to remand, the CROC Committee provides that this detention must 'be limited by law and be subject to regular review.

[23] Royal Commission Final Report, Vol 2B, p. 301.

Rationale

41. The Royal Commission made a finding that often bail is imposed that is 'not appropriately tailored to address the individual circumstance of the young person.' [24]

42. The Royal Commission heard that there are often multiple and varied reasons why a young person may 'fail' to comply with conditions including; where their designated place of residence is dysfunctional, has limited supervision or is unsafe, where conditions prevent them from being involved in pro-social activities like sporting groups, and where the young person has an incapacity to understand the consequence of their impulsive actions, particularly where they suffer from cognitive impairment or drug and alcohol addiction.

43. We strongly support the amendment of s 28 which operates to address these issues, by ensuring that the conditions set are suitable to the circumstances of the child or young person, to enable them to actually comply.

44. Further to this, it is essential to consider whether the young person has sufficient and appropriate supports around them to facilitate their compliance. This is the approach of the courts in NZ, where the *Oranga Tamariki Act 1989* provides that Youth Court may, from time to time, review bail conditions to ensure appropriateness.[25] We recommend consideration of this approach for the development of the Single Act.

Arrest as a last resort

Supported

45. We support the insertion on S 16 which provides that police officer may only arrest a youth *as an action of last resort* in relation to the youth.

Rationale

46. This amendment is consistent with Australia's obligations under international law. Article 37 of the CROC relevantly provides that:

> *The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.*[26]

47. Evidence shows that the experience of arrest can be particularly traumatising for a child or young person and should only be exercised as a last resort.[27] Arrest itself has a high likelihood of exacerbating the underlying causes of offending and facilitate further, more serious offending as a child or young person becomes further enmeshed in the system.

48. The Royal commission found that police sometimes fail to comply with the requirement to use arrest only as a last resort.[28] Evidence to the Royal Commission suggested that police (both Top End and Central Australia), often pay little regard to the factors set out at 14.1-14.5 of the *Police General Orders.* Police routinely exercise their discretion to arrest rather

[24] Royal Commission Final Report, Volume 2B, p 290.
[25] *Oranga Tamariki Act 1989* s 241
[26] CROC, Article 37(b).
[27] See e,g Weatherburn, D (2014), *Arresting Incarceration: Pathways out of Indigenous Imprisonment*, Aboriginal Studies Press, AIATSIS, Canberra, P.115
[28] Royal Commission Final Report, Chapter 25, p 230.

than use of the less restrictive options available under section 22 of the *Youth Justice Act* such as summons, notice to attend or by engaging less intrusive means like contacting a parent or guardian.

49. The proposed amendment is essential to ensure that police powers of arrest are exercised consistent with international law.

Explanations by police officers and interview of youth

Supported in principle

50. We support the amendment of S 15 of the *Youth Justice Act*, to provide that explanations by police officers must be made in a language and manner the youth is likely to understand, having regard to the youth's age, health, maturity, cultural background and English language skills.

51. We support the amendment of s 15(1A), which provides that if the youth appears to have insufficient English language skills to understand the explanation, the police officer must make reasonable efforts to obtain a qualified interpreter for the explanation. However, we consider that this should be amended to go further than this and *require* that an interpreter is provided if the child or young person indicates they want one.

52. We recommend that the proposed s 18(1A) be made more prescriptive, *requiring* that youths must not be interviewed until they have sought and *obtained* legal advice as per Recommendation 25.4 of the Royal Commission. We recommend that S 1A(b) be amended to include: "i*nform the lawyer and give the lawyer the opportunity to speak to the youth on request by the lawyer or the youth*."

53. We support the amendment in s (1A)(c) which requires that a support person must be present during the interview.

Rationale

54. These amendments are essential in helping to overcome power imbalance that exists in police interviews.[29] As the Royal Commission noted, this imbalance is recognized by international human rights instruments, which prescribe safeguards for children and young people in their interactions with police.[30]

<u>Access to a lawyer</u>

55. The CROC states that every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance.[31] The Beijing Rules provide:

> "*Basic procedural safeguards such as the presumption of innocence, the right to be notified of charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian … shall be guaranteed at all stages of proceedings*."[32]

56. The Royal Commission heard evidence from lawyers and others that raised concerns about how police conduct interviews with youth. The final report noted that 'Children and young

[29] see Royal Commission Final Report, Chapter 25, p 240.
[30] CROC, Article 37(d).
[31] CROC, Article 37(d).
[32] Beijing Rules, rule 7(1).

people require legal advice before an interview with police so they can make an informed decision about whether or not to participate.'[33]

57. In light of this, the Royal Commission recommended the establishment of a Custody Notification Scheme (**CNS**). We consider that the CNS should be legislated here. That is, there should be an express requirement to *notify* a legal practitioner once a child/youth is in custody and to facilitate access contact/legal advice, consistent with recommendation 25.4.

Access to a support person

58. The Royal Commission noted that an important safeguard to protect the interests of young people in custody being questioned by police is the presence of a support person.[34] The Royal Commission found police '*do not always make a reasonable effort to find a support person who is in a parental role, nominated by the child or young person, or a lawyer who has a relationship with the child or young person in custody as a support person in police interview.*'[35]

Increasing access to diversion

Supported

59. We support the amendment of s 39, which removes previous barriers to diversion:

- where the youth has left the territory;
- the list of 'serious offences' for which a young person was not eligible for diversion.

60. We note that the list of 'prescribed offences' inserted, makes a wider range of offences divertible than the current list of 'serious offences' in the Youth Justice Act, however we recommend the removal of the following offences from this list in s 3B:

Act	**Section:**	**Offence:**	**Why should this be removed?**
Traffic Act	All relevant sections	Indicative offences have been picked out below to illustrate the types of charges being brought against young people in the NT.	All traffic offences should be removed from the list 'Prescribed offences' excluded from diversion allowing police to divert youth in the appropriate circumstances. The Royal Commission recommended reviewing references to offences against Part (V) and Part (VI) of the *Traffic Act* (NT) with a view to enabling children and young people charged with offences under these provisions to be eligible for diversion under section 39 of the *Youth Justice Act* (NT).[36] The Royal Commission heard evidence that this area of exclusion catches too many young offenders, including minor, non-habitual offenders, preventing them from accessing programs and services designed to address these behaviours, and reduce re-offending.[37]
	Ss 21-25	Offences of driving with alcohol in breath or blood	

[33] Chapter 25, p 240.
[34] Chapter 25, p 245.
[35] Royal Commission Final Report, Findings, p 247, Chapter 25.
[36] Royal Commission Recommendation 25.11.
[37] Royal Commission Final Report, Chapter 2B, p 269.

	29AAE	Offence of failing to submit to breath analysis	Traffic and motor vehicle offences are some of the most commonly committed by young people and historically accounted for the majority of offences for which diversion had previously been offered. In a submission to a review of the NT youth justice system in 2011, the Australian Institute of Criminology stated that 15.4 per cent of offences committed by young people in the NT were traffic and vehicle offences, which was consistent with national trends.[38] In some instances, especially for offenders found driving without a licence, diversion could require a youth undertake direct instruction and obtain the necessary driving qualifications. In relation to more serious driving offences, a diversion program could require completion of a defensive driving course, a road trauma awareness course and/or drug and alcohol awareness courses and counselling. In such circumstances the response is directly related to the nature of the offence and can lead to interventions that positively influence driver attitudes and behaviour.
	29AAFA	Offence of failing to submit to saliva test	
	30	Dangerous Driving	
	30A	Driving at a dangerous speed	
	31	Driving Disqualified	
Criminal Code	S 127(1)	Sexual intercourse or gross indecency involving a child under 16 years	DDHS recommends that s. 127(1) be removed from this list. We have concerns about the criminalisation of consensual sex between young people and the impact that this has on restricting health seeking behaviours and access to health services. A decision not to grant bail for an offence under s 127(1) should be made based on the offence, whether there was a consensual act, ongoing relationship, etc. We note that appropriate diversion that encompasses counselling, education and supportive gender education is likely to have better outcomes for the young person's rehabilitation.[39]
	125B(1)	Possession of child abuse material	The seriousness in respect to the level of the images should be the determinative factor. In many instances the sharing of images by young persons of 'sexting' would be detrimental to their future prospects. Appropriate diversion that encompasses appropriate counselling, education and supportive gender education.
	181	Serious harm	A decision not to grant bail should be made based on the seriousness of the offending and harm caused, ongoing risk to community safety and (where relevant) views of the victim.
	211 212(2) or (3)	Robbery Assault with intent to steal.	A decision not to grant bail should be made based on the circumstances and seriousness of offending. There are many minor examples of conduct, without weapons and minimal physical contact or threatened application of force.

[38] Carney J, Northern Territory Government, Review of the Northern Territory Youth Justice System: Report (2011), 59.

[39] See e.g Riddhi Blackley and Lorana Bartels (Australian Government, Institute of Crime) 'Sentencing and treatment of juvenile sex offenders in Australia' (July 2018)

	243(2), (3)	Arson	DDHS recommends the removal of s 243(2), (3). We understand that many offences deal with minor examples of arson such as lighting a wheelie bin or paper. We understand that there has been very few prosecutions under s. 243(3) in the entirety of the enactment and as such has dubious relevance.

Rationale

63. Consistent with the 'last resort' principle for detention articulated above, opportunities for diversion should be strongly pursued. The preference for diversion as an alternative to formal judicial proceedings is noted in CROC, Article 40.3(b) mandates:

"*States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged, as, accused of, or recognized as having infringed the penal law, and, in particular whenever appropriate and desirable, measures for dealing with children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected*"

64. The Beijing Rules also provide:

Rule 11(1): Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority...

65. The high rates of youth incarceration in the Northern Territory suggest that the system relies heavily on, and promotes, detention in institutional facilities, rather than treating detention as a 'last resort.' NSW Justice observes that "young people who come into the criminal justice system at a young age are more likely to offend for longer, more frequently and go on to receive a custodial sentence."[40]

66. Diversion addresses the causes of unacceptable conduct and not merely the consequences of it. Diversion pathways, which operate outside the formal court system, are effective in helping children get back on track and reduce the risks of further offending.[41]

67. These proposed amendments, in particular removing the broad definition of a 'serious offence' as grounds for exclusion from diversion, will help to address the high incarceration rate, by increasing access to diversion. Subject to the changes recommended above, these amendments are consistent with several of the Royal Commission's recommendations directed at ensuring expanded and improved access to diversion for young people.[42]

Reporting on diversion

68. We support the insertion of S 42A – reporting requirement.

[40] NSW Justice, *Youth on Track*, at http://www.youthontrack.justice.nsw.gov.au/Pages/yot/about_us/yot_cjs.aspx

[41] Carney J, Northern Territory Government, Review of the Northern Territory Youth Justice System: Report (2011), 94-96. See further Kaye McLaren, Alternative Actions That Work: A Review of the Research on Police Warnings and Alternative Action (Police Youth Services Group, New Zealand Police, 2011).

[42] Royal Commission Final Report, Recommendations 25.9, 25.10 and 25.11.

Supported

69. This amendment is consistent with recommendation 25.13 of the Royal Commission, which provided that the *Youth Justice Act* be amended to require reports about a child or young person's participation in a diversion program be tendered in court and made available to the child or young person's legal representative.

Protection of privacy

Supported

70. We support the inclusion of s 49, which requires that proceedings be heard in a closed court

71. We also support the inclusion of s 50 that restricts publication of information relating to proceedings. However, we recommend excluding s 50(a) which prevents publishing information that is likely to identify 'the particular venue in which the proceeding was heard' as it is unnecessary.

Rationale

72. The amendments contained in S 49 and 50 are consistent with rule 8 of The Beijing Rules which states that:

'*The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling and in principle, no information that may lead to the identification of a juvenile offender shall be published*.'

73. The Royal Commission noted that it is well recognized that a young person's rehabilitation is 'seriously compromised' by early identification as an offender. Evidence shows that being identified as an 'offender' will affect a young person's sense of identity and connection to the community. One young person that gave evidence to the Royal Commission about when his name was published:

"*This made me feel like everybody knew that I was a criminal and not a person.. it feels like the public can see right through me… I began to feel like I was a lost cause*."

74. In light of this evidence, the Royal Commission recommended that proceedings under the Youth Justice Act (NT) should be heard in closed court, similar to child protection proceedings under the Care and Protection of Children Act (NT). The court should retain a discretion to publish all or part of a proceeding upon application.[43]

75. The purpose of closing the court is also to ensure that environment is child-focussed and conducive to open discussion. When the Court is closed, parents, guardians, carers, service providers and other support people are likely to feel more empowered to give detailed information about sensitive and other matters affecting the child. This allows the Judge to obtain a more holistic understanding of the circumstances of the young person, which will enable them to tailor a more appropriate sentence.

76. Criticism that the amendments in ss 49 and 50 will reduce public scrutiny of conditions in youth detention, the judicial process and the adequacy or otherwise of services available is

[43] Royal Commission Final Report, Recommendation 25.25.

misinformed. Indeed, youth advocates will still be able to publish legitimate reports regarding these issues, 'with the consent of the youth subject to the proceedings' (s 50(2)(b).

77. We also note that in practice, journalists are rarely actually in court and usually write reports about what happened based on audio recordings sourced after the event, or based on their understanding of what happened gathered from information from people that were in the court room. The proposed amendments do not propose limiting who can listen to recordings after the event, so journalists will still be able publish legitimate stories, or reports in an unidentified way, so as not to stigmatise the youth.

78. We strongly support these amendments, which will bring the NT in line with other jurisdictions around Australia.[44] The current naming and shaming of young offenders practiced by media outlets is not in the public's best interest, and is not in the interests of children and young people and their rehabilitation.

[44] See, for example, *Children (Criminal Proceedings) Act 1987* (NSW) ss 10, 15A(1). Provides that proceedings against young people are to be held in closed court and automatic non-publication orders apply. Section 24 of the South Australian Youth Court Act 1993 (SA) permits 'a genuine member of the news media' to be present at hearings and section 63C of the South Australian Young Offenders Act 1993 (SA) prohibits the publication of any report of proceedings that identifies or tends to identify the youth involved.

Part B – Recommended Amendments to the Bill

Including amendments to raise the minimum age of criminal responsibility and age of detention

Opinion

79. We recommend the inclusion of additional amendments to the *Criminal Code* (NT) to raise the minimum age of criminal responsibility 12 and limit the circumstances in which offenders under 14 can be ordered to serve a period of detention, as recommended by the Royal Commission.

80. The NTG has committed to these changes,[45] and we understood that they would form a part of this stage of the legislative reform process. No cogent explanation has been given for excluding these important reforms from this tranche of amendments.

Rationale

81. Article 40(3)(a) of CROC requires set a minimum age of criminal responsibility:

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

82. The Committee on the Rights of the Child has encouraged States parties to increase their lower minimum age of criminal responsibility to the age of 12 years as the absolute minimum age, and to continue to increase it to a higher age level.[46]

83. The Royal Commission recommended (recommendation 27.1) that section 38(1) of the Criminal Code Act (NT) be amended to provide that the age of criminal responsibility be 12 years, and section 83 of the Youth Justice Act (NT) be amended to add a qualifying condition to section 83(1)(l) to limit the circumstances in which offenders under 14 can be ordered to serve a period 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.

84. The Royal Commission noted that these changes would "*more accurately reflect modern understanding of brain development, [and] would ensure that the number of children brought before the courts is reduced.*"

85. These amendments are supported by scientific evidence. Neuroscientific research has found that a child or young person's brain is not fully developed until around the age of 20. Further, scientific studies have concluded that at the age of 10, a child's brain is still developmentally immature which affects their propensity for risk taking.[47] Most children and young people grow out of risk taking and offending behaviours. Further, "the younger

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[45] Safe Thriving and Connected, p 27.
[46] Committee on the Rights of the Child, *General comment No. 10* (CRC/C/GC/10) (February 2007) at https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf
[47] 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

children are when they enter the youth justice system, the more likely they are to reoffend".[48] Therefore, given, criminalising children under the age of 12 will increase their likelihood for a life time of offending.

86. The Royal Commission also heard substantial evidence regarding the prevalence of neuro disability in young offenders, also supporting raising the age.[49]

87. Furthermore, evidence suggests that the cohort of 10-11 year old young people engaging in criminal activity is small. The most recent Australian Institute of Health and Welfare report on Youth Justice in Australia found that for the Northern Territory in 2016-17 there were no 10 year old children and only three 11 year olds subject to youth justice supervision at any time during the year. This suggests that the small number of children in this age group (apprehended by police for an offence) are either being dealt with by alternatives outside of the formal court system including cautions and diversion or if sentenced by a court, not requiring ongoing formal supervision.[50]

88. Essentially, it is only the most vulnerable and disadvantaged children who come to the attention of the justice system at such a young age. Research shows that early intervention programs which involves families, emphasise respect, compassion and understanding are far more likely to produce positive outcomes for these children and the community at large.[51]

89. Territory Families has committed to prioritising early intervention, and child-development focussed responses, keeping young people out of detention.[52] For children below 12 years of age, comprehensive assessment, and appropriately tailored social welfare alternatives should be pursued outside of the formal court system so as to best address risk factors and meet the complex needs of these children.

Remove the offence of breach of bail in its entirety

Opinion

90. Whilst we welcome the removal of the offence of breach of bail condition for young people, we maintain our earlier feedback through the LAAC that s 37B of the *Bail Act* should be

[48] 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

[49] Midson, B, 2012, 'Risky Business: Developmental Neuroscience and the Culpability of Young Killers', Psychiatry,Psychology and Law, no. 19, vol. 5, tendered 8 May 2017, p. 695; Exh.020.001, Annexure 2 to Statement of Muriel Bamblett, Office of the Children's Commissioner (United Kingdom), Nobody Made the Connection: The Prevalence of Neurodisability in Young People who Offend, October 2012, tendered 12 October 2016, p. 12.

[50] Australian Institute of Health and Welfare 2016. Young people in child protection and under youth justice supervision 2014–15. Data linkage series no. 22. Cat. no. CSI 24. Canberra: AIHW, 17: 'Those who were younger at their first youth justice supervision were more likely to also be in child protection in 2014-15 than those who were older at their first youth justice supervision. Three in five (60%) of those aged 10 at their first youth justice supervision were also in child protection, compared with 9.4% of those aged 17. See further Jesuit Social Services, Too much too Young: Raise the age of criminal responsibility to 12, October 2015, 3.

[51] A meta-analysis of various types of prevention programs found that family-based programs, in particular, parent behavioural training, were the most effective in reducing youth offending, see: Farrington, D.P., and Welsh, B.C. (2003), "Family-based Prevention of Offending: A Meta-analysis", in The Australian and New Zealand Journal of Criminology, 36 (2), pp 127-151

[52] Safe Thriving and Connected: Generational change for children and families 2018 – 2023, April 2018, see p45.

amended to remove the offence of breach of bail for young people *in its entirety* as per Recommendation 25.19(4) of the Royal Commission.

Rationale

91. The Royal Commission recommended the removal of the offence of breach of bail for a number of reasons including:[53]

- A major contributor to escalating remand rates was the introduction of the offence of breach of bail (section s7B) in 2011;
- Data presented to the Royal Commission demonstrated that the younger the child is, the more likely they are to breach bail. It also demonstrates that since this provision came into effect 91% of young people charged with breach of bail have been Aboriginal.
- Criminalising breach of bail is counterproductive. It criminalises conduct that is not, of itself, criminal, such as not residing at a prescribed address and can lead to the entrenchment of children and young people in the youth justice system;
- there is no evidence that criminalising breach of bail deters young people from further offending;
- the criminalisation of breach of bail can lead to the detention of children and young people who would otherwise not be detained;
- Criminalising breach of bail derogates from the purpose of Bail which is to ensure that the individual attends court to finalise their matter.

92. The Final Report also noted policing practices and failure to summons rather than arrest even for breach by non-attendance at court.[54]

93. DDHS recommends excluding children from the offence of breach of bail entirely, as is the approach in Queensland.[55] It is our view that breach of the undertaking by non-attendance at court should not apply to youth. We note that police would still have the power to arrest where there is a breach of bail condition or failure to attend court to bring the child before a court.

94. In our view, where a young person breaches their bail undertaking, the focus should be on engaging with the 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.

95. The current proposal to retain the offence of breach of bail undertaking, is inconsistent with Recommendation 25.19(4) of the Royal Commission and should be amended to reflect this.

[53] Royal Commission Final Report, p 294.
[54] Royal Commission Final Report, Chapter 25.
[55] See *Bail Act* (QLD) s.29(2)(a).

Time in the police watch house without charge

Opinion

96. We recommend further amending s 137 of the *Police Administration Act*, to provide that young people may only be held in custody for up to four hours, and that any extension beyond this should only be granted by a judicial officer (as per the Recommendation 25.3).

97. The current proposed amendment gives the Senior Sergeant the power to authorize the holding of a young person in custody without charge, without the approval of a judge, for up to 24 hours.

Rationale

98. Article 37(b) of the CROC provides:

> *No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and* ***for the shortest appropriate period of time****;*

99. The Royal Commission found that children and young people were held in police custody in the Watch House for unreasonably long periods of time.[56] In light of this the Royal Commission recommended that young people may only be held in custody for up to four hours, and that any extension beyond this should only be granted by a judicial officer.

100. The rationale for these strict time limits, is a recognition of the harmful effects of keeping young people in police holding cells before they have even been charged with an offence, where they are often detained with adults, have no access to programs, support or therapeutic services. In our view, it is completely unreasonable that a young person be kept in these conditions beyond 4 hours.

101. An example raised by police at the LAAC related to a situation where a young person is too intoxicated to be dealt with within four hours in the middle of the night. In our opinion, a young person in such condition is vulnerable and should not be detained in police cells but should be medically supervised.

102. We consider that, if additional resources are needed to give effect to this provision, they should be provided rather than adapting the legislation to the current resources.

[56] Royal Commission Final Report, Chapter 25, p 237.

Part C - Concerns regarding *Youth Justice Amendment Act 2019 (Serial No 84)*

103. We note our ongoing concerns regarding the *Youth Justice Amendment Act 2019* (Serial No 84) ('**the urgent Act**) which was introduced on an 'urgent basis' to Parliament on 19 March 2019 without any consultation with the LAAC or other key stakeholder.

104. In our view, the urgent Act and corresponding updated policy determinations[57] are inconsistent with the recommendations of the Royal Commission and open the door to the kinds of torture and inhumane acts that lead to the Royal Commission in the first place.

105. We recommend that this Act is repealed and the updated policy determinations revised immediately.

Inconsistency with the Royal Commission

106. We are extremely concerned that the Urgent Act is inconsistent with the Royal Commission's recommendations, and represents a significant step backwards.

107. For example, amendments to s 10(1) of the *Youth Justice Act* (regarding use of force), removes the requirement that the person using force has regard to the "age, gender, physical and mental health, and background of the youth in relation to whom the force is to be used" replacing it with 10(3) which states a person *may* have regard to these factors. This is contrary recommendation 13.5 of the Royal Commission.

108. Attached at **Annexure A** is a detailed table which highlights our concerns regarding the Urgent Act.

109. In our view, the updated policy determinations also reflect a significant shift in the obligations and expectations of youth justice staff. In particular we have noted the revised policy determinations remove relevant Human Rights principles and obligations, and language requiring staff to act in a way that promotes the wellbeing, rehabilitation and development of the child, that were previously embedded throughout these documents.

110. At **Annexure B** is a table with our analysis of the updated policy determinations.

111. We note the failure of the government to adequately justify the 'urgent' basis of this amendment.

Lack of consultation

112. We were extremely disappointed about the lack of consultation in developing this Act, or related policy determinations and that the Bill was not referred to the social policy scrutiny committee for review before it was passed.

113. We consider that these actions by the government were completely inconsistent with their stated commitment to 'design work with Aboriginal controlled organisations, the community sector, and the people impacted by these systems.'[58]

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[57] Published at https://territoryfamilies.nt.gov.au/youth-justice/youth-justice-policy-determinations (updated 5 April 2019)

[58] Safe Thriving and Connected, p 4.

114. The process of rushing this Bill through parliament completely undermines the role of the LAAC and the value that the sector can add to the development of legislation.

Policing Powers to be subject to Youth Justice Principles

115. These amendments do not clarify whether general policing powers are subject to specific youth justice principles. For example, it is unclear whether the replaced s16 of the *Youth Justice Act 2005* – Arrest as a last resort, will prevail over the rights and duties of police granted under the Youth Justice Act and other legislation such as the *Police Administration Act 1987*. In Queensland, s380 of *Police Powers and Responsibilities Act* imposes a positive duty on police to release an arrested child or discontinue an arrest where certain considerations are met.[59] We submit that a duty framed in this way expands the locus of protective provisions for the young person's welfare throughout their contact with the justice system.

116. Furthermore, there is a need for codifying provisions to embed the requirement for police to consider alternatives to court proceedings and to preference proceedings by way of summons or notices to attend are needed to reduce the frequency and level of contact with the formal justice system.

[59] s 380 *Police Powers and Responsibilities Act 2000* (QLD).