



Our Ref: 2019/0585
Your Ref: 85-2019

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

Dear Ms Knight

RE: YOUTH JUSTICE AND RELATED LEGISLATION AMENDMENT BILL 2019

The Office of the Children's Commissioner (OCC) welcomes the opportunity to make a submission to the Social Policy Scrutiny Committee's inquiry into the Youth Justice and Related Legislation Amendment Bill 2019 (the Bill). The OCC supports the introduction of the Bill in giving effect to 11 of the recommendations made by the *Royal Commission into the Protection and Detention of Children in the Northern Territory* (the Royal Commission). The OCC views this Bill as an important step forward in reforming the youth justice system, resulting in better outcomes for young people and a safer community. Pursuant to section 10(h) of the *Children's Commissioner Act 2013*, the OCC takes this opportunity to comment on two specific aspects of the Bill.

(1) Clause 33: Closing the Youth Court

The OCC considers clause 33 an important and appropriate amendment to the *Youth Justice Act 2005* (YJA) and supports its introduction.

Correctly, the bill has set out that the default position is that proceedings under the YJA should be held in closed court. The Australasian Juvenile Justice Administrators' Juvenile Justice Standards provide that 'the principal purpose of a juvenile justice system is to intervene with children and young people to contribute to the reduction in re-offending'.¹ In other words, the youth justice system's primary purpose is to rehabilitate young people. While it is accepted that generally justice must be administered in an open and transparent manner, because of the firm focus on rehabilitation in the Youth Justice court, different considerations should apply.

'It is well recognised that rehabilitation is seriously compromised by undue publicity and early identification as an offender'.² That position is reflected in international instruments relating to the

¹ Australasian Youth Justice Administrators, 'Juvenile Justice Standards' (2009).

² Northern Territory, Royal Commission into the Protection and Detention of Children in the Northern Territory, *Final Report* (2007) vol 2B, 307 ('Royal Commission Report').



administration of juvenile justice,³ and state legislatures.⁴ Additionally, it is almost universally agreed upon by 'experts in child psychiatry, psychology and criminology that the publication of a child offender's identity often serves no legitimate criminal justice objective, it is usually psychologically harmful to the adolescents involved and acts negatively towards their rehabilitation'.⁵ As set out in the report of the Royal Commission, 'to speak of the need to expose children in trouble with the law to the 'full glare of publicity' in the interests of an open access to justice principle ... runs counter to the well-established and research-based knowledge that most children mature out of crime if appropriately dealt with by the juvenile justice system'.⁶

The process set out by the Bill is that any person not listed in section 49(2) can make an application to the court to be present for proceedings. That application will be decided on by the judge after hearing submissions from relevant parties. If the media is granted leave to be in the court room, they are permitted to publish details of the proceedings, provided the publication contains no child-identifying information, except in emergency situations.

It is the submission of the OCC that these provisions strike an appropriate balance between maximising the prospects of a young persons' rehabilitation while maintaining accountability in the court room.

(2) Clause 21: Time for bring young people before court generally

The OCC supports the introduction of a legislated time limit for which young people can be held without charge in police custody. The OCC considers the proposed four hour period appropriate and consistent with other Australian jurisdictions. Additionally, the OCC acknowledges the necessity of extending that period in certain circumstances. However, it is the OCC's submission that the process of approval by a Senior Sergeant for four hour extensions up to 24 hours does not provide sufficient oversight or accountability in relation to young people being held in police custody. Instead, approval should be required from the relevant Superintendent.

As is reflected in section 4(c) of the *Youth Justice Act* and rule 10.2 of the *Beijing Rules*, young people held in police custody should be kept in police custody for the shortest possible period. Interstate, extensions can typically only be granted by judicial officers.⁷ The division between the people responsible for investigating the alleged offence (the police) and those responsible for approving the continued custody (the judiciary) is designed to create accountability and oversight in relation to young people being held without charge. If those responsible for investigating the alleged offence and those responsible for approving continued custody are the same person(s), there is no meaningful oversight or accountability. That is likely to commonly be the case if Senior Sergeants are able to approve the continued police custody of young people.

By requiring the relevant Superintendent's approval for each four hour extension up to 24 hours, as opposed to a Senior Sergeant, more robust oversight and accountability would be achieved.

³ *United Nations Standard Minimum Rules for the Administration of Juvenile Justice ('The Beijing Rules')*, 29 November 1985, A/RES/40/33, r 8.1 & 8.2.

⁴ See, eg, *Children's Court Act 1992* (Qld) s 20; *Children (Criminal Proceedings) Act 1987* (NSW) s 10; *Children's Court of Western Australia Act 1988* (WA) s 35.

⁵ *MCT v McKinney & Ors* [2006] NTCA 10, [20].

⁶ Royal Commission Report, vol 2B, p 308.

⁷ See eg, *Summary Offences Act 1953* (SA) s 78(2); *Public Powers and Responsibilities Act 2000* (Qld) ss 403, 404(a) & 405; *Crimes Act 1914* (Cth) s 23C(4)(a).



Thank you for considering this submission.

Please contact Amy Williams, A/Manager, Strategy, Rights and Advice on 8999 6076 or occ@nt.gov.au if you have any queries in relation to this submission.

Yours Sincerely


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Children's Commissioner
17 April 2019



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