

17 April 2019

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Dear Ms Knight

YOUTH JUSTICE AND RELATED LEGISLATION AMENDMENT Bill 2019

Law Society Northern Territory (**Society**) appreciates the opportunity to provide a submission about the *Youth Justice and Related Legislation Amendment Bill 2019* (**Bill**).

Summary

The Society is broadly supportive of the amendments outlined in the Bill as far as they go. The relevant issues have been articulated and the need for far reaching change has been appropriately highlighted by the Final Report of the Royal Commission in the Protection and Detention of Children in the Northern Territory¹ (**Royal Commission Recommendations**). The Bill only seeks to partly implement the recommendations of the Royal Commission that relate to the youth justice system.

Recommendations

As the amendments do not implement the Royal Commission Recommendations in their entirety, the Society recommends that the Committee be minded to seek amendments. The Society submits the amendments should be aimed at closing the gaps between the provisions of the Bill and the Royal Commission Recommendations in particular:

- That current section 37B of the *Bail Act 1982* remain as it is and insert a new section providing that s. 37B does not apply to youths;
- Amend section 137 of the *Police Administration Act 1978*; and
- Increasing the age of criminal responsibility to at least 12 years of age.

Discussion

The Society does not attempt to respond to each individual amendment. Instead, we focus on the key issues where the amendments do not meet the Royal Commission Recommendations as well as the issues we support.

The Society is pleased the government is continuing to progress reforms which are in the best interests of the safety of the whole community and that aim to ensure children who

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

come into contact with the criminal justice system are given the best possible opportunity to turn their lives around.

Closed Courts

The Society is highly supportive of closing the courts to the public for all youth justice proceedings.

Currently, in the Northern Territory, a youth who has been accused of any crime no matter how trivial, or who has been arrested and not yet charged, can have their name and other identifying features published in the media.

In all other jurisdictions in Australia, young people coming into contact with the justice system are afforded protection under juvenile justice laws so their identities remain protected, usually throughout the entire process. The Society understands that this issue was previously referred to the Standing Committee of Attorneys-General for national attention.

The Society understands the public interest in open justice must be balanced against the clear public interest in rehabilitating and reintegrating juveniles back into the community. However, research demonstrates that naming and shaming does not have any positive rehabilitative outcome². Rather it concludes that naming juveniles stigmatises youths and has a negative impact on their rehabilitation prospects, potentially leading to increased offending³.

In 2012, the then President of the Northern Territory Criminal Lawyers Association, Russell Goldflam remarked that naming and shaming offenders was often seen as a badge of achievement for some juveniles⁴.

The Act appears to incorporate some sections from the United Nations Convention on the Rights of the Child, such as article 40. Article 40 provides: children accused of a criminal offence must be treated in a manner *which takes into account the child's age and the desirability of promoting the child's reintegration and the child assuming a constructive role in society*.⁵

As such, the Society believes the youth justice legislative framework should regulate the publication of the identities of young people throughout the entirety of the juvenile justice system.

The Society considers that the harm to a juvenile's reputation can and does have long term consequences especially given the relatively small size of the Territory demographic. This has the potential to reduce the prospects of a person finding employment and engage within his or her community. This does not fit within the well-established principle that the best interest of the child is to be at the forefront of decision making.

The current provisions are contrary to the *Beijing Rules*⁶ to which Australia is a party. This amendment is a specific recommendation of the Royal Commission⁷.

Bail and Bail Conditions

The Royal Commission found that children who are granted bail are often subject to numerous onerous bail conditions, such as strict curfews, the requirement to be in the company of a

² Johnston A., 'The Privacy Commissioner's Report on Child Offenders and Privacy', Position Paper, 23 July 2002, p 3

³ Johnston A., 'The Privacy Commissioner's Report on Child Offenders and Privacy', Position Paper, 23 July 2002, p 2, quoted in Submission 16, Shopfront Youth Legal Centre, p 7

⁴ <http://theconversation.com/naming-and-shaming-young-offenders-reactionary-politicians-are-missing-the-point-8690>

⁵ See ss.4(b)(f), (n) *Youth Justice Act*

⁶ <https://www.ohchr.org/en/professionalinterest/pages/beijingrules.aspx>

⁷ Recommendation 25.25 – Volume 2B, Chapter 25, page 308

parent or carer and to follow his or her directions, place restrictions and general requirements relating to accommodation, school, and health treatment programs. The stringency of these conditions coupled with the science about the behaviours and developmental aspects to the functioning of young people means there is an increased likelihood of children breaching conditional bail. The current law in the Territory means that breaching conditional bail can result in an additional offence on a child's criminal history and may ultimately lead to their detention.

The Royal Commission found that police often imposed inappropriate bail conditions⁸. The Society welcomes the amendments which ensure bail conditions are not overly onerous and that take into account the capacity of the youth to comply with the bail conditions.

Further, it is applauded that the amendments provide that young people are not held in detention on remand solely due to a lack of other options or because the young person does not have adequate accommodation.

Breach of Bail

The Society supports the current amendment to s. 37B of the *Bail Act 1982*. While this reform is to be commended, the amendment is not in full compliance with the relevant Royal Commission Recommendation. The Royal Commission recommended that children and young people be entirely excluded from the operation of s. 37B.⁹ Ultimately, the Society would like to see full compliance with the Royal Commission Recommendation.

Police Diversion

The Society strongly supports the removal of barriers to youth diversion by the introduction of a simplified list of Prescribed Offences. Prescribed Offences are those that prohibit a police officer from exercising his or her discretion to divert a child or young person from the criminal justice system. For example under the current legislation, police are prohibited from diverting a young person who commits a driving offence. This means that young person could end up in the youth justice system as opposed to attending Territory Families' road safety program which is specifically designed for young people who commit a traffic offence.¹⁰ Not being able to divert young people away from the Courts contributes significantly to the overrepresentation of indigenous young people in the criminal justice system. A study by the Australian Institute of Criminology¹¹ found that young people diverted from the court system were less likely to have further involvement in the criminal justice system.

Time for bringing a youth before the Court

The Society supports the proposed amendment to s. 137 of the *Police Administration Act 1978*. This amendment is not in full compliance with the Royal Commission Recommendations but is a significant improvement from current practice. The underlying purpose of an arrest must always be to take the arrested person before a court, so that they can be made answerable under the criminal law. The Royal Commission outlined its concerns about the length of time children and young people were being held in the watch house without charge. The Royal Commission Recommendations provide that children and young people should only be held in custody without charge for no longer than four hours. If an extension of that four hour period is required the Royal Commission thought it was appropriate for this to be decided by a Judge.¹² Even with that safeguard, the Royal Commission concluded that the Territory should legislate for a maximum period of time that a child or young person could be detained for the purposes of investigations¹³. The Royal Commission did so acknowledging that police watch

⁸ Volume 2B, Page 249.

⁹ Recommendation 25.19 (4) – Volume 2B, Chapter 25, Page 298

¹⁰ Volume 2B, Chapter 25, Page 275

¹¹ <https://aic.gov.au/publications/tandi/tandi355>

¹² Recommendation 25.3 (2) – Volume 2B, Chapter 25, page 237

¹³ Report 2B, Chapter 25, page 236

houses are not appropriate places to detain children for longer than four hours. International human rights standards require that detention for persons awaiting trial must be the exception rather than the rule.

While this reform is a step in the right direction, the Society would ultimately like to see legislated a maximum period of time in which a child or young person can held in custody without charge.

Age of criminal responsibility

The Society is disappointed that the Bill does not take up the opportunity to provide for an increase in age of criminal responsibility. In the government's response to the Royal Commission Recommendations, *Safe, Thriving and Connected*¹⁴ the government agrees to do so. The Society sees no apparent reason why this could not be provided for in this Bill. In fact, the Society submits it is more urgent now than before as a result of the current Don Dale Youth Detention Centre still being open contrary to the Royal Commission Recommendations and with no clarity about when the replacement youth detention facility will be built. Retaining the age of criminal responsibility at 10 years old is incompatible with the United Nations Committee on the Rights of the Child¹⁵.

If you have any questions in relation to this submission, please don't hesitate to contact me.

Yours faithfully



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¹⁴ https://rmo.nt.gov.au/__data/assets/pdf_file/0005/498173/Safe,-Thriving-and-Connected-Implementation-Plan-Web.pdf

¹⁵ United Nations Committee on the Rights of the Child 'Concluding Observations. United Kingdom and Northern Ireland', September 2008, para 77 (a).