



Scrutiny of Acts and Regulations Committee
Parliament House
Spring Street
East Melbourne VIC 3002

3rd August 2018

By email: SARC@parliament.vic.gov.au

Dear Committee Members,

Justice Legislation Amendment (Unlawful Association and Criminal Appeals) Bill 2018

Youthlaw is a state wide specialist legal centre for young people under 25 years of age. We focus on vulnerable young people. We assist over 1100 young people each year with a range of legal issues (debts, fines, family violence) and at court (generally low level crime, fines and family violence). The overwhelmingly majority of clients we assist have experienced abuse, neglect & or family violence and they are highly vulnerable to unemployment, homelessness & long - term mental ill-health. For these reasons they are already at high risk of engagement with the criminal justice system.

We are deeply concerned that these new association laws will detrimentally impact on the well-being and civil rights of many young people and that it will significantly increase the number of young people in the criminal justice system and those with criminal records.

There is much experience to be drawn on about the effectiveness and impacts of consorting and association laws. We draw your attention to the NSW Ombudsman review tabled in their parliament in 2014 regarding similar laws in NSW¹. The review found that such laws poorly targeted those it was intended to impact & disturbingly impacted many not engaged in serious or organised criminal activity. The issuing of notices also disproportionately captured disadvantaged, vulnerable and marginalised populations including children & young people & indigenous people.

In our assessment the proposed association laws will intrude on & criminalise young people that are not the focus or intended target of these laws.

We submit that the laws will restrict/ limit and interfere with Charter rights and that these are not reasonable or justified.

We have outlined each relevant right and our concerns below:

Section 12 & 16 – Freedom of Movement & Association

The proposed law provides for a notice to be issued to a young person as young as 14 prohibiting them from associating with the subject of a notice. No specified location will be included.

This places responsibility on the young person issued with the notice to keep way from locations or events the subject of the notice may be at. For those who still live in their home community this could include not attending local sporting or public social events as well as private social activities. The subject of the notice could be persons frequently in family circles.

In our submission this places an unreasonable restriction on a young person's freedom of movement. The laws also unreasonably restrict peaceful and non-criminal association between the person receiving the notice and the person subject to the notice. This could include participation together in cultural events, sporting activities and family celebratory events.

¹ Ombudsman of NSW *The Consorting Law: Report on the operation of Part 3A Division 7 of the Crimes Act 1900*

A further concern we have in regard to restricting association & movement is that vulnerable and marginalised population groups have a high breach rate in regard to public order offences. For the population of young people we represent their circumstances of poverty, homelessness and poor mental health will make them highly susceptible to breaching a notice.

We refer also to a recent submission by the Victorian Aboriginal Legal Service that echoes this point in regard to indigenous people "We know that Aboriginal men, women and children on bail are at risk of breaching at higher rates than non-Aboriginal people due to additional challenges such as homelessness, lack of access to mental health facilities, family violence, poverty, reduced life opportunities and the impact of inter-generational trauma due to colonisation. As such, the potential for a breach of the issued notice resulting in a potential jail sentence – coupled with the already existing problem of onerous over-policing – means that such laws will impact Aboriginal communities in Victoria and further drive up incarceration rates"².

For tight knit communities such as the indigenous community and migrant communities the restrictions on association will have greater impact and be more detrimental. The Victorian Aboriginal Legal Service submission on the anti-association laws describes these impacts as follows: " It is known that an offender's chances of rehabilitation are increased when they have the chance to engage with the community and be reintegrated back into society. These new laws instead threaten to dismantle such opportunities by severing social relationships and making it illegal to form friendships that might possibly serve as strengthening the possibility of rehabilitation.

This is especially so for tight-knit communities such as Aboriginal communities in regional areas, for who strong ties with extended family, friends, community elders, social associates (such as sporting team mates) and cultural mentors are key components in an Aboriginal offender's rehabilitation prospects. To remove the possibility to associate with other community members is akin to removing a vital platform by which rehabilitation can take place.

This also may sever vital relationships between young people and their cultural elders. Some elders may have pre-existing criminal records but are now reformed, with the opportunity to act in a mentorship role vital in not only rehabilitating themselves, but also act as a mentor to young people"³.

We note that the right to associate has been further eroded (and unreasonably so) by the lowering of the threshold criteria for issuing a notice from establishing 'the commission of offence is likely to be prevented' (in the current Criminal Organisations Control Act 2012 – s124D) to merely requiring evidence of a previous association. This will result in a net widening not justified by this restriction.

Section 13 – Privacy and Reputation

The anti -association laws will be highly stigmatising to both the young person receiving a notice & the person who is the subject of the notice, interfering with their right to privacy and reputation.

The laws are intended to target 'cleanskins' –young people without a criminal record. The issuing of a notice will inescapably result in a common view that they are a criminal. They will also have been and will be subject to intrusive surveillance by police. This is an invasion of their privacy and will impact on their reputation. This is contrary to the rehabilitation, non-stigmatising and privacy intentions & provisions throughout the *Children, Youth and Families Act 2005* and related youth sentencing legislation.

The subjects of public notices will be by fact of the notice identified publicly as a person convicted of a serious criminal offence and a person expected to offend in the future. In our view this is contrary to current protections afforded to persons with a criminal record. Of additional concern is the finding of the NSW Ombudsman review that a significant percentage of those who were subjects of notices were not engaged in serious criminal activities.

We represent young people under 25. Many have a criminal record and we do our utmost to protect their privacy in regard to this record, as does the law. We know how stigmatising a record can be and that it does close doors to employment and other positive opportunities. The proposed anti-association laws will publicly out those who are the subject of notices as having a criminal record and brand them as a serious future criminal. This is particularly concerning in regard to young

² Victorian Aboriginal Legal Service 'Anti-Association Laws' July 30, 2018

³ As above, p 3.

adults and children and is contrary to the spirit & intention of the *Children, Youth and Families Act 2005* that has a focus on rehabilitation and privacy.

Section 17 – Protection of Families & Children

The proposed law allows for a notice to be issued to a young person from 14 years of age. This in our view fundamentally interferes with and restricts the right of a child to protection in his or her best interests.

Put simply the threshold for using a notice on a young person is so minimal that it fundamentally undermines any semblance of protection of children. A notice can be issued based on mere observed association. A breach of such a notice will be satisfied by merely an association on 2 or more occasions over the period of the notice (1 to 3 years). This cannot be said to satisfy protection of children. The penalty for such a breach is very serious - 3 years imprisonment or a fine not exceeding 360 penalty units or both. This again is highly conflictual with any notion of protection of children and serving their best interests.

These laws aim to issue notices to young people without criminal histories, who, if they then breach the notice, can potentially end up in jail and/or with a criminal record.

We know from our 17 years of practice experience that as soon as a child or young person has any form of contact with the justice systems – such as a recorded police interaction or a minor charge – the likelihood of the young person becoming further engaged in the criminal justice system (including the adult prison) increases dramatically.

Section 19(2) – Aboriginal Cultural Rights

These laws may prevent Aboriginal young people being able to learn from, and spend time with, cultural elders, as is their right reflected in 19.2. We refer to our submissions above in regard to association.

Section 23 & 25 – Children in the Criminal Process & Rights in Criminal Proceedings

Young people breaching the notices will be subject to harsh penalties. In our submission this contravenes/interferes with their right to sentencing that is appropriate to their age and the aim of rehabilitation

Please contact Youthlaw on 03 9611 2412, or myself specifically on ariel@youthlaw.asn.au if you require further information regarding this submission.

Yours sincerely



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