Jesuit Social Services
Building a Just Society

40 years

Ms Blandthorn
Chair, Scrutiny of Acts and Regulation Committee
Parliament House, Spring St
East Melbourne VIC 3002

Dear Ms Blandthorn

In relation to the *Children and Justice Legislation Amendment (Youth Justice Reform) Bill 2017*, I would be grateful if the Scrutiny of Acts and Regulation Committee (SARC) would consider the following concerns.

1. Erosion of the dual track system

Clauses 20 to 22 of the Bill amend section 32 of the Sentencing Act in a way that effectively introduces a new presumption against dual track sentencing. The impact of this is that a court cannot sentence a young person to youth detention if they are convicted of:

- a category A offence, or
- a category B offence, having previously been convicted of a category A or B offence ***unless exceptional circumstances apply***.

This amendment will result in the young adult offender being treated as an adult and dealt with in the adult criminal justice system.

The current dual track system, allows young people aged between 18 and 21 to be sentenced to youth detention if appropriate. This has been a cornerstone of Victoria's youth justice system, in recognition of the fact that young people's brains are still developing and the response required to support rehabilitation is best suited to the youth system. Research also shows us that young people who spend time in adult prison are more likely to re-offend on their return to the community than young people who exit youth detention. This and other elements of the youth justice system have led to Victoria having comparatively low rates of youth offending and re-offending.

These proposed changes dismantle elements of our youth justice system and thus risk an increase of children and young people being incarcerated and becoming entrenched in a life of crime.

2. Increasing penalties and detention periods

The Bill includes a number of measures that increase penalties and detention periods including:

Ph: (03) 9421 7600
Fax: (03) 9421 7699
326 Church St (PO Box 271)
Richmond VIC 3121
jss@jss.org.au
www.jss.org.au
ABN: 72 005 269 554

- Increasing maximum youth detention periods for single and multiple offences
- Increasing the penalties regarding offences to escape or attempt to escape detention or custody, and
- The presumption that young offenders who damage property, escape or attempt to escape from a youth justice facility will serve their sentences on top of an existing period of detention, regardless of age.

I am concerned about these measures. There is little evidence that tougher sentencing policy improves community safety through deterrence or incapacitation. In fact, several studies[1] have found that imprisonment increases the likelihood of offending behaviour and has the potential to negatively affect prisoners, particularly younger, lower-risk offenders.

Jesuit Social Services acknowledges there is a problem in Victoria with a relatively small group of young people who are committing serious and violent offences and that these young people require intensive interventions that hold them accountable for their behaviour and that support them to embark on a positive pathway free from crime. We also note that in the main, most offending by young people is episodic, transitory and unlikely to constitute a risk to the safety and welfare of the community.

Children and young people need the opportunity to learn from their mistakes and, where appropriate, to make amends for behaviour that has harmed others. These proposed measures would reduce this opportunity and are thus not in the interests of the young people, nor of building a safe community.

3. Lack of consultation and due process

I am also very concerned that there was no exposure draft of this Bill and no consultation with the community sector. This means that an organisation like Jesuit Social Services, with 40 years of experience working with this cohort of young people, has not had a chance to provide input based on our expertise.

Furthermore, the Government has asked Penny Armytage and James Ogloff to review the youth justice system and to date there has been no discussion or consultation on the outcomes of that report. Introducing legislation to the Parliament without reference to this review is premature.

[1] 1) Wan, Moffatt, Jones & Weatherburn (2012) The effect of arrest and imprisonment on crime, Crime and Justice Bulletin, No. 158, NSW Bureau of Crime Statistics and Research, Sydney 2) Nagin, D., Cullen, T. & Jonson, C. (2009) 'Imprisonment and Reoffending', Crime and Justice: A Review of Research, Vol. 38 3) Gendreau, P., Goggin, C. & Cullen, F. T. (1999) in Michael Tonry (ed) The Effects of Prison Sentences on Recidivism, Report to the Corrections Research and Development and Aboriginal Policy Branch, Ottawa, Solicitor General of Canada, pp. 115-200.

Ph: (03) 9421 7600
Fax: (03) 9421 7699
326 Church St (PO Box 271)
Richmond VIC 3121
jss@jss.org.au
www.jss.org.au
ABN: 72 005 269 554

4. Undue trespass on rights and freedoms

The Bill trespasses unduly on rights and freedoms because it is not based on effective consultation or research. If the Armytage/Ogloff report were available, and if sector experience and relevant research could be brought to bear then, we expect, the young people affected would face different sentencing and detention regimes, and their rights and freedoms as citizens would be better addressed.

The proper action in this situation is to take a step back - to withdraw the Bill, conduct the consultations and review the research; or to refer the Bill to a Committee that can undertake such consultations and review.

5. Incompatibility with the Victorian *Charter of Human Rights and Responsibilities*

The Bill is incompatible with the *Charter* insofar as it increases penalties and detention periods in relation to young people under 18, in the following ways:

- Charter s17 (2) provides: Every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child. We know from several studies that imprisonment increases the likelihood of offending behaviour and has the potential to negatively affect prisoners, particularly younger, lower-risk offenders.

  The increased detention penalties are thus not in the best interests of the children who are affected, as they increase their detention periods without explicit regard for their interests.

- Charter s23 (3) provides that 'A child who has been convicted of an offence must be treated in a way that is appropriate for his or her age.' In Victoria, the *Children, Youth and Families Act 2005* provides (at s10 (1)) that the best interests of the child must always be paramount.

  To subject a child in detention to additional penalties when such penalties are arguably not in the best interests of the child is to offend against this provision of the Charter.

The proper action in this situation is to review the proposed changes in light of the interests of the young people concerned before enactment of the provisions.

I would be grateful if the SARC would consider these concerns and request that this submission be published on the Committee's website.

Yours sincerely

Julie M. Edwards

Julie Edwards

CEO, Jesuit Social Services

Ph: (03) 9421 7600
Fax: (03) 9421 7699
326 Church St (PO Box 271)
Richmond VIC 3121
jss@jss.org.au
www.jss.org.au
ABN: 72 005 269 554