



Youth Affairs  
Council Victoria

Ms Lizzie Blandthorn  
Chair, Scrutiny of Acts and Regulations Committee  
Parliament House, Spring Street  
East Melbourne Vic. 3002

2 June 2017

Dear Ms Blandthorn,

**Children and Justice Legislation Amendment (Youth Justice Reform) Bill 2017**

**Justice Legislation Amendment (Protective Services Officers and Other Matters)  
Bill 2017**

Youth Affairs Council Victoria (YACVic), the state peak body for young people, seeks to contribute to the Scrutiny of Acts and Regulations Committee's consideration of the youth justice changes introduced into the Legislative Assembly on 24-25 May 2017.

We understand that the Committee has a lead role in considering whether Bills introduced into Parliament are compatible with the Charter of Human Rights and Responsibilities Act 2006 ("the Charter").

As such, we make the following recommendations in relation to the youth justice changes:

- We oppose the expansion of PSO powers, especially the power to randomly stop and search children for weapons and drugs without a warrant, and especially if such powers are introduced without additional training in working safely with children with complex issues such as trauma. We oppose this reform on the grounds that it would contravene the Charter Section 17(2).

- We oppose the new presumption that serious offences committed by children aged 16 and over should automatically be tried in adult courts. We oppose this on the grounds that the new measure would contravene the Charter Section 25(3).
- We urge that the Victorian Government prioritise implementing the recommendations of the Commissioner for Children and Young People (*The Same Four Walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, 2017) and the Victorian Ombudsman (*Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville*, February 2017). These reports have identified conditions in youth justice centres which appear to contravene the Charter Sections 17(2), 22(1) and 23(3). Addressing these serious systemic failings should be prioritised, rather than introducing more punitive responses to young people who commit offences under these unacceptable conditions.
- We urge that the Victorian Government publically release and adopt recommendations from the major review of the youth justice system by Penny Armytage and Professor James Ogloff (2016-17). We are confident that implementation of this report would help Victoria establish an evidence-based, successful youth justice system. Future reforms to the youth justice system should also be informed by the pending findings of the 2017 Parliamentary Inquiry into Youth Justice Centres.
- We oppose the erosion of the “dual track” sentencing system, and recommend that sentencing of young people under the dual track system remain at the courts’ discretion.

YACVic welcomes the Victorian Government's commitment to protecting the Victorian community and improving safety standards within youth justice centres. We also welcome some elements within the new youth justice reforms which are likely to promote the rehabilitation of young people. These include the introduction of a statutory youth diversion framework, and the aspects of the Youth Control Orders

which could facilitate re-engagement with education, employment and community support services.

However, we raise concerns about the following reforms:

### **Expansion of powers for Protective Service Officers**

The Protective Service Officers (PSO) Bill expands PSO powers, notably enabling PSOs to randomly stop and search children for weapons and drugs without a warrant. We argue this provision, in particular, would contravene Section 17(2) of the Charter, which states:

*“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.”*

The new changes would also appear opposed to Articles 27(b) and 40(1) of the United Nations Convention on the Rights of the Child, which should inform our understanding and use of the Charter:

*“States Parties shall ensure that 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”*

*“States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.”*

We contend these new PSO powers are likely to have an impact on vulnerable children which is harmful, discriminatory, and detrimental to their best interests. We are particularly concerned about the risks to children and young people who are

unaccompanied by an adult carer, who might otherwise have advocated for them, reassured them, and reported any concerns about their treatment.

Other groups likely to be disproportionately affected by these new measures include children and young people who have existing trauma which would be exacerbated by adult aggression or confinement, and children and young people who have already had excessive contact with the justice system from a very young age. The composition of young people in the justice system suggests that the latter group would include children in out-of-home care, Aboriginal children, children with cognitive disability, and children from refugee and migrant backgrounds. Reinforcing their sense of themselves as “young offenders” is, we submit, likely to endanger community safety in the long term.

### **Children aged 16 and over to be tried in adult courts for serious offences**

YACVic expresses concern at the new section 168A into the Criminal Procedure Act 2009, which provides that there be a presumption in favour of trying children aged 16 and over in adult courts if they have been charged with specific serious offences, including aggravated home invasion and aggravated carjacking.

We believe this move would be opposed to Section 25(3) of the Charter, which states:

*“A child charged with a criminal offence has the right to a procedure that takes account of his or her age and the desirability of promoting the child's rehabilitation.”*

While serious and violent crimes certainly warrant a strong, effective response, we are concerned that the adult court system is not set up to provide this. The specialist rehabilitative focus of the Children’s Court was designed to respond to the fact that adolescent young people are not “adults”. Even those who have committed serious crimes are still at a very immature and impressionable stage in their lives where the right intervention could change their conduct for the better.

YACVic is concerned that moves to blur the legal line between “children” and “adults” will heighten the risk of very young people becoming acclimatised to the adult justice

system and learning to regard themselves as adult criminals. Once this idea begins to shape their aspirations and behaviour, the risks to the community and the young person grow more severe.

We acknowledge that the new measures include a clause making it possible for a child charged with a serious offence to be tried in the Children's Court if they are "particularly vulnerable because of a cognitive impairment or mental illness". However, such issues in the lives of marginalised young people are not always diagnosed and treated in a timely fashion, and the proportions of young people in the justice system affected by disabilities and/or mental health problems are high. For example, the last Youth Parole Board report found that 63% of young people in youth justice centres had a history of trauma (or abuse and neglect), 30% presented with mental health problems, 18% had a history of self-harm, and 24% presented with "issues concerning their intellectual functioning".

As such, we suggest there remains a risk of underage young people receiving an inappropriate trial in an adult court despite being affected by cognitive disability, mental illness and/or trauma.

### **Increasing penalties for offences committed in a youth justice centre**

Other new measures will increase the penalties for young people who damage property, escape or attempt to escape from a youth justice facility, and will make the young people serve these sentences on top of their existing period of detention.

We agree that young people should be held accountable for offences they commit. However, it has also been demonstrated that conditions in youth justice centres have, at times, breached young people's rights under the Charter and served to heighten the risk of further offending.

Youth justice centres have been seriously impacted by shortages of regular and adequately qualified staff and over-reliance on isolation, separations and lockdowns. The Ombudsman and the Commissioner for Children and Young People have identified that conditions in the centres have functioned to exacerbate and worsen tensions

within the centres, and in some cases constitute of a breach of children's rights. Examples of this include children being held in prolonged isolation in spaces without toilet facilities, children being isolated for weeks on end, children missing out on education due to lockdowns, and children missing out on health and psychological services, cultural supports or family visits due to inadequate staffing / resourcing or inappropriate separation plans.

We contend that such conditions are opposed to the Charter Sections 22(1), 17(2) and 23(3):

*"All persons deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person."*

*"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."*

*"A child who has been convicted of an offence must be treated in a way that is appropriate for his or her age."*

We submit that such conditions are also opposed to the Convention on the Rights of the Child Article 37(c):

*"Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age."*

It is critical that the Victorian Government move swiftly to address these concerns, rather than focusing on more punitive responses to offences committed by underage young people under these unacceptable conditions.

In addition, it is unclear to us how the use of cumulative sentences will function for young people being held in youth justice centres on remand. In January 2017 the Ombudsman reported that remandees made up approximately half the young people in the centres. According to the Ombudsman, historically only about 20% of young

people who've been held on remand end up serving a custodial sentence, and this is often because they have already served at least the relevant amount of time.

### **Broader concerns**

In addition to the above breaches of the Charter, we would raise two further concerns.

YACVic supports the “dual track” system, which makes it possible for adult courts to sentence young adults aged under 21 to custodial sentences in youth detention instead of adult prison, if the court is convinced that the young person has reasonable prospects of rehabilitation, and/or that they are particularly impressionable, immature, or likely to be subjected to undesirable influences in an adult prison.

The new reforms would introduce a presumption against the use of the dual track system in cases of specific serious offences. It is difficult to discern a valid reason for these changes, given that the use of dual track is already at the courts' discretion – a young person aged 18 and over can already be sentenced to an adult prison if this is considered an appropriate response. We have yet to see any compelling evidence that the dual track system is a major cause of problems in youth justice centres, or that sending more young people to adult prisons will reduce reoffending and improve community safety. We suggest such a move would be likely to have the opposite effect.

While the erosion of the dual track system does not appear to contravene the Charter, we nonetheless urge against the adoption of these measures.

More broadly, the new youth justice reforms would seem to pre-empt recommendations from a major review of the system which is currently underway, and which we are confident will put Victoria back on track towards a successful youth justice system. We urge Government to publically release and adopt recommendations from the review of youth justice by former Corrections Commissioner and Secretary of the Department of Justice and Regulation, Penny Armytage, and forensic psychiatrist Professor James Ogloff.

Future reforms to the youth justice sector should also be informed by the upcoming findings of the Parliamentary Inquiry into Youth Justice Centres (2017).

If the Committee would like further information regarding this submission, please do not hesitate to contact Georgie Ferrari on 9267 3711 or [gferrari@yacvic.org.au](mailto:gferrari@yacvic.org.au)

Yours sincerely,

A handwritten signature in black ink, appearing to read 'G. Ferrari'.

Georgie Ferrari  
CEO, Youth Affairs Council Victoria

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