



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

1st June 2017

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

Dear Committee Members,

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

Youthlaw is writing to express our grave concerns regarding the introduction of the *Children and Justice Legislation Amendment (Youth Justice Reform) Bill 2017 (Bill)*.

Youthlaw is extremely concerned that the Bill is inconsistent with fundamental human rights in the *Charter of Human Rights and Responsibilities Act 2006* (Charter), especially as they limit the rights of children and young people.

We respectfully submit there as less restrictive measure available to achieve the stated intent of the *Youth Justice Reform Bill 2017* is to “address community concerns about crimes committed by children and young people, and to improve safety and security in youth justice facilities.”

Rather some of the proposed legislative amendments treat children as adults, undermining the effectiveness of Victoria’s youth justice system and risking entrenching young people in the criminal justice system rather than increasing community safety.

Infringement of Charter and child rights

Youthlaw is concerned that section of the Bill are incompatible with rights in the Charter of Human Rights and Responsibilities Act 2006 (Vic), in particular:

- the right of every child, without [discrimination](#), to protection in his or her best interests (section 17(2))
- the right for children and young people convicted of an offence to be treated in a way that is appropriate for his or her age (section 23(3)),
- the right for a child or young person changed with a criminal office to a procedure that takes account of his or her age and the desirability of promoting their rehabilitation (section 25(3))
- Section 8(3) of the charter provides that every person is equal before the law and is entitled to equal protection of law without discrimination.

Sections 17(2) and 23(3), recognise the need to minimise the stigma to a child that may result from being detained, and the importance of supporting and ensuring the development and rehabilitation of the child.

This reflects long established international child rights principles premised on the acknowledgement that children and young people should be treated differently to adults, requiring a higher duty of care and more intensive interventions to meet their complex needs. Children and young people have a unique opportunity to be rehabilitated. Their brains are still developing, making them more susceptible to peer influence and risk taking behaviour.

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We note that the principle of detention as a last resort and for the shortest possible time, is one of the critical child rights embedded in the *United Nations Convention on the Rights of the Child* and the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*.

However, many of the proposed amendments will erode these principles of treating children and young people differently to adults, and prioritise detention and punishment over rehabilitation.

Key concerns with the Bill

We welcome some reforms in the Bill that have rehabilitative goals such as the introduction of youth diversion framework and Youth Control Orders, in as much as we see their potential to help young people confront and address the underlying causes of their offending, and divert children and young people away from the justice system and detentions.

However we hold reservations about how restrictive YCOs will operate in practice: whether children and young people will be supported to fulfil conditions of the order, or whether there is a strong likelihood of them breaching unattainable conditions and then being placed in detention, and not sufficiently promoting their rehabilitation (section 25(3))

The Bill makes distinctions between children deserving of the opportunity to be rehabilitated (via YCOs or diversion), and others who are not, and should be treated like adults and receive punitive treatment instead. This is highlighted in the Second Reading speech by Attorney-General Pakula where he stated in relation to Youth Control Orders that: *“This government understands that suitable young people should be given the opportunity to rehabilitate, which will protect the community from further offending”*.

It is our submission this amounts to discrimination and is an unjustifiable limitation of both section 17(2) and section 8(3) of the Charter that provides that every person is equal before the law and is entitled to equal protection of law without discrimination. All children should have the opportunity to rehabilitate, reach their potential and be protected in their best interests.

We have grave concerns about the proposal in Part 1 Division 2 of the Bill that will result in some children aged over 16 charged with particular serious offences having their cases heard in adult courts. This proposal blurs the distinction between children and adults, and undermines the specialist rehabilitative youth focus of the Children’s Court on treatment and protection in the child’s best interest. Additionally we submit it discriminates on the basis of age contrary to section 8(3) of the Charter.

We respectfully submit that this is an unjustifiable limitation of the right of children and young people convicted of an offence to be treated in a way that is appropriate for his or her age (section 23(2)). And we ask how was the age of 16 years arbitrarily decided upon?

The interests of justice and community safety and security not in competition with the interest of maintaining and strengthening a specific youth justice system premised on specialist, age appropriate, rehabilitative supports for young offenders. All the research shows that when jurisdictions move away from a child and youth specific focus and adopt a more punitive adult response, young offenders are actually more likely to reoffend and more likely to progress and be entrenched in the adult system.

Clauses 20 to 22 of the bill amend section 32 of the Sentencing Act in a way that effectively introduces a new presumption that a court cannot sentence a young person (aged between 18 and 20) to youth detention if they 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*, such as an intellectual disability.

This reform abrogates the dual track sentencing option which has been the foundation of our youth justice system. This sentencing option allows young people aged 18 to 20 to be sentenced to a youth detention facility, if a court believes they are vulnerable or have reasonable prospects for rehabilitation.

We have observed how time in adult detention results in young people becoming hardened and entrenched into criminal behaviour. This reform contradicts research that shows that young people who spend time in adult prison are likely to be more traumatised than when they went in , and more likely to re-offend on their return to the community, than young people who exit youth detention.

Part 8 Division 2 effectively doubles some penalties for young people who damage property, escape or attempt to escape from a youth justice facility and will make them serve theses sentences on top of an existing period of detention. Again we submit these penalty increases unjustifiably limit the right of every child, without discrimination, to protection in his or her best interests. While we agree that these young people should be held accountable for such offences, these increased penalties in effect blame young people for the current volatile environment in youth justice centres, and sets them up for failure and punishment. Reports by the Children’s Commissioners and Victorian Ombudsman explain that the current environment is a product of failings by government over a number of years, to address issues of poor infrastructure, under staffing, lack of staff management and support , and overuse of isolation and lockdowns.

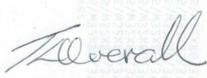
We respectfully submit less restrictive measure are available through the implementation of a range of recommendations by the Children’s Commissioner to address staff shortages, casualization of the workforce and over use of isolation in youth justice centres.

We are also concerned about clause 40 which give the Secretary of the Department of Justice and Regulation the power to authorise publication of identifying information by Victoria Police when a young offender escapes from custody, making it easier for police to catch the offender and safer for the public. While acknowledging some safeguards accompany these amendments, we submit this clause is an unnecessary infringement on the child’s right of privacy and protection in their best interest under section 17(2) of the Charter. The clause is unreasonable and unjustified.

The stated objective of the amendment to ensure community safety and the quick apprehension of the young person can be achieved without this reform. Victoria Police already know who these young people are when they escape and where they are heading (i.e home). After the escape from Malmsbury in January the young people were apprehended in a quick manner. How will publication of identifying information assist police to apprehend any quicker? How would it have preventing any of the unfortunate train of events after the escape? All this reform will achieve, on our assessment, is to further stigmatise these children and young people on return into their communities and hinder their reintegration in the long term.

This is an exhaustive list of our concerns, but covers the major ones. We would welcome consultation on these proposed legislative amendments. Please contact Tiffany Overall on 9611 2439 if you have any queries.

Yours sincerely



The image shows a handwritten signature in blue ink that reads "T Overall". The signature is written over a light blue grid background. The signature is cursive and appears to be written by a woman.

Tiffany Overall
Advocacy and Human Rights Officer, Youthlaw, 03 9611 2439