



28 August 2017

The Hon John Rau MP
Attorney-General
GPO Box 464
Adelaide SA 5000

via email: agd@agd.sa.gov.au

Dear Mr Attorney

As South Australia's Commissioner for Children and Young people I have reviewed the Statutes Amendment (Youth Sentenced as Adults) Bill 2017 (the Bill) that was introduced to the Parliament of South Australia (SA) on 5 July 2017.

It is incumbent on me to advise, in accordance with the *Children and Young People (Oversight and Advocacy Bodies) Act 2016 (the OAB Act)*, on matters related to the rights, development and wellbeing of children and young people in South Australia, at a systemic level. I am also required under the OAB Act to assist in ensuring that the State, as part of the Commonwealth, satisfy its international obligations in respect of children and young people.

The Bill aims to ensure that all children and young people who commit serious offences are dealt with as adults. It also seeks to dispense with the rehabilitative focus under s3 of the *Young Offenders Act 1993* (the Young Offenders Act) by ensuring that the paramount consideration... in sentencing a child '...is the protection of the safety of the community.'

It is my view that these proposed changes contravene the human rights principles and instruments that underpin the core functions of my role as Commissioner and significantly impact on the rights, development and wellbeing of South Australian children and young people.

Rights

The United Nations *Convention on the Rights of the Child* (CRC) Article 3 states that:

"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."¹

Development

¹ Convention on the Rights of the Child 1990

The Young Offenders Act 1993 s3(1) states that:

“The object of this Act is to secure for youths who offend against the criminal law the care, correction and guidance necessary for their development into responsible and useful members of the community and the proper realisation of their potential.²”

Wellbeing

The *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (“*The Beijing Rules*”) Rule 5 refers to:

“two of the most important objectives of juvenile justice. The first objective is the promotion of the well-being of the juvenile. This is the main focus of those legal systems in which juvenile offenders are dealt with by family courts or administrative authorities, but the well-being of the juvenile should also be emphasized in legal systems that follow the criminal court model, thus contributing to the avoidance of merely punitive sanctions.³”

It is my position that s3 of the *Young Offenders Act 1993* provides a balance between the protection of the safety of the community and the rights, development and wellbeing of a child or young person who has offended. Furthermore, the courts already have regard to the “protection of the safety of the community” and existing legislation allows for children and young people to be dealt with as adults.

In addition, the proposed changes contravening the principles and rights, development and wellbeing of children and young people are unlikely to achieve the desired result of increased community safety. It has been widely documented that the best protection for the community would be achieved by the rehabilitation of a child or young person and addressing the causes of their offending to prevent further offending.

As stated by Monsignor David Cappo AO, (then) Commissioner for Social Inclusion in 2007:

‘If community safety were the only focus this would imply there is no need to address the causes of the offending of young people detained there, only to minimise its effects. Nothing could be further from the truth. By requiring all of the objectives to be a focus, we are endorsing the role of secure facilities in rehabilitation, accountability and restitution as well as community safety.’⁴

The reasons that underpin offending behaviour in children are complex, often compounded by entrenched socio-economic disadvantage. This is why vulnerable groups are often over represented in the youth justice system. The Office of the Guardian for Children and Young People has provided extensive detail regarding the implications that the proposed changes have for these groups in their submission.

Furthermore the submission made by the Youth Affairs Council of South Australia highlights other factors that the proposed changes have failed to recognise such as the downward trend in youth offending and research suggesting longer sentences are ineffective.

At the core of my concern with the Bill is its deviation from the human rights principles underpinning a youth justice response i.e. the requirement for an institutional response to young offenders that is separate to adult offenders. This is premised on the understanding

² Young Offenders Act 1993

³ Beijing Rules 1986

⁴ Cappo, D. (2007) Commissioner for Social Inclusion. *To Break the Cycle: Prevention and rehabilitation responses to serious repeat offending by young people.*

that children and young people are at a different stage of development, and that youth offending often occurs in the context of complex socio economic disadvantage.

Consequently our response to young offenders should have as its foundation a requirement to maximise the rights, development and wellbeing of children and young people. As has been articulated by many advocates of best practice in responding to youth offending I would further recommend that our approach;

- minimise the use of custody and ensure it is imposed as a last resort and for the shortest appropriate period of time
- maximise diversion opportunities
- implements early interventions that promote children and young people's education, health and well-being
- ensures rehabilitation is the primary goal
- utilises restorative justice approaches wherever possible
- develops detention environments that safeguard the rights and rehabilitation of children and young people
- is trauma-responsive in all areas of intervention
- provides therapeutic and developmentally appropriate services and education
- creates effective pathways for reintegration into the community.

I acknowledge the proposed amendment arises as a result of the tragic events of the last 18months and the understandable community alarm regarding this. However it is my view that with a better understanding of the nature and causes of youth offending and the efficacy of therapeutic and rehabilitative interventions, the community would prefer to embrace the opportunity to ensure young people have the best chance to become positive contributors in our community.

I therefore believe it may be timely to work in collaboration with the community and stakeholders more broadly to find solutions to the complex challenge of serious offending by children and young people. My office could be available to work with the Government to assist in this way.

Yours sincerely



Helen Connolly

Commissioner for Children and Young People

T: (08) 8226 3355

E: CommissionerCYP@sa.gov.au

P: GPO Box 1146, Adelaide SA 5001

W: occyp.sa.gov.au