



NTCOSS Submission to the Youth Justice and Related Legislation Amendment
Bill

April 2019

ABOUT NTCOSS

The Northern Territory Council of Social Service (NTCOSS) is a peak body for the Social and Community Sector in the Northern Territory (NT) and an advocate for social justice on behalf of people and communities in the NT, who may be affected by poverty and disadvantage.

NTCOSS has a broad membership base, made up of non-government and community organisations, Indigenous organisations, and community councils across the NT, as well as other organisations and individuals committed to social justice issues for people and communities who are socially and financially disadvantaged in the NT.

NTCOSS recognises the specific expertise of members that have a high level of contact with individuals and their families who have direct involvement with the youth justice system. In particular, NTCOSS supports the submission by member organisation, North Australian Aboriginal Justice Agency to the Scrutiny Committee.

INTRODUCTION

NTCOSS welcomes the opportunity to make a submission to Social Policy Scrutiny Committee on the Youth Justice and Related Legislation Amendment Bill 2019 (the Bill).

The amendments proposed in this Bill seek to progress the NT Government's commitment to the reforms recommended by the Royal Commission into the Protection and Detention of Children in the Northern Territory (the Royal Commission), in relation to youth justice. The Royal Commission's report and NT Government's response provided an opportunity to create significant change in the lives of children in the Northern Territory. These changes will go towards reversing policies that have seen an increase in the number of young people remanded in detention and have produced poorer outcomes for young people, their families and our communities.

NTCOSS is a member of the Legislative Amendment Advisory Committee (LAAC), which has worked closely with Territory Families' Law Reform Team in the development of the Bill over the past 16 months. The process of the LAAC enabled consultation and collaboration with members in identifying and developing legislative solutions to implement reforms to the Youth Justice and Care and Protection systems. The work of the LAAC is in keeping with the NT Government's commitment to working with the non-government sector to implement the reforms, as articulated in *Safe, Thriving and Connected: Generational Change for Children and Families*.

Despite the inclusion of several positive amendments, NTCOSS is concerned that this Bill does not go far enough, with the notable exclusions of:

- Raising the age of criminal responsibility (as per Recommendation 27.1 of the Royal Commission report)
- Addition of a qualifying condition that young people under the age of 14 years may not be incarcerated (as per Recommendation 27.1 of the Royal Commission report)

NTCOSS urges further consideration of these recommendations as part of the Bill.

FEEDBACK ON SPECIFIC ELEMENTS OF THE YOUTH JUSTICE AND RELATED LEGISLATION AMENDMENT BILL

NTCOSS supports the introduction of youth-specific bail considerations under the *Bail Act* that create a presumption in favour of granting bail for young people. This is consistent with recommendations by the Royal Commission.¹

NTCOSS supports the removal of breach of a bail condition as a criminal offence for young people. However, it is concerning that breach of a bail undertaking has not been included in this exemption. The Royal Commission recommended that children and young people be excluded from the full operation of offence to breach bail²; retaining the offence of breach of bail undertaking is inconsistent with this recommendation. There is a lack of evidence to support retaining the offence to breach bail undertaking, and accordingly no logical reason for distinguishing between bail conditions and undertaking in relation to young people.

The Royal Commission found that the introduction of breach of bail has contributed to the high numbers of children and young people held on remand; has had a disproportionate impact on Aboriginal young people; has been counterproductive in improving outcomes for young people and the community; criminalises behaviour that is not, on its own, criminal (such as being with a different family member than specified in bail conditions), and can lead to the entrenchment of children and young people in the youth justice and detention systems.³ There is no evidence that enforcing breach of bail (through arrest and detention) leads to decreased offending amongst young offenders.⁴ Criminalising breach of bail is inconsistent with the principle of detention as a last resort for young people, and has had a significant impact with the length of a young persons' convictions often reflective of an extensive breach history, rather than repeat offending. Research shows that the labelling of a young person as an 'offender', and increasing the number of their convictions are key contributing factors in the likelihood to reoffending.⁵ Conversely, evidence demonstrates that adequate support and intervening early are far more effective in reducing repeat offending among young people.⁶

NTCOSS supports the proposed confirmation in the *Youth Justice Act* that arrest is to be used as a measure of last resort, and recommends that this confirmation also be made in the *Police Administration Act*. This is in line with evidence on the vulnerability and developmental needs

¹ Recommendation 25.19, Report of the Royal Commission and Board in Inquiry into the Protection and Detention of Children in the Northern Territory' November 2017, Findings and Recommendations

² *ibid*

³ p.293, Report of the Royal Commission and Board in Inquiry into the Protection and Detention of Children in the Northern Territory' November 2017, Vol. 2B

⁴ Vignaendra, S, Moffatt, S, Weatherburn, D & Heller, E, 'Recent Trends in Legal Proceedings for Breach of Bail, Juvenile Remand and Crime' (May 2009), *BOCSAR Bulletin* No.128

⁵ (Uberto Gatti, Richard E Tremblay and Frank Vitam, 'Iatrogenic Effect of Juvenile Justice' (2009) 50 *Journal of Child Psychology and Psychiatry* 991)

⁶ Wong, Bailey & Kenny, 2010 'Bail Me Out, NSW Young People and Bail', Youth Justice Coalition, Public Interest Advocacy Centre, University of Sydney

of children and young people; is consistent with findings by the Royal Commission⁷, and is in keeping with the United Nations Convention on the Rights of the Child.⁸

NTCOSS supports amendments to prevent children and young people being held in police cells for lengthy periods of time. In response to findings that young people are being held in police cells for unreasonably long periods of time, the Royal Commission recommended that a provision be made that children and young people may be held in custody without charge for no longer than four hours, and that any extension may only be granted by a Judge.⁹

However, NTCOSS does not support the proposed amendments to section 137 of the *Police Administration Act* in its current form, as it permits police to allow children and young people to be held up to 24 hours with review by a Senior Sergeant, and without requiring review by a Judge. Furthermore, NTCOSS is concerned that in combination with proposed amendment under Clause 27, section 27 of the *Youth Justice Act*, this will result in no maximum time limit that a young person can be held in police cells prior to being charged. This is inconsistent with the principle of detention as a last resort, is inconsistent with legislation in other Australian jurisdictions, and fails to address the findings and recommendations by the Royal Commission.

NTCOSS supports amendments to the *Youth Justice Act* to improve access to diversion programs for young people, by removing legislative barriers to its use. However, NTCOSS is concerned some traffic offences remain 'non-divertible offences' in this Bill, despite recommendation by the Royal Commission that they be eligible for diversion.¹⁰ The years between early adolescence to early adulthood are an intense time for brain development, and accordingly a time of increased risk. Young people lack the behavioural and emotional maturity of adults, particularly reduced decision-making skills, priority-setting and impulse control. It is crucial that responses to youth offending recognise this lack of maturity, be adapted to the stage of adolescent development, and help to build young people's resilience and ability to avoid future offending.¹¹ A focus on diversion programs allows a more effective and targeted approach to the addressing the causes of offending behaviour. The benefits of diversion in reducing reoffending are clearly demonstrated at a local level, with 86.4% of young people who participated in youth justice conferences in the NT during 2016 - 2017 not going on to reoffend.¹²

NTCOSS supports the proposed provision that all court proceedings under the *Youth Justice Act* be held in a closed Court. This is consistent with Royal Commission recommendations, and aligns with the *Care and Protection of Children Act*.¹³ Unwarranted media reporting and

⁷ p20 Report of the Royal Commission and Board in Inquiry into the Protection and Detention of Children in the Northern Territory' November 2017, Findings and Recommendations

⁸ Article 37(b), 1989 United Nations Human Rights, Convention on the Rights of the Child

⁹ Recommendation 25.3, Report of the Royal Commission and Board in Inquiry into the Protection and Detention of Children in the Northern Territory' November 2017, Findings and Recommendations

¹⁰ Recommendation 25.11, *ibid*

¹¹ Alex Stevens, Isabel Kessler and Ben Gladstone 2006, 'Review of Good Practices in Preventing Juvenile Crime in the European Union, European Crime Prevention Network

¹² p46 NTPFES 2017, NT Police, Fire and Emergency Services 2016 – 17 Annual Report

¹³ Recommendation 25.25 Report of the Royal Commission and Board in Inquiry into the Protection and Detention of Children in the Northern Territory' November 2017, Findings and Recommendations

identification of young offenders has been found to have a serious, negative impact on their rehabilitation, leading to stigmatisation and no improved effect on community safety.¹⁴ It is not the role of the media to provide scrutiny to Court processes; this oversight and accountability best sits with the legal advocates and an independent watchdog such as the Office of the Children's Commissioner.

¹⁴ p.307 Report of the Royal Commission and Board in Inquiry into the Protection and Detention of Children in the Northern Territory' November 2017, Volume 2B