



PO Box 1146
Adelaide, SA 5001
(08) 8226 3355

CommissionerCYP@sa.gov.au

20th June 2018

Hon Vickie Chapman
Attorney-General
11th Floor, 45 Pirie Street
Adelaide, SA 5000

Dear Attorney-General

Re: Independent National Security Legislation Monitor Review (INSLM Review)

As the Commissioner for Children and Young People my mandate is to listen to children, protect their rights and interests and be an advocate for all children and young people in South Australia on all issues affecting them.

I have been approached to make a submission in relation to the prosecution, bail and sentencing of children in relation to Commonwealth terrorism offences. Under the *Crimes Act 1914* ("Act") terrorism has a wide definition and the seriousness of these offences have not been adequately dealt with at common law. I believe that children charged with these offences should be heard in the Youth Court, who is better able to deal with this cohort.

It will also ensure that the principles set down in Article 3 on the Convention on the Rights of the Child which Australia ratified in 1990 states:

"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".

The different treatment of children is well supported by common law and is well embedded in our legal system due to:¹

1. Children's lack of maturity, which makes them prone to ill-considered or rash decisions. Because of this immaturity they lack a degree of insight, judgment and self-control possessed by an adult. Further, they may not fully appreciate the nature, seriousness and consequences of their criminal conduct;
2. Children's potential to be rehabilitated due to their stage of mental and emotional development. This is also one of the great objectives of the criminal law. Children are more open to influences designed to positively change their behaviour than adults. There is a community interest in the effective rehabilitation of young offenders, as the community will be protected from further offending.

¹ *R v Mills* [1998] VSC 241, *R v Curtis* [2013] ACTSC 291 and *Azzopardi v The Queen* [2011] VSCA 372,

3. The understanding that courts sentencing young adults to an adult prison would more likely impair, rather than improve, the offender's prospects of successful rehabilitation. This is due to the potential for exposure to corrupting influences and the exacerbation of anti-social tendencies that could have adverse flow-on consequences for the community.

It is well established that when children are treated as adults they are more likely to be a danger to society when released. Even incarceration for adults has very little impact on crime.² In fact, there is now a body of evidence showing that incarceration is in fact criminogenic, it actually increases a person's risk of engaging in crime in the future".³

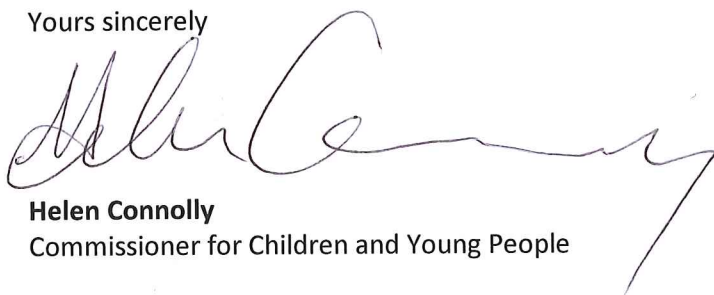
Therefore, I believe that the Act should explicitly recognise children and their unique set of circumstances and offer greater protections to children.

I agree with the Australian Law Reform Commissions ("ALRC") recommendation 27-1⁴ that young offenders should continue to be dealt with in the relevant state or territory. To ensure consistency, minimum standards for the sentencing, administration and administration of released offenders should be incorporated into the Act, including:

1. Incorporating the Australian Children's Commissioners and Guardians Charter of Rights for Youths Detained in Detention Centres similar to section 22(3) of the *Youth Justice Administration Act 2016 (SA)*.
2. When children are charged they should have a comprehensive mental and physical health assessment so that their capacity can be fully determined from the outset and they get the appropriate assistance they need and have an appropriate plan.
3. That these children have an advocate/support person throughout the entire legal process. Someone that can convey to the court the witnesses capacity and understanding of the process. Something similar to the Witness Assistance Officers currently at the SA Office for the Director for Public Prosecutions.
4. A presumption for bail and that age becomes one of the exemptions for bail. Judges would still have the discretion to refuse bail in very serious circumstances as it would just be one mitigating factor.
5. A right to a lawyer at all times.
6. When sentencing there should not be a minimum non-parole period. It should be at the discretion of the Judge to determine what the non-parole period would be.

If you have any comments please do not hesitate to contact me.

Yours sincerely



Helen Connolly
Commissioner for Children and Young People



² Stemen D, *The Prison Paradox: More Incarceration Will Not Make Us Safer*, July 2017, Department of Criminal Justice and Criminology, Loyola University Chicago

³ *ibid*

⁴ ALRC, *Same Crime, Same time: Sentencing Federal Offenders*, ALRC 103 (13 September 2006), 57-60.