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4th December 2018

The Hon Stephen Wade MLC
Minister for Health and Wellbeing
GPO Box 2555
Adelaide, SA 5001

cc: The Hon Vickie Chapman MP, Deputy Premier and Attorney General

Re: *The Controlled Substances (Youth Treatment Orders) Amendment Bill 2018*

Dear Minister Wade

I am writing to express my concern about the *Controlled Substances (Youth Treatment Orders) Amendment Bill 2018*. I am also writing to support submissions made by the SA Network of Drug and Alcohol Services, The Guardian for Children and Young People, The Law Society of South Australia, Australian Medical Association (South Australia) and the Youth Affairs Council (South Australia).

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. I am also required under the OAB Act to assist in ensuring that the State, including statutory bodies, as part of the Commonwealth, satisfies its international obligations in respect of children and young people.

The current iteration this Bill does not protect young people's rights and effectively breaches a number of their fundamental rights through the criminalising of what is essentially a health issue. The acknowledgment of these rights should be reinforced by increased government responsibility to provide support to these young people in the long term. There is a lack of evidence that the proposed mandatory treatment will make any positive impact on young people battling an addiction. In fact it is more likely to be counter-productive and could further damage their lives. It begs the question why these parents, children and young people cannot get the support they need at an earlier stage. By effectively forcing parents to "dob" on their children, breaches trust and potentially further isolates the young person from relationships and social networks.

I have attached more detailed reasons on why I think resources should be invested into services that encourage young people to seek help earlier and assist them and their families access community based support services.

I am happy to discuss these issues with you at a time that is convenient for you.

Yours sincerely

Helen Connolly
Commissioner for Children and Young People

Feedback on Sentencing Discount Scheme Review

The Bill breaches fundamental rights that the State is under a duty to protect

The Bill does not recognise children and young people's fundamental rights, including:

- Article 37 of the UN Convention on the Rights of the Child (CRC): "No child shall be deprived of his or her liberty unlawfully or arbitrarily [...] and should only be used as a measure of last resort". However, it appears that clause 54C of the Bill allows for children and young people to be detained even when it is not used as a measure of last resort. The test to detain a young person is much lower for the court: that there is a "**reasonable likelihood** that the respondent [children or young person] is habitually using"; that the young person "**may** be a danger to themselves or others"; and they are "**unlikely** to voluntarily seek a relevant assessment". In contrast, in Victoria, detention for treatment can only be used as a last resort and as a measure to save the person's life or prevent the serious damage to the person's health.¹
- The proposed length for treatment of up to 12 months is not consistent with Article 37 of CRC which states that detention should only be for the shortest appropriate period of time. In fact, in Victoria the limit is 14 days and gives time for the person undertaking mandatory treatment to opt to undertake voluntary treatment. The SA Bill does not appear to have the same intent.
- In turn, Clause 54 effectively relinquishes children and young people's rights under Article 12 of the CRC which gives them the right to have a say in decisions that affect their lives and to have the right to be heard in any judicial and administrative proceedings affecting the child or young person.
- The Bill also breaches the child's right to a legal representative under Article 37(d) of the CRC. This is in contrast with the Victorian law where the person who is subject to an application has a right to a representative (legal, police or guardian) depending on the applicant.²

There is no evidence that mandatory treatment works

In fact, in a systemic review of nine studies assessing the outcomes of compulsory treatment it concluded that overall there was no evidence to suggest improved outcomes and a couple of studies reviewed actually suggested that it could be "harmful".³ This is supported by Australian research⁴ that says there is a lack of evidence to prove that mandatory treatment works and includes the sentiment that "compulsory treatment of young people does not work". In Victoria, a review of a similar act⁵ aimed at enforcing mandatory treatment for adults found only 28% had abstained or reduced their use after six months. This is half the success rate of voluntary private treatments and not encouraging.⁶

Oversimplifying the success of other country's drug policies

MPs using countries like Sweden to support mandatory treatment⁷ is simplifying and trivialising its long-term, wide-ranging multifaceted approach to addressing its drug problems that concentrates on treatment and prevention.

¹ *Severe Substance Dependence Treatment Act 2014 (Vic)* s1(a)

² *Ibid* s 18

³ 'The Effectiveness of Compulsory Drug Treatment: A Systemic Review', *Int J Drug Policy*, February 2016 1-9 accessed at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4752879/> on 26 November 2018.

⁴ Pritchard .E. et. al., 'Compulsory Treatment in Australia', *Australian National Council on Drugs* (2007), 13 February 2008, accessed at <http://apo.org.au/node/8087> on 26 November 2018.

⁵ *Severe Substance Dependence Treatment Act 2014 (Vic)*.

⁶ Lee .N., 'Drug rehab: What works and what to keep in mind when choosing a private treatment provider', *ABC News* accessed at <https://www.abc.net.au/news/2018-05-02/drug-rehab-what-works-and-what-to-keep-in-mind-when-choosing/9718124> on 27 November 2018.

⁷ Hansard, *Controlled Substances (Youth Treatment Orders) Amendment Bill*, Parliament of South Australia, 15 November 2018 accessed at

There is little evidence that Sweden's hard-line policies have actually reduced drug taking in the country. Any evidence points to the reduction in drug use appear to correlate with their wide-ranging early intervention and drug prevention policies and strategies.⁸ The National Council for Crime Prevention of Sweden, for example, concluded that the criminalisation of personal drug use and an increase in penalties did not coincide with a decrease in drug habits of young people.⁹ Further, there was an increase in drug use when the government reduced investment in treatment facilities in the early 1990s due to the recession when 90 treatment homes were closed.

Unlike South Australia, where there is very little investment in drug treatment facilities to help people, Sweden has invested properly to ensure that there are resources to offer evidence-based and individually tailored care and treatment that is "generally provided on the principle of voluntary participation. In exceptional cases, mandatory protective legislation may be used if the individual does not consent to voluntary care and if this person risks seriously harming themselves or other people."¹⁰

Further, in Sweden, drug prevention activities are a "key element" of its national drug strategy and should also be considered by this government, including, for example:

- School-based prevention interventions, in the context of promoting a healthy school environment;
- A number of community-based programmes at the municipal level focus on providing alternative leisure activities in safe settings;
- Programmes for parents about alcohol and drugs; and
- Selected prevention activities, mainly early detection programmes (including programmes for children whose parents are dependent on alcohol and drugs).¹¹

The Bill neglects to support children and young people in the long term

There are no provisions to provide children and young people with a long term support plan to ensure they do not relapse and they are safe when they leave. The reason for many (not all) children's substance abuse is the fact they have come from a traumatised background and disconnected from family and community in some way. There appears to be no acknowledgement or recognition by the government that the reason these children are in this position is because there are no intervention services and supports for them to get back on track, so to force them into mandatory treatment and then release them back into the same environment could actually exacerbate underlying problems.

Instead of vast amounts of money being invested into mandatory treatment centres, consistent with the government's early intervention strategy and the new SA Health Mental Health Services Plan, investment should be concentrated to protect the needs of young people with drug and mental health issues at earlier stages. This includes investment for voluntary drug treatment services for young people, more homelessness services and services that reintegrate them back into education and society.

<http://hansardpublic.parliament.sa.gov.au/Pages/HansardResult.aspx#/docid/HANSARD-10-25226> on 26 November 2018.

⁸ United National Office on Drugs and Crime, 'Sweden's Successful Drug Policy: A Review of the Evidence', February 2007 accessed https://www.unodc.org/pdf/research/Swedish_drug_control.pdf on 27 November 2018.

⁹ Ibid at 16

¹⁰ Government Offices of Sweden, Ministry of Health and Social Affairs, 'Swedish drug policy – a balanced policy based on health and human rights', accessed at https://www.government.se/496f5b/contentassets/89b85401ed204484832fb1808cad6012/rk_21164_broschyr_nar_kotika_a4_en_3_tillg.pdf on 28 November 2018.

¹¹ European Monitoring Centre for Drugs and Drug Addiction, 'Sweden Country Drug Report 2017', 2017 accessed at <http://www.emcdda.europa.eu/system/files/publications/4504/TD0116923ENN.pdf> on 27 November 2018.