



Commissioner for Children and Young People
Western Australia

All enquiries

Legal and Constitutional Affairs Legislation Committee
legcon.sen@aph.gov.au

Dear Sir/Madam

Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2017

Thank you for the opportunity to review the Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2017 provisions and to provide a submission to the Senate Legal and Constitutional Affairs Legislation Committee's inquiry.

As Commissioner for Children and Young People in Western Australia (WA) I have a statutory responsibility under the *Commissioner for Children and Young People Act 2006* to monitor and promote the wellbeing of all children and young people under the age of 18 years. In undertaking these responsibilities, I must give priority to Aboriginal¹ children and young people and those who are vulnerable or disadvantaged for any reason. I must also have regard for the United Nations Convention on the Rights of the Child.²

It is within the context of my roles as an independent, statutory officer and the functions outlined above that I provide the following comments:

1. I welcome the exclusion of young people aged under 18 from the mandatory sentencing provisions under proposed subsection 16AAC(1).
2. New section 474.23A (conduct for the purposes of electronic service used for child abuse material) is not limited in application to offenders over 18 years of age. I note that in accordance with section 474.24C of the *Criminal Code*, the Attorney-General must provide his consent to commence proceedings where the offender is under the age of 18. I request that the Senate reviews these provisions and their impact on children and young people, and ensures that there are sufficient safeguards to prevent the unnecessary prosecution of young persons.
3. Proposed paragraph 15AAA(2)(e) requires the bail authority to consider the impact a

¹ For the purposes of this submission, the term 'Aboriginal' encompasses Australia's diverse language groups and also recognises those of Torres Strait Islander descent. The use of the term 'Aboriginal' in this way is not intended to imply equivalence between Aboriginal and Torres Strait Islander cultures, though similarities do exist.

² United Nations 1989, *Convention on the Rights of the Child*,
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refusal of bail would have on someone who is aged under 18 years. As noted in the Explanatory Memorandum to the Bill, a person who is under the age of 18 years can be severely affected by being remanded into custody and a decision to do so should be considered a matter of last resort. Again, I request that the Senate reviews these provisions and their impact on children and young people, and ensures that there are sufficient safeguards to prevent the unnecessary incarceration of young persons. There are a number of supervision issues affecting bail practices in Western Australia, for example the lack of a responsible adult causing refusal of bail (without additional support being provided such as a child services notification) and a lack of cultural appropriateness of bail terms for some Aboriginal children and young people leading to a subsequent breach³, which may impact upon the consideration envisioned by 15AAA(2)(e).

4. Item 1 repeals the current subsection 15YM(1) and substitutes a new subsection which allows for evidence in chief of a vulnerable witness to be admitted as evidence in chief if a specified person conducted their interview. I note that this removes the requirement to seek leave before a recorded interview of a vulnerable witness can be admitted as evidence in chief, and that removing the requirement to seek leave brings the Commonwealth's vulnerable witness protections into line with the approach taken by states and territories. I welcome this change to current Commonwealth practice.

Please do not hesitate to contact my office should you require any further assistance in respect of these submissions or the provisions of the proposed Bill.

Yours sincerely

COLIN PETTIT
Commissioner for Children and Young People (WA)

27 September 2017

³ See the Commissioner for Children and Young People (WA) (2016) "Speaking Out About Youth Justice" report available at: <https://www.ccp.wa.gov.au/our-work/projects/youth-justice-consultation/>