



The New South Wales Bar Association

99/450

22 December 2011

The Hon Greg Smith SC MP
Office of the Attorney General
Level 31 Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2001

Dear Attorney

Review of the Young Offenders Act 1997 and the Children (Criminal Proceedings) Act 1987

The New South Wales Bar Association is grateful for the opportunity to comment on your review of the *Young Offenders Act 1997* and the *Children (Criminal Proceedings) Act 1987* (CCPA).

The following submission does not respond to every issue addressed by the Consultation Paper in relation to this issue, but particular questions of relevance to the Association and its members.

Question 1: Does New South Wales's legislative framework take the right approach to offending by children and young people?

It is the position of the Association that the current legislative framework is appropriate for children and young people.

Questions 2-20: Young Offenders Act

The continuation of the *Young Offenders Act* with its focus on diversion from the criminal justice system is supported.

Question 21: Age of criminal responsibility under the CCPA

The Association is of the view that there is no need to change the age of criminal responsibility. In short, the current statutory regime, in conjunction with the common law principle of *doli incapax*, is satisfactory.

Questions 25 (b) and (c): Limitations on the use of evidence of prior offences committed as a child, and the amendment of s 15 of the CCPA

The Association is of the view that any non-conviction of a child in the Children's Court should not be admissible in criminal proceedings in an adult jurisdiction. Section 15 of the CCPA should be amended to make it easier to understand. The problems with interpreting section 15 were raised in *Tapueluelu v R* [2006] NSWCCA 113.

Question 26: Sentencing by courts other than the Children's Court

The Association is of the view that any court sentencing children should be required to take into account the sentencing principles in the CCPA. If courts other than the Children's Court sentence children they should be required to consider whether sentencing alternatives under the CCPA are appropriate before proceeding to sentence at law.

Question 30: Power to request a report from government agencies

Young people appearing in the Children's Court often have pressing care issues including a history of abuse, family dislocation, homelessness or related issues. These issues may be critical to understanding why the young person has come before the criminal jurisdiction. The Children's Court should have the power to request reports from the Department of Family and Community Services (formerly DOCs) and related agencies.

Question 33: Traffic offences

The Children's Court should have the power to hear all traffic offences allegedly committed by young people.

Question 34: Should the CCPA clarify whether a child can be sentenced to a control order for a traffic offence?

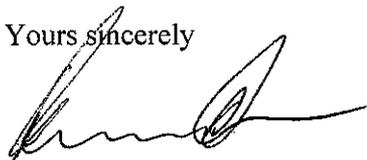
The CCPA should make it clear that a child can be sentenced to a control order for a traffic offence.

Question 39: Should the Young Offenders Act and CCPA be merged?

The Association supports merging the two acts. This would simplify the regime of dealing with young offenders and potentially promote a greater understanding and integration of the diversionary and court based alternatives. We see no reason why the objects of both Acts could not be incorporated into a merged Act.

If you or your officers have any questions, please do not hesitate to contact the Executive Director of the Association, Mr P A Selth on 9232 4055.

Yours sincerely



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President