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Dear Sir

REVIEW OF LAWS GOVERNING JUVENILE OFFENDERS SUBMISSION

Thank you for the opportunity to provide comment on this important area of concern.

Wentworth Shire Council writes this submission in the knowledge that its level of tolerance to crime is diminishing and the apparent level of crime that the community believes it has to accept in this day and age is increasing.

This submission is written, not based on countless hours of analysing the consultation paper, but in the knowledge that if the "system" does not address underlying causes of crime, and more particularly juvenile crime, then the outcome will continue to be unacceptable and the ability to turnaround the decay in our communities will become extremely difficult, something that governments and others have not been able to do successfully and sustainably throughout the country.

This Council is appealing to the policy and law makers to draw a line in the sand and ensure that all citizens are treated equally, respectfully, but firmly.

This Council believes that the focus should be on community well being and liveability rather than whether there are more numbers being processed through the courts or whether the numbers are increasing or decreasing in terms of jail terms or whether there are sufficient funds to deal with offenders or whether one community is better or worse than another.

This Council makes this submission in the knowledge that our communities are increasingly frustrated that they cannot deal with the issues locally and the system appears to favour the offender in relative terms to the law abiding citizens.

This Council has directly intervened in problem situations to facilitate favourable outcomes because our communities have asked us to. Yes, it is not our core business for local government. However, who is left to stand up if the courts, the Police, the politicians and numerous agencies cannot make enough of a difference?

Our communities are suffering. They are constantly confronted with various types of crime. Often the response is the "revolving door" syndrome where it appears that the courts are too lenient on offenders and for young offenders the answer appears to be "too young" or "give them another go" or "it is not worth pursuing because nothing will happen anyway".

.../2.

Council has asked our residents to write to you in the hope that you will understand our plight. However, we are dealing with legislation with not a lot of time to respond in the midst of our daily pressures, so would one expect many letters from people who do not normally write them or from many who cannot understand or care to understand the legislation?

Our communities simply want to let you know the importance of real change in legislation (whatever that may be) to directly impact on real outcomes. Our communities want fair outcomes for all, including the victims of crime!

The Consultation Paper

The terms of reference of your review in relation to the *Young Offenders Act 1997* and the *Children (Criminal Proceedings) Act 1987*, are as follows:

- (a) There will be a review of the *Young Offenders Act* and the *Children (Criminal Proceedings) Act*, to ensure that the legislation continues to reflect best practice and meets the needs of young people and the community, including victims.
- (b) The review is not to consider Division 2, Part 3A of the *Children (Criminal Proceedings) Act*, governing publication and broadcasting of names in criminal proceedings.
- (c) In general terms, the review is to:
 - (a) Consider whether the policy objectives and principles of the legislation remain valid, and whether the terms of the legislation remain appropriate for giving effect to those objectives and principles;
 - (b) Consider the implementation of the legislation in practice;
 - (c) Identify whether any amendments to the legislation are needed; and
 - (d) Identify how the legislation can be used more effectively in practice.
- (d) The review is also to consider specifically:
 - (a) Whether responsibility for hearing all children's traffic matters should be transferred from the Local Court to the Children's Court; and
 - (b) Whether the *Young Offenders Act* and the *Children (Criminal Proceedings) Act* should be amalgamated.
- (e) In considering the above matters, the review must take into account:
 - (a) data on the NSW youth justice system obtained from the NSW Police Force, NSW Juvenile Justice, the courts and the Bureau of Crime Statistics and Research;
 - (b) previous evaluations and reports on the legislation and the NSW youth justice system generally;
 - (c) the evidence and research base underpinning the legislation and youth justice more generally, including legislation and practice from other jurisdictions and international standards; and
 - (d) submissions from organisations and members of the public.
- (f) A report on the review will be submitted to the Attorney General and Minister for Justice. Whilst the terms of reference say it will look into legislation we are mindful of media releases put out by politicians encouraging the public, and victims of crime, to tell their story.

Reference 2.1 of Paper

The table on page 6 indicates that the data on children proceeded against for major crime relates to recorded crime. It is clear to this Council that there is reluctance for the community to continually report crime. It is something that this review must consider carefully as analysing recorded statistics without anecdotal evidence simply does not reflect what is going on.

This Council and the Police always request that all crime is forwarded on to the Police for recording. We know that over time this does not happen on all occasions. It is difficult to assess how much is not being recorded.

We agree that a small number of offenders appear to cause most of the problems. The repeat offenders are of concern.

A survey of communities needs to occur about how many incidents are not reported and why.

On page 5 of the paper it makes the statement that "Aboriginal and Torres Strait Islander young people are overrepresented". An indictment on the system but it is true for our communities also.

On page 6 it states that "over the past five years, the number of children aged 10 to 17 years proceeded against some way by the New South Wales police has fallen for four major categories of crime, rising for three categories and remain stable for the other nine categories."

Our view is that this trend is more likely to reflect the lack of police resources or an unwillingness to pursue proceedings rather than any indication that the level of crime has flattened out to some degree. It could also be a result of lenient magistrates which is something in the minds of our local residents.

Reference 2.2 Current Evidence – what works?

In this section references made to the "what works" principles and the types of interventions that are shown to be ineffective when dealing with children. It is interesting to note that one of the ineffective conclusions is that detention is not cost-effective in reducing young offending. The question for us is whether detention is ineffective or whether it is the lack of resources that leads to it being ineffective.

To us this section simply reflects the lack of resources being put into dealing with these issues.

Increased resources should be allocated to the various types of interventions that have been identified in relation to dealing with children.

Reference 2.3 International Standards

This section refers to International Law which deals with the rights of children in criminal justice systems.

Question for us is whether the minimum standards for children accused of breaking the law are overly protective?

Reference 3 Young Offenders Act 1997 (NSW)

Reference 3.3 Objects of the YOA

Question 2

In relation to 2(a) the only comment that we want to make is that to ensure the objects continue to have meaning for the community sufficient resources need to be allocated by governments to achieve the desired results.

In relation to 2(c) "reoffending" should primarily be dealt with by the court process. The question that might be asked is whether the court process commences at the second offence or some other number.

3.4 General Principles of the YOA

In relation to 3(a) the principles appear to be sound. However, where it refers to (f) parents being recognised and included in justice processes involving children there must be an adequate assessment process to ensure that those parents that are not capable of being involved to be supported adequately by appropriately trained personnel.

In relation to 3(h) this Council is concerned that the entrance behind the principal is that not all young people are treated the same. The fact that there is an overrepresentation of Aboriginal and Torres Strait Islander children should not be a reason to create a "lesser" process.

3.5 Scope of the YOA

In relation to 4 it is argued that the age limits need to be carefully reconsidered. In our communities there are offences committed by persons under the age of 10. There is also a thought that 18 should be reduced to 16.

3.5.2 Offences covered by the Act

No comment.

3.6 Warnings

3.6.1 Offences for which warnings may be given

In relation to 7 we are saying is that warning should be available for a more limited range of offences. The stands of the 2002 statutory review of the YOA that recommended expanding the range of offences for which a warning may be given to include larceny involving theft from a shop, is not supported.

3.6.2 Entitlement to be dealt with by a warning

On page 19 states that a child cannot be given a warning if the circumstances of the offence involved violence. Based on the definition of the child and the ages involved a response to question eight is that the current provisions governing children's entitlement to warnings appears to be inappropriate. We argue that it is appropriate to give a warning to a child under the age of 18. At what age such a warning is inappropriate to be further assessed.

3.6.3 Giving warnings

It would seem sensible to allow a police officer to attach conditions to a warning, where appropriate.

3.6.4 Recordings of warnings

No comment.

3.7 Cautions

3.7.1 Conditions required forgiving a caution

In relation to question 11 it is argued that the conditions of a warning where a child must admit the offence or the child consents to the giving of a caution are too restrictive.

3.7.2 Process of arranging and giving a caution

3.7.3 After a caution is given

No comment.

3.8 Youth Justice Conferencing

3.8.1 Principles of conferencing

In relation to the principles of conferencing I appear to be still valid. The dot points in relation to "be culturally appropriate, where appropriate" should not become an excuse to lessen the process of some.

It is noted on page 23 that nearly 1 in 10 outcomes were not successful in relation to youth Justice conferencing.

3.8.2 Conditions to be met before holding a conference

3.8.3 Referrals to conferences by courts

No comment.

3.8.4 Other provisions governing conferences

It is submitted that where there has been a failure of a conference to reach a decision on the matter should be dealt with a higher level.

3.9 YOA interventions and legal advice

It is argued that the need for a child to admit the offence may not achieve desired results of the child is quite knowledgeable about these conditions.

It is argued that an experienced child under the age of 18 will not have too much trouble in getting around conditions.

3.10 YOA interventions and criminal history

This section states that in general, are warning, caution conference does not have to be disclosed. It is argued that the history of warnings, cautions etc are important in relation to finding a lasting solution to offending (particularly repeat offending).

3.11 Appropriateness and adequacy of YOA interventions

It is acknowledged that the YOA has been successful in its objective of diverging young offenders from the formal court system. However, the outcome of reducing crime and offences in general is the real objective and not the process.

In relation to question 20 is argued that diversion is still a legitimate aim of YOA but not at the expense of delivering poorer outcomes for our communities..

In relation to 20(b) strong penalties are required for repeat offenders.

In relation to 20(c) is questionable whether warnings, cautions and conferences deliver the desired outcomes for repeat offenders.

In relation to 20(d) repeat offenders should be referred to a higher process. YOA probably has a limit.

In relation to 20(e) we doubt that the YOA would be seen as adequately catering for the needs of victims. Our communities simply want crime to be stopped or significantly reduced. Our communities are not confident that the systems are delivering these outcomes.

3.12 The diversion of Aboriginal and Torres Strait Islander children under the YOA

Many in our communities would be offended by the reference of "overrepresentation" when dealing with this section of youth. The word "equity" is used, however, a different approach seems to simply reflect a discrimination on how a youth is being dealt with.

All youth should be given the same opportunities for the same processes, and receive the same penalties where necessary.

3.13 Children with cognitive and mental health impairments

No comment.

3.14 Oversight of the YOA

It seems reasonable in relation to question 23 that there is a body to oversee YOA. However, this body should be accountable to the community and provide an annual report.

4 Children (Criminal Proceedings) Act 1987

4.3 Age of criminal responsibility

In this section states that children aged 10 to 14 years of age are said to be capable of an offence. Our communities believe that children in this age bracket are often aware the seriousness of crimes committed.

It is argued that the age of criminal responsibility should be changed. Is argued that the age group should be eight and below.

4.4 Structure of the Back

4.5 Guiding principles

4.6 Commencement of proceedings against children

No comment.

4.7 Hearing of children's criminal proceedings

In relation to question 25 (b) it is argued that the limitations on use of evidence of prior offences, committed as a child, are too restrictive. It is argued that such evidence is important for the long term rehabilitation of young offenders, particularly repeat offenders.

4.8 Penalties

Although many in our community believe that penalties should increase the real issue is often the way the penalties are applied in the courts. Too often the community does not see an adequate enough penalty to fit the crime. Are communities freely talk about the "revolving door" syndrome. Too often the public is left disillusioned by minor or no penalties for obvious crimes that should be penalised.

In relation to question 26 we believe it is appropriate for courts other than the Children's Court, when dealing with indictable offences, to impose adult penalties or Children's Court penalties.

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In relation to question 27 it would appear the list of factors is adequate.

In relation to question 28 would appear the list of special circumstances is adequate.

4.9 Background reports

In relation to questions 29 it is argued that background reports, including previous offences, warnings, et cetera are important in the process of dealing with youth offences.

In relation to question 29(b) it is argued that the contents of reports should not necessarily be over prescribed but it is important to have publicly reported the other matters considered that are not listed on page 38. Clearly where there are trends then the list of contents should be expanded.

4.10 Other reports

In relation to question 38 courts should have the power to request a report from relevant government agencies in order to determine whether a young person is at risk of serious harm (and in need of care and protection) and/or whether they are homeless.

4.11 Jurisdiction of the Children's Court

4.11.1 Serious Children's Indictable Offences

No comment.

4.11.2 Age of Defendants

No comment.

4.11.3 Traffic Offences

In relation to question 33 the current law appears to be sufficient in that any child old enough to drive should be dealt with in the same forum as adults. However, the penalties should not be "lessened" because it is a child.

For a child who is under the legal age limit to drive, and this occurs on numerous occasions in our area, there should be significant penalties imposed.

4.12 Hearing charges in the Children's Course

No comment.

4.13 Penalties in the Children's Course

In relation to question 36(a) the penalty provisions should be increased.

In relation to 36(b) our communities would say that in practice the courts follow the "soft" option rather than considering maximum penalties.

In this section one of the considerations is the capacity to pay. This would probably results in minor fines being imposed on many occasions. The approach should be to extend the period of time to pay the fine and, if necessary, well into adulthood, to ensure that the fines imposed are commensurate with the crime.

This is the area that our community believes is not strong enough. This is the area that our community believes that insufficient consideration is being given to the "victim".

4.14 Terminating or bearing orders

4.15 Youth Conduct Orders

4.16 Interaction between the Bail Act 1978 and the CCPA

No comment.

5 Should the two Acts be merged?

No comment.

This Council has made many representations on behalf of the community as a result of concerns that the system does not appear to find lasting or strong enough solutions to deal with young offenders.

It is hoped that this review can lead to a closer relationship between what the communities are saying and what is delivered through legislation.

We look forward to telling our communities that the review will make a difference and the results should be observed on the ground in due course. Without the "visible" change in due course the community will feel the review exercise has not been worthwhile.

Yours faithfully



Margaret Thomson
Mayor

