



The kids aren't alright

MARTY AUST President, CLANT

On 30 May this year CLANT gave evidence at the Social Policy Scrutiny Committee (SPSC) hearings in relation to the Youth Justice and Related Legislation Amendment Bill 2019.

The CLANT committee had been formally considering our continuing membership with the Legislative Amendment Advisory Committee (LAAC) since our monthly meeting in April this year. We had put the Department of Territory Families on notice of this position prior to that meeting.

Between that meeting and our giving evidence we had involved ourselves in discussions relating to revising the terms of reference of the LAAC for the ongoing improvement and transparency of LAAC.

We had sent a formal written submission to the SPSC prior to the hearings. Our primary concern was in fact broadening the scope of the amendments and incorporating into legislation a greater number of the recommendations of the Royal Commission; in particular:

1. The minimum age of criminal responsibility must be raised:

The Assembly should defer passage of the Bill to enable the inclusion of provision of raising the minimum age of criminal responsibility to 12 years or more, or;

The Assembly should enable appropriate amendments to the Bill to ensure the safeguards of youth under the age of 12 who will be impacted by this Bill.

2. No child under 14 years should be sentenced to detention:

The Assembly should defer passage of the Bill to enable the inclusion of provision(s) for the non-detention of youths under the age of 14 years.



3. Clause 13 must encompass a full repeal of the offence of breach of bail:

The Assembly seek that the Bill is amended in order that the offence of section 37B is repealed for youth.

4. Clause 21 must not be watered down, and must limit the holding of a child in police custody to 4 hours only, thereafter an officer must charge and seek judges review or release the child:

The Assembly should not pass this part of the Bill; or The Assembly should defer passage of the Bill to enable appropriate amendments to ensure the safeguards of youth who will be impacted by this Bill.

5. Clause 44 'prescribed offences'; the removal of offences against Part V and VI of the Traffic Act:

The Assembly seek that the Bill is amended in order that traffic offences are not included as prescribed offences under 3A (g).

Our submissions formally acknowledged and supported the submissions provided by NAAJA and generally speaking, were consistent with the submissions of many non-government organisations that provided submissions or gave evidence.

At the hearings, the Department of Territory Families, made public their intention to make four significant amendments to the Bill:

1. replace 'and' with 'or' in clause 9, proposed subsection 8A(1)(a) of the *Bail Act 1982*, so that the presumption in favour of bail applies unless the offence the youth has been accused of, is a prescribed offence, or the youth presents an ongoing and serious risk to the community; and
2. amend clause 11, proposed subsection 24A(2) of the *Bail Act 1982*, so that an authorised member 'may' and a court 'must', to the extent practicable, take into consideration the list of criteria to be considered in bail applications for youth; and
3. remove clause 25, and not amending section 16 of the *Youth Justice Act 2005* [arrest as a last resort]; and
4. amend clause 33, the proposed sections 49 and 50 of the *Youth Justice Act 2005* with the intent to align the amendments with the *Open Courts and Other Acts Amendment Act 2019* (Vic) to enable a reporter (member of the media) to be permitted to attend closed Court proceedings.

This action by the government was, unfortunately, not unprecedented, with the passage of retrospective and punitive legislation passed under urgency only months earlier.

At our CLANT Committee meeting on 5 June this year we resolved to discontinue our membership of the LAAC. This decision was made known to the minister sometime later. We are now looking to other avenues to meaningfully engage in the political process in

order to assist in the provision of appropriate policy in key criminal justice areas.

On 17 June this year we appealed to the people of the NT through an advertisement in the NT News, that stated, in part:

'we, the people of the NT, must be informed and brave. We need to embrace major changes. 'Insanity' is to do the same thing over and over again and expect a different outcome.'

Yet last weekend at Don Dale, an adult prison that was not fit for a bulldozer, according to a former Commissioner of Corrections (and now a Territory Families executive), we had another incident in which youths were able to put themselves in harm's way that lead to a major incident.

At what point do we finally commit to change and give effect to the purpose and intent of the 229 Recommendations from the final report of the Commissioners? When will we trust in the expert's opinions and the evidence-based findings?

While the insanity continues, the kid's aren't alright, neither is our community. ■

CLANT

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