

Your Ref:
Our Ref:
Enquiries: Tara Gupta - (08) 9222 2695

the Hon. Graham Gifford MLC
Chair Standing Committee on Legislation
Legislative Council
Parliament House
Harvest Terrace
PERTH WA 6000

Dear Mr Gifford

INQUIRY INTO THE CRIMINAL INVESTIGATION BILL 2005, CRIMINAL INVESTIGATION (CONSEQUENTIAL PROVISIONS) BILL 2005 AND CRIMINAL AND FOUND PROPERTY DISPOSAL BILL 2005

Thank you for your letter dated 22 June 2006 inviting a submission regarding the above Bills. I note that you particularly refer to Part 9, clause 92 of the Criminal Investigation Bill 2005 relating to the age at which a child suspect may consent to various forms of procedures.

The Department for Community Development ("DCD") supports the requirement in clause 92 that both the child suspect and the responsible person be required to consent to a forensic procedure upon the child, without in the case of an intimate forensic procedure an application for a warrant.

If a child suspect is over the age of criminal responsibility, namely 10 and is therefore able to be charged, plead guilty or not guilty to an offence and be sentenced, he or she should also be old enough to be requested to consent, or refuse consent to a forensic procedure.

There may be circumstances in which a child is estranged from his or her family or alternatively circumstances in which the parent or other responsible person is the alleged victim. It would not, in these type of circumstances be appropriate for the parent or other responsible person alone, to consent to a forensic procedure upon the child, in the absence of the child's consent.

This is not to say that the child's consent alone would be adequate as there are circumstances in which a vulnerable child would need the additional safeguard of the requirement of consent by the responsible person.

It is therefore DCD's view that the consent of both the child suspect and the responsible person should be sought in the respect of a request for a forensic procedure upon the child pursuant to clause 92 of the Bill. These comments are consistent with Articles 12 and 40 of the UN Convention on the Rights of the

Child as well as Rule 10 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules).

It is noted that a similar provision has been drafted in relation to forensic procedures on children as victims or witnesses (clause 84). The age requirement in this provision is also 10 years. While in this case there may not be such compelling reason as with the case of a child suspect to set the age limit at 10, a consistent approach has merit. An alternative in relation to a non suspect child, could be “a child who is sufficiently mature and capable of understanding the general nature and effect of, and the reason for and the consequences of, undergoing the procedure.” A potential issue with this alternative is its lack of certainty and possible inconsistency in application.

In relation to another matter, DCD is concerned that clause 88 of the Bill enables a police officer to arrest and detain a non suspect child for a reasonable time in order to make an application and prevent the disturbance or loss of evidence, without necessarily having regard to the best interests of the child. A child victim/witness may already be traumatised. It is DCD’s view that such detention should not occur if it would have the effect of further detrimentally affecting the wellbeing of the child. This could either be addressed by a proviso in the clause or a clear requirement in police standing procedures.

If you have any further queries regarding this submission, please do not hesitate to contact Ms Tara Gupta, General Counsel on 9222 2690.

Yours sincerely

Jane Brazier
DIRECTOR GENERAL

11 July 2005