



Commissioner for Children and Young People
Western Australia

PUBLIC

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All enquiries

Telephone: (08) 6213 2214
Email: amy.tait@ccyp.wa.gov.au
Our reference: 09/14510

Hon Robert Johnson MLA
Minister for Police
20th Floor
Governor Stirling Tower
197 St Georges Terrace
Perth WA 6000

Dear Minister

As you are aware, under section 19(g) of the *Commissioner for Children and Young People Act 2006* I have responsibility to monitor and review written laws, draft laws, policies, practices and services affecting the wellbeing of children and young people. In performing the functions of Commissioner, the paramount consideration is to be the best interests of children and young people.¹ I am also to have special regard to the interests and needs of children and young people who are vulnerable for any reason and Aboriginal children and young people.²

I have been monitoring the progress of the Criminal Investigation Amendment Bill 2009 (the Bill) through Parliament. I write to express my concerns regarding the scope of the proposed reforms and the potential impact on children and young people. I have written in similar terms to the Commissioner of Police.

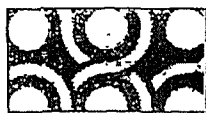
My understanding of the Bill is that it amends the Criminal Code (WA) to substantially increase the search powers of the police and to remove important checks on the scope of the powers. Given the potential impact of these powers on children and young people I believe that further public debate is required.

I am concerned that the new search powers could have the effect of increasing the incidence of children and young people coming into contact with the criminal justice system. The number of young people in detention on an average day in Australia (excluding New South Wales) has been on the increase, from 540 in 2004-05 to 630 in 2007-08,³ and the daily average population of young people aged 10-17 years in detention in Western Australia (132 young people) is disproportionately high compared

¹ Section 3 *Commissioner for Children and Young People Act 2006* (WA).

² Section 20 *Commissioner for Children and Young People Act 2006* (WA).

³ *Juvenile Justice in Australia 2007-08*, Australian Institute of Health and Welfare, 2009, pvii.
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to other states (such as Victoria, 48 young people).⁴ Over that same period the proportion of unsentenced young people in detention outnumbered those who were sentenced.⁵

Research shows that the likelihood of a young person's progression to detention increases with the severity of the initial contact with the criminal justice system.⁶ I would be concerned if the new search powers increased the presence of young people in our justice system or weakened their faith in our policing systems.


I believe there is substantial cause for concern when broad police powers can be applied to children and young people without special regard for them and their vulnerable status in our community.

The legislative and policy frameworks that underpin the Western Australian criminal justice system reflect the broad understanding that a distinction should be made in the way young people are treated. Children and young people constitute a distinct and vulnerable group and differ from adults in their psychological and physical make-up.⁷ This difference is reflected in the general principles of youth justice as articulated in the *Young Offenders Act 1994* (WA). In my view this understanding should be maintained in police dealings with children and young people generally and search powers should be exercised sparingly in respect to children and young people.

I would appreciate it if I could be kept informed on and consulted on proposals for legislation generally that has a likely impact on children and young people. This would assist me in carrying out the functions set out under the *Commissioner for Children and Young People Act 2006*.

I would be happy to discuss my concerns about the Bill with you personally.

Yours sincerely



MICHELLE SCOTT

Commissioner for Children and Young People WA

23 November 2009

⁴ *Report on Government Services 2009*, Productivity Commission, 2009, p15.56.

⁵ *Juvenile Justice in Australia 2007-08*, Australian Institute of Health and Welfare, 2009, pvii.

⁶ Ferrante, A., Loh, N., Mailer, M., *Pathways through justice: A statistical analysis of offender contact with the WA juvenile justice system*, Crime Research Centre, University of Western Australia, 2004, p57.

⁷ As noted by the United Nations Committee on the Rights of the Child, *General Comment on Juvenile Justice* (No 10), 2007 p5.