



Commissioner for Children and Young People
Western Australia

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Hon. Adele Farina MLC
Chairman
Standing Committee on Uniform Legislation and Statutes Review
Parliament House
PERTH WA 6000

Dear Ms Farina

Criminal Investigation (Covert Powers) Bill 2011

Thank you for your letter dated 11 November 2011 inviting comment on proposed amendments to the *Criminal Investigation (Covert Powers) Bill 2011* that have the potential to impact on children and young people.

Role of Commissioner for Children and Young People WA

I was appointed as Western Australia's (WA) inaugural Commissioner for Children and Young People in December 2007 pursuant to the *Commissioner for Children and Young People Act 2006* (the Act).¹ Under the Act my role is to advocate for the half a million Western Australian children and young people under the age of 18, having specific responsibility for advocating for, promoting and monitoring their wellbeing.

In performing my functions under the Act the best interests of children and young people must be my paramount consideration.

I am required, under section 19(b) of the Act, to promote the participation of children and young people in the making of decisions that affect their lives, and to encourage government and non-government agencies to seek the participation of children and young people appropriate to their age and maturity.

I am also required, under section 19(g) of the Act, to monitor and review written and draft laws that affect the wellbeing of children and young people.

¹*Commissioner for Children and Young People Act 2006*, Western Australia, Available: http://www.austlii.edu/j.au/au/legis/wa/consol_act/cfcaypa2006418/

Caring for the future growing up today

In the role of Commissioner, I travel extensively throughout Western Australia consulting widely with government and non-government agencies as well as with children and young people and their families in metropolitan, regional and remote communities.

It is from this perspective that I make my submission to the Inquiry.

Potential implications for children and young people

The *Criminal Investigation (Covert Powers) Bill 2011* addresses three main aspects of covert powers – ‘controlled operations’ (Part 2), especially in relation to suspected dealings with illicit goods, ‘assumed identities’ (Part 3) for both authorised officers (law enforcement officers) and authorised civilians, and ‘witness protection’ (Part 4) for both authorised officers and authorised civilians working as operatives.

Whilst I appreciate that the Bill is concerned with the preservation of the legality around issuing authority for these aspects of covert policing, and the stipulation of appropriate settings and conduct to protect the public at large, there appears to be no overt reference to children and young people. In particular, there is no specific mention of the potential presence of children and young people during controlled operations, however one may deduce there might be significant impacts for them should they be present during such an operation.

Under Part 2, Item 12 (g), p. 11 “Matters to be taken into account – all controlled operations” the Bill states:

that any conduct involved in the operation will not —

- (i) seriously endanger the health or safety of any person; or
- (ii) cause the death of, or serious injury to, any person; or
- (iii) involve the commission of a sexual offence against any person; or
- (iv) result in unlawful loss of or serious damage to property (other than illicit goods).

There is no explicit requirement stated here or elsewhere in the Bill that the potential presence of children and young people under the age of 18 should be considered during the planning and implementing of controlled operations. Further, there is no reference to how young people who are considered suspects in dealing with illicit goods may be dealt with in terms of controlled operations.

I would be interested to know whether consideration has previously been given to the rights of the child in relation to authorised controlled operations. It is my view that all legislation must have regard for the best interests of the child, as outlined in the United Nations *Convention on the Rights of the Child*².

² *Convention on the Rights of the Child*, accessed 27 October 2011, <<http://www2.ohchr.org/english/law/pdf/crc.pdf>>.

The best interests of the child

In accordance with Article 3.1 of the *Convention on the Rights of the Child*, I am firmly of the view that the best interests of the child shall be a primary consideration in all legal and administrative matters concerning children. While this does not necessarily mean that the best interests of the child will always override other important considerations (e.g. the protection or safety of members of the community)³, this principle should be considered when reviewing this Amendment Bill for the inquiry.

Conclusion

In its deliberations, I encourage the Committee to consider my legislation assessment guidelines *Improving legislation for children and young people*. These guidelines have been published to help government agencies and others assess draft legislation from the perspective of children and young people's wellbeing, with the intent of producing laws that better meet their needs and interests.

I would be happy to discuss these matters with you further or provide additional comments on subsequent drafts of these amendments.

Yours sincerely



MICHELLE SCOTT

Commissioner for Children and Young People

7 December 2011

³ It has been observed by the Australian Human Rights Commission that Article 3.1 of the *Convention on the Rights of the Child* provides 'for a child's interests to be among the first considerations rather than requiring them to be the first considered or favoured. There are circumstances in which the community or other parties might have equal or even superior interests so that a child's interest may not prevail': Australian Human Rights Commission, *The Best Interests of the Child, Human Rights Brief No. 1*.