

**Committee Secretariat,
Social Services,
Parliament Buildings,
Wellington**

Submission to the Inquiry into the identification, rehabilitation, and care and protection of child offenders

OVERVIEW

ACYA welcomes the Inquiry's terms of reference in this important area of the law.

BACKGROUND TO ACYA

Action for Children and Youth Aotearoa Incorporated (ACYA) is a coalition of non-governmental organizations, families and individuals whose purpose is to promote the well-being of children and young people in Aotearoa New Zealand through:

- 1 education and advocacy on the rights of children and young people;
- 2 encouraging the government to act on the recommendations of the United Nations Committee on the Rights of the Child; and
- 3 promoting opportunities for the voice and participation of children and young people.

In 2003 ACYA produced and published *Children and Youth in Aotearoa 2003*, the New Zealand NGO Report on New Zealand's implementation of the UN Convention on the Rights of the Child (NGO Report). The NGO Report was presented to the UN Committee on the Rights of the Child in Geneva in June 2003, accompanied by a video funded by ACYA and produced by New Zealand children called *Whakarongo Mai / Listen Up*.

ACYA made a submission to the draft 3rd & 4th periodic report to the Committee on the Rights of the Child, subsequently the report was issued by Government to that Committee in November 2008. ACYA is preparing the next Alternative Report to the Committee which is due 1 July 2010.

This submission has been prepared by the ACYA Committee and the views expressed

in it may not represent the views of each ACYA member.

SPECIFIC POINTS

1. Terms of reference 1 & 2

ACYA would strongly support further research into the identifiers of child offending, and the effectiveness of the rehabilitation programmes operated by the Ministry of Social Development. There is a lack of quality research relating to child offending in New Zealand.

2. Term of reference 3

ACYA supports the streamlining of the referral process for child offenders. The recent amending legislation (CYPF (Youth Court Jurisdiction and Orders) Amendment Act) does nothing to address the fundamental problems with the child offender provisions of the principal Act. The number of children dealt with through the Youth Court is likely to be small, and thus the majority of child offenders will continue to be dealt with through existing procedures. There are justifiable criticisms that the child offender procedure is unduly complicated and thus professionals appear reluctant to utilise the procedures (as raised by the Police Association in its submission to the Select Committee). The child offender provisions are an unusual and confusing mix of civil and criminal provisions, and because of the low volume of case work, professionals are unused to the procedure.

Contrary to this belief that child offenders cannot be held accountable, the Family Court has extensive powers to address both the underlying care and protection issues which are contributing to the child's offending through the ordinary Family Court orders (such as counselling orders (s 74, CYPF Act), services orders (s 86, CYPF Act), support orders (s 91, CYPF Act) and custody orders (s 101, CYPF Act)) and the effects of the offending on the community and the victim through additional criminal justice powers contained in section 84. The Family Court Judge may also order the parents of the child to come up if called, or order reparation to be paid to the victim of

the offence (s 84). These powers appear rarely used. Statistics from the Family Court indicate that only 68 applications to classify an offending child as being in need of care and protection under s 67 were made in 2005, 84 applications in 2006, 75 applications in 2007. In addition, only 6 applications in 2005, 2 in 2006 and none at all in 2007 were made for section 84 orders addressing the effect of a child's offending through forfeiture, reparation or admonishment (Latest family court stats 2006/2007 published April 2009, p 54). A child can be placed in a care and protection residence should this be necessary.

The reasons for this low uptake of the Family Court's powers in relation to child offending should be investigated, as they are frequently used to justify the lowering of the age of prosecution and the age of criminal responsibility.

3. Term of reference 4

ACYA is concerned about the recent legislative amendments which allow some 12 and 13 year old children to be prosecuted in the Youth Court.

Under the amending Act, the age of criminal responsibility will remain at 10 years and children may still be prosecuted for homicide, but children aged 12 and 13 years will be prosecutable in two further circumstances (s 14 of the amending Act). Firstly, where the child is alleged to have committed an offence where the maximum penalty is or includes imprisonment for life or for at least 14 years. This definition includes a wide range of offences, from assault with intent to rob (s 236 *Crimes Act*), wounding with intent to cause grievous bodily harm (s 188(1)), to the lesser known offences of dealing in slaves (s 98) and piracy (s 92). Secondly, where the child is alleged to have committed an offence where the maximum penalty is or includes at least 10 years imprisonment but less than 14 years imprisonment, and the child is a previous offender. Again, this definition covers a range of offences including burglary (s 231 *Crimes Act*) and robbery (s 234 *Crimes Act*). 'Previous offender' is defined in s 4(2) of the amending Act as being a child who has been declared in need of care and protection by the Family Court in relation to an offence attracting a maximum penalty of at least 10 years, or convicted by the High Court of murder or manslaughter or an

offence with a maximum penalty of life or 14 years imprisonment, or proved before a Youth Court to have committed an offence with a maximum penalty of life or 14 years. While an earlier version of the legislation would have allowed an admission of a qualifying offence at a child offender family group conference to constitute a previous offence, the final version allows only offending proved before a court. Child offenders will retain the protections of *doli incapax*.

The change to the child offender provisions was described during the Select Committee Process as ‘the most fundamental change to the system since its inception in 1989’ (Youth Court Judges’ Submission to the Social Services Select Committee, p 5). Indeed the prohibition of the prosecution of children for anything other than homicide has been on the statute books since the Children and Young Persons Act 1974. The changes met with opposition during the Select Committee process, with submitters principally concerned that the criminal justice system would not have the requisite powers and resources to deal with child offenders with profound care and protection issues, and with the potentially harmful effects of younger offenders associating with older offenders.

The potentially harmful effects of this change have been mitigated somewhat. An important check in the amending Act (s 20) is the power of the Youth Court Judge to remit a child’s case back to the informant should the Judge believe that the public interest would be better served by the matter being dealt with through the care and protection system. Efforts have been made to minimise the effects of association with older offenders through restrictions on the use of custody. A child may not be transferred to the adult criminal justice system under s 283 (o) of the principal Act.

ACYA would not support any further measures to bring children into the jurisdiction of the Youth Court and submits that the care and protection model is best served to address the problems of serious and persistent child offenders. The Family Court jurisdiction is equipped to support children and their families in the long term, rather than the short term powers of the criminal jurisdiction.

We draw your attention to Articles 3,4, 12 and 40 of the Convention on the Rights of the Child and we support the submission of UNICEF New Zealand.

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