

Submission by
YOUTH ADVOCACY CENTRE INC
to the
Inquiry of the Legal Affairs and Community Safety Committee
In relation to the
Justice Legislation (Links to Terrorist Activity) Amendment Bill 2018



December 2018

YOUTH ADVOCACY CENTRE INC

SUBMISSION RE Justice Legislation (Links to Terrorist Activity)
Amendment Bill 2018

INTRODUCTION

The Youth Advocacy Centre Inc (YAC) is a well-respected community legal and social welfare agency for young people who are involved in, or at risk of involvement in, the youth justice and/or child protection systems (10-18 years old) and/or are homeless or at risk of homelessness (15-25 years old) – young people who are among the most marginalised and excluded by our community and often the most harshly judged. This is particularly unfair given that these young people are usually “troubled”, victims of their environmental, family or personal circumstances, becoming “troublesome” as a result of these factors. YAC’s aim is to provide a safety net of legal and social welfare services and then seek to transition young people to more secure lives and opportunities, for their benefit and that of the community more broadly.

COMMENT IN RELATION TO THE BILL

YAC’s concern in relation to the Bill is that it expressly intends to treat children in the same way as adults despite the fact that we have a modified criminal justice system for dealing with children who have, or are alleged to have, broken the law. This is because children are considered to be less culpable than adults due to their limited life experience and an increased understanding that children and young people’s development involves periods of opportunistic action, risk taking and reduced consequential thought. We also know that their behaviour can be changed with the right interventions.

This legislation, however, will apply to children from the day they turn **10 years of age** effectively in the same way as adults. It is unclear why we would place on them the same level of decision making and responsibility as an adult when there are clear reasons why we generally do not do so. Terrorism is simply a descriptor for a group of criminal acts of a specific nature. *Doli incapax*¹ in Queensland is a very low bar and we have no confidence that this will protect children under the age of 14 years. Our understanding is that it has rarely been successfully argued in Queensland. We note that the Bill is part of a national COAG commitment but also that *doli incapax* in other States and Territories is defined differently and provides greater protection for younger children.

Of particular concern is that use of social media is likely to place children at high risk of allegations of “promoting terrorism”. Following our experience of children being charged with making and distributing child exploitation material for sending a picture of themselves by phone to someone else, we are not confident that brash and immature remarks on social media will not be given a more sinister interpretation by adults than is necessary.

It is likely that if children are involved in terrorist related activities, that they have been influenced and supported in doing this by an adult or adults either directly or through other media. Clearly, if there is a concern that children are involved in terrorism related activity, then action should be taken to address that, but it should focus on information and education for the child in relation to this and an assessment of why and how the child is being so influenced and action to address that. Working with their families is also likely to be important. Children (and adults for that matter) will be released from secure custody at some point: we would argue that the community is likely to be safer if we take this broader approach of addressing the issue rather than relying on locking them up for limited periods.

We would ask that the government re-consider the approach to the inclusion of children in this legislation and provide a more nuanced response to children who are in some way associated with allegations of terrorism.

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¹ The rebuttable presumption that a child cannot commit a crime under a specific age (under 14 in Queensland and other Australian jurisdictions) unless it can also be shown they understood their culpability. It is the test for that culpability which is problematic in Queensland.