

Submission by
YOUTH ADVOCACY CENTRE INC
to the
Legal Affairs and Community Safety Parliamentary Committee
Criminal Code (Child Sexual Offences Reform) and Other Legislation
Amendment Bill 2019



January 2019

The Youth Advocacy Centre Inc (YAC) appreciates the opportunity to comment on the Consultation Draft of the *Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Bill 2019* (draft Bill).

Please note that this agency works with children aged 10-18 years: that is, children considered old enough to breach the criminal law and be held responsible through the courts and, therefore, are considered capable of making choices and decisions. Our comments do not apply in relation to those children under 10 or who are otherwise found to be unable to provide their views and wishes in an informed way.

YAC absolutely supports the need to reduce the risks to children from adult sexual predators and to prevent ongoing abuse by such people. However, the good intentions of the legislation may not sufficiently take account of the situation from the child's perspective.

Confidentiality is key to being able to work effectively with our client group who are among the most vulnerable and disadvantaged young people. They often have limited if any support networks to the point that our lawyers may be the only constant adults in their lives.

We are clear with our clients that we will need to breach confidentiality where there is an immediate or imminent risk of serious harm to them or to others as a result of their actions or the actions of others. However, if our clients do not believe they can trust our staff, then they are likely to break contact and be potentially even more vulnerable.

Our clients, like any adult clients, are entitled to know and understand the consequences of any abuse which they have suffered being reported. This includes the legal, emotional and social consequences for them of a report being made. These impacts may be ongoing for some period of time. Reports made without their consent and adequate preparation have the potential to re-victimise them.

Our understanding is that the Youth Advocacy Centre would fit the definition of an *institution*, that is, an entity which *provides services to children*. YAC provides legal services through its solicitors and social welfare services through its homelessness/youth support, family support, court support and bail support services.

YAC's staff, including its lawyers, would be *adults associated with an institution* as employees of YAC.

The Royal Commission at page 49 states:

.....we consider that the offence should apply if a relevant person at **the institution**:

- Knows or suspects that a child is being or has been sexually abuse or
- Should have suspected that a child is being or has been sexually abused (...)

By a person associated with **the institution**. (Our highlight)

It seems clear that the Royal Commission intended that both the person who knows or suspects or who should have known or suspected and the person who is suspected are associated with the same institution.

As we read proposed new sections 229BB and 229BC, they do not seem to require that the institution with which the accountable person is associated must be the same institution with which the alleged offender is associated. This is a different scenario and would effectively place people associated with providing services or activities for children in a broader mandatory reporting situation. If this is the intention, this should be made very clear in any information and education materials which must be provided to the community in relation to these legislative changes.

However, specifically, it could mean that where a child instructing one of YAC's lawyers in relation to a criminal law matter identified that they were currently, or had been, the victim of a child sex offence at, for example, the residential care facility in which they were staying, but instructed the lawyer that they did not want the matter reported, the lawyer would be required by law to breach confidentiality. Both agencies would be considered to be *institutions* within the meaning of the Bill.

It may be arguable that the client-lawyer relationship constitutes a "reasonable excuse" but it would be preferable to make specific reference to this circumstance. The child must have confidence in their legal representative that their discussions are privileged in order for the lawyer to be able to properly advise them in the matters for which they are seeking legal help.

This requirement would not apply to all lawyers but only those in the community legal centre sector, certainly those community legal centres, such as YAC, who provide specialist legal services to children (10 and over). It is possible the definition could cover Legal Aid Queensland lawyers (Youth, Child Protection and Family Law sections) and ATSILS which both specifically *provide services to children*.

We therefore seek clarity in relation to:

- whether the legislation intends that the accountable person and the alleged offender are within the same institution – and if so we believe that this should be made clearer; and
- the situation of lawyers in the community legal centre sector and potentially other legal organisations delivering services to children?

We also seek a commitment to a community legal information and education campaign to ensure that people are fully aware of these new provisions and their criminal law consequences.