



## **Criminal Procedure Bill Youthlaw Submission**

### **1. Introduction**

Youthlaw is Victoria's state-wide community legal centre for young people. Youthlaw works to achieve systemic responses to the legal issues facing young people, through casework, policy development, advocacy and preventative education programs, within a human rights and social justice framework.

Youthlaw is based at Frontyard Youth Services which is a series of co-located youth services for 'at risk' young people, many of whom are transient and homeless. We act for clients up to the age of 25, many of whom are defendants in summary criminal matters in the Magistrates Court.

Youthlaw welcomes this opportunity to provide input into the *Criminal Procedure Bill*. Our submission focuses on the two main issues:

- The process for commencing proceedings for summary offences in the Children's Court; and
- Whether there should be joint committal proceedings when there are adults and child co-accused.

### **2. A human rights framework**

The core international standards for children and young people are explicitly set out in the United Nations *Convention on the Rights of the Child* ("CROC"), which is the cornerstone of Youthlaw's work. Of particular relevance is Article 40 of CROC which stipulates that a child in conflict with the law has the right to treatment which promotes the child's sense of dignity and worth, which facilitates their reintegration into society, which reflects the best interests of the child, and takes the child's age into account.

The particular rights of procedural fairness for child offenders is also found in section 25(3) of the *Charter of Human Rights and Responsibilities 2006 (Vic)* which provides that where a child is charged with a criminal offence, procedures should take into account their age and the desirability of promoting their rehabilitation.

CROC and the Charter both provide a rights-based framework for addressing the issue of procedural fairness for children in respect to the criminal matters and for addressing the questions raised in relation to the *Criminal Procedure Bill*.

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### **3. Discussion paper questions**

We provide comments on the five questions posed in the discussion paper. Our responses reiterate some earlier comments which were made in response to the *Summary Procedures Discussion paper* (Department of Justice, December 2005).

We applaud the decision to reduce the time limit for the commencement of proceedings for summary offences in the Children's Court from twelve months to six months. The defendant, prosecution and the community all have an interest in expedient disposition of summary offences. This promotes the efficient investigation of offences and protects defendants and victims from the adverse effects of delay. A prompt response is particularly important in relation to young people as early intervention emphasises the consequences of their actions and may prevent the escalation of offending. The power of the Court to extend the time limit for a further six months, on application by the prosecution, helps to strike a balance in circumstances where there are justifiable reasons for the delay considering also a range of other factors. This gives the police some leeway to seek further extension without having a potential detrimental impact on the young offender.

Youthlaw contends that there should be joint committal proceedings in the Children's Court, when there are adult and child co-accused. This facilitates the expedient use of resources, and assists in minimising inconvenience, stress and trauma of victims and witnesses. More importantly it takes into account the specific needs of children, including their age, maturity and vulnerability.

It is of utmost importance that these two main issues be considered within the framework of the *Charter of Human Rights and Responsibilities Act 2006* which recognises the right to a fair hearing (section 24) and certain rights in criminal proceedings (section 25).

#### ***Commencement of proceedings***

##### ***Question 1***

*Should the legislation provide that the application can be supported by any one of the following:*

- a) evidence on oath or affidavit; or*
- b) a statement signed by the informant; or*
- c) submissions from the bar table?*

Youthlaw strongly believes that option a) should be followed requiring the informant to attend the hearing of the application, where possible, and give evidence on oath supporting their application to extend time. The onus should remain on the informant to explain to the court the reason for the time delay in the commencement of proceedings and be subject to questioning by the presiding magistrate that a prosecutor may not be in a position to answer. The introduction of such a provision, we believe, would then put the onus back on the police to commence and complete investigations within timely limits for the youngest members of our community facing criminal offences.

##### ***Question 2***

*Should there be a right to a rehearing of the extension application if the defendant is not present at the hearing of the application?*

Youthlaw believes that if the defendant is not present at the hearing of the extension, then there should be a right to a rehearing. This is consistent with the notion of procedural fairness and section 24 of the *Charter of Human Rights and Responsibilities Act 2006* which provides for the right to a fair hearing. This right

pertains to all stages of the proceedings. Section 25(2) (d) provides for the right of a person to be tried in person. Section 25(3) provides that where a child is charged with a criminal offence, procedures should take into account their age and the desirability of promoting their rehabilitation.

According to Section 24(2) of the *Children and Young Persons Act 1989*, if a sentencing order is made by the Court against a person who did not appear in the proceeding, that person may apply for a re-hearing. The order may be set aside 'subject to any terms and conditions as it thinks just' and the proceeding may be reheard (section 93 of the *Magistrates' Court Act 1989*). Similarly, a defendant that is not present at the hearing of an extension application should be allowed the right to a rehearing. It is appropriate to consider the costs to the prosecution and the courts if a right of rehearing is conferred. However, the vulnerability of child defendants and the inherent unfairness that would result if the right was denied, greatly outweighs concerns about maximising the efficiency of resources.

### **Question 3**

*If provision is made for re-hearing, which test should apply?*

*Option A - the approach used in relation to applications to re-hear charges*

*Option B - the court has a broad discretion to re-hear the application*

The Court should be given broad discretion similar to section 93 of the *Magistrates Court Act 1989*, which would still allow the Court to order a rehearing where the defendant did not receive notice of the application, in appropriate cases.

### **Question 4**

*If there is provision for re-hearing, should the defendant be required to give prior notice to the informant or would it be sufficient for notice to be given to the prosecution on the day of the hearing (if this occurs an adjournment may be required to arrange for the attendance of witnesses)?*

Youthlaw believes that it would be sufficient for notice to be given to the prosecution on the day of the application for re-hearing as the defendant will be at court and the procedure would be expedited by simply serving the notice on the prosecution. If the defendant is unrepresented then, hopefully, s/he would be referred by court staff to the duty lawyer to assist and represent them in court if required and further engage in discussions with the prosecution about the application. We envisage that there may be applications made by the prosecution for adjournments in these circumstances in some cases but, in the interests of justice, it would be more expeditious to simplify the procedure and 'get things moving' whilst the defendant is at court.

## **Committals In the Children's Court**

### **Question 5**

*Which of the three options do you prefer?*

*Option A - Magistrates' Court and Children's Court jurisdiction may conduct committals to be exercised concurrently*

*Option B - joint committals in the Children's Court*

*Option C - joint committals in the Magistrate's Court*

Youthlaw supports Option B. There should be joint committal proceedings in the Children's Court when there are adult and child co-accused. This is the approach followed in New South Wales (s29 *Children (Criminal Proceedings) Act 1987 (NSW)*). Any committals involving children should be conducted in the Children's Court including joint committals involving adults.

Youthlaw is strongly of the view that all indictable offences, apart from those prescribed in the legislation, should be tried in the Children's Court. We maintain that the Children's Court is a specialist jurisdiction which should be relinquished "only with great reluctance" as stated in the case of *A Child v a Magistrate of the Children's Court and Ors* (unreported, Supreme Court of Victoria, 24 February 1992). This is consistent with the application of section 25(3) of the *Charter of Human Rights and Responsibilities Act 2006* which provides that a child charged with a criminal offence has the right to a procedure that takes account of his or her age and the desirability of promoting the child's rehabilitation. It is vital that the particular needs of children be taken into consideration, as stated in the United Nations *Convention on the Rights of the Child* and other international instruments. This overwhelming consideration greatly outweighs any potential negative impact of an adult co-accused being present at the Children's Court.

We agree that a joint committal would assist in streamlining proceedings and facilitating the expedient use of resources. The time consuming nature of technical compliance with all requirements of separate proceedings in the Magistrates' Court and Children's Court unnecessarily complicates proceedings, risking technical mistakes from non-compliance with procedural requirements. Joint committals in the Children's Court also relieves the need for formalities such as standing down one court to convene the other and assists in minimising the potential distress caused to victims and witnesses who otherwise have to give evidence in the two different jurisdictions about the same event/s which is the situation to date.

Thank you for the opportunity to respond to the Criminal Procedure Bill. We welcome further opportunities for involvement in this process.