Submission to Justice Committee

Ram Raid Offending and Related Measures Amendment Bill

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WHO WE ARE

YouthLaw Aotearoa is a Community Law Centre vested under the Legal Services Act 2000. We are a charity and part of the nationwide network of twenty-four community law centres throughout Aotearoa. We are a specialist law centre focussing on the legal needs and interests of children and young people under 25 years of age.

This submission is informed by YouthLaw Aotearoa's insights from working with children and young people across New Zealand for over thirty years.

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YOUTHLAW AOTEAROA'S SUBMISSION

YouthLaw Aotearoa strongly opposes the Ram Raid Offending and Related Measures Amendment Bill (**this Bill**).

We have made a joint submission with other child and youth-focused community organisations, submitted by *VOYCE — Whakarongo Mai*, in strong opposition to this Bill. That submission discussed some of the political issues driving this Bill, ethical objections to this Bill, and the well-established scientific evidence which demonstrates that this Bill is poor policy.

This submission is only in the name of YouthLaw Aotearoa. In this submission we discuss legal and jurisprudential objections to this Bill.

YouthLaw Aotearoa has read the New Zealand Law Society's submission on this Bill. We strongly agree with its analysis and condemnation.

YouthLaw Aotearoa has also read the Attorney General's section 7 Report into this Bill. We strongly agree with his analysis and condemnation.

YouthLaw Aotearoa wishes to be heard on this submission. We are happy to be heard at the same time as Community Law Centres o Aotearoa.

DOMESTIC LAW

Bill of Rights Act Breaches

Section 7 of the Bill of Rights Act 1990 (**BoRA**) requires the Attorney-General (**A-G**) to "bring to the attention of the House of Representatives any provision in [a] Bill that appears to be inconsistent with any of the rights and freedoms contained in this Bill of Rights." The A-G's Report on this Bill is illuminating, finding two main inconsistencies with the BoRA.

Section 25(i) of the BoRA upholds the right of a child, in determination of a charge, to be dealt with in a manner that takes account of the child's age. **The A-G considered that this Bill is inconsistent with Section 25(i)**, because "the age-appropriate treatment of offenders aged under 14 years old requires a welfare-based approach". Such an approach "reflects international standards and practice", based on evidence "which indicates that maturity and the capacity for abstract reasoning is still evolving in children aged 12 to 13 years", making them "unlikely to understand the impact of their actions or to comprehend criminal proceedings." The A-G considered this inconsistency to be unjustifiable, for several reasons.

Section 21 of the BoRA upholds the right to be secure against unreasonable search or seizure. **The A-G considered that this Bill is inconsistent with Section 21**, because "If the new criminal proceeding is not justifiable under the Bill of Rights Act, the premise for the amendments to the Bodily Samples Act falls away and cannot be justified."

We note that the A-G also found an inconsistency with Section 14 of the BoRA.

The A-G's Report is a compelling source of guidance on this Bill's adherence to New Zealand's human rights and fundamental freedoms. As such, **its findings should cause this Bill to be withdrawn**.

Contrary to Our Long-Standing Approach

New Zealand has a long legal tradition, and public policy backdrop, opposing the criminalisation of children under 14 years old. This approach has been in place for decades, based upon evolving understandings of child development.

This Bill contradicts New Zealand's long-standing approach to child offenders, without Parliament having undertaken robust consultation and evidence-based lawmaking before deciding to take this approach.

New Zealand's long-standing approach is underpinned by international law (see "International Law").

We oppose changes to this longstanding approach. Significant policy work needs to occur before such changes are seriously considered (see "Lack of Policy & Regulatory Context").

INTERNATIONAL LAW

Breaches of International Law

The United Nations Convention on the Rights of the Child (**UNCROC**) and the International Covenant on Civil and Political Rights (**ICCPR**) form the framework of children's rights under international law.

Article 37(b) of the UNCROC states that "The arrest, detention or imprisonment of a child … shall be used only as a measure of last resort and for the shortest appropriate period". However, this Bill opens the possibility of imprisoning children unnecessarily and for an excessive length of time.

Article 24(1) of the ICCPR states that "Every child shall have … the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State." However, this Bill infringes upon the long-recognised protection of children from imprisonment.

Significant policy work would need to occur and evidence be produced before infringing upon these international instruments is justified (instruments that New Zealand has ratified) (see "Lack of Policy & Regulatory Context").

International Best Practice and Evidence

International best practice is based on the well-established scientific evidence that children under the age of 14 have a reduced capacity for decision-making (as mentioned above). Evidence also indicates the many harms caused by children's involvement in the criminal justice system at a young age, including an increased chance of reoffending.

This evidence underpins the accepted need, in New Zealand and internationally, to take a welfare-based approach to 12- and 13-year-old offenders.

For further information on this topic, we refer you to the Joint Children's Sector Submission on this Bill, which we support.

LACK OF POLICY & REGULATORY CONTEXT

Given the significant breach of human rights being proposed by this Bill, **thorough policy and regulatory impact work should have been done first. It has not been done.**

This Bill proposes a substantial change to jurisprudential norms regarding the prosecution of children. It would put ram raiding in the same category as only murder and manslaughter, in terms of which system child offenders go through.

Such a fundamental change should only be considered after careful, broad spectrum and independent analysis (such as by the Law Commission), and only after wide

consultation. This process would be necessary to build the evidence base to justify such a radical change to longstanding, democratic societal norms.

A thorough regulatory impact investigation is also necessary to fully assess the likely impacts of this Bill, including whether it aligns with its policy goals.

This bill should be withdrawn until these processes have occurred.

EXISTING LAWS APPEAR ADEQUATE

It is not clear that this Bill would achieve its policy aims.

Every aspect of ram raid offending is already covered by other criminal offences (such as burglary, parties to offending and wilful damage). Adults who ram raid can already be prosecuted under these provisions, and children who ram raid can become subject to the Oranga Tamariki and Youth Justice systems' processes.

Therefore, **creating a new offence seems unnecessary**, and will do little to improve the detection and prosecution of ram raiding**.** It will also do little to achieve the sentencing aims of deterrence, denunciation, and community protection.

For further information on this topic, we refer you to the New Zealand Law Society's submission, which we agree with.

POOR DRAFTING

The Bill includes several technical and substantive legal issue that need to be fixed. These include being disproportionate, being contrary to long-established case law which currently strikes an appropriate balance, and creating over-criminalisation in some situations (for example, broadening the category of party offending).

For further information on this topic we refer you to the New Zealand Law Society submission, which we agree with.

OUR RECOMMENDATION

We urge parliament to withdraw this Bill and not propose it again. It represents a fundamental breach to long-held, evidence-based democratic norms. **This sort of lawmaking is not appropriate in a modern, liberal democracy.**

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