



Victorian Law Reform Commission  
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28 June 2019

Dear Commission

Jesuit Social Services welcomes the opportunity to respond to the VLRC's review on Contempt of Court, Judicial Proceedings Reports Act 1958 and Enforcement Processes. Specifically, we wish to respond to an issue outlined in the terms of reference. The statement we wish to respond to is as follows:

*The Commission should also consider the underlying principles for enforcement of prohibitions or restrictions on the publication of information, with particular reference to the law relating to contempt, the JPRA and the Open Courts Act.*

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#### **Jesuit Social Services: Who we are and what we do**

Jesuit Social Services has over 40 years' experience working with individuals and communities experiencing disadvantage. Our work draws our attention to the multiple and interrelated factors that cause disadvantage, push people to the margins, diminish communities' capacity to shape their future, and damage the natural environment we all depend on.

The people we work with are often experiencing multiple and complex challenges and face significant barriers to social and economic inclusion. We accompany them, address their needs and partner with community, business and government to support them to reach their potential and exercise their full citizenship.

As a social change organisation, we seek to *do* and to *influence* by working alongside people experiencing disadvantage and advocating for systemic change. Our service delivery and advocacy focuses on the key areas of justice and crime prevention; mental health and well-being; settlement and community-building; education, training and employment; gender and ecological justice.

#### **Our concern about the new suppression laws**

In regards to the terms of reference mentioned above, we wish to respond to a particular recommendation that was made through Judge Vincent's Open Courts review and subsequently adopted by the Government through the *Open Courts and Other Amendments Act 2019*. Recommendation 13 of Vincent's review recommended that 'Consideration be given to statutory reform to enable the discretionary disclosure of the relevant convictions of juvenile offenders in cases of their continuing and entrenched propensity to engage in serious offending as adults.' We understand that this particular law change is not a primary focus of VLRC's review, however, we wish to put forward a case as to why it should be and what the harmful implications of this legislative change are.

1. Offences committed as a child can be a consequence of immaturity, especially in vulnerable families/communities.

Firstly, this new law fails to consider the fact that young people are most vulnerable in the 10-17 age bracket. Youth at this age experience significant cognitive and emotional immaturity, leading to a reduced ability to foresee the consequences of their actions and an ultimately increased vulnerability compared to adults. In conjunction with this lack of maturity, the offending of a young person is also largely impacted by unfortunate circumstances in earlier years, such as disadvantaged backgrounds, the experience of profound adversity, including family violence, poverty, family disruption and mental health issues. Due to these aggravating factors, offences committed as a child should be considered separately to offenses committed as an adult.

2. Taking into account point 1, increasing the severity of the sentence due to offenses committed as child is unreasonable and likely to reduce rehabilitation prospects and increase recidivism.

In many cases, more severe sentencing can increase the likelihood of entrenched patterns of offending throughout life, particularly if the individual is sentenced to a term of imprisonment. A report released by the Sentencing Advisory Council (SAC) in 2013 found that there was a tendency for more severe sentence types to be associated with higher levels of reoffending than less severe sentence types. The results also showed that immediate custodial sentences have the strongest association with a higher likelihood of re-offending.<sup>1</sup> The incorporation of offenses committed as a child in the sentencing process for adults will more than likely contribute to a greater propensity for the use of custodial sentences and an increase in length of these sentences.

3. Reduced rehabilitative prospects are further exacerbated through the naming and shaming factor which can increase stigmatisation and social isolation.

Rather than acting as a deterrent, the naming and shaming of offenses someone committed as a child aggravates criminal behaviour due to the stigma attached and the compounding of offenses against their name. A 2008 NSW report found that 'naming and shaming', instead of leading to deterrence, would instead entrench a young offender's feelings of rejection by the community at large and invariably cause them to associate themselves with the only self-image that has been imposed on them – 'delinquent'.<sup>2</sup> Furthermore to this point, a young person does not reach full maturity on attaining the age of 18 years and becoming an adult in law. We believe that this stigmatization/shaming effect does not disappear just because the person becomes an adult by law. In many cases, studies have shown that the brain of a young person isn't fully developed until the age of 25.<sup>3</sup> Thus, in our view, these same

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<sup>1</sup> Gelb, K, Fisher, G, Hudson N (2013), 'Reoffending Following Sentencing in the Magistrates' Court of Victoria', *Sentencing Advisory Council*, accessed through <https://www.uat.sentencingcouncil.vic.gov.au/sites/default/files/publication-documents/Reoffending%20Following%20Sentencing%20in%20the%20Magistrates'%20Court%20of%20Victoria.d oc.>>

<sup>2</sup> Standing Committee on Law and Justice (2008), 'The prohibition on the publication of names of children involved in criminal proceedings', *New South Wales Parliament*, accessed through <https://www.parliament.nsw.gov.au/lcdocs/inquiries/1841/FINAL%20REPORT.pdf>

<sup>3</sup> Gilbert, R., and Wilson, A. (2009) 'Staying strong on the outside: improving the post-release experience of indigenous young adults', *Indigenous Justice Clearinghouse*, <https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/publications/files/brief004.v1.pdf>, p. 1.

considerations should still apply. We believe that this legislation is likely to have the most significant impact on that 18-25 age bracket and that should therefore be the group that we're most concerned about. The combination of a more severe sentence and increased shame and stigmatisation may ultimately lead to greater difficulty for a person to re-integrate back into society properly, thwarting important rehabilitative prospects such as employment opportunities, access to stable housing, access to a strong support network and a reliable income.

### **What we should be doing**

Rehabilitation should be a major concern in sentencing offenders, and the publishing of juvenile convictions goes against this principle. It is generally understood that allowing young people involved in the justice system to have their identities protected is crucial in giving them the opportunity to learn from their mistakes and be steered towards positive pathways. This underlying principle should not change just because they pass the age of 18. Mr. Vincent did recognise in his review, that in many instances, the adverse factors young people experience that we referred to earlier often affect offenders negatively long after they attain adulthood, sometimes for life, thus prolonging their contact with the criminal justice system, including the prison system. We should therefore be addressing the underlying causes which lead to offending, as opposed to shaming an individual for past offenses and increasing the likelihood that they will remain in persistent contact with the justice system.

More evidence-based, rehabilitative approaches towards vulnerable young people who offend in that crucial age bracket is what our primary goal should be. One way in which we can work towards achieving this is by raising the age of criminal responsibility to 14 years and funding programs that take a restorative and therapeutic approach to anti-social behaviour in children under the age of 14 years. We know that children first detained between the ages of 10 and 14 are more likely, compared to those first supervised at older ages, to have sustained and frequent contact with the criminal justice system throughout their lives.<sup>4</sup> We also need to invest in more restorative approaches at the forefront of the system, such as Youth Justice Group Conferencing, so that young people can be held accountable for their actions whilst working to repair the harm they caused.

We also need a greater investment in other diversionary options that engage vulnerable young people before they become caught up in the justice system, particularly in the area of education. Education can often be the first sign that a young person has started on a trajectory into anti-social behaviour and involvement with the youth justice system and the investment in programs such as Navigator – a program that works with disengaged learners aged between 12 and 17 to engage with them and their support networks to return them to education or training – should be a primary focus.

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<sup>4</sup>Australian Institute of Health and Welfare. (2013). Young people aged 10–14 in the youth justice system 2011–2012 Canberra: AIHW; Jesuit Social Services. (2013). Thinking Outside: alternatives to remand for children (Research Report). Richmond: Jesuit Social Services. Retrieved from [http://jss.org.au/wp-content/uploads/2015/10/Thinking\\_Outside\\_Research\\_Report\\_Final\\_amend\\_15052013.pdf](http://jss.org.au/wp-content/uploads/2015/10/Thinking_Outside_Research_Report_Final_amend_15052013.pdf)



Due to reasons outlined throughout this submission, we believe that the newly inserted section 534B of the *Children, Youth and Families Act 2005* which states that 'certain publications exempted if publication is in relation to sentencing of an adult' needs to be removed as soon as possible in order to protect the principle of rehabilitation in sentencing. Alternatively, if the removal of this section is deemed as not desirable, there should at minimum be a provision inserted that protects people in that still vulnerable 18-25 age range from having their juvenile offenses published and taken into account.<sup>5</sup>

We appreciate the Commission taking our views into account

Yours sincerely

*Julie M. Edwards*

**Julie Edwards – CEO, Jesuit Social Services**

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<sup>5</sup> Jesuit Social Services recognises that in Vincent's Open Courts Review, under the section where that discussed some of the background before making recommendation 13, he quotes Judge Amanda Chambers of the Children's Court of Victoria. Judge Chambers proclaimed that 'exposure of prior offending should not be automatically available for offenders once they had turned 18 given the frequent incidence of offending committed by young adults into their early twenties. President Chambers warned that mere disclosure of child offending would reveal only a partial picture of continued criminality in the absence of information about the circumstances of the offending.'