



Children's Court of New South Wales

22 April 2015

Mr Mark Johnstone
Executive Officer
New South Wales Sentencing Council
GPO Box 5199
Sydney NSW 2001
Australia

Dear Mr Johnstone,

Re: Consultation of alcohol and drug fuelled violence

Thank you for providing the Children's Court of New South Wales with the opportunity to comment on the alcohol and drug fuelled violence terms of reference.

The Children's Court is of the view that juvenile offenders should be treated differently from adults in relation to sentencing.

Sentencing of juvenile offenders involves significantly different considerations to those when sentencing adults. Unique issues relevant to juvenile offending, such as lack of maturity, propensity to take risks and susceptibility to peer influence must be taken into account on sentencing to ensure an emphasis on rehabilitation is maintained.

The overarching principles are outlined in section 6 of the *Children (Criminal Proceedings) Act 1987* and section 7 of the *Young Offenders Act 1997*.

Below are the Children's Courts views in relation to the terms of reference.

Mandatory aggravating factor

The Children's Court submits that common law provides for intoxication, in appropriate cases, to be taken into account as an aggravating factor when assessing the seriousness of an offence. It is not necessary to amend Section 21A to introduce a mandatory aggravating factor where an offence involved violence because the offender was taking, inhaling or being affected by a narcotic drug, alcohol or any other intoxicating substance as the current law adequately covers the issue.

Conditional liberty

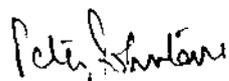
The Children's Court supports the proposal to include the definition of 'conditional liberty' in Section 21A. The amendment will ensure that the term is understood, thereby facilitating the administration and application of the Section 21A. Without this change, the Act is unclear if the term covers who is on parole or subject to a community service order.

Concept of vulnerability

The Children's Court supports the proposal to expand the concept of vulnerability to include broader circumstances of vulnerability.

Whilst the Court acknowledges that the current law is that the list of victims who may be regarded as vulnerable under Section 21A is not closed or exhaustive, there may be merit in amending Section 21A to make it clear that a victim who is not psychically strong as the offender or who has no means of escape is also vulnerable.

We thank you for the opportunity to comment and would be happy to be involved in any further consultations on these issues including consideration of any draft Bill that is released for comment.



Yours faithfully,

Judge Peter Johnstone
President of the Children's Court of NSW