



THE LAW SOCIETY
OF NEW SOUTH WALES

Our Ref: RBGMM1298105

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26 October 2009

The Hon. John Hatzistergos, MLC
Attorney General for NSW
Level 33, Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Attorney General,

Courts and Crimes Legislation Amendment Bill 2009

The Law Society's Criminal Law and Juvenile Justice Committees (Committees) have reviewed the above Bill and bring the following comments to your attention.

Schedule 2.1 - Bail Act 1978

The Committees' primary position is that s 22A should not apply to children, and that it is disappointing that the amendment does not exclude children from the application of the section. However, the new s 22A (1A), which provides more guidance around the circumstances in which a repeat application for bail may be made, is a step in the right direction.

The Committees support the amendment to s 22A(5) which removes the requirement that a solicitor "must" refuse to make a bail application if there are no grounds for a further application for bail, and replaces this with "may".

Schedules 2.2, 2.3 and 2.5 - Children's Court Magistrates

The Committees are completely opposed to the amendments contained in Schedules 2.2, 2.3 and 2.5 that would permit any Magistrate to exercise the jurisdiction of the Children's Court.

The Committees strongly support the concept of specialist Children's Court Magistrates, as did Justice Wood in his November 2008 Report of the Special Commission of Inquiry into Child Protection Services in NSW.

The proposed amendments are contrary to the very specific requirements for appointment as a Children's Court Magistrate set out in s 7(2)(b) *Children's Court Act 1987* which provide that the Magistrate:

"has, in the opinion of the Chief Magistrate and the President, such knowledge, qualifications, skills and experience in the law and the social or behavioural sciences, and in dealing with children and young people and their families, as the Chief Magistrate and President each consider necessary to enable the person to exercise the functions of a Children's Magistrate".

While there are logistical and resource implications in fully implementing Justice Wood's recommendations about specialisation, the Committee considers that these implications should not lessen its importance in practice. Children who are dealt with in more remote areas (whether in care or in crime) by the Local Court Magistrate sitting at the Children's Court from time to time are arguably getting quite different judicial attention to those appearing before a specialist Children's Court Magistrate.

The proposed amendments dilute the importance of specialist Children's Court Magistrates and should be deleted.

The only exception should be in urgent matters such as bail applications in regional and remote Courts where there is no specialist Children's Court Magistrate available to hear the matter. Any Local Court Magistrate acting as a Children's Court Magistrate in these exceptional circumstances should be required to attend regular training in children's law, and on current practices and procedures in the Children's Court as directed by the President of the Children's Court.

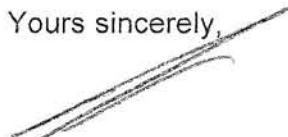
Schedule 2.8 Crimes - (Criminal Organisations Control) Act 2009

The Committees are concerned that the use of the word "request" in proposed s 16 is misleading and may lead to the unwitting commission of offences by persons subject to a "request" to provide information as to identity or to remain in a particular place under subsections 16(6) and 16(7).

The note to s 16(6) makes it an offence to refuse to comply with s 16(6)(a) (which deals with a "request" to disclose one's identity). While the note does not make it an offence to refuse to comply with s 16(6)(b) (dealing with a "request" to remain at a particular place), an officer can nevertheless detain a person for up to 2 hours under s 16(7) if the person refuses the request. If the person then maintains their refusal to comply with the request, presumably they would be committing an offence.

The term "direction" rather than "request" would be more accurate and less liable to misunderstanding and the unwitting commission of offences.

Yours sincerely,



Joseph Catanzariti
President