



**THE GREENS NSW SUBMISSION TO THE  
REVIEW OF THE *YOUNG OFFENDERS ACT 1997* &  
THE *CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987***

1. The Greens NSW are pleased to make this submission concerning the *Young Offenders Act 1997* ("YOA") and the *Children (Criminal Proceedings) Act 1987* ("CCPA").
2. Juvenile Justice is an issue of paramount importance the Greens. Any review of these Acts should be guided by the following:
  - a. The best interests of the child is the paramount consideration in all actions concerning children and young people;
  - b. Children and young people should be allowed to voice their opinions as to what is in their best interests. Children should have direct input into and be directly consulted with regard to policy formulation;
  - c. Any system must recognise there is a link between homelessness, social disadvantage, family dysfunction, child abuse, unemployment and crime;
  - d. Juvenile Justice must deliver early intervention and crime prevention programs;
  - e. The principles that underpin the YOA must remain central, including a commitment to diversion from the court system and keeping young people in their families and communities of support; and
  - f. The current acts and juvenile justice system are in particular failing Aboriginal youth who now represent some 50% of all the young people held in detention – from a population base of just over 4% of the State's young people.
3. In making this submission, the Greens NSW have focussed our responses on particular questions posed in the consultation paper which we believe should be the focus of law reform in relation to these two pieces of legislation.
4. We appreciate the time taken to consider this submission and look forward to positive law reform on behalf of the government in 2012.

Regards,

David Shoebridge MLC,  
Greens NSW Justice spokesperson



## **Greens NSW responses to consultation questions:**

### **2.1 Context**

*Question 1*

*(a) Does NSW's legislative framework take the right approach to offending by children and young people?*

5. No. There is excessive reliance under the present system on court appearances and judicial responses to juvenile offenders.
6. Almost all international and local studies have shown that community and family centred responses, delivered in the community not in the criminal justice system, are the only proven way of effectively reducing offending by children.
7. The legislative framework must provide a greater focus on community and family centred responses, requiring clear and cogent reasons to be given by police and other prosecuting bodies when they determine to refer a juvenile offender to the courts. These reasons should then be tested as a threshold point in any judicial process.

### **3.5.2 Offences covered by the Act**

*Question 5*

*Should the YOA apply to all offences for which the Children's Court has jurisdiction, unless specifically excluded?*

8. Yes. This would lead to better use of the Young Offenders Act. It would also mean less confusion for magistrates, given the complication in the current system.
9. In particular, the YOA should apply to drug related offences drug matters, and Apprehended Violence Orders, the latter because the courts and police remain as gatekeepers, and assault occasioning actual bodily harm can be dealt with by the YOA.



### 3.7.2 Process of arranging and giving a caution

*Question 12*

*Are the provisions that govern the process of arranging and giving cautions appropriate? Are there any concerns with their operation in practice?*

10. There is concern that NSW Police take young people into custody before releasing them with a caution, which contradicts the intentions of the YOA. Arrest is meant to be a matter of last resort. As such, there is a need for a clearer statement of this in the YOA.

### 3.8.3 Referrals to conferences by courts

*Question 15*

*Are there any concerns with the comparative rate of conference referrals from Police and the Courts? If so, how should these concerns be addressed?*

11. One issue of concern is resourcing. For example, it has been suggested that many police stations don't have Specialist Youth Officers (SYOs), meaning these stations they cannot conduct conferencing. This may in part explain the lower number of young people referred to conferencing by police as opposed to those referred by the courts.
12. Homelessness also needs to be addressed. It is important that the juvenile justice system is not used to house young homeless people.
13. The clear statistical bias against Aboriginal offenders also requires a more considered specific legislative response.

### 3.11 Appropriateness and adequacy of YOA interventions

*Question 20*

- a) Is diversion still a legitimate aim of the YOA?*
- b) If not, how could court processes and interventions be structured so as to better address re-offending amongst children?*
- c) If so, is it still adequate and appropriate to divert children to warnings, cautions and conferences?*
- d) What changes could be made to the interventions under the YOA, to better address re-offending amongst children and young people?*
- e) Do the interventions under the YOA adequately cater for the needs of victims?*



14. Please see the response in 2.1 above. Diversion to community and family based programmes is the only evidence based model that works to reduce juvenile reoffending.
15. While the Young Offenders Act is a good piece of legislation, the implementation of it can vary.
16. The approaches of the 'welfare based' approach, for example as operating in Scotland and Sweden, is that intervention should be based on the needs and best interests of the child, rather than their offence. Such an approach should be what we deliver in NSW.

### 3.12 The diversion of Aboriginal and Torres Strait Islander children under the YOA

*Question 21*

- a) *What changes to the YOA, or its implementation, could be made to ensure that Aboriginal and Torres Strait Islander children have equal access to diversionary interventions under the YOA?*
- b) *What changes to the YOA, or its implementation, could be made to better address the over-representation of Aboriginal and Torres Strait Islander children in the criminal justice system?*

17. It needs to be made clear that arrest is a measure of last resort. See also the responses in 3.7.2 and 3.8.3 above

### 4.3 Age of criminal responsibility

*Question 21*

*Should the age of criminal responsibility be changed? If so, why, and to what age?*

18. Yes, the criminal age of responsibility should be changed. 10 is too low.
19. Evidence from overseas suggests that an appropriate age should be 14.
20. However, in different circumstances, medical and psychological evidence could dictate otherwise. There are very good arguments to suggest that 12 should be the absolute minimum age.

### 4.5 Guiding principles

*Question 23*

- a) *Are the guiding principles set out in the CCPA still valid and are any changes needed?*



*b) Should the principles of the CCPA be the same as the principles of the YOA?  
Should the CCPA include an objects clause? If so, what should those objects be?*

21. The YOA originally established a Youth Justice Advisory Committee (YJAC), comprising representatives from non-govt agencies, as well as from the Department of the Attorney General.
22. Within three years the YJAC had noticed that there were inequities when it came to diverting young people from formal court proceedings and that Aboriginal young people were ending up in court rather than being dealt with under the YOA.
23. A body which had oversight of the legislation may be able to monitor aspects such as the relative number of Aboriginal young people diverted from the prison system.

## 4.9 Background reports

### *Question 29*

- (a) What should the content of the background reports be?*
- (b) Should the contents be prescribed in legislation?*
- (c) Should other reports be available to assist in sentencing?*

24. The main reason for a background report is to establish eligibility for non-custodial options, however there is no reference to non-custodial options in the CCPA.
25. Background reports are reportedly slowing sentencing process and are often seen as a waste of resources.
26. If background reports were shorter and focussed on a specific area to address the sentencing process, they might be of more utility.

## 4.10 Other Reports

### *Question 30*

*Should a court have the power to request to a report from relevant government agencies in order to determine whether a young person is at risk of serious harm (and in need of care and protection) and/or whether they are homeless?*

27. Yes, courts should have this power, given the constant risk that the juvenile justice system will be used to house difficult homeless young people.
28. Indeed if the system is to genuinely deliver reduced offending and higher rehabilitation levels, then integrating the (hopefully) small minority of cases that end up in the Court system and government support agencies is essential.



### 4.11.3 Traffic Offences

*Question 33*

*Should the Children's Court hear all traffic offences allegedly committed by young people?*

29. Yes, the Children's Court should deal with all traffic matters whether or not the driver is of licensable age.
30. This would clear up the anomaly in the current system whereby young people are sent to the Children's Court when they have committed another offence at the same time, but they are sent to the Local Court in regards a single traffic offence. The Children's Court is a far more suitable vehicle for dealing with these matters.
31. A further aspect urgently requiring change is that the Local Court can impose control orders for traffic offences although it is unclear whether it has the power to do so under the CCPA. This is both anomalous and contrary to the provisions and principles of the YOA and CCPA which should be given priority.

## 5. Should the two acts be merged?

*Question 39*

*Should the YOA and CCPA be merged? If so, what should be the objects of any new Act?*

32. There is no need to merge the YOA and CCPA. Doing so may give police a more obvious 'pathway' through the legislation and force them to look harder at all diversionary options before resorting to the CPPA.
33. However, it is already clear in the legislation that police need to make a decision that the provisions of the YOA are not applicable before they refer to the CCPA. Further training and resourcing for police to enable them to undertake this role in the spirit of the two Acts is required.
34. One possible response is to cross reference the two Acts internally through notations. Reference should be made in the CCPA to the YOA, which would instil an understanding of the hierarchy of interventions.