



Mr Lee Odenwalder MP  
Shadow Minister for Police,  
Emergency Services and Correctional Services  
PO Box 1046  
Elizabeth Vale SA 5112

Level 3, 111 Gawler  
Place  
Adelaide SA 5000  
GPO Box 2281  
Adelaide SA 5001  
DX115  
Tel 08 8226 8570  
Fax 08 8226 8577  
[gryp@gryp.sa.gov.au](mailto:gryp@gryp.sa.gov.au)  
[www.gryp.sa.gov.au](http://www.gryp.sa.gov.au)

By email only: [elizabeth@parliament.sa.gov.au](mailto:elizabeth@parliament.sa.gov.au)

CC: Members of the House of Assembly and Legislative Council

7 April 2020

Dear Mr Odenwalder

**Feedback on the Criminal Law Consolidation (Throwing Objects at Vehicles) Amendment Bill 2020**

I am writing to comment on the Criminal Law Consolidation (Throwing Objects at Vehicles) Amendment Bill 2020. This Bill seeks to double the maximum penalty for throwing rocks or other missiles at vehicles on a roadway from five to 10 years imprisonment.

I note that an identical version of this Bill was introduced into the House of Assembly in 2018, where it failed to pass. I have attached my letter from 8 October 2018 outlining my concerns. As I am not aware of any factors which have significantly changed to make this bill more necessary or its proposals more effective, my views remain the same today.

- Current research does not demonstrate that higher penalties act as a deterrent for children and young people who would be disproportionately affected by this Bill.
- Introducing a maximum penalty of 10 years for this offence would be likely to result in increased numbers of children and young people transitioning from youth to adult detention. That is not in the public interest and the evidence indicates that would actually detract from community safety.

As previously offered, I would be happy to make the time to discuss my concerns about the implications of this amendment with you.

Alternatively, if you are not aware of the evidence upon which I am relying to form my views or otherwise require any further information about this feedback, your staff may contact my Senior Policy Officer, Ms Jessica Flynn for this purpose on 8226 8570 or at [jessica.flynn@gryp.sa.gov.au](mailto:jessica.flynn@gryp.sa.gov.au).

As is commonly my practice, it is my intention to publish an edited version of this submission on my office's website. Please contact Ms Flynn by Tuesday 14 April 2020 if you have any concerns about this.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Penny Wright'.

**Penny Wright | Guardian and Training Centre Visitor  
Office of the Guardian for Children and Young People**

**Attachment - Feedback from Penny Wright, Guardian and Training Centre Visitor on the Criminal Law Consolidation (Throwing Objects at Vehicles) Amendment Bill 2018**

From 8 October 2018

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Mr Lee Odenwalder MP  
Shadow Minister for Police,  
Emergency Services and Correctional Services  
PO Box 1046  
Elizabeth Vale SA 5112

Level 4, East Wing  
50 Grenfell Street  
Adelaide SA 5000  
GPO Box 2281  
Adelaide SA 5001  
DX115  
Tel 08 8226 8570  
Fax 08 8226 8577  
[gcyp@gcyp.sa.gov.au](mailto:gcyp@gcyp.sa.gov.au)  
[www.gcyp.sa.gov.au](http://www.gcyp.sa.gov.au)

CC: Members of the House of Assembly and Legislative Council

**8 October 2018**

Dear Mr Odenwalder

**Feedback on the *Criminal Law Consolidation (Throwing Objects at Vehicles) Amendment Bill 2018***

I am writing to comment on the *Criminal Law Consolidation (Throwing Objects at Vehicles) Amendment Bill 2018* you introduced to Parliament in June, which doubles the maximum penalty for throwing rocks or other missiles at vehicles on a roadway from five to 10 years imprisonment. Please see my more detailed notes, attached.

An implication of the proposed maximum penalty is that a child could be sentenced as a 10-year-old and transition to the adult prison system because of a single offence.

While acknowledging the serious nature of this crime, I am concerned that the amendment will increase the likelihood of children and young people being sentenced in a way that guarantees that they will transition from youth detention to adult prison. Moreover, sentences of up to 10 years imprisonment sends a message that these children are not worthy of rehabilitation or redemption. The literature does not suggest that increasing penalties as proposed has any meaningful deterrent effect, which presumably would need to be established for the amendment to pass.

I will be happy to meet with you to discuss the implications of this amendment, especially as you noted in your second reading speech “that six people, sadly mostly very young people, have either been arrested or reported so far this year” for this offence.

Please let me know if you require any further information about, or wish to discuss, this feedback. Your staff also can contact my Senior Policy Officer, Ms Jessica Flynn for this purpose on 8226 8570 or at [jessica.flynn@gcyp.sa.gov.au](mailto:jessica.flynn@gcyp.sa.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Penny Wright'.

**Penny Wright | Guardian and Training Centre Visitor  
Office of the Guardian for Children and Young People**

## **Feedback on the *Criminal Law Consolidation (Throwing Objects at Vehicles) Amendment Bill 2018***

From Penny Wright, Guardian and Training Centre Visitor

**8 October 2018**

Feedback in this addendum reflects my responsibilities as Guardian for Children and Young People under the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*, and Training Centre Visitor under the *Youth Justice Administration Act 2016*.

### **This amendment will change the nature of youth detention in South Australia**

Children under guardianship orders, Aboriginal children, and those dealing with the effects of ongoing trauma, poor mental health and some disabilities are already over-represented in the youth justice system, and this amendment is likely to reinforce that trend. On any given day in the Adelaide Youth Training Centre, 62 per cent of residents are Aboriginal, and 24 per cent were under guardianship orders when they were admitted.

While 'tough on crime' measures in relation to juvenile offenders may be electorally popular, they generally are ineffective.

Introducing a maximum penalty of 10 years for this offence may result in increased numbers of children and young people transitioning from youth to adult detention.

Children being held criminally responsible ignores evidence which demonstrates that diversion, and avoiding detention, combined with measures such as restorative justice are effective methods of reducing crime amongst children. Harsher penalties ignore the need to deal more appropriately with juvenile offending.

### **This amendment is based on the assumption that an increased sentence will act as a deterrent**

Deterrence relies on the assumptions that offenders will have knowledge of the threat of a criminal sanction, and then make a rational choice whether or not to offend, based on that knowledge.<sup>1</sup> Those are both major assumptions in respect of children and young people. Where criminogenic logic *may* apply to adult offenders, it is not evident that it will work in the same way with developmentally immature young offenders.

This amendment therefore fails to acknowledge the developmental stages of childhood and adolescence, and the well-documented differences in judgement, decision-making and competency between children and adults. Children do not always understand the consequences of their actions.

It is doubtful whether the general deterrence sought by the Bill can be attempted, let alone realised. What is likely is that it would have a disproportionate impact on vulnerable children and young people.

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<sup>1</sup> Donald Ritchie, *'Does Imprisonment Deter? A Review of the Evidence'*, Sentencing Advisory Council, Victoria 2011. [Available here](#).

## **The age of criminal responsibility in South Australia is too low at 10 years of age**

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Across Australia, the common law principle of *doli incapax* allows the presumption that a child aged 10 to 14 years is not criminally responsible.<sup>2</sup> This presumption can be rebutted if the prosecution can present evidence which demonstrates the child knew the act was seriously wrong (not simply naughty or mischievous). The doctrine of *doli incapax* cannot be used to justify the age of 10 as appropriate. Across the world, the median age of criminal responsibility is 14 years.<sup>3</sup>

In criminal proceedings of children charged with throwing objects at vehicles under s 32A of the *Criminal Law Consolidation Act 1935*, the presumption is likely to be rebutted.

The Royal Commission into the Protection and Detention of Children in the Northern Territory has recommended the age of criminal responsibility be raised to 12 years, and that no child under the age of 14 be sentenced to detention, except in cases of the utmost criminal seriousness.<sup>4</sup> Australia has a responsibility to ensure compliance with its obligations as a signatory to the Convention on the Rights of the Child. The minimum age of criminal responsibility in Australia is 10 years old but should be raised to the UN recommended minimum of 12.<sup>5</sup>

The age of criminal responsibility is described as the primary legal barrier to the criminal justice system, and presents a critical opportunity to assist in reducing the overrepresentation of Aboriginal children in custody.<sup>6</sup>

If passed, this Bill will result in any child sentenced to the maximum penalty of 10 years imprisonment transitioning into the adult system.

Serious questions arise:

- Have the implications of this amendment been fully examined?
- What does it mean for the safety of the young person when transitioning to an adult system, and what does this mean for their rehabilitation prospects?

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<sup>2</sup> Emily Mitchell, Senior Policy Officer, Public Interest Advocacy Centre, 'OPCAT and youth in custody' 25 May 2016, p 10. [Available here](#).

<sup>3</sup> Australian Human Rights Commission, National Children's Commissioner, 'Children's Rights Report 2016', 187.

<sup>4</sup> Royal Commission into the Protection and Detention of Children in the Northern Territory report, p 28.

<sup>5</sup> United Nations Convention on the Rights of the Child, CRC/C/GC/10, 25 April 2007 p 11[32]. [Available here](#)

<sup>6</sup> Thomas Crofts 'A Brighter Tomorrow: Raise the Age of Criminal Responsibility' *Current Issues in Criminal Justice* 15; (2015) 27(1) 123.