

A Coalition of Youth, Legal and Welfare Workers

21 February, 2006

**Ms Barbara Perry  
Chair, Committee on Children and Young People  
New South Wales Parliament  
Macquarie St  
SYDNEY NSW 2000**

Dear Madam,

**Inquiry - Children, Young People and the Built Environment - Submissions**

Thank you for providing the Youth Justice Coalition with the opportunity to make a submission to the Inquiry into Children, Young People and the Built Environment.

The Youth Justice Coalition (YJC) is a network of youth workers, children's lawyers, policy workers and academics working to promote the rights of children and young people in NSW.

The YJC has been a key player in advocating for children's rights over many years; campaigning for law reform, advising government, conducting research, consulting with children, and providing community legal education.

Examples of the work of the Youth Justice Coalition include:

- *Kids in Justice: A Blue Print for the Nineties* (1990)
- Contribution to the Australian Law Reform Commission and Human Rights and Equal Opportunity Commission Inquiry into Children and the Legal Process (1997)
- *Youth Street Rights – A Policy and Legislation Review* (1999)
- *It's Our Act* – a submission to the NSW Care and Protection Act 1998 and a youth participatory project (1999)
- Research into young people's experiences of the *Young Offender's Act* in NSW (2002).

In addition we have made many submissions to the NSW and Commonwealth governments on various measures relating to the rights of children and young people.

**Human rights and a child-focused framework**

The Youth Justice Coalition adopts a human rights approach to its work and in preparing this submission we are guided by relevant human rights principles. We are also guided by

a child-focused approach. This requires an emphasis on both (i) the rights of children and (ii) the best interests of children.

As a signatory to the *UN Convention on the Rights of the Child (CROC)*, Commonwealth and State governments have an obligation to ensure that all legislative and policy reforms comply with both the intention and the wording of *CROC*.

CROC contains several Articles relevant to this inquiry which we submit should be considered when reviewing any policies relating to children and young people in the built environment:

**Article 3** – In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

**Article 12** – State Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

**Article 13** – The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or print, in the form of art, or through any other media of the child's choice.

**Article 31** – State Parties recognise the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts. State Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activities.

## **Our Submissions**

Please find below submissions based on the terms of reference of the inquiry. We would ask that this written material form the basis for any scheduled oral submissions. At that stage we hope that the submissions from the YJC will be presented by a member of the YJC as well as young people who may share their direct experiences of matters raised in this paper.

### **Terms of reference**

The Committee is to inquire into:

## **1. Trends, changes and issues for children and young people in the development, implementation and coordination of policy, design and planning for the built environment;**

We have broken down consideration of this term of reference into three main areas; young people and public space, young people in privately owned spaces and young people and public transport.

### **1. Young People and Public Space**

We submit that the use of public space is very important to young people and critical to maintaining their social networks and culture. It is a subject that has been well researched and reported in NSW. We would like, therefore, to take the opportunity of this enquiry to highlight some aspects of young people's use of public space as part of a review of young people in the built environment.

#### **1.1 Police Powers to Move On and Young People's Use of Public Space**

Police in NSW have the power to ask people to "move on" in a variety of public spaces such as roads, footpaths, car parks, train stations, parks, beaches and shops. Police should only make such directions in a limited number of circumstances, such as if people are obstructing traffic or people, harassing or intimidating other people, causing fear (or likely to cause fear) to other people, or if police suspect you are supplying or obtaining illegal drugs.

While the limits of the powers to issue move on directions are quite specific, it is our experience that young people are often the target of move on directions, even when they are just "hanging around". This is often due to the perception that young people hanging around in groups are intrinsically intimidating to some people in the community. It is also our experience that the move on power is used by police quite broadly and arbitrarily in relation to young people, especially in areas where there is a higher presence of marginalised young people in a local area.

It is our submission that the legislation relating to move on powers, such as the *Crimes Amendment (Police and Public Safety) Act 1998*, is very broad and has significant implications for the rights of young people to use public spaces within their built environment. For many young people, especially those young people who do not have money for other types of recreational activities, public spaces such as the street, parks and so on are a vital part of their social lives.

There is a clash of cultures when this type of social activity brings young people to the attention of the police when there is not necessarily any criminal or civil disobedience intent behind young peoples' behaviour. Surveillance of young people's activities in their social sphere creates a sense of resentment and criminalises many normal teenage behaviours. It is also our experience and a well documented phenomena that move on powers can sometimes act as a catalyst for the trifecta of public disorder charges –

offensive language, assault police and resist arrest. When young people feel that they are being unfairly targeted and surveyed by police, a direction to move on can escalate tension between police and young people – a situation that can leave young people with a significant criminal record and a very negative attitude towards police and the legal system in general.

In the light of new amendments recently passed by the NSW Parliament after the riots in Cronulla, we expect that the surveillance of young people in public spaces by police will increase, further restricting the rights of young people to use the built environment for legitimate and legal purposes.

**We recommend that there is a need to:**

- **review legislation authorising the use of move on powers,**
- **review the practice of using move on directions by police in relation to young people and**
- **implement better training for police in how to deal with young people more effectively.**

## **1.2 Graffiti, Young People and Public Space**

Recent media attention on graffiti and crackdowns on the selling of spray paint cans highlights another important issue for young people in the built environment. Creating graffiti art in public places is illegal under NSW legislation and in fact the *Summary Offences* legislation as well as the *Rail Safety (General) Regulation* criminalises the possession of materials which may be used for graffitiing purposes.

We submit that there should be a recognition of aerosol art as a legitimate form of artistic and creative expression for young people. Regulated appropriately and created on surfaces specifically put aside for this purpose, aerosol art can be an excellent avenue through which young people can tell their stories within the built environment, create a sense of ownership of space and make parts of the built environment more youth friendly. Aerosol art murals can add a striking and vibrant feel to a community.

Aerosol art workshops and projects run through local youth services have had great success in many areas linking young people in with community support, increasing young peoples' confidence and providing an avenue for young people to have a voice through art and design. Often young people are encouraged through these programs to think of themes for their work

It is our submission that blanket bans on graffiti run counter to children and young peoples' right to freedom of expression. The legislation and regulations in this area make it difficult to run legal graffiti workshops and to create legal aerosol art. It is our

experience that young people are having difficulty attending programs such as aerosol art workshops and working on legal aerosol art projects, particularly when young people travel on the train to get to their project. Clause 36(2) of the *Rail Safety (General) Regulation* specifies that

*“a person must not, without reasonable excuse, have in his or her possession on any train, any part of a railway, or any railway land any thing intended for use in damaging property”.*

Young people are being fined under this regulation (and the fine for an offence of this type is \$400) despite the fact that they have a ‘reasonable excuse’, ie attending a workshop or participating in a legal aerosol art project.

**We recommend that:**

- **The relevant clause of the *Rail Safety Regulation* should be reviewed to clearly define ‘reasonable excuse’ or be repealed;**
- **That planning of public spaces designed for youth purposes include space for legal aerosol art projects and**
- **That available wall space suitable for legal aerosol art projects be set aside in local government areas for use by young people in order to encourage positive artistic contributions by young people.**

## **2. Young People in Privately Owned Public Spaces**

A trend towards the diminution of public space in Sydney and regional areas for young people has meant that young people are spending more of their social and recreational time in privately owned public spaces such as shopping malls. For young people, these are safe spaces, where something is always happening, friends congregate and are often open late.

For Centre owners and tenants, the way that young people use shopping malls may seem inappropriate, as young people do not have a lot of money to spend in the stores and are often a visible and enthusiastic addition to the mall environment. One outcome of this tension is the increase in surveillance of young people in yet another area of their recreational activities, this time by private security guards.

As with police, interactions between young people and security guards in shopping malls often result in escalating conflict. Security guards patrol these spaces and young people complain that they are subject to harassment, being singled out because of their age and who they are hanging around with, are being told to move on and in some cases being banned from such spaces for behaviour which may be considered reasonable recreational use of space if the young people were not using a privately owned space.

The practice of issuing banning notices to young people for minor infractions of a shopping centre's rules, increases the likelihood of young people coming into contact with the criminal justice system. If a young person breaches a banning notice by returning to a place they have been banned from, the young person can be charged with a criminal charge of trespass and may end up with a criminal record. This can present serious equity issues quite apart from the young person's restriction of their right to use the space recreationally. In some cases, the centre they have been banned from may be the only local shopping centre available to them, restricting access to grocery shopping, banking and so on.

We submit that:

- an important aspect of young people's use and enjoyment of the built environment is a recognition of young people's rights to occupy these spaces without discrimination due to their age;
- The regulation of and exclusion of young people from existing public space such as shopping centres through banning notices and general practices of moving on young people impacts on this right;
- that banning notices are issued without accessible, accountable consistent rules as to what constitutes misconduct;
- the promulgation of the security industry with only self-regulation to account for their performance and their increasing presence in enforcing private property rights at the expense of young peoples' rights restricts young people's rights in relation to the built environment;
- no minimum standards exist in the training of security personnel on youth/cultural issues

and lastly that

- no independent process exists for dealing with complaints about private security personnel.

We recognise that progress is being made in some major shopping centres towards training and developing protocols in relation to young people and shopping malls. This practice is, however, by no means uniformly adopted and the above issues need to be addressed in a more systematic manner.

**We recommend that:**

- **Minimum standards be introduced in the training of security personnel on youth/cultural issues based on the *Resource Manual and Self-Paced Learning***

***Package for Shopping Centre Security Guards* produced through the Youth Action and Policy Association;**

- **Private security personnel be subject to the same complaint system that exists for police and transit officers and**
- **The process of banning young people from shopping centres be reviewed and regulation improved.**

### **3. Young People and Public Transport<sup>1</sup>**

Young people are more reliant on forms of public transport than adults. The public transport systems form an integral part of how many young people enjoy their social time. They serve the practical function of getting them to and from school and work, and are central to young peoples' experience of the built environment. This section will focus on trains in the Sydney metropolitan area. Many factors affect the level of accessibility to public transport; the cost of travel, surveillance by police and transit officers and perceptions of discriminatory treatment of young people, and the impact of the fines system.

#### **3.1 Cost of Travel**

Many young people do not receive any income, and where they do work or receive payments through Centrelink or an allowance from parents, their income level is often low. Current fare levels for children and young people and the complexity of concession card systems for under 18s impacts heavily on accessibility of public transport for a large number of young people in NSW.

#### **3.2 Surveillance and perceptions of discriminatory treatment of young people by police and transit officers on trains**

Many young people report feeling targeted and singled out by police and transit officers when travelling on trains for questioning or surveillance. Young people are highly visible on trains as in other spaces within the community. As part of a social structure and often out of a need to feel safe, young people travel in groups. This visibility in conjunction with adult perceptions of such groups can lead to negative attention focussed on groups of young people regardless of whether they are breaking any rules on the train or not.

It has been our experience through working with our client base that transit officers will sometimes check the tickets of young people only, and that other passengers are not

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<sup>1</sup> The Youth Action and Policy Association has produced a paper discussing young people's experiences of transit officers and includes young people's accounts of interactions between themselves, transit officers and police. The report is called *Fair go RailCorp: Young people and transit security* and is available through their website [www.yapa.org.au](http://www.yapa.org.au).

required to present tickets for inspection. This type of behaviour by rail staff contributes to a feeling among some young people that they are not safe or welcome on trains.

### 3.3 Impact of the Fines System

Fines are a significant issue for young people and an important one to raise in the context of consideration of young people and the built environment. The issue of fines links back to the cost of public transport, the fact that young people often have reduced transport options when compared to adults and the greater level of surveillance young people experience when using public transport and the resulting higher likelihood that they will be issued fines.

Under the *Young Offenders Act, 1997*, police have the option of warnings and cautions. Young people using trains are not given the benefit of these options as transit officers are not given equivalent powers. Transit officers often do not exercise discretion to warn offenders first, instead they issue fines straight away.

At times, police and transit officers use force when issuing fines to young people. While we would argue that any force used to issue a fine is inappropriate when dealing with young people, there are occasions when force beyond what may be considered reasonable is used to issue fines. This includes physically restraining young people and the use of handcuffs when issuing fines.

Many services working with young people note the growing number of their clients who are receiving large numbers of fines and who owe a great deal of money in outstanding fine amounts. Young people often struggle to pay even one fine out of their own finances. The consequences of outstanding fines are very serious, especially for marginalised young people with no access to support services or parents who are willing to financially assist with fines. Once issued with fines, young people face a complex enforcement system and are often overwhelmed by the prospect of dealing with their fines.

There is a serious issue in relation to the commensurability of fine amounts for public transport related offences and other offences which contributes to this problem. For example, a young person can be fined \$400 for smoking undercover at a railway station. This amount is clearly out of proportion with fine amounts for equivalent minor offences. If a young person is fined for using offensive language on the train, the fine will be \$400. If someone is fined under the trial of on the spot fining system for selected summary offences introduced by the *Crimes Legislation Amendment (Penalty Notice Offences) Act*, the fine for offensive language is \$150.

We submit that the fines system on the NSW railway network presents a significant barrier to accessibility to public transport and thereby to young people's greater participation in the built environment to a large number of young people in NSW. Any inquiry looking into the needs of young people and the built environment should consider



strategies for making public transport, such as the rail system, more accessible and appropriate for children and young people.

**We recommend that:**

- **a review of the fines system to allow for more diversion options for young people who are caught offending while on public transport be carried out**
- **there be more training for transit officers on how to work with young people and non-confrontational approaches to dealing with young people.**
- **the cost of using public transport for people under 18 be reviewed**
- **the fine amounts for public transport related offences be brought into line with equivalent summary fine amounts**
- **young people be involved in strategies for making public transport systems**

**2. The mechanisms available for monitoring and reporting on planning processes and decisions concerning the built environment, as they relate to and impact upon children and young people;**

We submit that any mechanisms available for monitoring and reporting on planning processes and decisions concerning the built environment include the following:

- The participation of children and young people in decision-making via direct participation, representation and consultation;
- A recognition of children and young peoples' right to participate, use and enjoy the built environment alongside other groups in the community;
- An understanding of the particular and unique needs of children and young people have in relation to the built environment and a commitment to providing for those needs;
- A greater level of training be made available to people working with children and young people within the built environment as to their different needs, expectations and uses young people have of their community and environment. This training should also include approaches to reduce confrontation when dealing with young people.

3. **Strategies to ensure that built environment issues affecting children and young people are readily identified and receive coordinated attention across portfolios and different levels of government;**

The YJC does not have any submissions in relation to this term of reference at this time.

4. **The role of the Commission for Children and Young People in giving input to the Government and non-Government sectors on inclusive and integrated planning and policy-making for children and young people in the built environment;**

The YJC does not have any submissions in relation to this term of reference at this time.

5. **Any other matter considered relevant to the inquiry by the Committee**

The YJC does not have any submissions in relation to this term of reference at this time.

and report to both Houses of Parliament on the inquiry.

Yours faithfully,



Julianne Elliott  
Convenor