



## Compulsory Treatment (Alcohol and Other Drugs) Bill 2016

YACWAs assessment of the impact on children

January 2017

# Executive Summary

The Youth Affairs Council of Western Australia (YACWA) welcomes the opportunity to provide a submission in response to the Compulsory Treatment (Alcohol and Other Drugs) Bill 2016 (Exposure Draft Bill).

YACWA has conducted extensive research in relation to the Exposure Draft Bill including a comparative analysis of relevant legislation, as well as a focus group with people who have experienced substance use, and direct consults with youth workers, children and young people.

In responding to the Exposure Draft Bill, YACWA has focused specifically on the element of people under the age of 18 being included under the legislation. In doing so, the following issues have been considered in assessing this bill:

- The current impact of drug use among children and young people
- The evidence base relating to Compulsory Treatment Orders
- The context, process, and policy direction of this legislation
- The legislations relation to human rights and children
- The relation of the draft legislation to other current WA legislation
- The relation of the draft legislation to other jurisdiction's legislation, and
- Specific elements of concerns relating to the Draft Bill and the inclusion of children

Through this analysis, YACWA is providing 8 recommendations in response to the Exposure Draft Bill. These are outlined in the relevant section below (page 14). Of significant note, is YACWA's recommendation pertaining to excluding people under the age of 18 from the legislation.

This is primarily due to:

- Prioritisation of Compulsory Treatment over other more relevant services for children and young people
- Lack of an evidence base to include children under legislation
- Lack of modelling to support the inclusion of children
- General doubt and concerns with the elements of the Exposure Draft Bill
- The potential breach of human rights in relation to children, and
- The lack of legislative security for children

YACWA as the peak non-government youth organisation in Western Australia, with a membership comprised of youth service organisations, community organisations, academics, individuals and most importantly young people themselves, YACWA's voice reflects the views of the sector.

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# Explanations

## Definition of ages in this submission

YACWA believes strongly that young people of all ages should have access to the help and support that they need. In doing so, YACWA recognises that different young people require different approaches and levels of support. This is often categorised by age, as is the case in the *Compulsory Treatment (Alcohol and Other Drugs) Bill 2016* (Exposure Draft Bill). However differing definitions of age exist in relation to applying treatment.

YACWA's mandate is to represent the views of young people between the ages of 12 and 25. It is in this regard that YACWA would normally define a young person.

The *Mental Health, Alcohol and Other Drug Services Plan* outlines the following definitions relating to age:

**Infants, Children and Adolescents<sup>(1)</sup>:**

Ages 0 to 15 years (Mental Health)

Ages 0 to 11 years (Alcohol and Other Drug services)

**Youth<sup>(1)</sup>:**

Ages 16 to 24 years (Mental Health)

Ages 12 to 17 years (Alcohol and Other Drug)

The following West Australian legislation provides the definition of 'child' being people who are under the age of 18:

- Article One of the *Convention on the rights of The Child<sup>(2)</sup>*
- Section Five of the *Commissioner for Children and Young People Act 2006<sup>(3)</sup>*
- Section Four of the *Mental Health Act 2014<sup>(4)</sup>*
- Section Three of the *Children and Community Services Act 2004<sup>(5)</sup>*

The Exposure Draft Bill currently makes reference to an adult (being over the age of 18), as well as a person under the age of 18. Currently no definition of young person, adolescent, youth or child exists under the legislation.

For the sake of this submission, YACWA will define a child as a person under the age of 18, and a young person as a person aged 18 to 25.

## Considering the Summary Model of Service

In this submission, YACWA is focusing and responding specifically on the Exposure Draft Bill. In doing so YACWA notes that a Summary Model of Service has been released to expand on some elements that the Exposure Draft Bill provides the legislative base for.

For this reason, YACWA has considered the Summary Model of Service only in relation to the Exposure Draft Bill, and will respond specifically to the legislation in relation to children in this submission. YACWA welcomes the opportunity to provide further feedback specifically in relation to the Model of Service and children and young people once the legislation is finalised.

## Preliminary Pages

### About YACWA

The Youth Affairs Council of Western Australia (YACWA) is the peak non-government youth organisation in Western Australia with a membership comprised of youth service organisations, community organisations, academics, individuals, and, most importantly, young people themselves. Established in 1980, YACWA has worked tirelessly for over 35 years to deliver high-level representation and advocacy for the Western Australian youth sector and young people, to address the exclusion of young people in a rapidly changing society.

YACWA's responsibility pertains to:

- Act as a lobbying group for the non-government youth sector and Western Australian young people aged 12-25
- Provide information and support to the non-government youth sector
- Work to promote fair and positive outcomes for young people in our community
- Promote equity, equality, access and participation for young people in Western Australia
- Advocate to all levels of government on the best interests of Western Australia's young people
- Encourage the active participation of young people in identifying and dealing with issues that are important to them
- Improve youth services by exchanging ideas, information, skills and resources
- Provide a strong, united and informed voice capable of effectively advocating for the non-government youth sector and the young people with whom they work

### YACWA's involvement in Alcohol and Other Drug (AOD) issues

YACWA has been involved directly in the development of the Exposure Draft Bill. A submission was prepared in partnership with the Aboriginal Health Council of WA (AHCWA), and the Western Australian Council of Social Services (WACOSS) providing a response to the discussion paper of Compulsory Treatment (**see attachment 1**). This submission provided 8 recommendations relating to the development of the Exposure Draft Bill.

YACWA is also a current signatory supporter of the WA Alcohol and Youth Action Coalition, and a firm supporter of the election platform put forward by the coalition (**see attachment 2**).

YACWA has also been tracking the Government's current Meth Strategy, and other policy initiatives that address these issues that children and young people face in the community.

Further, YACWA has worked in a multitude of areas indirectly affected by Alcohol and Other Drug (AOD) issues.

This work has been evident in our projects relating to mental health, homelessness, multi-cultural children and young people, as well as sexual health and blood borne viruses. It has also emerged through various pieces of policy work, and advocacy.

Underpinning YACWA's previous work is a vibrant and diverse membership that informs YACWA's positioning and response to issues.

## Process of this submission

YACWA has developed an independent response to the Exposure Draft Bill in order to specifically address children (people under the age of 18) being included under the draft legislation. To assist with this, YACWA has worked closely with WANADA, AHCWA, our members, and key stakeholders.

This resulted in a joint focus group with WANADA over two sessions (**see attachment 3**), consult individuals including youth workers, children and young people, and provide a draft submission for review to various key stakeholders.

Given the concern for human rights, and the lack of evidence of effectiveness for such a program as compulsory treatment, a large part of this submission has been formed on a paper-based review. YACWA has undertaken to respond to broad aspects of the Exposure Draft Bill that has been circulated for public comment, as well as analyse human right elements and complete a comparative analysis of other relevant legislation in relation to children.

In doing so, YACWA recognises that the Draft Bill has been prepared to a tight timeline, and is likely being changed as this submission is being written. We would encourage, as well as welcome, the opportunity to provide ongoing input into its development post this consultation period.

The submission was prepared by YACWA's Senior Policy Officer, Joshua Cunniffe.

## Introduction to this submission

The Youth Affairs Council of Western Australia welcomes the opportunity to provide a submission in response to the *Compulsory Treatment (Alcohol and Other Drugs) Bill 2016* (Exposure Draft Bill).

In doing so, YACWA notes that the timing of this consultation period and the close proximity of a state election to the development of this Exposure Draft Bill has resulted in significant concern and scepticism about the motivation for this legislation.

Of particular concern to YACWA is the inclusion of children (or as the legislation refers to: people under the age of 18) under this Draft Bill. While there may be some who advocate publicly for the inclusion of children in compulsory treatment, YACWA would argue firmly that there are significant concerns in including children in compulsory treatment, and enough doubt to not support their inclusion.

In writing this submission, YACWA has chosen to specifically focus on the Exposure Draft Bill's impact in relation to those people under the age of 18, or as we are defining them in line with other WA legislation: children.

In doing so, the following issues have been considered in assessing the Exposure Draft Bill:

- The current impact of drug use among children and young people
- The evidence base relating to Compulsory Treatment Orders
- The context, process, and policy direction of this legislation
- The legislation's relation to human rights and children
- The relation of the draft legislation to other current WA legislation
- The relation of the draft legislation to other jurisdiction's legislation
- Specific elements of concerns relating to the Draft Bill and the inclusion of children

After consideration of these matters through a consultation and research period, YACWA has arrived at the conclusion that children under the age of 18 would best be protected by being omitted from this legislation. The reasons for which this is the recommended course of action in relation to the Draft Bill, are outlined forthwith.

## Children, Young People and drug use

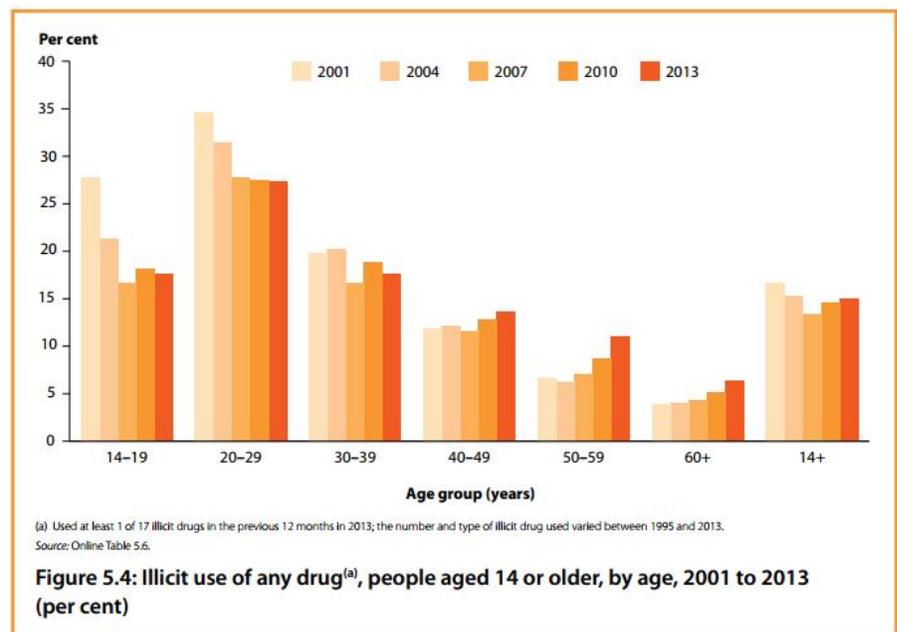
The background paper did not provide much information relating to drug use among children and young people, nor the modelling for including this demographic under the Exposure Draft Bill.

Australian Bureau of Statistic data indicates that there are 657,988 people in the state under the age of 18. Of that number, 315,693 of these children are aged between 10 and 19 years of age. This equates to 12.1% of the population being between the ages of 10 and 19.<sup>(6)</sup>

Further to this, it is estimated that In Australia, 12.7% of people aged 16-24 are estimated to have a substance use disorder<sup>(7)</sup>.

However, studies have consistently demonstrated that the prevalence of substance use and abuse increases with age during adolescence and peaks in early adulthood. Overall, about half of people with substance use disorders first experience substance use issues by the age of 20 years.<sup>(8)</sup>

This analysis is supported in the National Drug Strategy Household Survey (NDSHS) data which indicates that children and young people who had used drugs and been surveyed, on average, were not trying drugs until over the age of 18 in most cases.<sup>(9)</sup>



Australian Institute of Health and Welfare. National Drug Strategy Household Survey detailed report 2013.

- Young Australians (aged 14–24) first try cocaine at 19.2 years on average<sup>(9)</sup>
- Young Australians (aged 14–24) first try tranquilisers for non-medical purposes at 18.2 years on average<sup>(9)</sup>
- Young Australians (aged 14–24) first try ecstasy at 18.2 years on average<sup>(9)</sup>
- Young Australians (aged 14–24) first try hallucinogens at 18.5 years on average<sup>(9)</sup>
- Young Australians (aged 14–24) first try heroin at 16.9 years on average<sup>(9)</sup>
  - 1.6% of 12-17 year olds have tried heroin.<sup>(9)</sup>
- Young Australians (aged 14–24) first try ketamine at 19.4 years on average<sup>(9)</sup>

- Young Australians (aged 14–24) first try meth/amphetamines at 18.6 years on average<sup>(9)</sup>
- Young Australians (aged 14–24) first try cannabis at 16.7 years on average<sup>(9)</sup>

There are several reports and data mapping exercises regularly completed, which indicate drug use across the Western Australian Public. Some major publications include:

- National Drug Strategy Household Survey
- Australian School Students Alcohol and Drug Survey
- National Minimum Data Set
- Hospital Morbidity rates
- Western Australian Drug Trends: Findings from the Illicit Drug Reporting System
- West Australian Trends in Ecstasy and related Drugs Reporting System (EDRS)

This data varies, and is taken from sample sizes, making it unknown if it is representative of the wider public. This demonstrates the difficulty in being able to more accurately describe the problem. However, some consistent themes emerge.

- Alcohol and Cannabis are the most commonly used drug
- Methamphetamine use is rising amongst the wider population
- Highest number of use is in the 20-29 age group.

Anecdotal evidence is also useful, from people working in the field who are exposed to the problem on a daily basis. 12 Key Experts from the West Australian Trends in Ecstasy and related Drugs Reporting System (EDRS) reported that:

- Cannabis was very widely used across WA.<sup>(10)</sup>
- Ecstasy continued to be commonly used recreationally among children and young people in Perth.<sup>(10)</sup>
- Methamphetamine was the main drug used by people they encountered in their fields.<sup>(10)</sup>
- Alcohol use was commonly associated with mental health problems, including depression, anxiety and self-harm<sup>(10)</sup>

Adolescence can be a time of risk-taking, experimentation and testing boundaries, and using drugs or alcohol is often part of this developmental process<sup>(11)</sup>. However, experimentation and risk taking is different from developing a substance use disorder.

Not all children and young people are equally at risk for developing an addiction. Various factors, including inherited genetic predispositions and adverse experiences in early life, make trying drugs and developing a substance use disorder more likely. Exposure to stress (such as emotional or physical abuse) in childhood primes the brain to be sensitive to stress and seek relief from it throughout life; this greatly increases the likelihood of subsequent drug abuse and of starting drug use early.<sup>(12)</sup>

In fact, certain traits that put a person at risk for drug use, such as being impulsive or aggressive, manifest well before the first episode of drug use and may be addressed by prevention interventions during childhood.<sup>(13)</sup>

Further, it is worth noting that there is a close relationship between substance use disorders and other psychological disorders, and use of some substances may increase the risk of developing certain disorders.<sup>(14)</sup> However it is often unclear whether one issue causes the other. An Australian survey found high rates of comorbidity in those with substance use disorders. 1 in 5 Australians with a substance use disorder also met criteria for an affective disorder and 1 in 3 met criteria for an anxiety disorder.<sup>(15)</sup>

## Conclusion

In summary, the following points are made:

- Data is unreliable and unable to ascertain numbers of under 18 year olds with a substance use disorder. Of the data that is gathered, it indicates it is likely to be a small number.
- Therefore, the modelling to support the inclusion of under 18s is unknown.
- A number of those under 18 are likely to experiment with drugs, and differentiating between this and a substance use disorder is important. The definition of a substance use disorder, therefore, is crucial to accurately distinguishing the difference between experimentation and substance use disorder.
- A range of complicated social factors are involved, which are often different to adults.
- Given the smaller numbers of children using drugs such as meth and others, there is risk at placing them in treatment with adults using these drugs.

# Compulsory Treatment Orders

The Global Health Observatory data repository is the World Health Organisation's gateway to health-related statistics for its 194 Member States. It provides access to over 1000 indicators on priority health topics. One such indicator is the legislative provision for compulsory treatment. As of 2008, there were 61 countries indicating a legislative provision for compulsory treatment was in place.<sup>(16)</sup> Australia was not recognised as there was no federal provision, and this data relates to federal provisions.

However, the implementation of the different legislation varies greatly between jurisdictions, with some serious question marks about its effectiveness and legal compliance with international conventions.

A global health study completed in 2016<sup>(17)</sup> concluded that, in a study in Malaysia, 86% of detainees reported cravings for opioids and other drugs even after months of incarceration, and 87% reported that they expected to resume drug use after release. High relapse rates after release have also been reported in China and Cambodia. High rates of drug overdose and crime recidivism are also reported after release from compulsory treatment.<sup>(17)</sup>

In March 2012, a Joint Statement was released by the United Nations entities calling on States to close compulsory drug detention and rehabilitation centres and implement voluntary, evidence-informed and rights-based health and social services in the community.<sup>(18)</sup>

There is much variability in the ways in which compulsory treatment of offenders is implemented internationally, with significant differences in levels of legal coercion, the point in proceedings at which it is imposed, and in the types of offenders targeted. <sup>(19)</sup>

However, the Joint Statement does go on to state:

“All health care interventions, including drug dependence treatment, should be carried out on a voluntary basis with informed consent, except in clearly defined exceptional circumstances in conformity with international human rights law that guarantees such provisions are not subject to abuse.” <sup>(18)</sup>

“In the case of children under the age of 18 years, the most effective and appropriate responses are those that are family-based and build on the strengths of local communities. These should be the first option in full compliance with their rights to welfare, protection, care and justice.” <sup>(18)</sup>

This latter point is supported in a report by Pritchard et al. <sup>(19)</sup> wherein contributions were sought from key informants knowledgeable in the field of compulsory treatment. They said:

“Compulsory treatment of young people does not work. To address youth AOD issues: parents need education about youth drug use, including how to set boundaries; greater investment in early

identification of risky behaviour is required; and young people need access to developmentally appropriate treatment that addresses multiple needs.”<sup>(19)</sup>

This approach has so far been implemented in all jurisdictions in Australia that have compulsory treatment legislation in place. Victoria, New South Wales, and the Northern Territory all exclude children from the application of their respective acts.

Further, the New Zealand Bill mentioned throughout the supporting document of the Exposure Draft Bill, is yet to be implemented or enacted, and further, has no evaluation of its effectiveness.

The consultation completed by YACWA and WANADA indicated that the likelihood of patients finding this treatment effective, relied heavily on the motivation levels of the individual, which were doubted if placed involuntarily in such a program.

“A lot of young people don’t access services. It’s avoidance at any cost.”<sup>(20)</sup>

Further, one participant stated clearly that they would have done everything in their power to avoid being kept in a treatment centre when they were under the age of 18:

“They wouldn’t catch me in this program when I was under 18”<sup>(20)</sup>

This is supported Urbanoski’s paper,<sup>(21)</sup> where she says: “Descriptions of clients "going through the motions" of treatment without actively engaging or participating in the therapeutic process have been documented as common incidents of non-compliance in both adults and adolescents mandated to treatment<sup>(22, 23).</sup>”

A recent journal article exploring the global health and human rights analysis of compulsory treatment, published in the Boston Medical Journal,<sup>(17)</sup> provided the following key messages:

- Mandatory treatment without consent conflicts with human rights principles and is not effective in treating drug addiction.
- Evidence shows that compulsory treatment is associated with high rates of relapse
- The focus should instead be on voluntary treatment using methods that are evidence based

As acknowledged in the Mental Health Commission’s Background Paper: “A 2007 Australian National Council on Drugs (ANCD) Research Paper on compulsory treatment in Australia found there is a need to build the knowledge and evidence base regarding compulsory treatment programs.”<sup>(24)</sup>

On page 64, Pritchard et al. summarise the work of Krag et al, by stating: “From a researcher’s perspective, the principal methodological and conceptual problems that have impeded research were summarised by Klag and colleagues... who concluded that most research over the last 30 years had so many weaknesses that the results were inconclusive and that, in order to draw more than the limited conclusion that

compulsory treatment can sometimes be effective in reducing drug use and crime for some people, further information about the factors that lead to success is required.”<sup>(19)</sup>

## Conclusion

- Compulsory Treatment is a controversial issue, even in the research sector
- Research is inconclusive, with no policy providing substantial evidence that it works
- Major International bodies are unsupportive of compulsory treatment, especially in relation to children
- Little precedent of effective treatment for under 18, with legislation based on another jurisdiction's legislation which is yet to be implemented or evaluated.
- Children are unlikely to engage effectively
- Without meaningful engagement in the treatment, children are unlikely to gain long term benefits from compulsory treatment
- YACWA concludes, that with no evidence base, it is a gamble to enact this legislation in relation to under 18s.

## Recommendations

As a result of the analysis conducted in this submission, YACWA has made a number of recommendations. They are provided below. We have responded to the actual elements of the Exposure Draft Bill by assessing the inclusion of people under the age of 18 years of age, which we are defining throughout this submission as children (see explanation).

YACWA's Recommendations are:

1. That the application of this act be removed from applying to children under the age of 18.
  - a. Failing that, as a minimum:
    - i. The application of children to this act be extremely tightened legislatively with further consultation completed directly with children and young people in conjunction with YACWA, WANADA and the Commissioner of Children and Young People, with further consideration given to concerns raised within this submission
    - ii. The enactment of the legislation be put on hold pending the results from New Zealand in line with what was originally outlined in with the timeline in the Mental Health, Alcohol and other Drugs Services Plan.
    - iii. Accompanied only with increases in funding to voluntary services and prevention approaches for children and young people
2. That this legislation and policy direction be put on hold, pending further investment into voluntary services and prevention approaches. This should be completed in line with the Mental Health Alcohol and Other Drug plan.
3. That further time be given to provide input from the community to draft legislation, with a clear progression of the legislation progress mapped, a clear consultation plan developed including children, young people, and relevant organisations, and transparency in relation to modelling underpinning the legislation.
4. That this service be trialled at a specific place and for a specific time before wide scale implementation, with clear reporting mechanisms, as was originally intended in the Mental Health, Alcohol and Other Drug Services Plan, to remove unintended negative impacts of the bill, and assess effectiveness of compulsory treatment in a Western Australian setting.
5. That specific key efficiency indicators and reporting elements be added to the annual report of the Mental Health Commission for such a service.
6. That this legislation be reviewed every three years with a report tabled to parliament on a continual basis from proclamation.
7. That further expert advice is sought specifically in relation to human rights, especially if the application of this act is progressed with children included – as was recommended by the New Zealand Human Rights Commission in relation to the New Zealand Bill. <sup>(26)</sup>
8. A public consultation period is provided in relation to the Model of Service.

## Supporting other submissions

YACWA would also like to acknowledge its support of the Aboriginal Health Council of WA, and the WA Network of Alcohol and other Drug Agencies in their submissions relating to the Exposure Draft Bill. YACWA has worked alongside these agencies in developing our submission, and is supportive of the positions they have taken.

## Concerns with the policy direction

YACWA has endeavoured to outline a number of concerns relating to the Bill, and in this section is responding to the policy direction that the Exposure Draft Bill Represents, as well as the context in which it has been applied.

YACWA is concerned about the following elements in relation to this policy direction:

- Prioritisation of such a program over other more relevant services for children and young people
- Doubt created in establishing the Exposure Draft Bill over proximity to election
- Cost effectiveness of such a program
- Lack of evidence base to include children under legislation
- The acute nature of the program as a general trend of Government
- Lack of modelling to support the legislation

Compulsory Treatment is referenced in the Mental Health, Alcohol and Other Drug Services Plan. Planning for compulsory treatment is mapped as commencing by the end of 2017, with a trial to commence in 2020. This is Draft Exposure Bill raises doubt to the application of a trial site, in contrast to the plan. If that is the case, significant demand and motivation would need to be present to explain it being prioritised over other services that are currently at capacity and require additional support. This has not been articulated in the documentation so far.

Further, YACWA notes that the timing of this consultation period and the close proximity of a state election to the development of this Exposure Draft Bill has resulted in significant concern and scepticism about the motivation for this legislation.

YACWA acknowledges that in an absolute minority of cases, this legislation may be necessary. Even so, the effectiveness of such a program is highly contentious. As stated in our previous submission: YACWA believes strongly that this sort of policy is not one that should be experimented with in order to inform an evidence base.

Of further concern is the general trend that was evident in the last Budget of the State Government, as outlined in YACWA's State Budget Analysis (**see attachment four**) towards acute services for children and young people. YACWA has argued in the past, and will continue to argue, for early intervention and prevention services in the youth sector that identify issues early, build resilience, and create a bigger return on investment.

## Comparing other Legislation

### Considering the New Zealand Bill in relation to children and young people

The New Zealand Substance Addiction (Compulsory Assessment and Treatment) Bill<sup>(25)</sup> is currently before the houses of parliament and is yet to be legislated. Of the legislation the Mental Health Commission has used to base the Exposure Draft Bill upon, this is the only one that includes under 18 year olds under the legislation.

Currently, the Exposure Draft Bill provides for people under the age of 18 to have quicker review processes when placed in treatment, and an expert place on the mental health tribunal.

Additional safeguards exist in the New Zealand Bill to protect children under the New Zealand Legislation. Such provisions do not currently exist within the WA legislation. These include<sup>(25)</sup>:

- **Part 1, (S.13):** Additional principles applying to exercise of powers over children or young persons
- **Part 2, Subpart 1, S.(20):** Certain approved specialists to undertake assessment of child or young person, if practicable
- **Part 2, Subpart 1, S.(24):** Restriction on signing compulsory treatment certificate for child or young person
- **Part 2, Subpart 3, S.(33):** Restriction on making compulsory treatment order in respect of child or young person
- **Part 2, Subpart 5, S.(51):** Principal caregiver, welfare guardian, and nominated person to be informed of events affecting patient
- **Part 2, Subpart 5, S.(65):** Child or young person entitled to have adult present
- **Part 2, Subpart 5, S.(66):** Parents and others to be informed of decisions
- **Part 2, Subpart 6, S.(81):** Appointment of lawyer to represent child or young person

A review was held by a joint committee of the New Zealand parliament into the legislation in 2016, with a report submitted based upon the feedback. The committee sought input from the public about measures within the Bill. There were 38 submissions on the Bill. <sup>(26)</sup>

The New Zealand Human Rights Commission recommended as part of this review that the Bill is amended to ensure that all its clauses are fully consistent with the United Nations Convention on the Rights of the Child (UNCROC) special protection requirements in relation to all persons aged under 18 years of age.<sup>(26)</sup>

YACWA is of the opinion that a similar measure should be taken with the Western Australian Compulsory Treatment (Alcohol and Other Drugs) Bill.

## Conclusion

In direct comparison to the New Zealand Bill, the Exposure Draft Bill does not provide enough provisions to protect children under the legislation. The omissions indicate that under the current Exposure Draft Bill, children will be treated as adults under the legislation in the majority of instances, which is of significant concern, particularly given that it could be considered a breach of human rights, and the Convention on the Rights of the Child.

## Considering the review of the Victorian Legislation

The Victorian Severe Substance Dependence Treatment Act 2010 recently underwent an independent review. The extensive review looked at the effectiveness of the legislation, the treatment, and other measures. It included consultations with stakeholders involved in the service delivery. <sup>(27)</sup>

It is worth noting that the Victorian Legislation has specific criteria (Part 1, S.8 (1)) relating to the exclusion of children under the age of 18, however, YACWA believes some of the findings are still relevant.

There are two declared treatment centres (named St Vincent's, and Depaul House) in Victoria. Twenty three people in total (an average of approximately 6 per year) were detained and treated under the Act for 28 separate treatments between 1 March 2011, when the service commenced, and 2 February 2015. St Vincent's endeavours to make contact with clients for at least six months following discharge. In relation to 25 episodes of care, they found that<sup>(27)</sup>:

- 3 people could not be contacted and were assumed to have relapsed
- 12 people had relapsed
- 2 people reported reduced use
- 3 people had deceased
- 5 people reported abstinence

The following points were raised within the review of the Victorian legislation and the service, which may be applicable in a West Australian Context in relation to forming legislation regarding children and young people<sup>(27)</sup>:

- Stakeholders emphasised the need to ensure the intended client group is clearly described. They recognise that civil commitment should only be contemplated for a very small group of severely substance-dependent individuals with highly complex needs whose lives are at serious risk in the short- to medium-term.
  - Should the Exposure Draft Bill take on this feedback, it is not clear how many children the legislation would then apply to, but from estimations, it is likely to be a very small number.

- There was limited discussion with stakeholders and no submissions were made about the criterion of a minimum age of 18 years. No specific concerns were expressed about this criterion.
  - This indicates limited desire or need for the application of the Victorian legislation to encompass children under the age of 18
- A prescribed registered medical practitioner cannot make a recommendation if the senior clinician does not or is unable to confirm the availability of facilities or services, regardless of the needs of a potential client. The regulatory framework does not specify the factors the senior clinician may take into account in providing this advice. Some stakeholders expressed concern that this provision vests sole control over the allocation of facilities and services in the senior clinician, and suggested that the criteria for availability of facilities and services should be both specified and transparent
  - This is relevant to the Exposure Draft Bill as, currently, the legislation outlines that an approved specialist only has to enquire about the availability of care provided for children separate to adults.
  - This feedback suggests that there is some confusion in who has responsibility to declare separation from adults for treatment is available for children, and what that criteria is. This suggests further legislative steps are missing in the Exposure Draft Bill.
- The lack of a more distributed service system has been identified as a problem for people in rural areas, both in terms of access to family and local service providers whilst they undergo treatment and the risks of transporting sick people long distances to the treatment centre.
  - The Exposure Draft Bill does not indicate how many treatment centres will be created, and where it is expected patients will come from. This is of extreme concern for WA, which is a much larger geographical area than Victoria. This increases the risk of repercussions of people being transported for treatment, particularly in relation to children and indigenous populations.

## Conclusion

The Victorian review raises several important issues relating to the overall enactment of the legislation, and how the service operates in Victoria. In YACWA's view, the anecdotal evidence pertaining to children, and its implications on Western Australian legislation should be adhered to. Particularly in relation to the fact that the legislation excludes children, and there is not a pressing need to include children.

## Considering the New South Wales Legislation

YACWA did not assess the New South Wales legislation, as it is currently under review.<sup>(24)</sup> YACWA believes that any Compulsory Treatment Legislation put forward by the government would be served well by adhering to the findings of this review.

YACWA notes that this legislation does not include children under 18 year olds.

## Comparing the Children and Community Services Act<sup>(5)</sup>

The following divisions and provisions of the Children and Community Services Act have been explored, as potentially relating to this legislation. A few specific provisions of the legislation point towards further legislative requirements missing from the Exposure Draft Bill. These are explored through the table below.

It is also not clear how this Act will interact with the Compulsory Treatment (Alcohol and Other Drugs) Bill 2016, and what additional safeguards will be put in place to assist children who are living in the care of the state. The New Zealand Bill has specific provisions relating to the interaction between their relevant legislation.

Part	Division	Sub division	Section	Explanation	Concern relating to the Exposure Draft Bill
2	2		7-10	<p><b>General principles relating to children</b></p> <p>Part 2 of this legislation is comprised of four sections relating to working with children under the act. These include:</p> <ul style="list-style-type: none"> <li>• A provision stating that all actions taken into account must be in the best interests of the child (s.7)</li> <li>• Outlines the matters that must be taken into consideration when determining the best interests of a child (s.8)</li> <li>• the guiding principles to be observed in applying the act (s.9)</li> <li>• the Principles of ensuring the child is able to participate in decision making processes(s.10).</li> </ul>	<p>YACWA is concerned that there are no Principles relating specifically to working with children currently under the draft legislation.</p> <p>The draft legislation provides for general principles of performing actions, communication and detention under the act.</p>
4	5	1	78	<p><b>Charter of Rights</b></p> <p>This provision provides specific actions to be taken by the CEO across 5 sub-divisions that legislate: the creation of a charter of rights within a specific time frame- s.78(1); promotion of the charter internally - s.78(2); all children receiving the charter of rights - s.78(3); communicating the charter appropriately - s.78(4); and, accountability through the parliament - s.78(5)</p>	<p>YACWA is concerned that the Exposure Draft Bill does not reference a charter of rights or charter of principles. YACWA notes the existence of the Charter of Rights for Children and Young People in Care, Western Australian Public Patients' Hospital Charter, as well as the Charter of Mental Health Care Principles and questions why a</p>

					similar approach could not be undertaken in regard to the Compulsory Treatment Legislation, or else, with reference to other charters.
4	5	3A	88A-88J	<p><b>Secure Care Arrangements</b></p> <p>This section relates to the Kath French centre, and secure care provisions for children in the care of the state who are admitted when it is judged that:</p> <ul style="list-style-type: none"> <li>• There is immediate and substantial risk to the child or another person; and,</li> <li>• there is no other suitable way to manage the child and provide care</li> </ul>	<p>YACWA is concerned about how this specific part of the Children and Community Service Act relates to the draft legislation. Currently it is not mentioned in the draft legislation.</p> <p>YACWA notes that this particular element of the legislation was controversial, and is currently under review by the Department of Child Protection and Family Support.</p>
4	8		113A	<p><b>Prerequisites for exercise of power</b></p> <p>This section relates to the CEO being able to approve a person or class of persons for the purposes of this Division if the CEO is satisfied that the person has, or persons belonging to that class have, the experience and training that the CEO considers necessary for the proper exercise of the powers conferred by this Division.</p>	<p>YACWA is concerned that the provisions in Part 4, Division 7, of the Exposure Draft Bill are not strong enough, as they provide power to use reasonable force to police officers, transport officers and staff members of the treatment centre. However, a staff member is only defined as somebody who is providing a service under contract to a treatment centre. Theoretically, this could include a cleaner, and stronger provisions need to be applied to reduce risk.</p> <p>Further, while minimal force is a principle of the legislation, there are no restrictions placed on the maximum force allowed to be applied, which is of further concern, particularly in relation to children, who may be more likely</p>

					to resist treatment, or be hurt in the process.
4	8		114	<p><b>Child may be restrained</b></p> <p>An authorised person may restrain a child but only for the period, and to the extent, necessary, in the opinion of the authorised person, to prevent the child —</p> <p>(a) endangering the health or safety of the child or another person; or</p> <p>(b) causing serious damage to property.</p>	<p>YACWA is concerned that currently no specific provisions are related to restraining in the Exposure Draft Bill. Whilst YACWA realises the necessity of providing leniency in relation to legislation, the loose approach allows for this element to be over used - particularly in relation to children.</p>

## Comparing the Young Offenders Act<sup>(28)</sup>

The following divisions and provisions of the Young Offenders Act have been explored, as potentially relating to this legislation. A few specific provisions point towards further legislative requirements missing from the Exposure Draft Bill. These are explored through the table below.

Part	Division	Sub division	Section	Explanation	Concern relating to the Exposure Draft Bill
2			8	<p><b>Responsible adults, role of</b> This section acknowledges the role that responsible adults (see definition Part 1, S.3) play in a child's life, and what principles should guide their involvement in decisions made about the child.</p>	<p>YACWA understands in this comparison, there are some differences.</p> <p>However, the Exposure Draft Bill mentions only a parent or guardian which raises concern about whether or not a parent or legally recognised guardian is most applicable in all cases, when a responsible adult may be a more adequate definition.</p> <p>There are also no specific elements relating to the rights of the parent or to their role in the legislation.</p>
9			181	<p><b>Rules for detention centres, CEO may make</b> This provision grants powers to the CEO, with approval of the Minister, to make rules for the management, control, and security of detention centres.</p>	<p>Currently this does not exist under the Draft Exposure Bill.</p> <p>YACWA is concerned that consideration hasn't been given to the need to create rules to protect patients. Some leniency may be required in order to respond to situations as they arise, with the protection of legislative steps.</p>

## Comparing the WA Mental Health Act<sup>(4)</sup>

The following divisions and provisions of the WA Mental Health Act have been explored, as potentially relating to this legislation. A few specific provisions point towards further legislative requirements missing from the Exposure Draft Bill. These are explored through the table below.

Part	Division	Sub division	Section	Explanation	Concern relating to the Exposure Draft Bill
2	5		9	<p><b>Communicating with a person</b> This section legislates that communication with people relating to the act “must be in a language, form of communication and terms that the person is likely to understand using any means of communication that is practicable and using an interpreter if necessary and practicable.”</p>	<p>YACWA notes the importance of communication given the nature of compulsory treatment, and draws attention to the importance of doing so in a way that is able to be understood by children. YACWA is concerned that if a child is forced into this system, they may not be aware of what is happening, and would require a specific approach. YACWA is concerned that this legislative direction is not strong enough.</p>
5	1		14	<p><b>Capacity of Child to make decisions</b> This section provides for a parent to make decisions on behalf of the child if they are unable to demonstrate they are capable of making decisions themselves.</p>	<p>YACWA is concerned that this area is not addressed by the legislation specifically, and without addressing this, leaves a question mark to the role of a parent, and what powers exactly they have over a child who is judged to not have capacity to make decisions for themselves.</p>
6	3	6	80	<p><b>Information to which examiner may have regard</b> This provision relates to what information a practitioner may have regard to in assessing an individual, and under subsection (2), states that an assessment cannot be made without obtaining information by observing the individual, and asking them questions.</p>	<p>YACWA is concerned that the legislation does not place enough importance on assessing the individual concerned. This protective measure means that somebody cannot be placed under an involuntary order without reasonable suspicion held by the assessor after asking them questions and observing their behaviour. Currently, the legislation only states that an interview must be conducted in person.</p>
14		5-6	211-240	<p><b>Part 14 – Regulation of certain kinds of treatment and other interventions</b> Part 14, has 6 divisions of which the following two are relatable to the Exposure Draft Bill and</p>	<p>YACWA is concerned at the lack of provisions in the Exposure Draft Bill relating to when these interventions can and will be applied, and what</p>

				worth considering. They are: Division 5 – Seclusion Division 6 – Bodily restraint Both these divisions provide a legislative base for confinement of individuals under the act when in treatment.	accountability there is to use of such force. It is unclear if such force will be required, and if so, what protections will be in place for the individuals concerned.
17	1		280-283	<b>Role of carers and family</b> The four sections under this division, pertain to who can be considered a carer or family member, and the role they play in treatment.	YACWA is concerned that the role that parents and wider family members play in treatment is not clearly defined under the legislation.
18			299-304	<b>Part 18 – Children who have a mental illness</b> Sections 299-304 relate to specific provisions relating to children under the act. Of particular interest are the sections: 299. Best interests of child is a primary consideration 300. Child’s wishes 301. Views of child’s parent or guardian 303. Segregation of children from adult inpatients	YACWA is concerned that without standalone provisions, the treatment of children may be misinterpreted or unclear. Further, YACWA is concerned that not enough of the legislation protects children from not being treated separately from adults.

## Conclusion:

- There are a number of legislative provisions missing from the Exposure Draft Bill in relation to children.
- When considering the relationship between children and drug use, the background of compulsory treatment orders and their effectiveness, the legislation needs to be precise in order to ensure that people are not incorrectly referred to it if they are able to in the first place.
- YACWA acknowledges the need for legislation to be open to interpretation in some cases, however, is concerned that not enough detail currently exists in the Exposure Draft Bill.
- YACWA is recommending that children be removed from the application of this legislation, for reasons detailed both above and below. YACWA would argue that there is a strong basis, and lack of proven precedent through the New Zealand model to even enable children to be applicable under this legislation.
- However, should this progress with children under the legislation, it is vital that further consideration must be given to the application of children under the legislation, based on what has been provided so far, further comparative analysis of other legislation, and ongoing consultation with key stakeholders.

## The Bill and Human Rights

YACWA does not have expertise in humanitarian law, nor is it our role to have expertise. YACWA has however, endeavoured to raise a number of questions and concerns as to the interpretation of humanitarian law and human rights in this section, as is our role. YACWA firmly recommends that further consideration is given to how human rights with consideration to the below information are impacted under this bill in relation to children, through the relevant experts.

### Our International Human Rights Obligations

Australia is a party to the seven key international human rights treaties of which Australia has signed and ratified. These include<sup>(29)</sup>:

- The *International Covenant on Civil and Political Rights* (ICCPR),
- The *International Covenant on Economic, Social and Cultural Rights* (ICESCR),
- The *Convention on the Rights of the Child* (CRC),
- The *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment* (CAT),
- The *Convention on the Elimination of All Forms of Racial Discrimination* (CERD),
- The *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW)
- The *Convention on the Rights of Persons with Disabilities* (CRPD)

The Australian Government, as a party to the above treaties, has explicitly agreed to ensure that new laws be enacted or existing laws be applied in a manner that gives proper expression to its treaty obligations.

Our treaty obligations are voluntary, and our government has an obligation of good faith to comply with the treaties provisions, and to take the necessary steps to give effect to those treaties under domestic law.<sup>(30)</sup>

YACWA has chosen to assess parts of this Bill only in relation to the Conventions on the Rights of the Child, as it relates entirely to people under the age of 18. Further, YACWA has provided a response to the United Nations Office on Drugs and Crime principles in treating drug dependency referenced in the Mental Health Commission's Background Paper.

YACWA is of the view that the Commission should undertake further consultation, in relation to Human Rights.

## Assessing Human Rights of Children

### Convention on the rights of the child:

The following articles of the Conventions on the Rights of the Child have been identified by YACWA as potentially relating to a breach under this Exposure Draft Bill. <sup>(2)</sup>

**Article three (1):** “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.”

**Potential concern:** Currently the Exposure Draft Bill provides that consideration must be given to age, but this is not strong enough to address concern. Lack of criteria specific to children, lack of child specific treatment by specialists with relevant experience, lack of separation from adults, and a questionable evidence base to support effective outcomes all indicate that the best interests of the child are not the primary consideration.

**Article 9(1):** “State’s Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.”

**Potential concern:** YACWA understands that this article relates to separation from parents in another sense, however, has flagged it as a potential breach as the Exposure Draft Bill does not require judicial review, and involves separation from the parents.

**Article 9(3):** “State’s Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.”

**Potential concern:** Currently, the Exposure Draft Bill only allows the inclusion of one parent in notification stages of the draft bill. In some cases, a child or young person may have parents who are separated, and may desire both parents to be equally informed.

**Article 37(b):** “No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time”

**Potential concern:** YACWA is concerned that the lack of evidence of success makes the detention of a child a deprivation of liberty that is arbitrary and a potential breach of human rights.

**Article 37(c):** “Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her

age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances”

**Potential concern:** YACWA is concerned that the Exposure Draft Bill does not provide legislatively for the specific needs of children. The provisions relating to the separation of adult treatment and child treatment are also considered inadequate by YACWA, and in breach of the CRC.

## The World Health Organisation on human rights

Australia is a Member State of the World Health Organisation. In 2008, the World Health Organisation released a discussion paper titled: *The Principles of Drug Dependence Treatment*, in order to help guide service delivery of drug dependence.<sup>(31)</sup>

This discussion paper aims to encourage Governments and other partners to take concerted action for the implementation of evidence-based drug dependence treatment services, which respond to the needs of their populations.

This paper outlines nine key principles for the development of services for treatment of drug use disorders, as outlined in the Mental Health Commissions background Paper:

- availability and accessibility of treatment;
- screening, assessment, diagnosis and treatment planning;
- evidence-informed AOD treatment;
- drug treatment, human rights and patient dignity;
- targeting special subgroups and conditions;
- addiction treatment and the criminal justice system;
- community involvement, participation and patient orientation;
- clinical governance of drug dependence treatment services; and
- treatment system based on policy, strategic planning and coordination.

Principle four relates to: *Drug dependence treatment, human rights, and patient dignity* and outlines 7 actions government can take in order to promote this principle. These are:<sup>(31)</sup>

1. The legal framework guarantees compliance with human rights within drug dependence treatment and rehabilitation services.
2. Service procedures require staff to adequately inform patients of treatment processes and procedures, develop individual care plans jointly with the patient, obtain informed consent from the patient before initiating interventions, and guarantee the option to withdraw from treatment at any time.

3. The privacy of patients is respected: patient data are strictly confidential and authorization from the patient in written form is requested before its use for any purposes.
4. Staff are properly trained in the provision of treatment in full compliance with ethical standards, and show respectful and non-stigmatizing attitudes.
5. The provision of medical treatment services is not dependent on compliance with addiction treatment
6. Evidence-based prevention and treatment interventions for drug use disorders and associated health consequences are available also in prisons.
7. For treatment research, ethical committees review and authorize research protocols, as is the case for all other medical disciplines.

YACWA holds concern about the Exposure Draft Bill's compliance with human rights issues relating to children and the option to withdraw from treatment. Further elements of the seven actions outlined above, relating to principle four, should be considered further in the development of the Exposure Draft Bill.

## General Concerns with The Exposure Draft Bill affecting children

Some general concerns YACWA has relating to the Bill and the inclusion of children are outlined briefly below. Further research is recommended to consider these points.

In responding to general concerns, YACWA notes that there is still a lot of information which is unattainable at the time of writing this submission, resulting in an inability to assess the legislation and model of service in its entirety. Therefore, it is worth noting that these responses are legislation specific, and broad in nature.

**YACWA supports the submission made by WANADA, and its recommendations relating to elements of the bill.**

YACWA would welcome the opportunity for ongoing input into this legislation and the final model of service.

### **Inclusion of children**

YACWA holds serious concern for the inclusion of children under this legislation, and does not support the inclusion of Children for reasons outlined in the above sections.

### **Interaction with other legislation**

YACWA is concerned that the Exposure Draft Bill does not articulate how children currently under the jurisdiction of the Children and Community Services Act will be treated in relation to this legislation. YACWA notes that the New Zealand Legislation has specific requirements relating to this element, as does the Young Offenders Act in its relationship specifically with the Children and Community Services Act.

### **Adult Present**

YACWA believes firmly that a child should have the opportunity to have an adult present at stages of the legislation, and is concerned that this is not a requirement in some places. YACWA notes that sometimes, a parent is not the most adequate person to provide support as was mentioned in consultation, and is negated in the Young Offenders Act (see above). Further, the New Zealand Legislation has specific provisions relating to this matter.

### **Cultural Security**

YACWA believes strongly in listening and supporting people from different cultural backgrounds, including Aboriginal and Torres Strait Islanders, to advocate, co-design, and evaluate the effectiveness of service delivery and demand for services.

In YACWA's view, the cultural security elements of the Exposure Draft Bill must be strengthened. As for the extent and the exact recommendations, **YACWA supports the Aboriginal Health Council of WA in their submission in relation to these matters.**

## Criteria and Exclusion Criteria

The lack of specific criteria (inclusion or exclusion) relating to children is concerning to YACWA under the legislation. This means there is a lack of acknowledgement that in some cases, children will have complex and specific needs separate to that of adults.

YACWA notes that in America, The American Society of Addiction Medicine (ASAM) has a separate criteria for adolescents to adults.<sup>(32)</sup>

ASAM's criteria, formerly known as the ASAM Patient Placement Criteria, are the result of a collaboration that began in the 1980s to define one national set of criteria for providing outcome-oriented and results-based care in the treatment of addiction. Today, the Criteria have become the most widely used and comprehensive set of guidelines for placement, continued stay and transfer/discharge of patients with addiction and co-occurring conditions in the United States. ASAM's Criteria are required in over 30 states.<sup>(32)</sup>

## Involvement of Family

The involvement of family members of children being treated under this legislation is not clear, and YACWA holds concern that this is not specifically addressed. YACWA is concerned at the damage caused to relationships of parents and children when parents nominate their children for this treatment, paired with the lack of provision defining the role they play in the ongoing treatment.

Further, YACWA would draw attention to the Convention on the Rights of the Child and the analysis above, as well as the above analysis of the Young Offenders Act in relation to this matter.

## Separation of children from adults in treatment

YACWA is concerned at the current provision only legislating to enquire into the availability of separate treatment of children from adults. YACWA is concerned that stronger legislative measures are not present in the Exposure Draft Bill.

Further, YACWA notes the analysis provided on the Victorian Legislation review (see above) as well as analysis on article 37(c) of the Convention on the Rights of the Child that specify this as a human rights issue (see above).

Further, the World Health Organisation identifies that: “It may be counterproductive for young patients in early stages of drug use disorders to get in contact with people in more advanced stages of the disease through the treatment setting, and therefore, whenever possible, separate settings for adolescents and their parents can be considered. Planning and implementing interventions with young people will benefit from close cooperation with families and when appropriate, schools.”<sup>(31)</sup>

## **Specialist Expertise in Treating Children**

YACWA is concerned at the lack of provision requiring practitioners, under the legislation, to have relevant experience and expertise in treating children when doing so.

The World Health Organisation identifies that “Ideally specialized training should be available for counsellors, outreach workers and other professionals involved in treatment of adolescents with drug use disorders, and child/adolescent psychiatrists and psychologists should be part of these multidisciplinary teams.”<sup>(31)</sup>

This is also provided for in the New Zealand Legislation (see above).

## **Regional and Remote Children**

It is difficult to ascertain the extent of the impact on children living in regional and remote areas of Western Australia, as it is not clear where Treatment Centres will be located. If they are to be held in Perth only, YACWA holds serious concern for children being forced to travel for care outside of their community and family structures.

## **Volume of People Admitted**

The Victorian Legislation was applied to 28 patients under the between 2011 and 2015. However the review explored above found that “Many people working in relevant fields appear to be unaware of the Act’s existence. Stakeholders suggested this has been a significant factor in the low number of applications for DTOs since the Act’s inception.”<sup>(27)</sup>

YACWA holds concern for the volume of children and young people it is intended that this legislation will affect, and if this becomes a public issue, the ramifications of people being referred to this program inappropriately.

This was explored extensively in the consultation conducted by YACWA and WANADA (**see attachment 3**)

## **Definition of substance use disorder**

As far as YACWA can tell, the definition relating to the Substance Use Disorder in the Exposure Draft Bill has been taken from other jurisdictions legislation, instead of the Diagnostic and Statistical Manual of

Mental Disorders (DSM–5) or the International Statistical Classification of Diseases and Related Health Problems (ICD-10). This raises a number of concerns in diagnosing practices, the potential for misdiagnosis of children, as well as applications of the Exposure Draft Legislation. As mentioned above, differentiating between experimental substance use and substance use disorder will be pivotal in children when others refer them to a service under this legislation. The most reputable and thorough version of diagnosis frameworks should be used to minimise risk.

## **Detaining Child if Access to Treatment Centres or Assessment is unavailable**

YACWA holds concern that a child could be detained if a place at a treatment centre not be available, or pending an assessment. Currently, there is nothing in the legislation to omit this occurrence. Further, the legislation does not clearly articulate what should happen in the case that a place is not available separate from adults, or should a transport order be made to bring a child into a treatment centre and a place becomes unavailable in the meantime.

## **Stigma**

YACWA hold concerns for the unintended implications relating to children who would be admitted under this legislation, and their future prospects relating to employment, education and other eligibility for things like rentals, loans and other processes that require background checks. A number of questions arise, if the child is currently in education or training, regarding what steps will be taken to address and notify relevant people.

## **Discharge Practices**

YACWA holds concern for the application of discharge practices. We have heard through other legislation in other areas such as Children in Care and children placed in involuntary treatment for mental illness, that this practice is often inconsistent. YACWA would be supportive of further legislative measures to ensure adequate through care, and wrap around support for children exiting treatment, if they are to be included under this legislation.

Further, the United Nation’s Principles of Drug Dependence Treatment Continuous identifies that “care in the community upon release is crucial to meaningfully reintegrate drug dependent offenders into the community. Without access to education, job opportunities, housing, insurance, and health care including drug dependence treatment, persons in recovery face a higher risk of relapse and related mortality and also increase the burden on their communities.”<sup>(31)</sup>

## Supporting minority groups of children

YACWA is concerned how this legislation will impact children of various minority groups, and what extra measures and precautions will be taken to support them. These include, but are not limited to:

- Children who identify as LGBTI, particularly those with Diverse Gender/non binary accommodation and privacy needs
- Young Carers and the absence from their caring role
- The interests and needs of people with a disability
- Aboriginal and Torres Strait Islander children

## Accountability

YACWA is concerned at the accountability aspects of this legislation and service, particularly given the controversy surrounding it.

There is increasing recognition that the process of service development needs to be accountable to, and shaped by, the wide range of community interests. The community and service users both play an important role in helping shape an approach that ensures appropriate accountability and responsibility of all those involved in the delivery of services.<sup>(31)</sup>

YACWA would like to see a reporting element included in the Mental Health Commission's annual report, and further, ongoing, consultation with children directly through relevant stakeholders as recommended.

## Assessing Young People's Response to such a service

YACWA, in conjunction with WANADA conducted a focus group over two sessions, the results of which you can read in the attachment section, to explore the legislation. Several key issues relating to the legislation and the model of service were raised, including the inclusion of people under the age of 18 under the legislation.

Significant concern was expressed regarding the inclusion of children in compulsory treatment.

“Parents putting an application in for their child: I can understand why, but it will kill the relationship”

A large number of focus group participants didn't agree to the inclusion of children within the legislation. Some expressed concern about their behaviour being misinterpreted and an inappropriate application being lodged.

“It shouldn't count for under 18's. They experiment. Their behaviour will unsettle people around them regardless”

A key concern was the risk of net widening, and what implications that may have:

“You wouldn’t have caught me when I was under 18. A lot of these kids won’t have criminal records. But they likely will once you’ve forced them into treatment”

“The exposure to other drugs and people is concerning – it has the potential to make their habits much worse”

Some focus group participants supported children being included, noting that they are less likely to engage with treatment and support services until their problems become critical.

“A lot of young people don’t access services. It’s avoidance at any cost. Some parents are prepared to trash the relationship to get help for their child”

The focus group was unable to fully analyse the potential inclusion of children within the Draft Exposure Bill. This was a result of not all safeguards and specific youth provisions being included in the existing Draft Exposure Bill. This limited discussion and assessment of the Exposure Draft Bill, and led to the majority of participants holding concern for the inclusion of people under the age of 18 in this legislation.

## Attachments

- 1 - Submission to discussion Paper - YACWA, AHCWA, WACOSS
- 2 - The WA Alcohol and Youth Action Coalition election Platform
- 3 - Consumer Focus Group Report
- 4 – YACWA State Budget Analysis, 2016

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