

14 May 2002

Our ref Jane Irwin

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Attorney General's Department
GPO Box 6
SYDNEY NSW 2000

Dear Sir/Madam

**Submission to the Attorney General's Review of the Victims Support and Rehabilitation Act 1996 and Victims Rights Act 1996
Submission by The Shopfront Youth Legal Centre**

The Shopfront Youth Legal Centre is a free legal service for homeless and disadvantaged young people aged 25 and under. The Shopfront has been operating since 1993 and is a joint project of Freehills, Mission Australia's Sydney City Mission and the Salvation Army.

The Shopfront represents and advises young people on a range of legal issues, with a particular emphasis on criminal law. Many of the Shopfront's clients are under 18, and our solicitors have extensive experience appearing in the Children's Court. Two of our solicitors have received rewards in the National Children's and Youth Law Centre's Children's Lawyer of the Year Awards.

We welcome the opportunity to make this submission and apologise that it is a late submission. We have had the opportunity of reading the submission prepared by The Combined Community Legal Centre's Group of NSW's to this Review. We fully endorse the Combined Centre's submission and attach a copy.

We would also make the following additional submissions:

We are very concerned about the restitution provisions of the *Victims Support and Rehabilitation Act* and in particular their application to juvenile offenders. We support the principle that compensation paid out to victims should be recovered from offenders where possible and appropriate. However, we do not believe it is appropriate to attempt to recover large sums of money from offenders who are children at the time of the offence. Currently, the restitution provisions make no distinction between adult and juvenile offenders.

We note that the *Victims Support and Rehabilitation Act* allows the Victims Compensation Tribunal to make an order for restitution against a person even if the person was a child at the time and no conviction was recorded. It is our

experience that young people coming before the Tribunal for offences they committed when they were children, some as young as thirteen years of age, perceive the legal process as fundamentally unfair. These young people believe that these matters have been finalised and that they can get on with their lives only to be confronted with a further substantial debt at a very young age. The punitive effect of the legislation contradicts juvenile justice reform which has focused on prevention, diversion and the importance of rehabilitation for young people involved in offending. Criminal courts have clearly held the view that the future consequences for, and liability of, children and young people, particularly those under sixteen years of age, who are found guilty of an offence should be less severe than adults.

Our Juvenile Justice System is based on long-established principles, which are set out in the *Children (Criminal Proceedings) Act*, as well as in the common law and relevant United Nation instruments. Young people are encouraged to take responsibility for their criminal behaviour, but rehabilitation is a paramount consideration. Recognition is given to the fact that children are still in a state of dependency and immaturity, and should not have to pay for the rest of their life for youthful transgressions. These principles are reflected in the sentencing options available to the Children's Court, and in the practise of not recording convictions against certain juvenile offenders. We argue that making juvenile offenders pay substantial restitution orders is contrary to these principles and detrimental to their rehabilitation.

We submit that the *Victims Support and Rehabilitation Act* should be amended restricting restitution proceedings to those defendants who are over 18 years of age at the time their offence was committed. At the very least, the Act should be amended to provide that young offenders are only liable to restitution if they have been dealt with according to law, or if a conviction has been recorded against them.

We also submit that restitution amounts payable by juvenile offenders should be limited to \$1,000. This would bring the restitution provisions in line with section 36(3) of the *Children (Criminal Proceedings) Act*, which limits the amount of compensation a Children's Court may order to \$1,000. Currently, the restitution provisions of the Act apply to children dealt with by Children's Courts even if no conviction is recorded (unless the matter is dismissed with a caution under section 33(1)(a) of the *Children (Criminal Proceedings) Act*). The upper limit on restitution, at the moment, payable by children is the same as it is for adults (\$50,000).

In summary it is our primary submission that the *Victims Support and Rehabilitation Act 1996* should be amended so as to differentiate restitution proceedings between adult offenders and those offences committed by children.

If you wish to contact us about the contents of our submissions please do not hesitate to do so.

Yours faithfully

Jane Irwin
Solicitor