

## INDEPENDENT NATIONAL SECURITY LEGISLATION MONITOR

### REVIEW: THE PROSECUTION AND SENTENCING OF CHILDREN FOR COMMONWEALTH TERRORIST OFFENCES

#### Question on Notice

**1. Counsel assisting the Monitor asked the following question at the hearing on 2 August 2018:**

- a) ... Federal offenders have their parole determined by the Commonwealth Attorney-General, which wasn't always necessarily the case. Can you see any necessary reason why section 19AG [of the *Crimes Act 1914* (Cth)] would need to remain for children in circumstances where the ultimate decision about parole and risk presented by an offender is vested in the Attorney-General?

**The answer to Counsel's question is as follows:**

- a) As the Monitor noted at the hearing on 2 August 2018, there is no presumption of parole for federal offenders (including children) serving prison terms. Rather, s 19AL of the *Crimes Act 1914* (Cth) (Crimes Act) provides that the Attorney-General must, before the expiry of any non-parole period fixed by the sentencing court, consider whether or not a prisoner should be released on parole.
- b) The Commission repeats its primary submission, made in its written submission to the present review and at the hearing, that s 19AG of the Crimes Act is inconsistent with the human rights of children affected by it. The section should therefore be amended so that it does not apply to children.
- c) The Commission notes its oral and written submissions to the effect that international human rights law requires that, in all decisions affecting the child (especially those with serious human rights implications such as parole), the best interests of the child must be a primary consideration. Further, the detention of children should always be a measure of last resort and should be for the minimum necessary period.
- d) A best practice model for the parole of children convicted of terrorism offences would require any person or body vested with authority to grant parole to act in accordance with these principles. These principles indicate that, at least in the case of child offenders, there should be a rebuttable presumption in favour of parole. That is, children should be entitled to be released on parole following the expiry of any non-parole period

unless continued detention is demonstrated to be necessary and proportionate in all the circumstances of a particular case.