



Adam Ingram MSP  
Minister for Children and Early Years  
The Scottish Government  
Victoria Quay  
Edinburgh  
EH6 6QQ

cc: Kit Wyeth

8<sup>th</sup> December 2009

Dear Adam

Action for Children Scotland welcomes the opportunity to respond to the Scottish Government's consultation on the Children's Hearings (Scotland) Bill ("the Bill"). Action for Children Scotland's response draws upon our experience of working with some of the most difficult to reach children and young people in Scotland, many of whom have been referred to the Children's Hearings system at some stage in their lives. It also draws upon the key findings from the survey we recently carried out with children and young people seeking their views on the Children's Hearings system. Please note that we will write to you under separate cover to share the conclusions of the Where's Kilbrandon Now? Inquiry event, which we were delighted you were able to address.

**In summary, the key issues Action for Children Scotland wishes to raise are:**

- **There should be a strong statement supporting children's rights and the UNCRC on the face of the Bill;**
- **The Bill needs to strike the right balance between local and national decision making and control;**
- **The proposed Tribunal must provide any information for children and young people in an accessible, child friendly format;**
- **Strategic directions for the Tribunal and SCRA should be developed by the Scottish Government in consultation with key partners;**
- **Children and young people should be involved in the recruitment and training of the President, senior tribunal staff and of the Principal Reporter;**
- **The Bill should include a clear statement that children will have the right, and opportunities, to express their views and to be listened to at hearings;**
- **Children should only appear before a hearing when compulsory measures may have to be put in place;**

- **With regard to legal representation, the correct balance must be struck between protecting a child’s rights and avoiding the creation of an adversarial system;**
- **Local authorities must ensure sufficient resources are available to implement any supervision and support requirements ordered by a Children’s Hearing;**
- **Young people aged between 16 and 18 years should be dealt with through the Children’s Hearings System; and**
- **The membership of the Tribunal should include a young person; or the Tribunal should consult a reference group of young people about key policies and developments.**

## **General**

Action for Children Scotland welcomes the Scottish Government’s commitment to safeguard children’s rights in the Bill. We also note its aim to ensure that the UNCRC, and its interface with the children’s hearings system, are referenced in the supporting documentation accompanying the legislation. Given that the Bill will have a significant role in shaping the future direction of the Children’s Hearings System, and will impact upon the lives of many vulnerable children and young people, we believe these issues should be clearly reflected on the face of the Bill. We, therefore, recommend that the Long Title of the Bill should include the following statement defining the aims and purpose of the legislation:

*A Bill to strengthen the ability of the Children Hearings System in Scotland to promote the welfare of vulnerable children and young people, to support the rights of children and their families as laid out in the UNCRC, and to make decisions that are supported by evidence and evaluation and are implemented through the provision of local and national services.*

## **Section 3 (Establishment)**

We note that under the Bill as drafted a new body entitled the Scottish Children’s Hearings Tribunal (“the Tribunal”) will be established to support the Children’s Hearings system. Action for Children Scotland shares the Scottish Government’s concern that the proposed title of this body is misleading, and welcomes the decision to consult on alternative titles. Our understanding is that this body will support the management and operation of the Children’s Hearings system. Against this background, we believe a title such as the Scottish Children’s Hearings Service, or the Scottish Children’s Hearings Agency, would more accurately reflect the functions of the proposed body than the ‘Scottish Children’s Hearings Tribunal’ as at present.

## **Sections 4 & 5 (Functions and Powers)**

Many of the functions and powers in Sections 4 & 5 of the Bill reflect Recommendation No.10 in Action for Children Scotland’s Where’s Kilbrandon Now? Inquiry report (2003). This states that: *“A single, independent professional association responsible for the recruitment, retention and training of panel members should be established, bringing together the work of existing local and national groups. This would aid both profile and credibility”*. Our concern, however, is that under the Bill the relationship between the Tribunal’s functions and powers, and those of the Principal Reporter and of SCRA, need to be clearer. These provisions also need to strike the right balance between local and national decision making and control.

Action for Children Scotland welcomes the provisions in Section 5(2)(c) that the Tribunal's powers will include being able to "carry out research relevant to the carrying out of its functions by virtue of this and any other enactment". This is consistent with Recommendation No.6 in the *Where's Kilbrandon Now?* Inquiry report that: "*An independent research, monitoring and performance review should be built into the hearings process*". We believe it is important that panel members should be able to access research and evaluation on areas such as the outcomes of decisions, and on particular measures e.g. secure care, residential care etc., and that these resources help to inform and support Children's Panel decisions.

We also note that Section 5(2)(d) enables the Tribunal "to publish or assist in the publication of materials relevant to the carrying out of its functions by virtue of this and any other enactment". In this respect, we believe it is essential that the Tribunal ensures that it publishes material and information for children and young people in an accessible, child friendly format. The same requirement should apply to other provisions in the Bill, such as the President's duty under Section 13(3) to ensure that the child and their carer understand advice given by the President to panel members, and the provisions in Section 159 to provide the child with information about their specific case and the Children's Hearings system.

Apart from providing paper copies of such material, the Tribunal should also actively seek to use the other communication mediums which many children and young people use frequently, and often feel more comfortable with, e.g. the Internet, texting, TV etc. This would reflect one of the key messages from Action for Children Scotland's recent survey of young people about the Children's Hearings system. This survey highlighted that significant improvements must be made to the ways, and manner, in which children and young people receive information about their individual cases and/or about the Children's Hearings System.

### **Section 7 (Directions)**

Section 7 of the Bill states that the proposed Tribunal must follow the strategic directions of Scottish Government Ministers, while Section 21 confers similar powers on Ministers in relation to SCRA. Our concern is that these provisions will compromise the independence of the Tribunal, and of SCRA. We, therefore, strongly recommend that the Bill should be amended to confirm that strategic directions will be developed by Scottish Government Ministers in consultation with the Tribunal, SCRA, local authorities, the voluntary sector and other agencies working with children and young people.

We note that Section 14 will give Scottish Government Ministers the power to confer additional powers, or to remove powers, from the President without the need for primary legislation. Action for Children Scotland believes that a similar requirement to consult, as above, should be placed on the face of the Bill in relation to any variation of the President's powers.

### **Section 12 (Office of President)**

Action for Children Scotland is aware that the proposed reforms will have a significant impact upon the Children's Hearings system. The President and the Tribunal will ultimately be responsible for how the new system promotes positive outcomes for vulnerable children and young people. As part of the process of

ensuring that the President, senior tribunal staff and the Principal Reporter have the necessary experience and insight to work with, and on behalf of, difficult to reach children and young people, we believe that children and young people should be involved in their recruitment. This would help to promote an organisational culture at the very heart of the Children's Hearings System in which the voices of children and young people are valued, and listened to. Significantly, the need to develop a 'listening' culture was one of the key messages which emerged from Action for Children Scotland's survey of children and young people about the Children's Hearings system. It was also highlighted by the young people who participated in the Where's Kilbrandon Now? inquiry event.

### **Section 13 (Functions of President)**

We note that the functions of the President will include the recruitment and training of children's panel members. While welcoming the Scottish Government's aim of ensuring that the Tribunal promotes a consistent approach to recruitment and training throughout Scotland, we consider it essential that the right balance is struck between centralised recruitment and training and localised recruitment and training needs. Against this background, we welcome the Scottish Government's commitment to continue discussions with partner agencies focusing on how the Tribunal will work "at local level and how it will link in with local partners".

Action for Children Scotland considers that the President, when addressing the training needs of panel members, should ensure that children and young people are involved in the training of panel members. We believe this will add considerable value to this training. It could, for example, help to improve the ways, and manner, in which panel members deal with and relate to children and young people. We believe this practice would also help to create a culture within the children's hearings system in which children and young people feel involved in key decisions about their lives. The need to develop such a culture was highlighted by many of the children and young people who participated in our survey about the children's hearings system. Their responses revealed serious failings in the ways that members of Children's Panels communicate with children and young people, and involve them in the decision making process.

Children and young people from Action for Children Scotland's Crossover and Chances projects in Ayrshire have been involved in the training of children's panel members. We would be willing to discuss with the Scottish Government how involving children and young people in such training can be rolled out to benefit more panel members across Scotland.

### **Section 32 (Area support teams)**

Action for Children Scotland would welcome further clarification of which geographical areas the area support teams will cover, and the ways in which the area support teams will maintain the links between panel members and the local communities, services and agencies working with children and young people.

### **Section 39 (Welfare of the child and other general considerations)**

The provisions in Section 39 that the "children's hearing or court is to regard the need to safeguard and promote the welfare of the child throughout the child's childhood as the paramount consideration" are welcome. Action for Children Scotland notes the provisions that the Children's Panel or sheriff must take the child's views into account when reaching decisions about the child and their welfare. We take the view,

however, that Section 39 should be amended to include a clear statement that children will have the right, and opportunities, to express their views and to be listened to at hearings. This is consistent with the main aspects of Recommendation No.15 of Action for Children Scotland's *Where's Kilbrandon Now?* Inquiry report: *"Young people must have a greater involvement in the hearings, in panel member training, as peer mentors or advocates, and when their own cases are under consideration"*.

To ensure that children's voices and views are, in practice, heard within the reformed Children's Hearings system, Action for Children Scotland believes it is also vital that Recommendation No.14 of *Where's Kilbrandon Now?* Inquiry report should be implemented by Children's Panels across Scotland. This recommendation states: *"Separate time at every hearing should be allocated for young people to speak to the panel in private"*. The need for this opportunity to speak privately to Panel members was reinforced by the input of the children and young people who responded to Action for Children Scotland's survey about the Children's Hearings System, and at the *Where's Kilbrandon Now?* inquiry event.

### **Section 59 (Compulsory Supervision Order)**

Action for Children Scotland believes it is important that the provisions of the Bill reflect the fact that most referrals to the Children's Hearings System are on care and protection grounds, rather on offending grounds. We, therefore, welcome the Scottish Government's commitment to amend Section 59 of the Bill to place "the care and protection grounds for referral first".

Action for Children Scotland further welcomes the Scottish Government's commitment to review the wording of the draft grounds for referral. As part of this process, we consider that Section 59 should be strengthened to include a clear statement that children will only appear before a hearing where compulsory measures may have to be put in place.

### **Section 68 (Duties where no referral is made)**

The Scottish Government's commitment to give further consideration to amending the Bill "to make explicit reference to the Reporter's power to refer children and young people for voluntary measures" is welcome.

### **Sections 73 – 75 (Initial Children's Hearings)**

Action for Children Scotland also welcomes the Scottish Government's commitment to give further consideration to incorporating aspects of the Guernsey model, which would reduce the number of hearings, and simplify procedure.

### **Section 77(1) (Role of Reporter at grounds hearing)**

We further welcome the Scottish Government's commitment to work with key partners in considering options for the role of the Reporter at Children's Hearings.

### **Section 77(3)(b) (Warrant to secure child's attendance at Court)**

Action for Children Scotland would welcome clarification from the Scottish Government about how Section 77(3)(b) links with the 'no order' provisions in Section 39(8) of the Draft Bill.

## **Section 85 (Representation)**

We welcome the provisions in Section 85 outlining a child's right to representation at Children's Hearings. Action for Children Scotland believes, however, it is also vital, with regard to the legal representation provisions in Section 171, that the correct balance is struck between protecting a child's rights and their family's rights, and avoiding the creation of an adversarial system.

## **Sections 114 – 142 (Compulsory Supervision Orders)**

Action for Children Scotland also welcomes the Scottish Government's commitment to give further consideration to the provisions relating to Compulsory Supervision Orders, and to include provisions highlighting that local authorities and other key agencies should follow the *Getting it right for every child* framework in responding to supervision orders.

## **Section 120 (General Duty of local authority)**

We note that Section 120 of the draft Bill provides that local authorities will continue to be responsible for giving effect to the decisions made by Children's Panels. It is, therefore, essential that local authorities ensure sufficient levels of resources are available to implement any supervision and support requirements ordered by a Children's Hearing.

## **Section 208 (Case where Act applies to persons aged between 16 and 18 years)**

Action for Children Scotland believes that young people aged between 16 and 18 years should be dealt with through the Children's Hearings System. This was one of the key recommendations of the original Where's Kilbrandon Now? Inquiry report. Recommendation No.1 states: "*The hearings system and not the courts must remain the forum for making decisions about the compulsory care and supervision of children and young people in Scotland*". We take the view that addressing the offending of 16 – 18 year olds through the Children's Hearings system, and using the *Getting it right for every child* framework to address such behaviour, would have significant benefits in supporting vulnerable and difficult to reach young people to address their offending, and to turn their lives around.

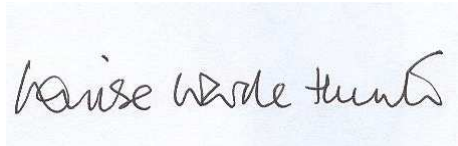
We also recommend that Section 208 should be amended to include provisions confirming the interface between the reformed Children's Hearings System, and the courts system.

## **Schedule 1 (Scottish Children's Hearings Tribunal)**

Action for Children Scotland notes that the Tribunal will have 5 – 8 members. We believe that the Scottish Government should give consideration to including a young person in the membership of the Tribunal, or to establishing a reference group of young people which could be consulted by the Tribunal about key policies and developments. Action for Children Scotland considers that implementing this proposal, and ensuring children and young people are involved in the recruitment and training of senior Tribunal staff, will help to promote a culture within the reformed Children's Hearings system in which the views of children and young people are more likely to be heard and listened to.

Please do not hesitate to contact either myself or Paul Carberry, Operational Director of Children's Services, or Moira Luccock, Operational Director of Children's Services, on 0141-550-9010 if you require more information, or would like to discuss any of the issues we have raised further.

Yours sincerely

A handwritten signature in black ink on a light blue background. The signature reads "Louise Warde Hunter" in a cursive script.

Louise Warde Hunter  
Strategic Director of Children's Services  
Scotland and Northern Ireland