

2023

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

PRESENTATION SPEECH

JUSTICE (AGE OF CRIMINAL RESPONSIBILITY) LEGISLATION AMENDMENT BILL 2023

**Presented by
Shane Rattenbury MLA
Attorney-General
May 2023**

THIS PAGE TO REMAIN BLANK

Madam Speaker

I am pleased to present the Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023 to the Assembly today.

Currently across Australia, children as young as 10 years old can be charged, arrested and placed in detention on remand or if they are found guilty of committing a criminal offence. We know from the available evidence that when children and young people become involved in the criminal justice system, particularly if they are incarcerated – it leads to worse community outcomes and higher recidivism rates.

Madam Speaker, today is a very significant day for the ACT, marking a change in how we perceive criminality and how we approach young people engaged in harmful behaviour. Our approach will change to recognise that offending in young people primarily stems from difficult life circumstances and that providing treatment and support benefits everyone in the community. The bill marks the culmination of years of work, as we take steps to raise the minimum age of criminal responsibility in the ACT. It implements a key part of the Parliamentary and Governing Agreement

The Bill will raise the minimum age of criminal responsibility from 10 to 14 years. The ACT will be the second jurisdiction, after the Northern Territory, to raise the age, and the first jurisdiction in Australia to raise it to 14 years.

Raising the age to 14 not only reflects international human rights standards and ACT community expectations, but also aligns with the expectations of many Australians. For these reasons, I am immensely proud to present this Bill into the Assembly today.

It is demonstrated by medical evidence and widely accepted that children under the age of 14 years are unlikely to understand the gravity of a criminal

offence or be able to meaningfully engage in the criminal justice process. We know that children and young people aged between 10 and 13 years who engage in harmful, risky or violent behaviour often do so because of trauma, abuse, neglect, homelessness, or unmet disability or mental health needs.

The amendments in this Bill will help address these risk factors and support young people rather than criminalise them.

The Bill will also lead to better outcomes for Aboriginal and Torres Strait Islander people and other minority cohorts, by ensuring children and young people are supported to remain connected to community, country and cultural heritage. These are critical connections that would otherwise be disrupted by the criminal justice system and incarceration.

The Bill will support the aim of Reducing the rate of Aboriginal and Torres Strait Islander young people in detention by at least 30 per cent, by 2031. This goal is outlined in the *ACT Aboriginal and Torres Strait Islander Agreement 2019-28* and the youth justice targets of the *National Agreement on Closing the Gap*.

The Bill also supports our work under the *Blueprint for Youth Justice in the ACT 2012-2022*, which commits to addressing the underlying causes of offending by children and young people through early support and therapeutic responses; and the ACT Government's commitments to the *Reducing Recidivism by 25% by 2025 Plan*.

Madam Speaker, we would not have been able to get to this position today, to introduce a Bill to raise the minimum age of criminal responsibility without the tireless work and advocacy of our community stakeholders. I am thankful for

the years of engagement by all stakeholders who carefully considered these complex reforms at key stages and provided invaluable comments.

The ACT Government has developed several reports and papers throughout this process, to help all contributors navigate and address the complexities of raising the minimum age.

In particular, the ACT Government Discussion Paper released in June 2021 outlined raising the minimum age to 14 years, as a way to respond to young offenders with an evidence-based (rather than a punitive) approach. The paper prompted community discussion around several points, recognising the need for a comprehensive approach so that no child at risk is left unsupported under the new legislation.

The listening report, which followed the community consultation process, also provided valuable insights into community and stakeholder perspectives. It was fantastic to see that out of the 52 submissions we received, 45 indicated strong community support for raising the age to 14 years.

The Bill includes a number of amendments across criminal justice and child and youth protection legislation, including raising the minimum age in a staged approach - to 12 years immediately upon passage of the legislation, and then to 14 years by July 2025. Four exceptionally serious and intentionally violent offences will retain their minimum age increased to 12 years. These offences are inserted at Schedule 1 of the Criminal Code and are murder, intentionally inflicting grievous bodily harm, sexual assault in the first degree and act of indecency in the first degree.

Section 25 of the Criminal Code will reflect an increased minimum age of 14 years and provide that a child under 14 is not criminally responsible for an offence unless they are at least 12 years old, engage in conduct constituting

one of the four exceptionally serious and intentionally violent offences (Schedule 1 offences) and also know that their conduct is wrong.

The Bill establishes an **alternative framework** to respond effectively to the therapeutic needs of children and young people who engage in harmful behaviour. This will ensure a child or young person who engages in such behaviour is diverted from the criminal justice system and provided with supporting services that can help identify and address their therapeutic needs.

The alternative framework includes the introduction of a new Therapeutic Support Panel that will provide an independent, multi-disciplinary decision-making forum responding to the therapeutic needs of children and young people who display harmful behaviour. The panel will bring people together in a restorative way to agree a path forward with the child or young person and, where necessary, provide a mechanism to hold people to account.

Within this framework, the Bill creates an Intensive Therapy Order which enables the Childrens Court to order appropriate treatment and to put in place conditions and restrictions necessary to ensure children and young people who engage in harmful behaviour are safe and that the community is also safe.

The Bill ensures that any criminal orders in place for children and young people under the current minimum age of criminal responsibility will no longer be enforceable once the minimum age is raised. It extinguishes all convictions for offences committed by children and young people under the minimum age, except for the Schedule 1 offences and for the purposes of a Working With Vulnerable People Background Check.

The Bill recognises and maintains the rights of victims of harmful behaviour by recognising victims' interests, providing for victim participation and support in relation to any harm caused by children and young people aged 10 to 13 years.

The Bill also introduces a new community-based sentencing option, a **therapeutic correction order**, for children and young people under 18 years to support a therapeutic response to young people who are aged over the minimum age of criminal responsibility.

Human rights analysis

A key goal of this bill is strengthening human rights for young people and children in the ACT.

The Bill also supports a number of rights including the protection of the family and children; the right to liberty and security of person; children in the criminal process; the right to work; and the right to culture and other rights of Aboriginal and Torres Strait Islander peoples.

I note, however, that the inclusion of the exceptions raises human rights issues and that the Human Rights Commission, and other stakeholders, consider that this means there may be problems with human rights compatibility.

Government advice, supported by the Government Solicitor, is that, on balance, the bill can be considered human rights compatible, and this is reflected in the human rights compatibility statement.

It is important to note that the exceptions apply only in situations regarding a handful of particularly serious offences committed with intention of causing serious bodily harm. From the perspective of a human rights analysis, the exceptions are narrowly defined, and the bill has extensive other benefits, such as promoting the rights of children and young people.

The Bill will also overall promote the right of community members to security of person by helping to reduce the engagement of this cohort of children and young people with the criminal justice system. The Bill is intended to support a clear reduction in recidivism and criminal offending in the ACT as children will no longer be exposed to potentially damaging behaviours encountered in the criminal justice system.

Transitional provisions

The Bill will address the immediate and ongoing consequences of children and young people's contact with the criminal justice system.

In particular, the Bill will ensure that any criminal orders and law enforcement action (such as sentencing orders, bail orders, warrants, police arrest and criminal proceedings) currently in place for children and young people under the minimum age will cease and no longer be enforceable once the minimum age is raised. If the law enforcement action is arrest or police custody, the Chief Police Officer must ensure that reasonable steps are taken to ensure the safety of the child or young person on their release.

The Bill provides that relevant entities, such as the Chief Police Officer or a Judge or Magistrate, may refer a child or young person who has been subject to orders or any law enforcement action to the Therapeutic Support Panel. This will ensure that such children and young people can receive an appropriate and timely therapeutic response as soon as they are no longer engaged with the criminal justice system.

These amendments will ensure that once the minimum age is raised, children who are below the new minimum age will be removed from the criminal

justice system and the consequences of any historical criminal record will be absolutely minimal and limited to disclosure in the interests of protecting vulnerable people.

Amendments relating to victims

Maintaining support to victims has been an important consideration for the Government in developing this legislation. The Bill amends the *Victims of Crime Act 1994* and the *Victims of Crime (Financial Assistance) Act 2016* to ensure that victims of harmful behaviour committed by children under the age of criminal responsibility are still able to access support services under the Victim Support Scheme and Financial Assistance Scheme.

In addition, the Bill enables victims to provide harm statements to the Therapeutic Support Panel, explaining the impact of the harm that a child's behaviour has had on them. The panel is required to take a harm statement into account in exercising its functions. The Bill also allows for information about a child and the therapeutic response to be provided to victims in appropriate circumstances.

The Bill amends the *Crimes (Restorative Justice) Act 2004* to allow for children who are under the age of criminal responsibility to be referred by the Therapeutic Support Panel or other entities to restorative justice counselling. This will provide a further option for repairing harm to victims in appropriate cases.

Therapeutic Correction Orders

The Bill introduces a Therapeutic Correction Order as an alternative sentencing option for children and young people who are over the minimum age of criminal responsibility, to address the risk factors that lead children to

criminogenic behaviour. This will further reduce the numbers of young offenders who are sentenced to detention as it provides another diversionary sentence to assist offenders in dealing with the root causes of offending before they reach the point where they are sentenced to detention.

A Therapeutic Correction Order will be a community-based sentence served without a sentence of imprisonment attached. A community-based sentence will allow a greater number of young offenders to have their underlying needs addressed by the order, providing a sentencing alternative for those young offenders for whom a Good Behaviour Order does not have a strong enough therapeutic benefit.

This sentencing option will be available to children aged over the minimum age and up to 18 years and to children aged 12 and 13 years who have been charged with a Schedule 1 offence.

Community safety

A key goal of raising the minimum age is to increase community safety by reducing ongoing harmful behaviour by children and young people aged 10 to 13 years.

There is clear evidence that young people's involvement in the criminal justice system can solidify criminogenic behaviour and therefore increase their likelihood of reoffending.

Raising the minimum age aims to reduce harmful behaviour and subsequent offending among children and young people by diverting them from involvement in the criminal justice system. The objective of this approach is ultimately improved community safety, as children and young people who would have potentially gone on to commit further and possibly more serious

offences, will receive intensive support to change their lives while they are still very young. This dual benefit for the individual and community will be further realised with each stage of this reform.

Under an Intensive Therapeutic Order the Childrens Court can order intensive therapeutic support and treatment and where necessary to protect the safety of members of the community and the child or young person themselves, impose other conditions such as authorising confinement as a last resort to prevent the child or young person from engaging in harmful conduct.

Police will retain their current powers to intervene to protect members of the community, including powers to arrest and detain a child or young person aged from 10 to 13 years where they engage in conduct that would be an offence or where there is imminent danger of injury to a person because of the child's conduct.

Concluding remarks

These reforms are ground-breaking for the ACT and indeed, for Australia.

They represent a recognition that our best evidence about children, young people and the disadvantage that leads to harmful behaviour must be reflected in our criminal laws. The reforms represent a timely change to the way we seek to reduce crime and harm in our community.

I would particularly like to thank my Ministerial colleagues, Minister Stephen Smith and Minister Davidson, for their dedicated contribution to developing this reform. As the Minister for Families and Community Services, and Minister with responsibility for youth justice respectively, they have led the work to develop the alternative pathways that will be the platform for delivering a

therapeutic response to harmful behaviour. Those alternative responses are vital to the success of this reform.

I would also like to thank again the many others who have contributed to the development of this Bill - advocates, researchers, and stakeholders. Thank you for sharing your personal and professional insights to develop these reforms, which will enable lives to be turned around and for our community to be safer. And finally, we thank the officials in the Justice and Community Safety and Community Services Directorates who have worked tirelessly to develop both the model and the legislation.

I commend the Bill to the Assembly.