



**LEGISLATIVE ASSEMBLY**  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

Mr Peter Cain MLA (Chair), Dr Marisa Paterson (Deputy Chair), Mr Andrew Braddock MLA

## Submission Cover Sheet

Inquiry into Justice (Age of Criminal Responsibility)  
Legislation Amendment Bill 2023

**Submission Number: 016**

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**ACT  
Policing**

# ACT Policing Submission

Inquiry into Justice (Age of Criminal Responsibility)  
Legislation Amendment Bill 2023

7 June 2023

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### Report details

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## Executive Summary

ACT Policing thanks the Standing Committee on Justice and Community Safety for its invitation to make a submission into its inquiry into the Inquiry into Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023 (**the Bill**). ACT Policing's position on raising the minimum age of criminal responsibility (**MACR**) is largely consistent with its August 2021 submission into raising the MACR Discussion Paper (**Attachment A**).

ACT Policing is committed to initiatives that improve community safety and continue to support the wellbeing of children and young people. ACT Policing remains focused on therapeutic interventions and diverting youth from engagement with the criminal justice system.

ACT Policing's position remains to raise the MACR to 12 years of age rather than to 14 years of age.

ACT Policing strongly recommends national consistency in relation to a revised MACR. This is particularly pertinent as the ACT has porous borders with New South Wales through which criminal activity is fluid.

ACT Policing strongly advocates for ensuring the introduction of raising the MACR occurs when the alternative therapeutic system and service responses are in place.

If the MACR is raised to 14 years, ACT Policing does not support offence exceptions for serious offences. ACT Policing's experience is that children either have the cognitive ability to understand their actions or not, regardless of the crime type.

ACT Policing is working with the ACT Government to finalise the implementation of the MACR reforms, including determining agency responsibilities to ensure the most appropriate stakeholders carry out and are resourced to deliver the policy intent of the MACR reforms. ACT Policing supports the ACT Government's policy commitment to raise the MACR, and will work constructively and collaboratively to ensure police have the required powers and resources to respond. ACT Policing will continue to advocate for young people and their carers to have access to appropriate service responses and support.

## **Policy Positions**

### **National Consistency**

ACT Policing strongly recommends national consistency in relation to a revised MACR. This is particularly pertinent as the ACT has porous borders with New South Wales through which criminal activity is fluid.

ACT Policing is concerned that any differences to MACR across jurisdictions and the Commonwealth will raise significant operational challenges, for example, ACT Policing anticipates an increase in crime in the ACT committed by youth from surrounding jurisdictions who will exploit the legislative inconsistency.

### **Commencement**

The ACT Government proposes the Bill will commence on the 7<sup>th</sup> day after its notification day.

ACT Policing believes that the relevant wrap-around support services (including after-hours and crisis accommodation) and other frameworks (Therapeutic Correction Orders and Intensive Therapeutic Orders) must be in place and appropriately resourced prior to implementation of the revised MACR. ACT Policing strongly advocates ensuring the introduction of raising the MACR occurs when the alternative therapeutic system and service responses are in place, noting best practice would likely require considerable time to implement the required infrastructure and resources.

### **Statutory Review**

The Bill proposes to review the operation and effectiveness of the amendments to all Acts made by the Bill as soon as practicable after the end of 5 years after commencement; and present a report of the review to the Legislative Assembly before the end of 6 years.

ACT Policing's preference is a review period of two years after the MACR has been raised to 12, to assess the effectiveness of the MACR reforms and the sufficiency of wrap around services in order to make appropriate changes before a revised MACR of 14 would impose an increase in the volume of young people on the system. This will increase public confidence in the MACR reforms and will ensure the alternative therapeutic system and service responses are ready to support all young people affected by a revised MACR to 14.

## Offence Exceptions to a Raised MACR of 14 years

The Bill proposes to raise the MACR to 14 years of age on 1 July 2025, except for the following four offences where children aged 12 or 13 will remain criminally culpable:

- murder
- intentionally inflicting grievous bodily harm
- sexual assault in the first degree
- act of indecency in the first degree

The Bill's rationale for including the excepted offences is to ensure the community remains protected from the significant risks that may be posed by young people who engage in exceptionally serious and intentionally harmful behaviour.

If the MACR is raised to 14 years, ACT Policing does not support offence exceptions for serious offences. ACT Policing maintain several concerns regarding the proposed offence exceptions, noting:

- ACT Policing's experience is that children either have the cognitive ability to understand their actions or not, regardless of the crime type. ACT Policing does not subscribe to the idea that an individual can be deemed responsible for one crime because of its seriousness, yet not be considered responsible for a different crime because it is considered less serious.
- ACT Policing is concerned that the proposed exceptions do not address a range of other intentionally violent, serious or significantly harmful offences. ACT Policing continues to observe a cohort of 12-13 year olds engaging in serious and violent offences, who are often recidivist offenders. Offences include incest, property damage, ride/drive motor vehicle without consent, assault (common and occasioning actual bodily harm), robbery, burglary, and contravention of a protection order.

ACT Policing and Courts recognise the range in seriousness of offences conducted by those aged 12-13 years old and, in most cases, determined that alternative measures such as caution, dismissal, convicted with recognizance, and proved without proceeding to conviction were more appropriate outcomes than imprisonment.

## Police Powers

The Bill proposes that police officers will retain all their current powers with respect to intervening in circumstances where there may be harm or a risk of harm, including their powers to search, arrest and detain a child or young person who is under the revised MACR. Any arrest or detention of such a young person will not result in any criminal justice action. A young person may be returned to their parents or their place of residence or otherwise referred to an appropriate service.

ACT Policing is supportive of retaining current police powers to intervene in circumstances where there may be a risk of harm to a person, to protect the community and individual.

## Victim Participation and Support

The Bill proposes allowing victims of crime to access the Victim Support Scheme, provide a harm statement to the Therapeutic Support Panel, apply for financial assistance, and be informed of certain information.

ACT Policing supports the proposed victim participation and support measures outlined in the Bill to allow the victim to have the opportunity to be updated throughout and engage in the process, and access relevant support.

In addition, ACT Policing believes that recognising how the victims relate to their offenders and the spaces that they each occupy in the community are critical to supporting victims of crime. Sufficient support is required not only to identify who the victim is, but identify the risks within their environments and respond appropriately to prevent re-victimisation. For example, where a child under the MACR sexually assaults their younger sibling. Vulnerable people in the ACT community are likely to experience the greatest barriers to support. Further, barriers may include support that is not culturally sensitive and language difficulties for our culturally and linguistically diverse community.

## Restorative Justice

The Bill proposes to allow a child or young person under the MACR who harms a victim to be eligible for referral to restorative justice conferencing. For any child offender to be eligible to participate in restorative justice conferencing they must not deny responsibility for having committed the act that harmed the victim.

ACT Policing supports retaining restorative justice for children under the raised MACR as this may allow an offender to take responsibility regarding their actions, acknowledge the impact on the victim and provide the opportunity to repair harm and rehabilitate.

## Therapeutic Framework

ACT Policing supports in-principle the Bill's proposed therapeutic framework, including the proposed Therapeutic Support Panel, Intensive Therapeutic Order and Therapeutic Corrections Order. ACT Policing will continue to engage with the ACT Government on how best to implement the framework and ensure an appropriate service system is in place.

## Criminal History, Proceedings and Orders

The Bill proposes to extinguish all convictions committed by children and young people under the MACR, except for the purposes of the *Working with Vulnerable People (Background Checking) Act 2011*; and those scheduled offences for which a minimum age of 12 years will remain once the MACR is raised to 14 years.

ACT Policing supports the proposed approach to extinguish convictions committed by children and young people under the raised MACR.

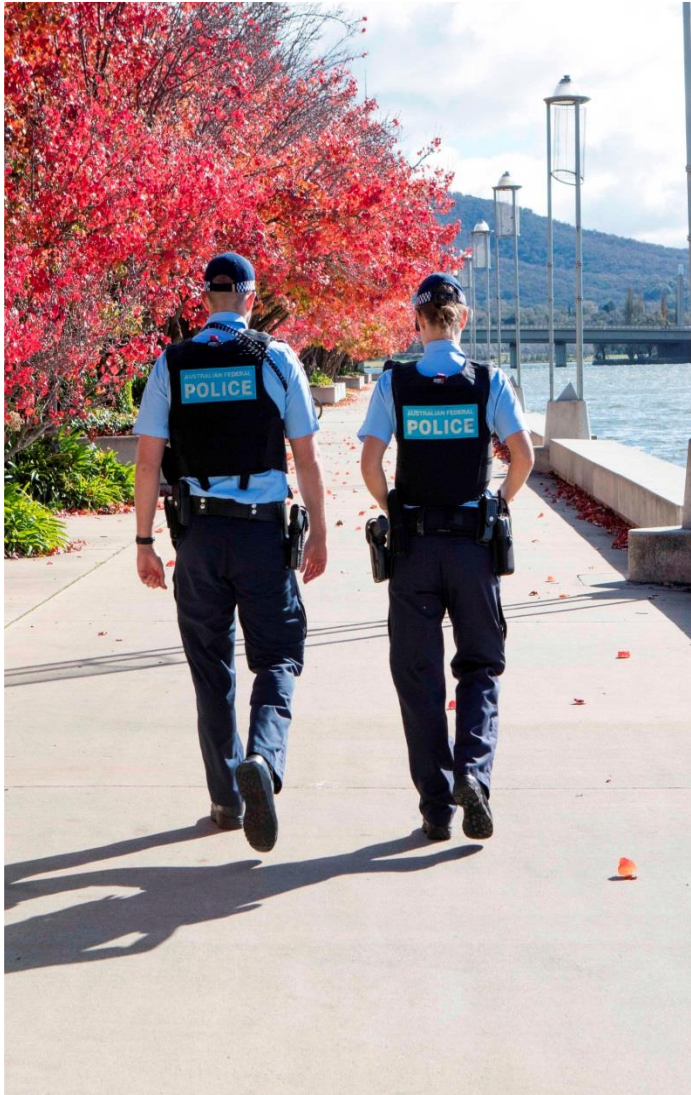
The Bill proposes that any 'law enforcement action' (as defined under amendments to the *Crimes Act 1900*), Family Violence Orders or Personal Protection Orders in which the respondent is under the raised MACR end on the commencement day.

ACT Policing agrees with this approach, however, recommends recognising interstate criminal orders, which may apply to children and young people under the ACT MACR. For example, allowing ACT Policing to enforce a Family Violence Order that has been issued by a New South Wales court to an 11-year-old who has breached their conditions. ACT Policing notes this approach would align with the ACT Government's commitment to the National Domestic Violence Order Scheme which, since 25 November 2017, has provided that all Family Violence Orders issued in an Australian state or territory are automatically recognised and enforceable across Australia. In practice, this means ACT Policing has committed to enforcing the conditions of a Family Violence Order, regardless of where it was issued.

Given the Bill will extinguish convictions and cease current law enforcement action for children and young people under the MACR, ACT Policing will work with the ACT Government to ensure the most appropriate agency informs victims of this change and that there are appropriate record keeping mechanisms in place to ensure that ACT agencies hold accurate criminal history records.



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AUSTRALIAN FEDERAL POLICE



## Raising the Minimum Age of Criminal Responsibility in the ACT

August, 2021

Submission by ACT Policing



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## Executive Summary

ACT Policing appreciates the opportunity to provide a submission to the ACT Government in response to the recent Discussion Paper on Raising the Minimum Age of Criminal Responsibility (MACR). ACT Policing's preference would be to raise the MACR to 12 years of age rather than to 14 years of age, and for MACR to be nationally consistent. ACT Policing is committed to initiatives that improve community safety and continue to support the wellbeing of children and young people. ACT Policing remains focused on diverting youth from engagement with the criminal justice system.


The intent of this submission by ACT Policing is to raise operational issues that require consideration prior to any alteration of the MACR. ACT Policing will continue to work closely with the ACT Government and community sector to ensure young people have access to the appropriate services to support their needs and that police have the relevant powers and resources to respond to any changes to the MACR.

ACT Policing's current approach towards engagement with young people has focused on diversionary practices and therapeutic interventions, as guided by evidence-based best practice. Current evidence suggests that children and young people who display harmful, risky, unsafe and sometimes violent behaviour often do so as a result of trauma, mental health issues, abuse, and/or disability. Early involvement with the criminal justice system can lead children and young people to further offending. ACT Policing continues to support approaches involving diversion and therapeutic interventions as a key form of primary prevention.

ACT Policing's main concern in raising the MACR is to ensure there are appropriate health and social support services available and adequately resourced for young people to access. Other key operational and implementation issues include:

- The requirement for support services to be available 24/7 to provide a therapeutic response to the underlying, complex needs of youth who engage in harmful behaviours, including temporary and long-term accommodation for children and young people in after-hours or crisis situations where they are unable to return home;
- Further clarity regarding ACT Policing's role in supporting a new therapeutic response model and ensuring this role does not extend to the supervision of children in crisis or after-hours situations, particularly noting that there is no legislative authority for police to detain child or young person under the MACR;
- Consideration of a tiered or triaged approach for responding to children and young people who repetitively engage in serious or violent harmful behaviours and in instances where they are not participating in diversionary interventions or other support processes; and
- Ensuring ACT Policing have the relevant powers and resources to respond to serious or violent harmful behaviours under a revised MACR framework in order to best protect the ACT community.

It is important to also consider the effect of removing or limiting the scope of the existing diversion options and the impact this will have on community safety. Where there is no criminal offence committed by a child or young person due to the raised MACR, police are



limited in their ability to divert the individual to existing therapeutic response models as an alternative to the criminal justice system. Any alternate approaches need to be supported by firm and robust intervention responses to ensure youth are engaging in therapeutic responses to address their harmful behaviours and provide sufficient protections for the ACT community.

ACT Policing will continue to support the Government in implementing its approach and corresponding safety policies, including collaborative consultation with ACT Government partners, the community sector, and other key stakeholders to identify solutions for the way forward.

## Current Models for Youth Offenders

Currently, ACT Policing's management of youth offenders focuses on a diversion approach in order to follow evidence-based best practice. The *Child and Young Persons Act of 2008* (ACT), the ACT Children's *Human Rights Charter*, *The ACT Young Peoples Plan 2009-2014 Blueprint for Youth Justice in the ACT 2012-2022*<sup>1</sup> and ACT Policing's Police Services Model (PSM), provide the legislative and governance framework for engaging with children who commit certain offences through the use of appropriate prosecutions, warnings, cautions and restorative justice conferences as an alternative to the usual justice responses of arrest, summons and courts proceedings. This is reflected by the various models utilised by ACT Policing, including those outlined below. It is ACT Policing's preference that the below models and initiatives continue to be implemented if the MACR is raised, further promoting inter-agency collaboration to address the specialist needs of children and young offenders.

### Diversion Programs

#### *Police Cautions*

ACT Policing exercise formal police cautions as a discretionary power conferred by common law. The vast majority of criminal offences are cleared via a police caution and they are often used as a diversion method for children and young people who are suspected of committing a relevant criminal or traffic offence. This early intervention approach minimises a young persons' engagement with the criminal justice system and deter them from engaging in further harmful and/or criminal behaviours.

To issue a formal police caution, the alleged offender must have not previously been charged with an offence. It is used as an appropriate alternative to criminally charging a person for an offence in certain circumstances, which may include when:

- the alleged offender has not previously been charged with an offence;
- the circumstances of the incident are considered suitable for resolving without referring charges to the courts; and
- if there are more appropriate services available for the child or young person.

A formal police caution involves the investigating member having to be satisfied that there is sufficient admissible evidence to establish a prima facie case with a reasonable prospect of prosecution. When issuing a formal police caution, as per ACT Policing guidelines and Youth Justice Principles derived from s 94 of the *Children and Young People Act 2008* (ACT) the preferred option in order to do so would include the child or young person showing remorse and/or an admission of guilt for the suspected offence. There are numerous factors to consider for issuing a caution, including the seriousness of the alleged offence, available alternatives to prosecutions and sentencing, previous cautions given, and the age, maturity and developmental capacity of the offender. Serious or indictable criminal and traffic offences under ACT and Commonwealth legislation are generally not suitable for clearance by way of caution.

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<sup>1</sup> The ACT Government. 2012. *Blueprint for Youth Justice in the ACT 2012-2022: Improving outcomes for young people over the next 10 years*. Canberra, ACT  
<[https://www.communityservices.act.gov.au/\\_data/assets/pdf\\_file/0009/337590/Blueprint\\_for\\_Youth\\_Justice\\_in\\_the\\_ACT\\_2012-22.pdf](https://www.communityservices.act.gov.au/_data/assets/pdf_file/0009/337590/Blueprint_for_Youth_Justice_in_the_ACT_2012-22.pdf)>

Police cautions will no longer be available for those under the MACR if it is raised, as the young person will no longer be criminally liable for an offence. This will remove a significant diversionary and early intervention method available to police to divert young people from the criminal justice system and/or deter them from further engaging in criminal or harmful behaviours.

#### ***Youth Alcohol Diversion Program***

The ACT's Youth Alcohol Diversion Program provides an intervention for young people engaged in underage drinking with a focus on reducing harm, excessive consumption of alcohol (binge drinking), and the various associated social and health problems. Eligibility requires the child or young person to have committed an offence under the *Liquor Act 2010* (ACT) and consent to participate in the diversion program (including parents/guardians consent). Young people who are involved in violent crimes are ineligible. When considering diversion as an option, police will also consider public interest, the interests of the individual involved, and the interests of their immediate family.

The program is a partnership between ACT Policing and ACT's Health Directorate and aligns with the *Blueprint for Youth Justice in the ACT 2012-2022* and the *National Drug Strategy 2017-2026*<sup>2</sup>. These efforts include a three-tiered diversionary prevention approach with varying levels of support and transition programs to link young people back into education, training, employment, or independent living in the community. This ensures that there are a range of services available for young people that may be required for their health and wellbeing. Children and young people who have no prior involvement with the criminal justice system will benefit the most from the program, with an opportunity of being referred to an education session and alternative treatment options. ACT Policing receive regular reports of compliance and non-compliance.

#### ***Illicit Drug Diversion Program***

The Illicit Drug Diversion Program provides intervention and education to children and young people who engage in illicit drug consumption, with a view to reducing harm and associated social and health problems in the community. The program includes data collection on drug consumption and incentives for offenders to access additional health support services in this space. This program is also a partnership between ACT Policing and ACT's Health Directorate and aligns with the *Blueprint for Youth Justice in the ACT 2012-2022* and the *National Drug Strategy 2017-2026*. The program provides the necessary support services for children and young people for ACT Policing to re-direct offenders towards as an alternative and minimise their engagement with the criminal justice system.

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<sup>2</sup> Commonwealth of Australia. 2017. Drug Strategy 2017-2026. Canberra, ACT 2601  
< [https://www.health.gov.au/sites/default/files/national-drug-strategy-2017-2026\\_1.pdf](https://www.health.gov.au/sites/default/files/national-drug-strategy-2017-2026_1.pdf) >

### ***Restorative Justice Conferencing***

Restorative Justice Conferencing is a form of diversion which provides advantages for both the offender (including children and young people) and victims. Restorative Justice Conferencing provides a platform to discuss how an offence has affected each party and allows offenders an opportunity to accept responsibility for their actions and take steps towards repairing the harm that has occurred. This can be quite beneficial for young people who have offended, as it diverts them from traditional criminal justice responses. Ordinarily, if the offender participates in the conference and completes the terms of their agreement, the matter will not be taken any further by police and will not go to court. However, police and prosecutors retain the discretion to progress a matter that has been subject to restorative justice through the court, if appropriate in the circumstances. If the incident goes to court after Restorative Justice Conferencing, the court may consider whether the offender has accepted responsibility for the offence and reduce the sentence (but is not required to do so). The court may also use restorative justice as part of the offender's sentencing and suspend final sentencing until the conference has been finalised.

### **Community Engagement Team – Youth Engagement/Liaison Officers**

ACT Policing's Community Engagement Team work closely with vulnerable communities, including youths, primarily through Community Engagement Liaison Officers. The team's primary purpose is to strengthen ties between police and the community by proactively engaging with vulnerable groups on a range of community and policing matters. Active engagement allows ACT Policing to more fully address any potential tensions arising from overt police activity; builds trust between the police and community members; and assists in the development and building of social cohesion and resilience of affected communities. This level of engagement also ties in extensively with the aforementioned models in various forms through continuously focusing upon young people and children's wellbeing.

Youth Engagement Officers (YEO) undertake a wide variety of tasks including developing and maintaining a network of contacts between police, government agencies and youth in the community in order to strengthen cooperation and communication. YEOs provide support and encourage positive role models to enhance police-youth relationships as an effective crime prevention strategy. This helps direct youth to the appropriate services for both young people and their corresponding support systems (and/or families) to assist in addressing problematic behaviours. The role of YEO is primarily to assist 'at-risk' youth from further heading down the pathway towards the criminal justice system, and re-direct them further where possible.

### **Raising the MACR**

ACT Policing provides in-principle support for raising the MACR in the ACT, with a preference for the age to be raised to 12 years old instead of 14 years old, and for MACR to be nationally consistent. ACT Policing continue to observe a cohort of 13-14 year olds engaging in serious and violent offending. This includes aggravated burglary, assault (common and occasioning actual bodily harm), property damage, theft, trespass and weapon offences. Whilst this cohort is small, these are often repeat offenders who continue to engage in such behaviours

despite ongoing diversionary criminal justice responses. ACT Policing is concerned if the MACR is raised to 14 years old, this cohort will continue to engage in serious, violent behaviours and in some circumstances may increasingly do so without fear of repercussions through the criminal justice system.

In comparison to other Australian jurisdictions, ACT remains the most progressive in raising the MACR. At present, there is no national consistency. The Victorian Greens Party introduced a Bill in March 2021 to raise the MACR to 14 years of age, however the Bill was not supported by the Parliament. In 2020, the Queensland Government made an election commitment not to raise the minimum age, whilst the Northern Territory has committed to raising the MACR to 12 years of age and ban the detention of those under 14 years of age (with the exception of serious crimes). A nationally consistent approach would be beneficial in order to streamline the appropriate support services efficiently and ensure a tailored approach to complex needs of children and young people who engage in harmful behaviours.

If the MACR is raised to 12 years of age, ACT Policing will continue to focus on diversionary responses for young people, including the 13-14 year old cohort, who commit criminal offences. The benefit of this approach is utilising the criminal justice system as the mechanism for mandated therapeutic interventions to support young people who engage in harmful behaviour.

## Alternative Police Response Model

Raising the MACR will require a collaborative and considered approach across Government and non-Government support services. Police will continue to play an incredibly important role in protecting the community from harm, with the support of appropriately resourced and skilled support services to best improve the outcomes when youth have engaged in harmful behaviours or have been involved in unsafe situations. ACT Policing supports the development of an alternate model for responding to harmful behaviour involving children and young people if the MACR is raised and a criminal justice response is no longer relevant. The alternate model should involve a multi-disciplinary approach with support from relevant ACT Government and non-Government services.

An alternative model for ACT Policing's engagement with youth under the MACR could reflect the Police, Ambulance, and Clinical Early Response (PACER) model which operates 24/7 to provide effective care to the wider ACT community. The PACER model was implemented in 2019 and involves a tri-service approach to mental health call-outs. The model aims to provide a more holistic mental health response to the wider ACT community through a focus on inter-agency cooperation. The PACER model is underpinned by ACT Policing's ongoing collaborative efforts with ACT Ambulance Service, ACT Mental Health, Canberra Hospital and Calvary Public Hospital Bruce, which was initiated in 2011 with the launch of the Mental Health, Emergency, Ambulance and Police Collaboration (MHEAPC).

Similar to PACER, an alternate model would bring together ACT Policing and youth services to respond to young people acting in an unsafe, harmful manner or who themselves are unsafe in the circumstances. Where ACT Policing is called to respond to an incidence involving youths, officers would jointly attend with youth services. This multi-disciplinary approach will assist in establishing rapport with the young person and breaking down

barriers to better understand their needs and ensure a holistic, therapeutic response for those under the MACR. ACT Policing and youth services will be able to support youths by referring them to appropriate service providers in the health, housing, education, family and community sectors, to address their underlying, complex needs and reduce harmful behaviours.

## Requirement for Appropriate Support Services

ACT Policing's key concern for implementation is that children and young people have access to the relevant support services they need, when they need it. It is critical that the system which replaces criminalisation ensures that therapeutic interventions successfully divert youth away from harmful behaviours, improve their overall wellbeing and result in positive holistic outcomes for community safety in the ACT. Services should reflect the complex needs and risk factors for children and young people who are either 'at-risk' of or have already engaged with the criminal justice system, recognising that some of these factors may include health, homelessness, education, substance misuse, family violence and necessary child protection mechanisms.

This is due to police often coming across youth on the street or being called out in circumstances involving harmful or unsafe behaviour and requiring some form of response or action. In these situations, particularly where a criminal offence has not been committed, police will attempt to support the individual and facilitate access to relevant services, but this relies on consent and cooperation from the offender. If an offence has been committed, police are able to utilise criminal justice actions to arrest, restrain, caution, charge or divert the offender. If the MACR is raised, these traditional police or criminal justice responses would not be available for police to use on youths under the MACR and alternative responses would need to be employed. It is imperative that there are mechanisms available for police to connect children and young people with services that are appropriately resourced and readily available.

Notably, there are currently limited services for children and young people to access after-hours, particularly in terms of temporary or crisis accommodation. The current options include placing a young person in police custody, or Bimberi, to securely 'hold' individuals and young people who have committed a criminal offence until alternative arrangements can be made or the relevant services open during normal business hours. These options would not be available for youth under the MACR if it is raised. In crisis or after-hours circumstances, safe and secure accommodation options are critical to support young people who cannot return to their usual residences or must be secured as they are at risk of substantial or immediate risk of harm to themselves or to others. Within these facilities, young people may be able to access the relevant health and social support services to address underlying, complex needs (if available after-hours) or wait in a safe, secure location until these services are available. Further clarity is required regarding the extent of ACT Policing's role in this space and the expectation of police officers in responding to unsafe, violent or harmful behaviours involving youths, particularly where there is no or a limited legislative basis to direct or hold youths until appropriate services can be accessed.

## Exceptions to Raising the MACR

By removing criminal justice interventions as an avenue to address the harmful behaviour of children and young people, it is important to recognise that the consequences for harmful behaviours are not being removed, particularly where they may be serious, violent or repetitive. Appropriate models should be implemented to manage these individuals and their behaviours, ensuring responses balance the need to support youth in accessing relevant services whilst safeguarding community safety. ACT Policing supports a tiered or triaged approach for responding to children and young people who repetitively engage in serious or violent harmful behaviours, particularly in instances where they are not participating in diversion or other support processes. It is expected that appropriate therapeutic support responses will address underlying needs and risk factors for harmful behaviour and as a result reduce repetitive harmful behaviours. However, this must be balanced against the safety and security of the broader ACT community. Serious, violent or repetitive behaviours cause significant harm to the community and there is a community expectation that individuals will be held accountable for engaging in such behaviours.

A tiered approach would reflect that voluntary youth engagement with therapeutic services model is preferred and undertaken in consultation with relevant service providers, community groups and (if appropriate) parents/guardians. This approach would also implement appropriate mechanisms for mandated engagement in these or alternate approaches for serious, violent or repeated harmful behaviours. ACT Policing understands the need for young people to have ease of access to relevant services in order to effectively address complex underlying needs through therapeutic approaches, however, recognises that sustained violent behaviours must be addressed to protect the wider community from harms, ensure victim safety, and safeguard community expectations.

This type of approach could be managed through creating exceptions for serious offences (as is the case in New Zealand) for which a young person under the MACR could be prosecuted. The benefit of this approach is allowing the courts to have the discretion to mandate an individual's engagement in therapeutic interventions. ACT Policing supports the ability to mandate the young person's involvement in therapeutic interventions in serious circumstances – whether this is through the courts or another mechanism. This approach will also benefit young people who engage in repetitive harmful behaviours, either as a result of not having access to the relevant services or not participating in therapeutic interventions resulting from earlier behaviours. A robust governance framework would need to be developed to support such a model, including clear guidelines for what would constitute serious or repetitive behaviours, when mandated approaches would be utilised and the authority basis for mandating engagement. ACT Policing will continue to work with the ACT Government and relevant stakeholders in consideration of a tiered approach to raising the MACR.

## Victim's Rights

ACT Policing notes the importance of ensuring a clear and consistent narrative regarding raising the MACR. It is important to consider the impacts this will have on the broader community, particularly for victims of harmful behaviour caused by individuals under the

MACR. ACT Policing advocates for additional support services to be available for victims who may be harmed in these instances and accountability mechanisms for youths.

There should be additional considerations, particularly for serious or violent offences against a person or their property, as to how to manage community expectations. The approaches which replace traditional criminal justice practices should include therapeutic interventions where the victim's rights are also considered. ACT Policing suggests any alternate models include a restorative justice approach which would allow the young person to take responsibility for their harmful behaviours and acknowledge the impact on the victim, who also has the opportunity to engage in the process. These practices will greatly assist in ensuring harmful behaviours are addressed and where relevant, are managed by appropriate accountability mechanisms.

## Police Powers and Operational Considerations

### Current Police Powers for Children under the Age of 10

ACT Policing's current powers relating to children under the age of 10 are outlined in s252A of the *Crimes Act 1900* (ACT). Currently, a warrant for the arrest of a child under 10 years old may be issued if a judicial officer believes on reasonable grounds that the child has carried out conduct that makes up the physical elements of an offence and poses a risk to the safety of either the child or the community. Under s228, police may also arrest a child without a warrant in certain circumstances, but must only do the minimum necessary to stop or prevent the child's conduct. Once the child has been arrested, the police officer must either take the child to a person with responsibility for the child or another person or agency agreed in consultation with the Director-General of the Community Services Directorate. Children under the age of 10 years also cannot be subject to a strip search or an identification parade.

ACT Policing's preference is to retain these powers for engaging with children and young people under a raised MACR to ensure there are preventative steps to protect younger people and the broader community from harm. In instances where police members have attended an incident where a child or young person is considered under the MACR, police will be expected to intervene to prevent foreseeable harm. Where the individual's age cannot be determined (either due to lack of identification or lack of cooperation from the individual), police may be required undertake specific actions, including the arrest of a young person, to prevent imminent harm or injury as a result of their conduct. There is a significant risk to the safety of young people and the broader community if police officers are unable to intervene in such situations. Maintaining these powers are critical to ensuring ACT Policing has the appropriate legislative framework to manage serious or violent harmful behaviours. ACT Policing will continue to manage incidents involving young people with a diversionary, therapeutic focus, and only utilise relevant powers or provisions where there is a substantial or imminent risk to the safety of the young person or broader community.

### Intersection with Commonwealth Legislation

All Australian police officers, be they federal, state or territory, are empowered to enforce Commonwealth criminal law. Individual Constables are accountable for their own decisions

regarding the exercise of their powers on becoming aware of the occurrence of an offence. As noted in the Discussion Paper, it is not anticipated a revised MACR will apply to individuals who commit a Commonwealth offence in the ACT, unless Commonwealth legislation is amended also. For example, a number of cyber-crime related offences are found in Commonwealth legislation. Whilst this risk can be mitigated to some extent by introducing new governance encouraging utilisation of ACT laws, the legislative ambiguity remains. Due to the independent office of constable, officers cannot be directed whether or not to utilise particular offences.

ACT Policing's internal governance on the MACR will make clear that whilst the Commonwealth law remains available for ACT Policing officers, they are encouraged to give effect to the ACT Government's policy intent. Where a Commonwealth crime has occurred, ACT Policing will investigate the offence in line with current internal policies and in consultation with the Australian Federal Police. As detailed in this Submission, ACT Policing's internal policies will continue to focus on diverting youth from the criminal justice system and engaging in diversion or restorative justice programs where appropriate.

### **Exploitation by Adults**

If the MACR is raised, a concern for ACT Policing is the potential manipulation or exploitation of youths by adults to engage in criminal behaviours in order to avoid law enforcement and/or prosecution. This could see ACT evolve into hotspot jurisdiction for youths to become involved in criminal activity without fear of consequences through the justice system. The *Criminal Code 2002* (ACT) outlines existing offences to criminalise behaviour that induces or incites another person (inclusive of children and young people) to engage in forms of criminal activity, as detailed within sections 47 (incitement) and 655 (recruiting people to engage in criminal activity). Notably, neither offence relies on the relevant offence itself being committed but does rely on an identifiable offence.

ACT Policing supports amendments to the incitement and recruitment offences to specifically note that these provisions still apply for when the young person is under the MACR but the relevant activity would be considered criminal if the individual was over the MACR. This ensures young people are protected from exploitation and the adults seeking to exploit them are held criminally accountable. These amendments will provide appropriate mechanisms to assist in the protection of the ACT from becoming a jurisdiction involved in criminal activity committed by young people at the direction of adults or criminal entities.

### **Extradition Requests**

Section 82-83 of the *Service and Execution of Process Act 1992* (Cth) details current extradition measures between the ACT and other Australian jurisdictions, which applies to all states and territories. ACT Policing does and will continue to support and reciprocate extradition requests under these legislative provisions.

As detailed in the Discussion Paper, if a valid interstate warrant is produced, ACT Courts cannot interfere with the extradition process other than to decide whether the accused person should be transferred to the other jurisdiction in custody or on bail. If the MACR is raised in the ACT, this may preclude young people being prosecuted for alleged offences in the ACT, but does not necessarily preclude them from being held accountable for the

offences/warrants they may be subject to in other Australian jurisdictions. Although there remains inconsistencies across Australian state and territory legislation, the Commonwealth legislation governs the extradition proceedings and ACT Policing will continue to work with state and territory partners on extradition requests in line with this legislative framework.

### **Historical Convictions**

ACT Policing supports that historical convictions for offences committed by children when they were younger than the revised MACR be treated in accordance with existing spent conviction laws. This would provide ACT Policing, ACT Courts and additional bodies with an accurate criminal history for young people when considering bail and sentencing options if the individual was to continue to offend when they are older. If convictions are spent or extinguished as a result of the raised MACR, ACT Policing's position is that this should be on a case by case basis through application by the young person outlining why their previous offences should be removed. In reviewing these applications, consideration should be given to the seriousness of the offences, extent of criminal history and the offenders engagement with the sentencing imposed (including imprisonment, good behaviour bond and diversionary or restorative justice approaches). ACT Policing also expresses concern and suggests that any victims of crime should also be consulted to ensure that their rights are considered and addressed.

### **Information Use and Sharing**

ACT Policing will continue to promote inter-agency cooperation and collaboration when engaging with young people who have offended or engaged in harmful behaviour. As outlined in the Discussion Paper, there are a number of legislative frameworks which enable police to collect the personal information of young people. ACT Policing notes the importance of robust rules and procedures to govern the management and use of personal information for young people and the complexities associated with the MACR in relation to this.

ACT Policing supports consideration of a model similar to Scotland's Independent Reviewer to determine the appropriate use of personal information relevant to young people, including harmful or criminal behaviour which occurred when they were under the MACR. An accurate understanding of previous behaviours will greatly assist police and other service providers to understand the complex needs of an individual to ensure they have access to appropriate services. If the individual continues to offend after they have passed the MACR, this information may also be critical to supporting ACT Policing and the criminal justice system in pursuing appropriate response options to address the ongoing offending. A model similar to Scotland will ensure an independent review of applications to use such information, with a focus on weighing the personal privacy of the individual against the need to use or share the information.

ACT Policing will continue to engage with the ACT Government to ensure the use and sharing of personal information is safeguarded by appropriate frameworks which focus on personal privacy rights and supporting ACT Policing in protecting the community from harmful and criminal behaviours.

## Conclusion

Increasing the MACR will provide an opportunity to strengthen preventative and therapeutic programs to keep children and young people from engaging with the criminal justice system and break the cycle of crime. ACT Policing supports raising the MACR in the ACT, although prefer this to be raised to 12 years of age rather than 14 years of age. There remains key issues for police in the implementation of the policy's intent, including:

- Ensuring children and young people have access to the social and health support services to address underlying, complex issues which lead to harmful behaviours. These services need to be adequately resourced and available 24/7 to respond after-hours and crisis situations;
- Clarifying the extent of ACT Policing's role and powers to support therapeutic mechanisms to respond to and treat harmful behaviours; and
- Whether a tiered response can be introduced to respond to more serious, violent behaviours and support compliance with therapeutic interventions.

ACT Policing will continue to work closely with the ACT Government and partners in the social and health support sectors to provide a holistic response to criminal offending by young people, ensuring that the often complex, underlying issues are addressed.

**Deputy Commissioner Neil Gaughan APM**  
**Chief Police Officer for the ACT**