



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

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

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Submission on

Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023

Standing Committee on Justice and Community Safety

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Standing Committee on Justice and Community Safety
ACT Legislative Assembly
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Submission to Standing Committee on Justice and Community Safety

Thank you for the opportunity to make a submission to the Standing Committee on Justice and Community Safety regarding the *Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023*.

The attached submission is an individual submission. I am happy for this submission to be made available publicly.

Yours sincerely,



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Information about the author:

In April 2023, I graduated from the University of South Australia with *First Class Honours* in Social Work. My Honours Thesis explored Social Work and Human Service Advocates' experiences of advocating for raising the age of criminal responsibility within Australia. I have heavily researched the significant need for the age of criminal responsibility to be raised within Australian States and Territories. I have a strong passion for advocacy within this area and I believe the voices of advocates need to be heard on this matter.

Key Areas of Consideration:

- The unjust incarceration of children and young people within Australia cannot be ignored. The current laws regarding the minimum age of criminal responsibility being 10 years of age impact those who are most disadvantaged and further perpetuate the cycle of systemic disadvantage of Aboriginal and Torres Strait Islander children and young people.
- The age of criminal responsibility should be raised to at least 14 years of age as a matter of urgency without exception for specific offences. Research evidence has found that children should not be incarcerated and advocates are pleading for governments to take this evidence into consideration and become proactively involved in raising the age
- There is a significant over-representation of Aboriginal and Torres Strait Islander children within the criminal justice system. The voices of Aboriginal and Torres Strait Islander Peoples must be heard, acknowledged, and acted upon.
- There is an overwhelming amount of scientific evidence that supports the urgency for the age of criminal responsibility to be raised in Australia. This evidence also details the impacts of incarceration on children and young people in Australia. Children and young people within Australia should not be incarcerated and put at risk of significant psychological harm, they should be supported in a trauma-informed and therapeutic manner to increase rehabilitation.

Imagine being 10 years old, you are taken from your family, friends, and community and placed into a youth justice facility. Imagine a significant moment of your childhood being spent behind bars with no connection to the outside community. This is, unfortunately, the experience of 819 Australian children on average in 2021, of whom 91% were male and 50% were of Aboriginal and Torres Strait Islander background; imprisonment is not an experience children as young as 10 should have.¹ In 2019-20, 499 children aged between 10 and 13 were imprisoned, 65% of whom were Aboriginal or Torres Strait Islander children.² In most jurisdictions when young people offend or are charged with an offence, they are supervised by youth justice agencies, remanded in juvenile detention facilities, or supervised in the community.³ Advocates argue that no child should be imprisoned in juvenile detention centres.⁴ Australia is in breach of the recommendations by the ‘United Nations Committee for the International Convention on the Rights of the Child’, and the human rights of children within Australia need to be protected.⁵ The Australian government has been criticised for their refusal to raise the age and for the treatment children face in youth detention.⁶ The delay in raising the age is failing children and young people in Australia and places vulnerable and disadvantaged children at significant risk.

First Nations children and young people have a long history of being significantly over-represented in Australian youth justice systems.⁷ Current Australian statistics highlight that Aboriginal and Torres Strait Islander children and young people are 17 times more likely to be incarcerated than non-

¹ Australian Institute of Health and Welfare. (2021). *Youth detention population in Australia 2021*. (Cat. no. JUV 136), 3. <https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2021/contents/summary>;

Crofts, T. (2015). A brighter tomorrow: Raise the age of criminal responsibility. *Current Issues in Criminal Justice*, 27(1), 123-131. <https://doi.org/10.1080/10345329.2015.12036035>

² Australian Medical Association. (2021). *Children as young as ten should not be incarcerated*. Australian Medical Association. <https://www.ama.com.au/ama-rounds/30-july-2021/articles/children-young-ten-should-not-be-incarcerated#:~:text=In%202019-20%20alone%2C%20499%20children%20aged%20between%2010,Health%20and%20Welfare.%20Any%20further%20inaction%20is%20unacceptable>

³ Ibid.

⁴ Human Rights Law Centre [HRLC]. (2020). *Prison is no place for 10 year olds: Australian governments told*. HRLC. <https://www.hrlc.org.au/news/2020/2/27/prison-is-no-place-for-10-year-olds-australian-governments-told>

⁵ Australian Association of Social Workers (AASW). (2020). *Code of Ethics*. AASW, 1, 6. <https://www.aasw.asn.au/document/item/92>; Australian Human Rights Commission (AHRC). (2020). *Review of the age of criminal responsibility: Submission to the council of Attorneys-General age of criminal responsibility working group*. Human Rights, 5. <https://humanrights.gov.au/our-work/legal/submission/review-age-criminal-responsibility-2020>; *ibid* (Urbas, 2000).

⁶ *Ibid* (Urbas, 2000).

⁷ Blagg, H. (2008). *Crime, Aboriginality and the decolonisation of justice*. Hawkins Press. <https://nla.gov.au/nla.cat-vn4299740>; *ibid* (Crofts, 2015).

Aboriginal children.⁸ Keeping the age of criminal responsibility under 14 years of age further perpetuates the cycle of incarceration amongst First Nations children and young people who are already disproportionately represented in Australia's youth justice system.⁹ The star of *In My Blood It Runs*, Djuwan addressed the United Nations Human Rights Council and the United Nations Committee on the Rights of the Child for the Australian Government 'to stop putting kids in jail' and he said the Australian Government was 'not listening' to Indigenous children like him.¹⁰ Djuwan called on the Government to raise the age of criminal responsibility from 10 to 14 so Australia can be in line with international law.¹¹ It is important for Australian Governments to raise the age of criminal responsibility to prevent and eliminate this form of oppression for Aboriginal and Torres Strait Islander children.¹² We must work alongside First Nations Organisations and Peoples and support their rights to self-determination.

There has been an active construction in legal discourse regarding children and young people aged between 10 and 13 being held accountable for criminal offences, despite medical and other research indicating otherwise.¹³ The idea regarding children lacking the capacity to understand the consequences of their behaviour which impacts children being held criminally responsible for their actions is known as the longstanding principle of *Doli incapax*.¹⁴ With this principle in place, this alludes to a stronger punitive and responsabilisation focus of legal youth justice discourse, rather than placing emphasis on the welfare needs of children and young people in Australia which underpins the push to raise the age.¹⁵ It is important to note previous research has found inconsistencies with

⁸ Ibid (AIHW, 2021); Amnesty. (2022). *Why we need to raise the minimum age of criminal responsibility*. Amnesty, para. 5, 6. <https://www.amnesty.org.au/why-we-need-to-raise-the-minimum-age-of-criminal-responsibility/#:~:text=What%20is%20the%20age%20of,at%20only%2010%20years%20old>

⁹ Ibid (Amnesty, 2022).

¹⁰ Human Rights Law Centre [HRLC]. (2019). *The speech 12 year old Aboriginal child, Djuwan, delivered at the UN Human Rights Council*. HRLC. <https://www.hrlc.org.au/news/2019/9/11/the-speech-12-year-old-dujuan-delivered-at-the-un-human-rights-council#:~:text=Djuwan%2C%20the%20young%20star%20of,for%20Aboriginal%2Dled%20education%20model>

¹¹ Ibid (HRLC, 2019).

¹² Ibid (AASW, 2020).

¹³ Bartels, L. (2022). Sentencing review 2020-21. *Criminal Law Journal*, 46(1), 8. <https://search.informit.org/doi/10.3316/agispt.20220428066055>; McAlister, S., & Carr, N. (2014). Experiences of youth justice: Youth justice discourses and their multiple effects. *Youth Justice*, 14(3), 241-254. <https://doi.org/10.1177%2F1473225414549694>

¹⁴ Crofts, T. (2003). *Doli Incapax: why children deserve its protection*. *eLaw Journal: Murdoch University Electronic Journal of Law*, 10(3), 1-15. <https://search.informit.org/doi/abs/10.3316/agispt.20034565>; Davis, L. (2020). Youth justice: An overview of the youth court: An essential and potentially transformative jurisdiction. *Bulletin (Law Society of South Australia)*, 42(10), 28-34. <https://search.informit.org/doi/10.3316/informit.573317911270008>.

¹⁵ Phoenix, J., & Kelly, L. (2013). 'You have to do it for yourself' Responsibilization in youth justice and young people's situated knowledge of youth justice practice. *British Journal of Criminology*, 53(3), 419-437. <https://doi.org/10.1093/bjc/azs078>; ibid (McAlister, 2014) Ibid (Bartels, 2022).

how the principle of *doli incapax* was applied in legal practice and resulted in undermining the legal safeguard this principle offers to children who are faced with criminal charges.¹⁶

In the submissions released through the ‘Raise the Age’ Campaign, a number of leading Australian medical bodies called on governments to raise the age of criminal responsibility as 10-year-old children are unlikely to have the cognitive and mental ability to understand the criminal offences they have committed, let alone the repercussions and consequences of their behaviour and actions.¹⁷ The incarceration of children under the age of 14 needs to stop as this can have a significant impact on their mental health due to the trauma they experience whilst incarcerated; children are often subject to being strip-searched, placed in solitary confinement, degradation, as well as experience court appearances.¹⁸ Research has established children and young people who are incarcerated are often the most disadvantaged and have experienced a history of poverty, domestic and family violence, neglect, and abuse.¹⁹ As there is a high rate of First Nations children who are incarcerated, it is important to also acknowledge the impact of intergenerational trauma as a result of colonisation and past government policies.²⁰ Advocacy for raising the age of criminal responsibility is a view shared by medical and legal experts, First Nations organisations, Australian and International human rights organisations, and the global community.²¹ There has been ongoing debates and continuous advocacy to change the age of criminal responsibility, it is time for action to take place for the children of Australia and raise the age of criminal responsibility to a minimum of age 14.²²

¹⁶ O’Brien, W., & Fitz-Gibbon, K. (2017). The minimum age of criminal responsibility in Victoria (Australia): Examining stakeholders’ views and the need for principled reform. *Youth Justice*, 17(2), 134–152. <https://doi.org/10.1177%2F1473225417700325>

¹⁷ Cunneen, C. (2017). *Arguments for raising the minimum age of criminal responsibility*. [Research report, University of New South Wales]. Comparative Youth Penalty Project <http://cypp.unsw.edu.au/node/146>; Jesuit Social Services. (2015). *Too much too young: Raise the age of criminal responsibility to 12*, Jesuit Social Services, Melbourne. http://jss.org.au/wp-content/uploads/2016/01/Too_much_too_young_-_Raise_the_age_of_criminal_responsibility_to_12.pdf

¹⁸ Matthews, S. (2018). Girls in juvenile detention: Deprioritised and re-traumatised. *PRECEDENT*, (147), 14-18. ISSN:1449-7719; National Justice Project. (2023). *How can we protect the rights of Indigenous children in youth detention?* National Justice Project. <https://justice.org.au/protect-rights-of-children-in-youth-detention/>

¹⁹ Deegan, S. J. (2022). Appetite for destruction: Food-related experiences of incarcerated children and young people. *Incarceration*, 3(2). <https://doi.org/10.1177/26326663221104998>

²⁰ Ibid.

²¹ Ibid (Crofts, 2015); Raise the Age. (2022). *CAG Submissions*. Raise the Age. <https://www.raisetheage.org.au/cag-submissions>

²² Ibid (AASW, 2020); ibid (O’Brien & Fitz-Gibbon, 2017).