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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6 June 2023

Mr Peter Cain MLA
Chairperson
Standing Committee on Justice and Community Safety
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2610

Dear Mr Cain MLA,

RE: DPP SUBMISSION – INQUIRY INTO THE
JUSTICE (AGE OF CRIMINAL RESPONSIBILITY) LEGISLATION AMENDMENT BILL 2003

I thank the Standing Committee on Justice and Community Safety for the opportunity to comment on the Government's proposal to raise the minimum age of criminal responsibility in the ACT, as expressed through the *Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2003* ('the Bill'). I make the following comment:

1. At the outset it is important that I emphasise my support for the raising of the minimum age of criminal responsibility. I commend this initiative. Nothing that I say below should be taken to detract from that support.

2. While the principle of *doli incapax* operates as an effective safeguard in criminal proceedings, there are sound reasons for fixing a minimum age that absolves children of criminal responsibility for most offences.

3. Even in cases where the relevant young offender has capacity to form criminal intent, the exposure of young people up to 14 years old to criminal prosecution for minor offences offers little social reward. Indeed, the harmful consequences of embroiling that cohort in the criminal justice system for trivial offending arguably outweighs whatever benefits that would be achieved. Of course, for offending behaviour that is particularly harmful or of greater social concern, there are equally sound reasons for retaining the capacity for the criminal law to respond where appropriate.

4. This submission addresses the following topics:

   i. Factors to consider in determining the minimum age of criminal responsibility;

   ii. Criminal culpability of a young person;

   iii. Principled basis for an exceptions model;

   iv. The need for therapeutic detention;

   v. Retention of police powers

MINIMUM AGE OF CRIMINAL RESPONSIBILITY

5. I note the Bill contains a staggered approach to raising the age of criminal responsibility. It proposes that, upon commencement, the minimum age of criminal responsibility be raised to 12 in relation to any offence. It further proposes that from 1 July 2025, the minimum age of criminal responsibility be raised to 14, with certain 'exceptions.'

6. I observe that much of the public discourse in support of raising the minimum age of criminal responsibility to 14 has been on the basis that (i) such an increase is required under international law; and (ii) there is medical and scientific literature supporting such an increase.

International Law

7. It is often suggested that international law provides a minimum age of criminal responsibility of 14 years. It is important to note, however, that there is no international human rights instrument (either from the United Nations or otherwise) that mandates this age.

8. Article 4.1 of the *United Nations Minimum Standard Rules for the Administration of Juvenile Justice (1985)* (*'the Beijing Rules'*) states:

> In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.

9. Article 40(3)(a) of the *Convention on the Rights of the Child (1990)* provides:

> 3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:
>
> (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

10. Neither international human rights instrument provides a mandatory minimum age of criminal responsibility of 14. On the contrary, each instrument leaves it to the discretion of the State Party to determine what that age should be.

11. International law affords state parties significant (although not unfettered) latitude in determining how to implement international law instruments. This is known as the 'margin of appreciation' doctrine. International courts, tribunals and advisory bodies must be cognisant of this doctrine. In ***James and other v United Kingdom*** (1986) EHRR 123, the European Court of Human Rights observed at [46] [in a different context] that:

> Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is 'in the public interest'. Under the system of protection established by the Convention, it is thus for national authorities to make the initial assessment both of the existence of a problem of public concern... and the remedial action to be taken... Here, as in other fields to which the safeguards of the Convention extend, the national authorities accordingly enjoy a certain margin of appreciation".

12. Applying this doctrine, in ***Carson and Other v United Kingdom*** [2010] (App. No. 42181), it was held at [61] that "...the Court will generally respect the legislature's policy choice unless it is 'manifestly without reasonable foundation'".

13. In ***T and V v United Kingdom*** (2000) 30 EHRR 121, the European Court of Human Rights found that the minimum age of criminal responsibility of 10 years in England and Wales did not constitute a breach the human rights of the defendants. As far as I am aware, this decision has not been revisited by that Court since.

14. In 2019 the United Nations Committee on the Rights of the Child issued comment 24 in which it recommended that the minimum age of criminal responsibility be raised to 14. Curiously, in 2007, the same committee recommended (in comment 10 of 2007) that the minimum acceptable age was 12. The Committee did not point to any clear evidence justifying its shift in position on the minimum age.

15. It is important to note that the comments of the United Nations Committee on the Rights of the Child are advisory only and do not constitute international law. International law, as it currently exists on this question, does not mandate any hard and fast minimum age of criminal responsibility and leaves it to state parties to determine what that age should be.

16. To be clear, I make these observations to simply highlight that it is wrong to suggest that the age of 14 is required or mandated under human rights or international law. I do not make these observations in order to suggest that there should be no increase to the minimum age of criminal responsibility.

Medical and Scientific Evidence

17. The push to increase the age of criminal responsibility to 14 is often supported, in part, by reference to medical and scientific literature. Whilst unquestionably informative and

insightful, I would respectfully suggest that care needs to be taken with respect to the use of the literature on the issue on the minimum age of criminal responsibility.

18. The Independent Review commissioned by the ACT Government, which was released in August 2021, observes that:

> These developmental arguments include the recognition of the marked differences between the cognitive functioning (e.g., impulsivity, reasoning) in children and adults and the different capacities of individual children to regulate their behaviour, assess risks and implications, demonstrate empathy and self-efficacy – 'requiring that we challenge the assumption that capacity adheres uniformly to chronological age' (Newton & Bussey, 2012)[1]

19. The article cited above by the Independent Review is "The age of reason: an examination of psychological factors involved in delinquent behaviours", *Legal and Criminological Psychology,* (2012) volume 17(1), pages 75–88. The study involved standardised questions being given to two cohorts of children: one with a median age of 10.5 years, the other with a median age of 14.3 years. The questions related to the 'Australian self-reported delinquency scale'. That scale is described by the authors as follows:

> The Australian self-reported delinquency scale contained 34 items designed to examine delinquency ranging from minor status offenses to more serious crimes. It included nine subscales; cheating, status offenses, fighting, stealing of vehicles and parts, drug use, theft, harming others, driving offenses, and acts of vandalism and disturbance (Mak, 1993).

20. Both cohorts scored approximately the same. Contrary to the impression given by the Independent Review, the authors of that article in fact conclude that their findings suggest that the current minimum age of criminal responsibility of 10 is appropriate. They opine:

> ...**This clearly demonstrates that young children are as competent as the older children, and therefore lends support and strength to the basis of the current law in Australia surrounding the ACR of 10 years**, which has previously rested on research that has not included children's evaluative judgements of actual crimes (Kochanska et al., 2002; Nucci, 2001; Turiel, 1998; Urbas, 2000; Yau & Smetana, 2003)
>
> ...
>
> Overall, the findings of the present study clearly show that young children are as competent as the older children and lend considerable support to the current ACR in Australia and to the hypothesized paths of influence through which criminal judgement competence, self-efficacy beliefs, and moral disengagement contribute to levels of delinquent behaviour and in turn impact on criminal decision making. (emphasis added)

21. Again, to be clear, I simply make the observation that the literature on this issue does not all point one way. I do not point to it to suggest that there should be no increase in the minimum age of criminal responsibility.

CRIMINAL CULPABILITY IN YOUNG PEOPLE

22. The fundamental question that needs to be considered is whether a young person aged between 10 and 14 is able to form culpable criminal intent.

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[1] Review of the Service System and implementation requirements for raising the minimum age of criminal responsibility in the ACT – Final Report, August 2021, page 12.

23. A crucial distinction needs to be made between conduct which is plainly and inherently culpable, and that which is not. Consider the following examples:

- I would suggest that absent a mental illness or frailty of the mind, all young people aged between 12 and 14 would appreciate that it is inherently wrong, immoral and criminal to intentionally kill another person, absent acting in self-defence. Such a proposition should be immediately and demonstrably obvious as a matter of common sense and life-experience.

- Similarly, young people aged between 12 and 14 would appreciate that it is inherently wrong, immoral and criminal to fix upon a random stranger, forcibly take them to some place out of public view, and force an act of sexual intercourse.

- Moreover, a young person aged between 12 and 14 would appreciate that it is inherently wrong, immoral and criminal to use physical violence to forcibly take someone else's property (i.e. commit a robbery) for no other reason than their own gratification, e.g. using violence to steal a television or designer sunglasses.

On the other hand –

- I would suggest that a juvenile aged between 12 and 14 might struggle to appreciate that consent to a sexual act is vitiated simply by virtue of the complainant's heavy intoxication (see s 67(1)(c), Crimes Act 1900).

- They might not appreciate that the appropriation of an item is dishonest in circumstances where it was given subject to a conditional licence, but exceeded the terms of that licence (e.g., they have rented a DVD but kept it beyond the rental term and not returned it).

- They might not appreciate the regulatory offences in relation to animal welfare, work safety or the provision of food to the public can involve culpable conduct.

24. The ability of a young person to form culpable intent is a complex issue and turns, in large part, on the kind of conduct in question. Most young people aged between 12 and 14 would readily appreciate that some forms of conduct are plainly and inherently wrong and criminal, whilst not being able to form such an appreciation in relation to others. Therefore, in determining the appropriate minimum age for criminal responsibility, a careful and nuanced approached is required which is based on rational and evidence-based justifications.

25. It appears clear from the scientific literature that the current age of 10 is set too low. However, there is no scientific evidence suggesting that the age of 14 is the appropriate age, at which point most of the difficulties in this area subside. It is difficult to defend the proposition that a 13 year old child is incapable of forming culpable criminal intent, but is

suddenly able to do so at the stroke of midnight on their fourteenth birthday. At its highest, the reputable literature recommends an age *range*, as opposed to a single appropriate age.

EXCEPTIONS FOR SPECIFIC CATEGORIES OR CLASSES OF OFFENDING

26. The types of conduct proscribed as crimes are ordinarily selected based on their capacity to cause harm to victims, the community, or the state; their capacity to offend against morality; or their stifling effect on good order or social freedom. The purpose of criminalising such conduct is to legitimise the state's power to respond when a legal norm is breached. Over time, the criminal law has evolved and is no longer simply a vehicle for punishment, though that may be an appropriate response depending on the circumstances of any given case.

27. The criminal law has also evolved as a vehicle for vindicating the experience of victims and their families and recognising the harm caused to the community. It can offer catharsis for victims and the community who might otherwise call for retribution or be driven to vigilantism. Even if a conviction is not recorded, engagement in the criminal law process can act as a deterrent for future misconduct and make an offender accountable for their behaviour.

28. Moreover, today's modern courts have sufficient capacity to consider an offender's subjective circumstances, including any factors which might reduce moral culpability or weigh in favour of rehabilitation. The criminal law has not been siloed from the medical and scientific literature on youth development. Nor is it naïve to the socio-economic motivators of criminal behaviour and criminogenic risk factors. Rather, it sits at the coalface of such issues. In doing so, it has evolved to develop safeguards to prevent injustice (such as the *doli incapax* principle) and scope to respond flexibly to the subjective circumstances of individual offenders (contained in the Territory in the *Crimes (Sentencing) Act 2005*, chapters 2, 4 and 8A).

29. Where a juvenile's subjective circumstances cannot explain or justify their behaviour, or where their offending is malicious or inexcusably unacceptable by all social standards, the criminal law provides a unique vehicle for recognising the harm to victims and the community and fashioning an appropriate response for individual offenders which might include punishment.

30. I would suggest that in developing an exceptions model, it is important that any such model would preserve two important features:

    i. Any criminal law response would need to retain the principle of individualised justice; and

    ii. The prosecution would still need to prove beyond reasonable doubt that the young person knew their conduct was wrong and criminal (I note that the Bill appropriately preserves this requirement).

31. The very fact that there have been successful prosecutions of juveniles up to 14 years in the Territory, where the prosecution has displaced the *doli incapax* presumption beyond reasonable doubt, necessarily demonstrates that some young persons are capable of forming culpable criminal intent. Where such intent is formed (and can be proved to have been formed), and sufficient harm is occasioned, the community might be less interested in the question 'should there be an exceptions model' and more concerned with the question of 'why wouldn't there be and exceptions model?'

32. In light of these considerations, it is clear that there remains an important and unparalleled role for the criminal law to play in responding to harmful behaviour committed by young people. That such instances might be rare is no justification for removing the capacity for the criminal law to respond to them entirely.

33. Clause 94 of the draft bill puts forward an exceptions model that includes a schedule of offences that a child aged between 12 and 13 can be found criminally responsible for if it can be proved that the young person knew that their conduct was wrong. The current schedule lists four offences which include:

    i. Murder (maximum penalty – life imprisonment);

    ii. Intentionally inflicting grievous bodily harm (maximum penalty – 20 years, or 25 years if aggravated);

    iii. Sexual assault in the first degree (maximum penalty – 17 years , 20 or 25 years if aggravated); and

    iv. Act of indecency in the first degree (maximum penalty – 15 years, or 19 years if aggravated).

34. The rationale for choosing these offences to be included in the schedule, and not others, is unclear. At first blush, it would seem that they have been chosen due to their significant maximum penalties. I would respectfully suggest that there is little principled or rational justification underpinning the four offences which have been selected as exceptions.

35. To demonstrate the point, consider the hypothetical example of a 13-year-old who deliberately takes a knife from the kitchen one evening, packs it into his school bag the following morning, and waits patiently throughout the day until he stabs another student with the intention of seriously hurting him. Under the Bill as currently drafted, he would not be susceptible to prosecution if the stab wound did not amount to 'grievous bodily harm', even if the prosecution could displace the *doli incapax* presumption. This raises serious concern as to why this kind of conduct does not warrant the child being held accountable for their conduct and the subsequent harm caused to the victim.

36. While significant maximum penalties provide a useful indicator for identifying serious offences, it would be of greater utility to focus upon the salient features of certain

offences which might cause them to warrant a criminal law response. At a minimum, offences which involve *intentionally* harmful or violent conduct ought to be captured (such as murder, serious sex offences, and intentionally inflicting actual or grievous bodily harm). Further, offences which *cause* significant harm whilst the offender holds a sufficiently culpable state of mind might also be included (such as manslaughter). This approach, in turn, provides a defensible theoretical and principled foundation.

37. In respect of "serious" offences which do not have intention as the fault element or *mens rea*, it is suggested that offences with a mental state no less than recklessness be included. This would necessarily exclude offences such as culpable driving, which has negligence as its *mens rea*, from an exceptions model.

38. Once that theoretical starting point is established, the legislature might nonetheless determine to limit the operation of the criminal law to only those offences where specific and identifiable harm is occasioned to members of the community, or the mental state of the young person is of sufficient concern to engage a criminal law response. For example, aggravated burglary which is particularised as intent to cause harm might be included in an exceptions model, whereas aggravated burglary with intent to cause damage to property or commit theft might be excluded. Such an approach recognises the unique role the criminal law plays in imposing a sentence of punishment in circumstances where physical harm is occasioned to identifiable victims.

39. In light of the above, a more principled approach to an exceptions model would see a much greater number of offences included in the proposed schedule. My office conducted a cursory review of common offences and compiled a list of those we identify as involving salient features which the legislature might think warrant a criminal law response. They are located at **Annexure A.**

40. That said, I of course appreciate that the nature and extent of any exceptions are ultimately a legal policy question for government and the legislature.

THERAPEUTIC DETENTION AND INTENSIVE THERAPY ORDERS

41. Raising the age of criminal responsibility, of itself, will do nothing to arrest violent and recidivist conduct amongst young people who fall outside of the raised age.

42. There must be strong and credible interventions available to the Territory where a young person's conduct presents a clear and demonstrable risk to the community or themselves, particularly in relation to violent conduct. A stab wound inflicted by a 12 year old has the capacity to be every bit as grievous and fatal as one delivered by a 14 year old.

43. I am fully supportive of increasing resourcing interventions available to authorities. That will go some way towards keeping the community safer. However, in the absence of an ability to therapeutically (not punitively) detain the most dangerous young people with the greatest propensity for violence, or who present a substantial risk to themselves, there will inevitably be avoidable tragedies.

44. Chapter 16 of the *Children and Young People Act 2008* currently creates a statutory regime whereby the Director-General responsible for that Act can apply for a therapeutic protection order from the ACT Children's Court for a juvenile to be therapeutically detained in a 'therapeutic protection place'. Such a place cannot hold juveniles who are detained in relation to criminal proceedings: see s 625(2)(a). I understand that no place has ever been declared as a 'therapeutic protection place' and, accordingly, the regime created in Chapter 16 has never been utilised.

45. I understand the Bill proposes to substantially amend Chapter 16 of the *Children and Young People Act* by repealing the therapeutic protection order regime, and replacing it with an 'intensive therapy order' regime. Clause 532(b) and 545 of the Bill will provide a mechanism whereby the Director-General may issue a 'confinement direction' accompanying an intensive therapy order.

46. I am supportive of the introduction of the intensive therapy regime. Whilst community-based interventions should always be preferred, there will inevitably be a small cohort of young people to whom they will simply be ineffective. Accordingly, the ability of a young person to be confined in appropriate cases whilst undertaking therapy is essential.

RETENTION OF POLICE POWERS

47. It will be essential that the police retain the power to do the following in relation to young people below the minimum age of criminal responsibility:

    - Detain young people whom police reasonably believe present an immediate risk to themselves or others for the purpose of having them delivered into the safe custody of a parent or guardian, or delivered to a secure facility for intensive therapy if necessary;

    - Search young people whom police reasonably believe have a weapon or some other dangerous implement on them, and seize such items; and

    - Search a young person's person or their premises (under the authority of a warrant, where practicable) whom police reasonably believe are in possession of illicit drugs or 'otherwise' stolen property, or in possession of evidence of a crime committed by someone else.

48. The fact that police would no longer be able to criminally charge and prosecute a young person should not mean that the young person has licence to retain stolen property, illicit drugs or weapons.

49. Moreover, if there is a lacuna in the law concerning police powers in this respect, one can readily see older offenders being incentivised to exploit young people under the minimum age of criminal responsibility and using them to hold drugs or stolen property on their

behalf. There would be an incentive to use juveniles as 'safe harbours' to carry contraband.

50. There is also a compelling public interest in allowing police to recover property taken from its lawful owner (and then returning it to that owner), regardless of whether anyone will be criminally charged and prosecuted. The absence of such a power would invite vigilante action if members of the community could not seek effective redress and have their property recovered by the police.

51. I am concerned about the affect that the Bill will have on the operation of the search powers at section 207 of the *Crimes Act 1900* and section 188 of the *Drugs of Dependence Act 1989.*

52. Both of these provisions enable police to conduct searches in emergencies and without the authority of a warrant (e.g. because it would be impracticable to obtain a warrant because evidence would be lost or destroyed if police waited for one to be obtained). Both search powers are predicated on police first having a reasonable suspicion or belief that a person is in possession of items relevant to the commission of an offence.

53. It must be steadfastly borne in mind that a person who falls under the minimum age of criminal responsibility is "incapable of committing a crime" because they lack *mens* rea, being an indispensable component of an offence: ***BP v The Queen*** [2006] NSWCCA 172 at [27]; ***RP v The Queen*** (2016) 259 CLR 641 at [8]; ***C (A minor) v DPP*** [1996] AC 1.

54. I can envisage a compelling argument being made that if a young person falls under the age of criminal responsibility, and is therefore "incapable of committing a crime", police (assuming they are aware of the young person's age) can have no basis to suspect or believe they have committed an offence. In these circumstances, the statutory preconditions to conducting the search cannot be met, and police will be powerless to conduct a search and seize any illicit items or weapons the young person may be in possession of.

55. The same problem manifests when it comes to the issue of search warrants, which are also predicated on a magistrate or judge forming a reasonable suspicion that an offence has been committed.

56. Consider the following hypothetical examples:

    a) A 12 year old commits a 'smash and grab' burglary at an electronics store. Police have credible intelligence that he has 20 mobile phones in his bedroom, which are the proceeds from the burglary. As the young person will fall under the minimum age of criminal responsibility, he would be deemed incapable of having committed the burglary (i.e. because he is presumed incapable of forming the requite *mens rea,* or 'fault element'). How, then, do the police seek lawful authority to search his premises? In the ordinary course, police would seek a search warrant pursuant to section 194 of the *Crimes Act.* Such a warrant authorises police to search for

'evidential material', which is defined as 'a thing relevant to an offence'.[2] However, as the young person is incapable of committing an offence, it might be argued that logically he cannot be in possession of any 'evidential material.' In this situation it is difficult to see how the statutory preconditions for a search warrant are satisfied, thus rendering the police powerless to recover the phones.

b) A 12 year old has taken intimate images of another student's genitalia at school and is disseminating them to other students on his mobile phone. Police want to seize his phone so as to prevent the further distribution of the images. Given the 12 year old would be under the minimum age of criminal responsibility and thus deemed incapable of having committed an offence, it is unclear what power police would have to seize the phone, identify the extent of any distribution so that the parents of affected children can be informed, and then erase the images.

57. I would suggest that further consideration be given to the enactment of specific provisions enabling police to search young people and their property in light of the above considerations.

SUMMARY

58. In summary:

a. I support raising the minimum age of criminal responsibility.

b. The question of criminal culpability in children aged 12 -14 is one that requires a nuanced approached and appropriate consideration of the actual conduct at hand. If the minimum age is raised to 14, any exceptions model needs to be based on a clear principled basis which has regard to the young person's requisite level of intent and the harm occasioned to the identifiable victims, regardless of penalty.

c. To ensure that any reform that the legislature strikes an appropriate balance between the best interests of child as a paramount principle, whilst ensuring that the security and safety of the residents of the ACT is properly protected, I would suggest careful consideration be given to expanding the proposed schedule of offences to include the offences outlined at Annexure A, and ensuring that police retain the ability to search young people suspected of carrying drugs, stolen property, and weapons, or where it is otherwise in the public interest to do.

[2] See section 185 of the *Crimes Act.*

Thank you again for the opportunity to provide this submission.

Yours faithfully

[redacted]

Anthony Williamson SC
A/g DIRECTOR OF PUBLIC PROSECUTIONS (ACT)

Annexure A –
Offences to be included in the schedule of exceptions

(Annexure to the Submission of the Director of Public Prosecutions to the Inquiry into Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023)

The draft Bill proposes that only **four** offences be included in the exceptions model. The DPP suggests that consideration be given to including the following **additional** offences in the schedule of exceptions. Particular consideration ought be given to the offences in red text.

Crimes Act 1900	**Salient feature**	**Maximum penalty**	**Other notes**
19 (Recklessly inflicting grievous bodily harm)	Grievous bodily harm occasioned	20 years 25 years (aggravated)	
21 (Wounding)	Non-trivial harm occasioned	5 years 7 years (aggravated)	
22 (Assault with intent to commit another offence)	Threatening conduct; combined with intention to engage in another serious offence	5 years	
23 (Inflicting actual bodily harm)	Non-trivial harm occasioned	5 years 7 years (aggravated)	*Could be drafted as applying only where offence is particularised as intentional inflicting of ABH*
24 (Assault occasioning actual bodily harm)	Non-trivial harm occasioned	5 years 7 years (aggravated)	*Could be drafted as applying only where offence is particularised as intentional inflicting of ABH*
27(3) (Acts endangering life etc)	Intention to engage in unlawful conduct that endangers life or is likely to cause GBH	10 years 13 years (aggravated) 15 years (where ss(4) applies)	*This is the offence provision under which choking/strangling/suffocating is prosecuted, where the victim is rendered unconscious or insensible* *Also includes poisoning, use of explosives, firearms or offensive weapons, and setting traps etc.*

28(2) (Acts endangering health etc)	Intention to engage in unlawful conduct that threatens the health, safety or physical wellbeing of another	5 years 7 years (aggravated)	*This is the offence provision under which choking/strangling/suffocating is prosecuted, where the victim is not rendered insensible or unconscious* *Also includes poisoning, use of explosives and setting traps etc.*
28AA(1) and (2) (Food or drink spiking)	Intention to *harm* another by giving or causing ingestion of intoxicating substance		
34 (Forcible confinement)	Intention to unlawfully confine another	10 years	*Could be limited to circumstances where the young person causes complete physical restraint, as opposed to matters where they induce a reasonable person in the position of the complainant to believe they are not free to leave*
38 (Kidnapping)	Intention to hold/detain another for ransom or other advantage	20 years – if GBH suffered 15 years – any other case	
52 (Sexual assault in the second degree)	Inflict ABH on a person; with intent to engage in sexual intercourse	14 years 18-21 years (aggravated)	
53 (Sexual assault in the third degree)	Assault another, or threaten GBH/ABH; with intent to engage in sexual intercourse	12 years 15-18 years (aggravated)	
54 (Sexual intercourse without consent)	Intention to engage in sexual intercourse; recklessness as to consent	12 years 15 years (aggravated)	*Could be limited to circumstances where the young person has actual knowledge as to the lack of consent.*

	(affirmative consent model now enacted)		
116(1) (Destroying or damaging property)	Intention to destroy/damage property; with intent to endanger the life of another by that act	20 years 25 years (aggravated)	
117(1) (Arson)	Intention to destroy/damage by fire; with intent to endanger the life of another by that fire	20 years 25 years (aggravated)	

Criminal Code 2002	**Salient feature**		
309 (Robbery)	Commits theft; with intent to use or threaten use of force to assist in the theft or escape	14 years	*Could be limited to situations where the young person uses actual force to effect the theft, as opposed to the threat of force.*
310 (Aggravated robbery)	Commits robbery in company; or with an offensive weapon	25 years	*Could be limited to where offence particularised as committing robbery with offensive weapon (s 310(b)).*
311 (Burglary) – (1)(b) only	Enters/remains in building as trespasser with intent to cause or threaten harm (if limited to s 311(1)(b) only	14 years	
312 (Aggravated burglary)	Commits burglary in company; or with an offensive weapon	20 years	*Could be limited to where offence particularised as committing robbery with offensive weapon (s 312(b)).*
404 (Arson)	Intends or is reckless about causing damage	15 years	*Could be limited to where offence particularised as intentional arson*

	to building or vehicle by fire or explosive		
405 (Causing bushfires)	Intentionally or reckless causes a fire; reckless about the spread to vegetation or property	15 years	*Could be limited to where offence particularised as intentional causing of fire; given community sensitivity about bushfires, retaining capacity to prosecute in the right circumstances seems sensible*