



6th December 2021

Dear Premiers, Chief Ministers, Attorneys-General and Health Ministers,

Re: The health reasons for raising the age of criminal responsibility to a minimum of 14 years of age

The undersigned health and medical organisations reiterate the call to raise the age of criminal responsibility to a minimum of 14 years of age on health grounds.

While prison is harmful for all children, the medical evidence and internationally accepted standards make it clear that 14 is the bare minimum governments must raise the age to in order to protect the rights and health of our children.

The current minimum age of criminal responsibility of 10 years of age in all states and territories across Australia is out of step with medical consensus regarding child brain development. Children under the age of 14 are undergoing significant growth and development, which means that they may not have the required capacity to be criminally responsible.¹ Research shows that immaturity can affect a number of areas of cognitive functioning “including impulsivity, reasoning and consequential thinking”. Scientific advances related to the understanding of child cognitive development favour a minimum age of criminal responsibility of at least 14, taking into account the time it takes for the adolescent brain to mature.²

There is now also clear evidence that children in the youth justice system in Australia have high rates of additional neurocognitive impairment, trauma and mental health issues.³ Given the high rate of neurodevelopmental delay experienced by children in youth prisons, some behaviours often reflect the developmental age of the child, which may be several years below their chronological age. Judging criminal responsibility on the basis of a chronological age is inappropriate for children who may have a much lower developmental age due to a number of medical and developmental conditions described in the following sections. The evidence overwhelmingly shows that when children in the very young age bracket of 10 to 13 years of age are forced through a criminal legal process during their formative developmental phases, they suffer immense harm.

Neurocognitive impairment in children caught in the criminal legal system

There is strong evidence that children in youth prisons in Australia have a very different neurodevelopmental and mental health profile compared to children who are not in custody. A recent study found that a third of children caught in the criminal legal system met the criteria for at least two mental health disorders and were twice as likely to experience high or very high psychological distress.⁴

A large multidisciplinary study of 99 children and young people sentenced to detention in Western Australia showed that 89% had at least one severe neurodevelopmental impairment.⁵ These included neurodevelopmental impairments in the areas of memory, language and communication, executive function, attention, cognition, motor skills, adaptive function, academic skills and brain structure or

¹ Chris Cunneen, ‘Arguments for Raising the Minimum Age of Criminal Responsibility’ (Research Report, Comparative Youth Penalty Project, University of New South Wales, 2017) citing Sentencing Advisory Council, *Sentencing Children and Young People in Victoria* (2012) 11; Thomas Crofts, ‘A Brighter Tomorrow: Raise the Age of Criminal Responsibility’ (2015) 27(1) *Current Issues in Criminal Justice* 123; Enys Delmage, ‘The Minimum Age of Criminal Responsibility: A Medico-Legal Perspective’ (2013) 13(2) *Youth Justice* 102.

² Cunneen (n 1).

³ Bower C, Watkins RE, Mutch RC, et al *Fetal alcohol spectrum disorder and youth justice: a prevalence study among young people sentenced to detention in Western Australia* *BMJ Open* 2018.

⁴ Meurk C, Steele M, Yap L, Jones J, Heffernan E, Davison S, et al. *Changing direction: mental health needs of justice-involved young people in Australia*. Sydney: Kirby Institute; 2019.

⁵ Bower (n 4).



neurology as well as intellectual disabilities, learning difficulties, speech and language disorders, and Fetal Alcohol Spectrum Disorder (FASD). Notably, the majority of children diagnosed with neurodevelopmental disorders had not been previously identified until the study occurred.⁶

These findings highlight that many, if not most, incarcerated children with a chronological age of 12 or 13 years are likely to have a much younger functional age, further impacting their impulsivity, reasoning and decision-making abilities.

As children driven into contact with the legal system are likely to have a lower functional age and have not yet developed critical cognitive functioning, we are strongly recommending the age of criminal responsibility be raised to at least 14 years of age.

Adolescence and the transition from primary school to high school

Many children aged 12 are still in primary school and many 13 year old children are just entering high school. Neurodevelopmental evidence demonstrates that adolescence is a unique, defining stage of human development. It is characterised by rapid brain development,⁷ increased impulsivity and sensation-seeking behaviour, coupled with a heightened vulnerability to peer influence which affects decision making capacity⁸. Documented evidence in the fields of child development and neuroscience indicates clearly that maturity and the capacity for abstract reasoning are still evolving in children aged 12 to 13 years, due to the fact that their frontal cortex is still developing.⁹

Transitioning from primary school to high school can be a challenge for a range of children who may require further education and social support. There is evidence that children at risk of experiencing a difficult transition to high school include those with emotional and behavioural difficulties, prior difficult experiences in primary school, and limited engagement in extracurricular activities.¹⁰

A range of behaviours in 10 to 13 year old children that are currently criminal under existing Australian law are better understood as behaviours within the expected range in a typical neurodevelopment of a 10 to 13 year old with a significant trauma history.¹¹ However, instead of being assisted by trauma-informed services to complete primary school and transition to high school, children in this cohort are often criminalised, arrested, strip-searched, and put in prisons.

Committing to develop a proposal to raise the age of criminal responsibility to just 12 is insufficient and does nothing to address the unmet need of the 456 children aged 12 and 13 who were sent to prisons between 2019 and 2020¹².

The evidence-based pathway to Raising the Age

There is an evidence-based pathway to raising the age which has already been set out by the ACT Government through the independent review headed by Emeritus Professor Morag McArthur on the steps required to best support this reform. The resulting [report](#) provides options for therapeutic and restorative care to reduce children and young people's interaction with the criminal justice system and outlines the service system and implementation requirements for raising the minimum age of criminal responsibility to 14.

⁶ Bower (n 4).

⁷ Committee on the Rights of the Child, General comment No. 24 (2019) on children's rights in the child justice system.

⁸ Cunneen citing Sentencing Advisory Council (n 1).

⁹ Committee on the Rights of the Child, General comment No. 24 (2019) on children's rights in the child justice system.

¹⁰ Macarthur M, Suomi A, Kendall B, *Review of the service system and implementation requirements for raising the minimum age of criminal responsibility in the Australian Capital Territory: final report* (Justice and Community Safety Directorate ACT, 2021).

¹¹ Royal Australasian College of Physicians (RACP), Submission to the Council of Attorneys General Working Group reviewing the Age of Criminal Responsibility (July 2019), 3 and 5.

¹² Australian Institute of Health and Welfare, Youth justice in Australia 2018-19. Table S78b: Young people in detention during the year by age, sex and Indigenous, Australia, 2019–20. Cat. no. JUV 132. Canberra: AIHW



Our call is firmly rooted in neurodevelopmental evidence, child development, and scientific research. We call on state and territory governments and the federal government to follow the lead of the ACT by immediately committing to Raise the Age to at least 14 without exception.

Yours sincerely,

Aboriginal Health Council of SA (AHCSA)

Alcohol and Drug Foundation (NT and SA)

Australian Association of Social Workers

Australian Healthcare and Hospitals Association

Australian Health Promotion Association

Australian Indigenous Doctors' Association

Australian Medical Association

Cabrini Outreach

Cumberland Women's Health Centre

Foundation for Alcohol Research and Education

Full Stop Australia

Illawarra Women's Health Centre

Jesuit Social Services

Life Without Barriers

Lives Lived Well

Murdoch Children's Research Institute

National Association of Aboriginal and Torres Strait Islander Health Workers and Practitioners

NOFASD Australia (National Organisation for Fetal Alcohol Spectrum Disorder)

Orygen: Australia's centre of excellence in youth mental health

Partnership for Justice in Health

Public Health Association of Australia

The Queensland Network of Alcohol and other Drug Agencies (QNADA)

Royal Australian College of General Practitioners

Royal Australasian College of Physicians

SA Network of Drug and Alcohol Services (SANDAS)

The Salvation Army Australia Territory

Telethon Kids Institute

Twenty10

Victorian Aboriginal Community Controlled Health Organisation (VACCHO)

Women's Health NSW

Youth Action

Youth Support + Advocacy Service