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The Chair
Age of Criminal Responsibility Working Group
c/- Strategic Reform Division
Department of Justice
GPO Box F317
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28 February 2020

Dear Chair,

Council of Attorneys-General – Age of Criminal Responsibility Working Group Review

The Youth Network of Tasmania (YNOT) welcomes the opportunity to provide a response in relation to the review of the age of criminal responsibility. YNOT is the peak body for young people aged 12-25 years and the Tasmanian youth sector. Our mission is to work with young people, the Tasmanian youth sector, the community and all levels of government to increase the participation and contribution of young people in the State.

Our response has been informed by YNOT members and key stakeholders and will focus on two key matters raised by the working group including:

1. *Currently across Australia, the age of criminal responsibility is 10 years of age. Should the age of criminal responsibility be maintained, increased, or increased in certain circumstances only?*
2. *If you consider that the age of criminal responsibility should be increased from 10 years of age, what age do you consider it should be raised to (for example to 12 or higher)? Should the age be raised for all types of offences?*

YNOT strongly recommends raising the minimum age of criminal responsibility to at least 14 years for all circumstances and without exceptions. Our position is informed by contemporary research and a significant and compelling evidence base that supports a higher age, as well as recommendations from a growing body of experts in the field including the Australian Medical Association, the Royal Australian College of Physicians and the Law Council of Australia.

Australia currently has one of the lowest criminal ages of responsibility in the world. Raising the age of criminal responsibility to at least 14 years for all crimes will bring Australia in line with international consensus and recommendations by the United Nations Convention on the Rights of the Child.¹

Why 10 years old is too low.

Contemporary research suggests that adolescence is an important period of brain development that continues well into early adulthood. During this time, the adolescent brain matures at different rates

and in response to varying genetic and environmental stimuli. This development greatly impacts behaviours including impulse control, judgement, deciphering complex information and understanding consequences.² It is unjust to hold children criminally responsible for their actions when they have yet to fully develop mental, intellectual and emotional maturity.

We recognise that actions should have consequences however, we do not support the use of criminal law to respond to antisocial or offending behaviour of children and young people. Rather, emphasis should be placed on diversion from the criminal justice system through prevention and early intervention initiatives, and therapeutic responses proportionate to the offence committed.

The Australian youth justice system largely comprises of children and young people with past experiences of abuse and neglect, trauma, substance use and homelessness.³ Research suggests that children being held in custody are exposed to an environment that can further harm, traumatise and reinforce criminal and antisocial behaviour.⁴ Whilst no single risk factor can be attributed to children and young people developing criminal and antisocial behaviour, it is important to acknowledge that those from lower socioeconomic backgrounds and indigenous Australians are overrepresented in the youth justice system.⁵

Australia's low age of criminal responsibility inadvertently contributes to some of our most disadvantaged children becoming entrenched in a criminal justice system that can have life-long adverse impacts on health, social, economic and justice outcomes.^{6,7} Evidence suggests that early engagement with the youth justice system is a predictor of repeated juvenile criminal behaviour and adult offending.^{8,9}

As an alternative to criminalising children, Australia's focus should be on strengthening prevention, early intervention and diversionary programs in our community, and ensuring the provision of therapeutic approaches that address the underlying causes of antisocial and offending behaviour.

A therapeutic response that addresses the needs of children under 14 years should be underpinned by restorative justice principles, be holistic in nature, provide wrap-around support and be tailored to the needs of the individual. Importantly, responses need to be culturally appropriate, placed based and include children, young people, families and communities. It is imperative that any response can accommodate the needs of all children and young people and be proportionate to the offence committed.

Our current youth justice system is failing our children, young people and our communities. It is time for a different approach.

YNOT urges the Australian Commonwealth, State and Territory Governments to increase the minimum age of responsibility to at least 14 years without exception.

Kind regards,



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References

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- ³ Queensland Family and Child Commission (2017). The age of criminal responsibility in Queensland.
- ⁴ Australian Children's Commissioners and Guardians (2017). Statement on conditions and treatment in youth justice detention.
- ⁵ Australian Institute of Health and Welfare (2019). Youth justice in Australia 2017-18. Australian Government.
- ⁶ *Ibid.* United Nations (2019).
- ⁷ *Ibid.* Australian Children's Commissioners and Guardians (2017).
- ⁸ Australian Medical Association & Law Council of Australia (2019). Minimum age of criminal responsibility; policy statement.
- ⁹ Australian Institute of Health and Welfare (2018). Young people returning to sentenced youth justice supervision 2016-17. Australian Government.