

# COMMUNITY LEGAL CENTRES TASMANIA

28 February 2020

The Chair  
Age of Criminal Responsibility Working Group  
c/- Strategic Reform Division  
Department of Justice  
GPO Box F317  
PERTH WA 6841

via email: [LegPolicy@justice.wa.gov.au](mailto:LegPolicy@justice.wa.gov.au)

To the Council of Attorneys-General,  
**Re: *Age of Criminal Responsibility Working Group Review***

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Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to provide comment to the Council of Attorneys-General on the *Age of Criminal Responsibility Working Group Review* ('the Review').

CLC Tas is the peak body representing the interests of nine community legal centres (CLCs) located throughout Tasmania. We are a member-based, independent, not-for-profit and incorporated organisation that advocates for law reform on a range of public interest matters aimed at improving access to justice, reducing discrimination and protecting and promoting human rights.

We strongly support raising the age of criminal responsibility across Australia. In our view, it is out of step with international best practice, human rights law and with neuroscientific studies of children's brain development which clearly demonstrates that children under 12 years of age lack the necessary capacities for full criminal responsibility.

- ***The Age of Criminal Responsibility and the Law***

In Tasmania, 10 is the minimum age at which a child can be charged, brought before a court, sentenced and imprisoned. Section 18(1) of the *Criminal Code Act 1924* (Tas) providing:

**18. Immature age**

(1) No act or omission done or made by a person under 10 years of age is an offence.

Similar provisions are contained in other Australian jurisdictions.<sup>1</sup>

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<sup>1</sup> Section 4M of the *Crimes Act 1914* (Cth); Section 7.1 of the *Criminal Code Act 1995* (Cth); Section 25 of the *Criminal Code 2002* (ACT); Section 5 of the *Children (Criminal Proceedings) Act 1987* (NSW); Section 38(1)

### - **Young Person's Brain Development**

One of the most important reasons for raising the age of criminal responsibility is the acknowledgement that young person's brains are continuing to mature during adolescence leading to their being more prone to impulsivity, sensation-seeking and risk-taking behaviors. As Elly Farmer a clinical psychologist reports in *The age of criminal responsibility: developmental science and human rights perspectives*:<sup>2</sup>

*The maturation of the prefrontal cortex occurs gradually over adolescence and is near completion by 18 years. This protracted development occurs alongside greater reactivity of the socioemotional systems of the brain and a general increase in dopaminergic activity associated with heightened sensitivity to reward. This creates a window of potential vulnerability in the early to mid-adolescent period during which the likelihood of impulsivity, sensation-seeking and risk-taking behaviours is raised.*

### - **Advantages of raising the age of criminal responsibility**

Raising the age of criminal responsibility would have a number of advantages including reducing the contact young people and in particular indigenous young people have with the criminal justice system and ensure consistency with human rights law.

According to the most recent data, there were 974 young persons in detention across Australia on an average day in 2017-18, with more than 4,900 in detention some time during the year.<sup>3</sup> Whilst most of these young persons are over 12 years of age,<sup>4</sup> research points to a well-recognized link between exposure to the justice system at a young age and reoffending later in life. Detrimental impacts may include exposure to harmful environments and the loss of educational, familial and social networks. For example, in *Young people aged 10-14 in the youth justice system* the Australian Institute of Health and Welfare reported:<sup>5</sup>

- 85 per cent of young people who had contact with the youth justice system at age 10-14 returned (or continued under) supervision when they were 15-17; and
- Young persons who were first subject to supervision under the youth justice system due to offending between 10-14 years old were more likely to experience all types of supervision, including detention in their later teens.

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of the *Criminal Code Act 1983* (NT); Section 29(1) of the *Criminal Code Act 1899* (Qld); Section 5 of the *Young Offenders Act 1993* (SA); Section 344 of the *Children, Youth and Families Act 2005* (Vic); Section 29 of the *Criminal Code Act Compilation Act 1913* (WA).

<sup>2</sup> Elly Farmer, *The age of criminal responsibility: developmental science and human rights perspectives* (2011) 6(2) *Journal of Children's Services*, 86 at 87.

<sup>3</sup> Australian Institute of Health and Welfare, *Youth Justice in Australia 2017-18* at 16.

<sup>4</sup> For example, the number of children aged 10 and 11 years involved in the justice system in 2013-14 accounted for less than 2 per cent of children under 18 in custody across the country. As found at Jesuit Social Services, *Too much too young - Raise the age of criminal responsibility to 12* (October 2015). As found at <https://jss.org.au/too-much-too-young-raise-the-age-of-criminal-responsibility-to-12/> (Accessed 25 February 2020).

<sup>5</sup> Australian Institute of Health and Welfare, *Young people aged 10-14 in the youth justice system 2011-2012* (2013) at vi.

Exposure to the youth justice system may also lead to detrimental outcomes later in life as Professor Stuart Kinner, a paediatrician with research interests in youth justice, recently observed:<sup>6</sup>

Remarkably little is known about outcomes for young people released from detention, except that the majority reoffend and a disproportionate number die from preventable causes, including drug overdose, suicide, homicide and accidents and injury.

As well, the most recent *Youth Justice in Australia* reports, “young Aboriginal and Torres Strait Islander people have a long history of over-representation in the youth and adult justice systems in Australia”.<sup>7</sup> More than half of all young people (59 per cent) aged 10-17 and in detention were indigenous, despite indigenous people making up only five per cent of the general population aged 10-17.<sup>8</sup> As well, indigenous young people aged 10-17 were twenty-six times more likely as non-Indigenous young people to be in detention on an average day.<sup>9</sup>

Finally, the United Nations Committee on the Rights of the Child considers that 12 years of age is the lowest internationally acceptable age for criminal responsibility and encourages all countries to raise the age to 14 or 16 years.<sup>10</sup>

In our opinion, the law in all Australian jurisdictions should where possible divert children away from the criminal justice system. In Australia, this should include all States and Territories raising the minimum age of criminal responsibility to at least 14 years.

If we can be of any further assistance, please do not hesitate to contact us.

Yours faithfully,



Benedict Bartl  
Policy Officer

**Community Legal Centres Tasmania**

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<sup>6</sup> Commonwealth, *Royal Commission into the Protection and Detention of Children in the Northern Territory*, Final Report (November 2017), Volume 2A at 350.

<sup>7</sup> Australian Institute of Health and Welfare, *Youth Justice in Australia 2017-18* at 9.

<sup>8</sup> Australian Institute of Health and Welfare, *Youth detention population in Australia 2018* (AIHW Bulletin 145, December 2018) at 2.

<sup>9</sup> Australian Institute of Health and Welfare, *Youth detention population in Australia 2018* (AIHW Bulletin 145, December 2018) at 2.

<sup>10</sup> Committee on the Rights of the Child, General Comment No. 10 Children's rights in juvenile justice, 44th sess, UN Doc CRC/C/ GC/10 (25 April 2007), paras 32-3.