

UCWB response to the South Australian Attorney-General's Department's Minimum Age of Criminal Responsibility - Alternative Diversionary Model (Discussion paper)

UCWB welcomes the South Australian Government's proposal to change the Minimum Age of Criminal Responsibility (MACR) in South Australia. However, UCWB strongly believes this proposal falls short of international recommendations from the United Nations Committee on the Rights of the Child (UNCRC). *UCWB supports calls for further action from all Australian jurisdictions, in line with the #RaisetheAge campaign, requiring federal, state and territory governments implement at MACR of 14 years of age with no exceptions.*

This recommendation from the UNCRC is based on overwhelming evidence that highlights the negative impact on health, wellbeing and long-term outcomes for children as a result of exposure to the criminal justice system at a stage of critical cognitive, social and physical development. The Common Law principle of *doli incapax* requires prosecution to prove the child understood the criminality of their actions before they can be convicted of an offence. Children below the age of 14 are recognised in Common Law as not having the decision-making ability to qualify as meeting the standards of criminal intent and understanding of fault.

Children below the age of 14 who come into contact with the youth justice system commonly have complex backgrounds, with a history of trauma, engagement with the child protection system, developmental delay and disability. Data from the Australian Institute of Health and Welfare (2022, pg. 10) indicates that 81% of those who were 10 at the time of their first interaction with the youth justice system, had an interaction with the child protection system in the 5-year period between 2016-2021. This long-standing trend demonstrates a need for a therapeutic approach to offending for 10-13 year olds that is trauma informed and multidisciplinary.

First Nations children continue to be overrepresented in the youth justice system. National data indicates that First Nations children 10-13 years are 46 times more likely to serve time in detention than non-First Nations children. Additionally, First Nations children were more likely to experience a period of remand than non-First Nations children, partly attributed to over-policing, limited funding to provide access to culturally responsive diversionary programs, unrealistic bail conditions, and insufficient suitable housing availability. (AIHW, 2023).

Criminalising children at such a young age has also proven ineffective in preventing further offending. Evidence indicates that the younger a child is when they first come into contact with the youth justice system, the more likely they were to reoffend, with reoffences escalating in severity. This increases the likelihood they would enter the adult justice system before their 22nd birthday (Sentencing Advisory Council, 2016, pg. 52).

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The likelihood of reoffending not only significantly increases the chances of poor outcomes for children who could have otherwise been diverted from the youth justice system but also has negative long-term outcomes for community safety.

UCWB agrees that an alternative diversionary model is required to replace criminal justice responses to 'harmful behaviour' for children aged 10 to 13. While UCWB agrees in principle that the alternative model should be restorative, culturally led, trauma informed and needs to include professionally developed and led diversionary options, the discussion paper does not provide sufficient detail to allow UCWB to support the model in its current format.

The proposed model requires further consultation to ensure resource requirements are accounted for, and to provide for the wholistic needs of children diverted through each of the model's three pathways.

Key considerations should include:

- Early engagement of First Nations Elders, community leaders and Aboriginal Community Controlled Organisations to ensure that services provided to First Nations children are culturally responsive.
- Early engagement of community leaders from Culturally and Linguistically Diverse communities, incorporations, and service providers to ensure services are delivered in a culturally appropriate way, and that supports available across each level of the diversionary model are accessible to communities from a variety of cultural backgrounds.
- Increased funding for community-led, place-based diversionary programs specifically targeting children aged 10 to 13.
- Early engagement of Justice Reinvestment Pilot Programs to support further development of the three levels of the diversion model and its delivery in a culturally responsive way.
- Resourcing and development of appropriate training to ensure first responders such as SAPOL, medical professionals, educators and service providers have the skills and knowledge to appropriately respond to children undertaking 'harmful behaviour'.
- Funding for flexible diversionary programs and services is increased and targeted to children aged 10 to 13 years at risk of or demonstrating 'harmful behaviour'.
- Ensuring first responders have quick access to information regarding diversionary options connected to the model (e.g., a 24-hour gateway service).
- Resourcing to ensure services/programs supporting the model allow for 24-hour, 7 day a week access, such as sufficient 'places of safety' that are located away from existing youth or criminal justice facilities and ensuring that these facilities are independently monitored to guarantee the safety of children in their care.
- It is expected that raising the MACR will increase demand for family support, preventative, and youth services. Consideration should be made to ensure that pathways into these services are streamlined and with resourcing increased to meet the additional demand.
- Monitoring of Child Protection escalations from first responders to ensure that the diversionary model does not result in an avoidable increase in intervention from child protection services.

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UCWB would welcome further community engagement regarding the diversionary model, its resourcing and implementation, to improve outcomes for children aged 10 to 13 who would have otherwise have entered the youth justice system. Raising the Minimum Age of Criminal Responsibility in South Australia to 14 years will not only support better outcomes for children and the South Australian community, but also achieve medium and long-term government savings.

References:

- Australian Institute of Health and Welfare (2022) Young people under youth justice supervision and their interaction with the child protection system 2020–21, catalogue number CSI 29, Canberra, ACT, Australia.
- Australian Institute of Health and Welfare (2023) Aboriginal and Torres Strait Islander Health Performance Framework. Tier 2- Determinants of Health. 2.11 Contact With The Criminal Justice System. Web report accessed 21st March 2024 <<https://www.indigenoushpf.gov.au/measures/2-11-contact-criminal-justice-system>>
- Sentencing Advisory Council (2016) Reoffending By Children and Young People in Victoria, Melbourne, Victoria, Australia.