

## Helping Children get their lives back on track - Raising the minimum age of criminal responsibility to 14 years of age

August 2021

**Luke 18:16:** *“Let the little children come to me, and do not stop them; for it is to such as these that the kingdom of God belongs.”*

**Zechariah 7:9-10:** *“This is what the Lord Almighty said: ‘Administer true justice; show mercy and compassion to one another. Do not oppress the widow or the fatherless, the foreigner or the poor. Do not plot evil against each other.’”*

*“The Uniting Church believes that every person is precious and entitled to live with dignity because they are God's children, and that each person's life and rights need to be protected or the human community (and its reflection of God) and all people are diminished.”*

Dignity in Humanity: A Uniting Church Statement on Human Rights, 2006.

In 2019, the United Nations Committee on the Rights of the Child recommended member states raise their minimum age of criminal responsibility to 14 years of age. Currently, this minimum is 10 years of age across all jurisdictions in Australia. Over 2019-2020, 499 children under 14 were held in detention. Aboriginal and Torres Strait Islander children continue to be disproportionately impacted with 65% of children held in detention identifying as Aboriginal and Torres Strait Islander.

Children who are involved in the criminal justice system are already among the most vulnerable members of our community. Approximately 90% of children in Banksia Hill Detention Centre in Western Australia were found by the Telethon Kids Institute to have significant cognitive impairments, including Foetal Alcohol Spectrum Disorder (FASD). Furthermore, 50% of children in the criminal justice system in Australia have also been involved in the Child Protection System. In 2019/2020, 72% of the young people incarcerated in Western Australia were Aboriginal or Torres Strait Islander young people, despite making up just 5% of the population.

The profoundly relevant Statement from the Heart made at Uluru in 2017 said, “Proportionally, we are the most incarcerated people on the planet. We are not an innately criminal people. Our children are alienated from their families at unprecedented rates. This cannot be because we have no love for them. And our youth languish in detention in obscene numbers. They should be our hope for the future.”

Children need to be loved and supported so they can reach their full potential and not locked up. Physiologically, children under the age of 14 are still developing their frontal cortex and are unlikely to fully understand the broad impacts of their actions.

Psychologically, adolescence is an age of rapid development where the capacity for decision-making and impulse control is impacted. Developmental and neuroscientific evidence informed the United Nation's decision to set the minimum age of 14, despite some arguments it should be higher still.

Raising the criminal age of responsibility from 10 to at least 14 does not suggest offences go unaddressed. However, criminalising and incarcerating children for behaviour at such a young age is ineffective at preventing future offending behaviour. A study of incarcerated youth in Oregon, USA, found that children arrested before the age of 14 are three times more likely to reoffend as adults as children arrested when they are over 14 years of age. In WA, 55% of children in Banksia Hill Detention Centre in 2019/2020 had been imprisoned previously.

Instead, children should be diverted away from engaging formally with the criminal justice system's punitive mechanisms. The United Nations Convention on the Rights of the Child states that all children “should grow up in a family environment, in an atmosphere of happiness, love and understanding”. Raising the age of criminal responsibility to at least 14 allows a greater emphasis on supporting pro-social behaviour and the welfare of the child by not separating them from their families.

In August 2020, the Australian Capital Territory became the first jurisdiction to support raising the age of criminal responsibility from 10 to 14. Many Australians are unaware that our laws currently allow for the criminalisation and detention of children so young, with a report last year finding just 7% of Australians correctly identified 10 years old as the age of criminal responsibility, and 51% believed it was already at least 14 years old.

#### **Case Study:**

Dujuan is a 13 year old boy from Arrernte and Garrwa Country near Alice Springs. He starred in the recent observation feature documentary 'In My Blood It Runs' at the age of 10. In September 2019, he delivered a speech to the United Nations Human Rights Council. In his speech he said "The film shows that I felt like a failure at school. I was always worried about being taken away from my family. I was nearly locked up in jail. I was lucky because my family they know I am smart. They love me. They found a way to keep me safe. There are some things I want to see changed: I want my school to be run by Aboriginal people. I want adults to stop crueLLing 10 year old kids in jail. I want my future to be out on land with strong culture and language."

#### **What You Can Do**

Write polite and respectful letters to:

##### **Tasmania**

##### **The Honourable Elise Archer MP**

Attorney-General  
Level 10,  
15 Murray Street  
HOBART TAS 7000  
By Email: [elise.archer@dpac.tas.gov.au](mailto:elise.archer@dpac.tas.gov.au)

*Salutation: Dear Attorney-General*

##### **Victoria**

##### **The Honourable Jaclyn Symes**

Attorney-General  
Level 26  
121 Exhibition Street  
Melbourne Victoria, 3000  
By Email: [jaclyn.symes@parliament.vic.gov.au](mailto:jaclyn.symes@parliament.vic.gov.au)

*Salutation: Dear Attorney-General*

#### **Letter Writing Action**

Points to make in your letter:

- Thank the Attorney-General for their interest and engagement with the discussion about raising the age of criminal responsibility.
- Express that you are pleased the National Council of Attorneys-General meeting in July 2020 identified the need for further work to occur regarding the need for adequate processes and services for children who exhibit offending behaviour.
- Express that you are encouraged by ACT's willingness to raise the minimum age of criminal responsibility to be in line with international standards set by the United Nations.
- State that children need to be loved and supported so they can reach their full potential, and not be locked up.
- Point out a child's brain is still developing, especially the parts that regulate judgement, decision-making and impulse control. This means that children struggle to foresee the consequences of any action and cannot fully understand the criminal nature of their behaviour.
- Point out that Indigenous Aboriginal and Torres Strait Islander children are disproportionately detained, and non-custodial measures are needed to address this.
- Point out that the United Nations Committee on the Rights of the Child has called on member countries to raise the age to at least 14 years old.
- Point out that there are cheaper and more effective options than criminalisation and that we should be redirecting our resources to early intervention, prevention, diversion, and rehabilitation initiatives that resolve the underlying causes of offending.
- Acknowledge the absence of Federal leadership on this issues, and request the matter be pursued with bi-partisan support for legislation advocating the raising of the minimum age of criminal responsibility from 10 to 14.