

A submission to the:
Council of Attorneys-General

Authorised by:
Tracy Adams, CEO, **yourtown**



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Dear members of Council of the Attorneys-General,

We strongly welcome this review into Australia's age of criminal responsibility and write to add our voice to the many other organisations who advocate for change.

yourtown is a national organisation and registered charity that aims to tackle the issues affecting the lives of young people. Established in 1961, our mission is to enable young people, especially those who are marginalised and seldom heard, to improve their quality of life. To this end, **yourtown** provides a range of face-face and virtual services to young people and families seeking support. These services include Kids Helpline, youth employment, social enterprises and educational programs, accommodation responses to young parents with children who are at risk and women and children seeking refuge from family violence, and early child and young parent programs. We also provide drug and alcohol counselling services in prisons for young adult offenders.

All Australian states and territories have the age of criminality set at 10 years old, below the global average of 12.1 years old and below many of its counterparts in most of Europe, China, Russia and Japan where it is set between ages 14 and 16.¹ As a result, today in Australia, there are around 600 children aged under 14 years old who are in detention,² 60% of whom are on remand. Furthermore, although just 5% of their peer population, 70% are Aboriginal and Torres Strait Islander children.³

We recognise that people in our community need to be safe and that children at risk of harm to themselves or others may need to be contained for short periods in specialised programs outside the youth justice system. However, we set out why we have long held that Australia's current age of criminal responsibility is set far too low. We believe it should be raised to at least 14 years old, and furthermore, maintain that there is a need for a minimum age of detention, along with early intervention, prevention, holistic and community-based approaches by way of responses to child anti-social behaviour and offending.

Research on child development shows the current age of criminal responsibility is set too low

Our society rightly places significant protections on children and provides them with rights that are distinct from adults. This is recognition of long-established research about how children's brains develop and mature, and particularly in view of the fact that their frontal cortex is still developing.⁴ In relation to anti-social and offending behaviours, entry into adolescence and rapid brain development during this period resulting in poorer and developing capacity for impulse control, poorer cognitive understanding of repercussions and increased propensity to risk-take is key as this renders children less equipped than adults to regulate their behaviours and actions, and to understand responsibility and think through consequences.

¹ <https://www.smh.com.au/politics/federal/the-plan-to-take-thousands-of-children-out-of-australias-prisons-20171128-gzu40t.html>

² <https://ama.com.au/media/ama-calls-age-criminal-responsibility-be-raised-14-years-age>

³ <https://www.aihw.gov.au/getmedia/f80cfcb3-c058-4c1c-bda5-e37ba51fa66b/aihw-juv-129.pdf.aspx?inline=true,%20Table%20S78b>

⁴ E.g. see

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkGld%2fPPRICAqhKb7yhslkirkQZLK2M58RF%2f5F0vEnG3QGKUxFivhToQfGxYjV05tUAlgpOwHQJsFPdJXCiixFSrDRwow8HeKLLh8cgOwISN6vJ%2bf0RPR9UMtGkA4>

This understanding of the developmental process of children largely underpins how parents, families, communities and governments treat them, and as a society we aim to provide them with the support they need to learn the knowledge and skills required to become well-adjusted, responsible and healthy adults. Indeed, this understanding is the rationale for the current differences in how the criminal justice systems respond to (alleged) criminal activities undertaken by children and adults.

However, our youth justice system has continued to maintain that 10 years of age is the age when children – who are not deemed old enough to have social media accounts in view of the risks we believe they are ill-equipped to appropriately manage – are old enough to have their liberty taken from them and to be imprisoned for their wrongdoings.⁵ This is not only contrary to research on their development, but also to research on the detrimental and long-lasting effects detention and involvement in the youth justice systems as they are currently provided have on children at formative periods crucial to their successful development.

We believe – as does many of Australia’s international counterparts – that this legislation is not grounded in the research relating to child development, leaving our nation at odds with recommendations from the UN Committee on the Rights of the Child and Australia’s Child Rights Taskforce (of which we are a member) that Australia raises the age of criminal responsibility to at least 14 years old.⁶ We strongly urge all Australian governments to raise the age of criminal responsibility to reflect international standards and research to at least 14 years of age.

Critically, however, we do not believe the developmental immaturity of children means that they have no responsibility or accountability for their actions. Instead, we see that alternative approaches to managing their anti-social and offending behaviours is required and indeed is more effective (see more details on this below).

The current age of criminal responsibility compounds disadvantage

In delivering our services, we work with many children who have had or are involved with the youth justice system and – like the vast majority of children and young people who commit offences in Australia – they are amongst our communities’ most disadvantaged groups.

In their young lives, many will have been confronted by a range of deeply complex, intergenerational and interrelated social issues, a fact explaining the startling, continuing and increasing overrepresentation of Indigenous children within the youth justice system. Indeed, a significant body of research shows that (a) youth involved in the justice system have high rates of exposure to trauma, often from early in life, and often across multiple different contexts,⁷ and (b) trauma and chronic stress can have long lasting effects on brain development, which can contribute to antisocial behaviour and offending in later life.

⁵ <https://www.lawcouncil.asn.au/media/media-releases/law-council-backs-push-for-increase-to-minimum-age-of-criminal-responsibility>

⁶ https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/AUS/CRC_C_AUS_CO_5-6_3729I_E.pdf

⁷ E.g., Dierkhising, C. B., Ko, S. J., Woods-Jaeger, B., Briggs, E. C., Lee, R., & Pynoos, R. S. (2013). Trauma histories among justice-involved youth: findings from the National Child Traumatic Stress Network. *European Journal of Psychotraumatology*, 4, 0.3402/ejpt.v4i0.20274

Young offenders will most likely have experienced, for example, contact with child safety services, parents who have been in prison, misuse of drugs and/or alcohol, long-term unemployment, homelessness or unstable family environments. They also have some of the poorest outcomes in life, and the younger a person is at the time of their first offence, the greater the likelihood that they will become persistent offenders throughout their life.⁸ We also know that, if the many needs of both offender and their family are left unaddressed, there is a high chance that these issues will become intergenerational and today's young offenders will become the parents of young offenders in the future.

Yet, rather than seeking to help better support children who have been confronted by such highly complex disadvantage, the youth justice system responds through incarceration and has even employed methods of restraint and punishment within prison/detention facilities that constitute torture, as highlighted in the abuses at Don Dale Youth Detention Centre.⁹ This is despite evidence showing that imprisonment inflicts significant long-lasting harm on these children, commonly increases rates of recidivism and reduces their life outcomes on a range of different variables. We believe this approach is ethically unacceptable and, therefore, call for a child safety and 'do no harm' approach to the delivery of correctional interventions by the youth justice system (as set out below) that seeks to help prevent youth offending and more appropriately and effectively responds to it when it occurs.

Indeed, we believe raising the age of criminal responsibility is of particular importance if Australia is to close the gap between Aboriginal and Torres Strait Islander children and non-Indigenous rates of offending, and if we are to prevent yet another generation of Indigenous children being removed from the families and communities they so desperately need to survive and thrive.

Evidence shows there are more effective responses to offences committed by children

Given the complexity of issues behind youth offending together with the fact that children's brains are still developing and they are vulnerable to making poor or risky choices - **yourtown** strongly advocates for a youth justice system that is underpinned by holistic, early intervention and community-based responses supported by acute services that deliver effective and comprehensive, community-based rehabilitation options. As a wealth of research shows, this system would not only have more effective outcomes for the children, families and communities at risk of or affected by youth offending, but it would also be less expensive in terms of reduced costly detention services, recidivism and social costs supporting life-long offenders and their families.¹⁰

Noting that our communities need to be safe and that there will be children at risk of harm to themselves or others, we believe that the containment of high-risk young people should be

⁸ Armytage, P. and Ogloff, J. (2017) *Youth Justice Review and Strategy*. Victorian Government:

https://assets.justice.vic.gov.au/justice/resources/c92af2a1-89eb-4c8f-8a56-3ac78505a3a/report_meeting_needs_and_reducing_offending_executive_summary_2017.pdf

⁹ <https://www.abc.net.au/news/2017-11-21/nt-royal-commission-on-youth-detention-has-failed-children/9174860>

¹⁰ E.g. Welsh, B.C., Farrington, D.P., Gowa, B.R. (2015). Benefit-cost analysis of crime prevention programs. *Crime and justice*, 44(1): 447-516, *Cost effectiveness of early intervention*. (2007). AICrime reduction matters No. 54. Canberra: Australian Institute of Criminology. <https://aic.gov.au/publications/crm/crm054> and Homel, R. (2005). Developmental crime prevention. In Tilley, N. (ed), *Handbook of crime prevention and community safety*. Devon: Willan. 71-106

undertaken in evidence-based programs separate to the youth justice system. Examples of such programs are the Victorian Secure Welfare Services program, where children can receive trauma-informed, therapeutic interventions delivered in a safe environment. We encourage government to invest in research to identify others programs that provide safety to the community and to the child without the adverse impacts of the youth justice system.

We have identified a number of key areas that we believe require greater attention to reduce youth offending. These include:

- **Indigenous-led solutions** underpinned by a radical shift away from Indigenous issues being an ‘after-thought’, a targeted group or an additional consideration in youth justice service provision to instead Indigenous leadership and views being inherently intertwined in and central to the strategic planning, policy and service delivery of youth justice services. We would like to see Close the Gap targets include the reduction of Indigenous incarceration.

Community-led interventions are particularly important for Indigenous communities as they have the ability to overcome the significant access barrier of trust that Indigenous people experience when interacting with formal services and agencies, and instead can instil not just a sense of, but real ownership.¹¹ In **yourtown**’s experience, legal solutions such as Queensland’s Murri Court are effective. This is because they tap into the respect and influence that local Elders have in their community to mediate positive and sustainable legal responses, as well as remove some of the highly formal aspects of courts to provide a less hierarchical space more in keeping with Indigenous values and understanding.

- A focus on **supporting the holistic needs of families of children at risk of offending or who have offended as well as the child themselves**, recognising that if the support and environment at home does not change for a child then efforts to prevent or rehabilitate youth offending are greatly hamstrung. Many risk factors for offending are statistical markers for family traits associated with socio-economic disadvantage, for example parental or sibling offending history, child abuse, family violence, low parental educational attainment or employment, parental use of drugs and alcohol, poor child-rearing practices, neglect or abuse, and poverty.¹² In the 2017 survey of youth people undertaken by Victoria’s Youth Justice Review and Strategy, one-third of respondents identified the family as the main driver for young people engaging in serious and violent offending.¹³ Strong families act as protective factors, with children living in stable environments with

¹¹ Law Council of Australia, (2017) *The Justice Project: Aboriginal and Torres Strait Islander, Consultation Paper, 2017*:

<https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Consultation%20Papers/Aboriginal%20and%20Torres%20Strait%20Islander%20Peoples.pdf>

¹² Armytage, P. and Ogloff, J. (2017) *Youth Justice Review and Strategy*. Victorian Government:

https://assets.justice.vic.gov.au/justice/resources/c92af2a1-89eb-4c8f-8a56-3acf78505a3a/report_meeting_needs_and_reducing_offending_executive_summary_2017.pdf and Farrington D.P. (2003) Key Results from the First Forty Years of the Cambridge Study in Delinquent Development. In: *Taking Stock of Delinquency. Longitudinal Research in the Social and Behavioral Sciences: An Interdisciplinary Series*. Springer, Boston, MA

¹³ Ibid

supportive caring parents being less likely to find themselves on a trajectory towards later involvement in crime.¹⁴

We therefore believe that all sentencing options must seek to work with a child's family, school and wider community stakeholders to ensure that issues such as poverty, family dysfunction, parental mental health, unstable accommodation and alcohol and drug use are being supported and worked on to help reduce the likelihood of repeat child offending.

- **Universal and comprehensive assessments of children** as early as possible, and regularly throughout a child's school career, to identify and monitor those at risk of offending. We know that even primary school staff are able to identify students who are having issues that are likely to develop into severe behavioural problems, school disengagement and criminal activity later in their young lives. In Victoria, schools are encouraged to use available data and information to identify children at risk of disengaging.¹⁵ We believe the whole country would benefit from taking a similar approach to identifying children at risk of offending, using an assessment of all children at primary school and triangulating additional information and data they have to develop an at-risk cohort that can become a focus of targeted support.
- **Flexible, person-centred and community-based services** to meet a diverse range and level of needs, distinct from a one-size-fits-all approach, reflecting the complexity of issues that challenge every child at risk of offending or who has offended.
- **Appropriate mental health services and support.** Young people with mental health needs are over-represented in the youth justice system, whilst the use of alcohol and drugs is also another major issue that is associated with offending.¹⁶ Despite Australian Government funding for headspace and State Government funding for the Child and Youth Mental Health Service (CYMHS), there remain significant gaps in services, particularly for children under the age of 12 years (a fact we have also noted in our work on youth suicide prevention¹⁷).

Those under 12 years are too young for headspace, and the demand on government mental health services means they are only able to support children with the most complex mental health problems. For older children, headspace provides a useful service, but long waiting lists are often reported and headspace is unable to respond to children in crisis. As a result, services funded to deliver early intervention, such as the Australian Government

¹⁴ Homel R, Cashmore J, Gilmore L, Goodnow J, Hayes A, Lawrence J, Leech M, O'Connor I, Vinson T, Najman J & Western J. (1999). *Pathways to prevention: developmental and early intervention approaches to crime in Australia*. Canberra: Commonwealth Attorney-General's Department

¹⁵ <https://www.education.vic.gov.au/school/teachers/studentmanagement/Pages/disengagedrisk.aspx>

¹⁶ Armytage, P. and Ogloff, J. (2017) *Youth Justice Review and Strategy*. Victorian Government: https://assets.justice.vic.gov.au/justice/resources/c92af2a1-89eb-4c8f-8a56-3acf78505a3a/report_meeting_needs_and_reducing_offending_executive_summary_2017.pdf

¹⁷ **yourtown** (2018) *Preventing suicide by children and young people position paper*: https://www.yourtown.com.au/sites/default/files/document/1.%20yourtown%20Position%20Statement%20-%20Preventing%20suicide%20by%20children%20and%20young%20people_0.pdf

Family Mental Health Support Service (which we deliver in Logan and Moreton) find themselves working with young people experiencing significant mental ill health and suicidality, including young people who have recently attempted suicide. This leaves them with fewer resources to do the early intervention work for which they are in fact funded, creating another service gap.

In addition, the cost of private services is prohibitive for the most vulnerable families and parents are often unable to effectively navigate the system or even simply keep an appointment once made.

Children and young people and their families desperately need access to affordable, community-based, and where necessary, culturally appropriate mental health services to ensure that issues are professionally diagnosed and supported.

- **Youth specialist prevention and trauma-informed rehabilitation services** (particularly for those aged under 14 years old) that focus on the distinct needs of this group of children and young people, noting their differences from adult offenders and other highly disadvantaged children and young people and that they may have disengaged from existing service models (e.g. schools) and therefore require alternative options.

Trauma-informed practice should be a core aspect of any service dealing with at risk children and young people. A significant body of research shows that (a) youth involved in the justice system have high rates of exposure to trauma, often from early in life, and often across multiple different contexts,¹⁸ and (b) trauma and chronic stress can have long lasting effects on brain development, which can contribute to antisocial behaviour and offending in later life.

Experience of trauma and neglect at an early age is associated with poor emotional regulation and impulse control, learning and behavioural difficulties at school, mental health problems, risky behaviour and later offending.¹⁹ In our experience, in the absence of formal support this negative pathway can be inadvertently strengthened by inappropriate responses from families and schools. A significant proportion of our clients who have youth offending history advise that they have been 'diagnosed' with Attention Deficit Hyperactivity Disorder (ADHD) yet have never been assessed or consulted by appropriate professional staff to treat this condition. We fear that children displaying problematic behaviour at school are labelled ADHD (without any follow-up care), when in fact a history of untreated, complex trauma is likely to be responsible for their behaviour.

- **System-wide staff training** on child development, trauma-informed practice and cultural competency and sufficient staff to support relationship-based service provision and

¹⁸ E.g. Dierkhising, C. B., Ko, S. J., Woods-Jaeger, B., Briggs, E. C., Lee, R., & Pynoos, R. S. (2013). Trauma histories among justice-involved youth: findings from the National Child Traumatic Stress Network. *European Journal of Psychotraumatology*, 4, 0.3402/ejpt.v4i0.20274

¹⁹ Cook, A., Spinazzola, J., Ford, J., Lanktree, C., Blaustein, M., Cloitre, M., DeRosa, R., Hubbard, R., Kagan, R., & Liautaud, J., Mallah, K., Olafson, E., & van der Kolk, B. (2005). Complex Trauma in Children and Adolescents. *Psychiatric Annals*. 35. 390-398.

intensive case management and one-on-one support. In addition, we know that relationships are central to working with vulnerable groups and that all services working with these cohorts must consider how it works with children and their families to develop mutual respect and trust. For young offenders, they will often have been let down by and lost faith in the relationships they have with adults and do not know their value. Therefore, all children must have the opportunity to develop respectful relationships with adults be that at home, school or the wider community and it should be the aim of early intervention to develop this trust early on to help them learn that there are adults can be trusted.

- **Cross-government understanding of the causes of youth offending**, ability to recognise needs and risks (e.g. no wrong door) and a commitment to collectively working to address its causes, acknowledging that children and young people at risk of offending or with offending histories may enter government services through a range of different access points and have a range of different needs.
- **A long-term, political and policy commitment to sustained and appropriate levels of funding** needed for effective prevention and rehabilitation services, recognising the progress that has been hampered in past years due to shifting policy directions and funding cuts.

In conclusion, we greatly welcome this review and urge all Australian governments to meet world standards by raising the age of criminal responsibility. In addition, we call for a child safe approach to youth justice and believe that a minimum age of detention should be set given the harm that detention has on children, whilst early intervention and community-based correctional services are systematically provided to children under this age.

Yours sincerely,

Tracy Adams,
Chief Executive Officer
yourtown