

Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023

Submission to the Standing Committee on Justice and
Community Safety

5 June 2023

Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal of the Eora Nation.

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to provide this submission to the ACT Parliament's Standing Committee on Justice and Community Safety ('the Committee'), regarding the Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023 ('the Bill').
2. The ALA considers that raising the age of criminal responsibility is a key measure in reducing the rate of incarceration of young people, who should be detained only as a last resort.
3. The ALA welcomes this Bill which will, in most cases, raise the age of criminal responsibility in the Territory from 10 years to 14 years of age.
4. However, in accordance with the recommendations of the United Nations (UN) Committee on the Rights of the Child, the ALA submits that the age of criminal responsibility should be raised to 14 years of age without exception,
5. The ALA therefore does not support the Bill's proposal to raise the age of criminal responsibility from 10 to only 12 years old, and eventually to 14 years old from 1 July 2025 with exceptions ("exceptionally serious and intentionally violent offences").
6. The ALA can see no reason in principle or logic why there should be a staged raising of the age of criminal responsibility over a two-year period. It cannot be suggested there is some concern that children who or will be 12 or 13 before the age is raised from 12 to 14 need to remain criminally responsible for their conduct, and only the cohort of children currently under 10 years of age should be wholly protected from exposure to the criminal justice system.
7. If the justification for such delay is a matter of resourcing alternatives to putting children into the criminal justice system, then the ALA urges the Territory to reconsider whether that is an appropriate justification.

8. The ALA submits that the Territory, having recognised the age of criminal responsibility should be raised from 10 years to 14 years should make that change forthwith, not over a two-year period.
9. Finally, the ALA does not support the carve out in the Bill that would still see children held criminally responsible for conduct in relation to particularly serious offending. Whilst it is natural for the community to want someone held criminally responsible if they have engaged in the most heinous conduct, it is entirely artificial to proscribe the potential criminal responsibility of children based on the seriousness of the conduct as opposed to age of the child.
10. The current low ages for criminal responsibility across Australia's states and territories are in breach of human rights standards and puts Australia out of step with much of the rest of the world – the worldwide median age of criminal responsibility is 14 years of age.²
11. The ALA strongly encourages the ACT Government to consider that the proposed amendments are accompanied by comprehensive and properly funded alternative arrangements for minors involved in criminal behaviour including meaningful diversionary options that combine education and support.

Young people in detention

12. According to the Australian Institute of Health and Welfare (AIHW), in 2021-2022 on any given day, 4,536 people aged 10 and over were under youth justice supervision. Among those aged 10–17, this was a rate of 13 per 10,000. A total of 8,982 young people was supervised by youth justice at some time during the year (from 1 July 2021 to 30 June 2022).³

² National Children's Commissioner, Australian Human Rights Commission, *Children's Rights Report 2016* (Report, October 2016) 187 <<https://humanrights.gov.au/our-work/childrensrights/publications/childrens-rights-report-2016>>.

³ <https://www.aihw.gov.au/reports/australias-welfare/youth-justice>

13. The ALA highlights damning statistics that show in 2021–22, for young people aged 10–17 in youth justice supervision - Aboriginal and Torres Strait Islander people were about 19 times as likely as non-Indigenous Australians to be under supervision – about 17 times as likely to be under community-based supervision, and about 24 times as likely to be in detention (see Indigenous community safety).⁴
14. The ALA emphasises the need for governments to consider the impact of policy on growing numbers of marginalised youth in detention. Therefore, we encourage the ACT Government to consider community-led solutions that are supported by evidence to keep our children and communities truly safe in the long-haul.
15. The ALA strongly encourages the ACT Government to consider raising the age immediately and without exceptions. The proposed Bill, by raising the age of criminal responsibility in stages, goes against all medical evidence and expert advice from Aboriginal, legal and human rights organisations as well as the UN.
16. The ALA submits that it is never appropriate for children aged between 10 and 14 years of age to be dealt with by the youth criminal justice system during the most formative years of their development.

The capacity of children to comprehend the nature of their conduct

17. The ALA contends that there is a significant quantity of contemporary research indicating that many children aged between 10 and 14 years of age are not at a cognitive stage of development where they are able to appropriately appreciate the nature and significance of criminal conduct and the lifelong consequences of undertaking such conduct. This creates significant doubt on the capacity for children of these ages to appropriately reflect before embarking on a course of action involving criminal behaviour.⁵
18. The ALA notes that whilst the proposed amendments would make the ACT the most enlightened and liberal Australian jurisdictions on this issue, the amendments do not go far enough. We note below that medical and other evidence strongly suggests that the

⁴ Ibid.

⁵ Kelly Richards, 'What makes juvenile offenders different from adult offenders?', *Trends & issues in crime and criminal justice* (Paper No. 409, 18 February 2011) 4; Laurence Steinberg, 'Risk taking in adolescence: new perspectives from brain and behavioural science' (2007) 16(2) *Current Directions in Psychological Science* 55, 56.

trajectory of a child's life is determined by their earliest years of development and experiences. Furthermore, the ALA highlights evidence that imprisonment itself has a criminogenic effect.

19. According to the UN Committee on the Rights of the Child:

Documented evidence in the fields of child development and neuroscience indicates that maturity and the capacity for abstract reasoning is still evolving in children aged 12 to 13 years due to the fact that their frontal cortex is still developing. Therefore, they are unlikely to understand the impact of their actions or to comprehend criminal proceedings. They are also affected by their entry into adolescence.⁶

20. Based on this evidence, the ALA does not support a “carve out” (in the second stage of the proposed amendments) for the “most serious” offences (with the result that, for those offences, the presumed aged of criminal responsibility will remain at 12 years).

21. The ALA is concerned that by criminalising the behaviour of children who may not be aware of the consequences and nature of their conduct, a dangerous cycle of disadvantage is initiated, causing children to become entrenched in the criminal justice system. Several studies confirm that when children are drawn into the criminal justice system at a young age, there is a significantly higher likelihood of subsequent reoffending, and a lower likelihood of that child completing their education or securing employment.⁷

22. The ALA also notes that the Australian Medical Association stated in December 2019 that raising the age of criminal responsibility was an important measure to prevent the unnecessary criminalisation of vulnerable children.⁸

23. In light of this and other evidence, the ALA cannot logically support a delay for the proposed changes until 2025.

⁶ United Nations Committee on the Rights of the Child, *General comment No. 24: Children's rights in the child justice system*, CRC/C/GC/24 (18 September 2019) para 22.

⁷ Australian Institute of Health and Welfare, *Young people returning to sentenced youth justice supervision 2014–15* (Report, Juvenile justice series no. 20, 22 July 2016).

⁸ Paul Karp, 'Peak legal and medical groups push to limit minimum age of criminal responsibility to 14', *The Guardian* (online, 17 December 2019) <<https://www.theguardian.com/law/2019/dec/17/peak-legal-andmedical-groups-push-to-lift-minimum-age-of-criminal-responsibility-to-14>>.

International human rights law and the age of criminal responsibility

24. Under article 40(3) of the UN *Convention on the Rights of the Child* (signed and ratified by Australia in 1990), State Parties are required to establish a minimum age of criminal responsibility. However, the article does not specify the age. Over 50 State Parties have raised the minimum age following ratification of this Convention and the most common minimum age of criminal responsibility internationally is 14 years of age.
25. The UN Committee on the Rights of the Child has consistently said that countries should be working towards a minimum age of 14 years of age or older.⁹
26. In 2017, both the UN Human Rights Committee and the UN Committee on the Elimination of Racial Discrimination (CERD) recommended that Australia take active steps to raise the age of criminal responsibility.¹⁵ The CERD specifically expressed concern regarding the overrepresentation of young Aboriginal and Torres Strait Islander children who come into contact with the criminal justice system: The Committee is deeply concerned about the high proportion of indigenous children in contact with the criminal justice system, some of them at a very young age. It is also concerned about the ill-treatment suffered by juveniles, especially indigenous children, and the conditions in which they are held.¹⁶
27. In January 2021, as part of Australia's Universal Periodic Review before the UN Human Rights Committee, 31 UN Member States called on Australia to raise the age of criminal responsibility to 14 years of age.¹⁷

Conclusion

28. The Australian Lawyers Alliance (ALA) welcomes the opportunity to provide this submission to the Standing Committee on Justice and Community Safety, regarding the Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023. The ALA welcomes the proposal to raise the age of criminal responsibility to 14 years for most but says it should apply to all. The ALA is available to provide further assistance to the Committee on the issues raised in this submission, should the Committee consider that to be useful.

⁹ United Nations Committee on the Rights of the Child, *General Comment No. 10: Children's rights in juvenile justice*, 44th session, UN Doc CRC/C/GC/10 (25 April 2007) paras 32–33; see also n 11 above, para 22.



Hassan Ehsan

President, ACT Branch Committee

Australian Lawyers Alliance