**Legislative Assembly for the Australian Capital Territory**
Standing Committee on Justice and Community Safety

# Inquiry into Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023

Legislative Assembly for the Australian Capital Territory
Standing Committee on Justice and Community Safety

Approved for publication

Report 18
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# About the committee

## Establishing resolution

The Assembly established the Standing Committee on Justice and Community Safety on 2 December 2020.

The Committee is responsible for the following areas:

- ACT Electoral Commission
- ACT Integrity Commission
- Gaming
- Minister of State (JACS reporting areas)
- Emergency management and the Emergency Services Agency
- Policing and ACT Policing
- ACT Ombudsman
- Corrective services
- Attorney-General
- Consumer affairs
- Human rights
- Victims of crime
- Access to justice and restorative practice
- Public Trustee and Guardian

You can read the full establishing resolution on our website.

## Committee members

Mr Peter Cain MLA, Chair

Dr Marisa Paterson MLA, Deputy Chair

Mr Andrew Braddock MLA

## Secretariat

Ms Kate Mickelson, A/g Committee Secretary

Ms Anna Hough, Assistant Secretary

Mr Satyen Sharma, Administrative Officer

## Contact us


**Mail** Standing Committee on Justice and Community Safety
Legislative Assembly for the Australian Capital Territory
GPO Box 1020
CANBERRA ACT 2601

**Phone** (02) 6207 0524

**Email** LACommitteeJCS@parliament.act.gov.au

**Website** parliament.act.gov.au/parliamentary-business/in-committees

# About this inquiry

The Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023 was presented in the Assembly on 9 May 2023. It was then referred to the Standing Committee on Justice and Community Safety as required by clause 5 of the establishing resolution. This clause allows committees to inquire into and report on bills within two months of their presentation.

The Committee announced that it would inquire into the Bill on 22 May 2023.

# Contents

# Acronyms and Abbreviations

| Short form | Long form |
|---|---|
| ACT | Australian Capital Territory |
| ACTCOSS | ACT Council of Social Service |
| AMC | Alexander Maconochie Centre |
| ANTAR | Australians for Native Title and Reconciliation |
| The Bill | Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023 |
| Bimberi | Bimberi Youth Justice Centre |
| Criminal Code | *Criminal Code 2002* |
| CYPS | Child and Youth Protection Services |
| HRA | *Human Rights Act 2004* |
| JRI | Justice Reform Initiative |
| ICS | Inspector of Correctional Services |
| ITO | Intensive Treatment Order |
| ITP | Intensive Therapy Place |
| MACR | Minimum age of criminal responsibility |
| MLA | Member of the Legislative Assembly |
| NSW | New South Wales |
| ODPP | Office of the Director of Public Prosecutions |
| OICS | Office of the Inspector of Correctional Services |
| OPCAT | United Nationals Optional Protocol to the Convention Against Torture |
| PHAA | Public Health Association of Australia |
| TCO | Therapeutic Correction Order |
| TSP | Therapeutic Support Panel |
| WWVP | Working With Vulnerable People |

# Glossary

| Term | Meaning |
|---|---|
| Doli incapax | deemed incapable of forming the intent to commit a crime or tort, especially by reason of age |

# Recommendations

## Recommendation 1

The Committee recommends that the ACT Government raise the minimum age of criminal responsibility to 12.

## Recommendation 2

The Committee recommends that the ACT Government should then raise the minimum age of criminal responsibility to 14.

## Recommendation 3

The Committee recommends that the ACT Government ensure that the statutory review of the bill is conducted in a timely manner and no later than as currently drafted.

## Recommendation 4

The Committee recommends that the ACT Government expand *Section 501Q (1), Part 14A.3 – Referrals to Therapeutic Support Panel* of the Bill to include additional behaviours, such as cruelty towards animals, arson, and starting bush fires, as a precursor for referral to the Therapeutic Support Panel.

## Recommendation 5

The Committee recommends that the ACT Government amend *Section 501R – Panel to act on referrals, part 2, (a)* of the Bill to mandate a specific timeframe, within 12 hours.

## Recommendation 6

The Committee recommends that the ACT Government amend *Part 14A.4 – Reporting by the Therapeutic Support Panel – Section 501T* of the Bill to mandate the production of administrative reports, similar to an annual report tabled in the ACT Legislative Assembly.

## Recommendation 7

The Committee recommends that the ACT Government amend Part 2 – *Children and Young People Act 2008*, Section 5 of the Bill to add provision of education services to the Director-General's functions in new section 22 (1) (ea) and (eb) as follows:

- (ea) providing, or assisting in providing, services including education for the safety and wellbeing of children and young people;
- (eb) providing, or assisting in providing, services including education for the safety and wellbeing of children and young people who carry out, or are at risk of carrying out, harmful conduct.

## Recommendation 8

The Committee recommends that the ACT Government amend the Bill so that Cl 12 589 explicitly states that places can only be declared intensive therapy places if they have not formerly been used to accommodate young detainees and are not located in any part of a facility whose purpose is to house young detainees.

### Recommendation 9

The Committee recommends that the ACT Government amend the Bill to explicitly provide that the ACT National Preventive Mechanism bodies, including the Office of the Inspector of Correctional Services, have unfettered access to intensive therapy places, in accordance with the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*.

### Recommendation 10

The Committee recommends that the ACT Government amend the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018* to enshrine the requisite powers, privileges and immunities of the ACT National Preventive Measures bodies, in accordance with the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.*

### Recommendation 11

The Committee recommends that the ACT Government amend the Bill to include the Inspector of Correctional Services under Cl 12 578 and 597(1).

### Recommendation 12

The Committee recommends that the ACT Government amend *Division 16.3.3 – Visits by accredited people, section 578 – who is an accredited person* of the Bill to include a young person's general practitioner.

### Recommendation 13

The Committee recommends that the ACT Government amend *Section 501E* of *Part 14A.2 – Therapeutic Support Panel for Children and Young People* of the Bill to support the inclusion of panel members regarded as elders within their own cultural groups.

### Recommendation 14

The Committee recommends that the ACT Government include a discretion in relation to the eligibility for the Working With Vulnerable People card that is in line with restorative justice practice.

### Recommendation 15

The Committee recommends that the ACT Government ensure protections are accessible to victims of domestic and family violence from children under the minimum age of criminal responsibility.

### Recommendation 16

The Committee recommends that proposed Division 3A.3A from clause 129 be relocated to just prior to Division 3A.7 in the *Victims of Crime Act 1994*.

### Recommendation 17

The Committee recommends that, to allow an appropriate degree of discretion to the Therapeutic Support Panel or Victims of Crime Commissioner in identifying whether a person is

a secondary victim, the ACT Government amend the Bill to remove the word 'immediately' from paragraph (b) of the definition of 'victim' for the purposes of proposed Division 3A.3A of the *Victims of Crime Act 1994*.

### Recommendation 18

The Committee recommends that the ACT Government amend s 15CG(d) of the Bill to read:

- (d) how a statement may be used by the therapeutic support panel in carrying out its functions, including that—
- (i) a copy of the statement may be given to the child [if the maker of the statement agrees]; and
- (ii) the panel must consider the statement in carrying out its functions.

### Recommendation 19

The Committee recommends that the ACT Government amend the Bill to remove the proposed amendment in Clause 132.

### Recommendation 20

The Committee recommends that the ACT Government ensure timely practice of restorative justice practices in the ACT to allow for these practices to be offered as part of therapeutic interventions for young people.

### Recommendation 21

The Committee recommends that the ACT Government amend the Bill to ensure that ACT Policing retain search warrant powers when interacting with the parents and guardians of young people under the age of criminal responsibility, so that property can be seized if required for public safety or to return stolen goods.

### Recommendation 22

The Committee recommends that the ACT Government urgently put in place a throughcare case management program at Bimberi Youth Justice Centre.

### Recommendation 23

The Committee recommends that, after considering and responding to the recommendations in this report, the Assembly pass the Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023.

# 1. Conduct of the inquiry

1.1. The Committee received 23 submissions. These are listed in **Appendix A**.

1.2. The Committee held a public hearing on Thursday, 15 June 2023. Witnesses who appeared at the hearing are listed in **Appendix B**.

1.3. The Committee had four Questions Taken on Notice from the public hearing. These are listed in **Appendix C**.

1.4. A breakdown of witnesses at the public hearing by gender identity is given in **Appendix D**.

1.5. In this report, references to Committee Hansard are to the Proof Transcript of evidence. Page numbers may vary between proof and final official transcripts.

# 2. Background to the Bill

2.1. The Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023 (the Bill) will raise the minimum age of criminal responsibility (MACR) in the ACT from 10 to 14 years. The current MACR across Australia is 10 years, while the most common MACR internationally is 14 years.[1]

2.2. The Bill will raise the MACR to 12 years seven days after the legislation is notified, and to 14 years on 1 July 2025.[2] When the MACR is raised to 14 years, a child under 14 but over 12 will be able to be prosecuted only for a few serious offences, listed in a new Schedule 1 to the *Criminal Code 2002*.[3] These offences are:

- Murder;
- Intentionally inflicting grievous bodily harm;
- Sexual assault in the first degree; and
- Act of indecency in the first degree.

2.3. The Bill introduces a therapeutic framework for the support and treatment of children and young people who engage in harmful behaviour. It establishes a Therapeutic Support Panel for children and young people, and introduces Intensive Therapy Orders and a community-based sentencing option of a Therapeutic Correction Order for children and young people up to 18 years old.[4]

2.4. The Bill also extinguishes all convictions committed by children and young people under the MACR, except for those in the schedule as listed above and for the purposes of the *Working with Vulnerable People (Background Checking) Act 2011*.[5]

## Therapeutic Support Panel

2.5. The Therapeutic Support Panel (TSP) will provide an independent multi-disciplinary decision-making forum to respond to the therapeutic needs of children engaging in harmful behaviour.[6]

2.6. The TSP will comprise at least 10 but not more than 12 members, and members must hold relevant qualifications or expertise in fields including psychology, paediatrics, criminology, working with Aboriginal and Torres Strait Islander children and young people, mental health and child protection.[7]

[1] Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023, *Explanatory Statement*, p 1.
[2] Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023, *Explanatory Statement*, p 15.
[3] Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023, s 94.
[4] Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023, *Explanatory Statement*, p 2.
[5] Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023, *Explanatory Statement*, p 2.
[6] Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023, *Explanatory Statement*, p 6.
[7] Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023, s 501E (1) and (2).

2.7. At least one panel member must be an Aboriginal or Torres Strait Islander person, and at least one panel member must be appointed to represent Aboriginal and Torres Strait Islander people.[8]

## Therapeutic Correction Orders

2.8. The Therapeutic Correction Order (TCO) is a new sentencing option introduced by the Bill, which will apply to all young offenders above the MACR:

> The TCO is intended to use intensive supervision methods and a therapeutic, problem-solving court environment to reduce and avoid harmful behaviour by taking into account the individualised needs of children and young people, particularly where that individual has high or complex needs, and to prevent the detention of children and young people. The TCO has been designed using aspects of the Intensive Corrections Order and the Drug and Alcohol Treatment Order, both of which are available in the ACT to adults, but not to young offenders.[9]

2.9. A TCO can last up to four years, and requires an offender to not commit any further offences, to report to or receive visits from the therapeutic correction team, and prevents an offender from leaving the Territory without approval from the Director-General. The offender must also complete a program of treatment, including medical, psychiatric or psychological treatment or detoxification, participate in counselling, attend meetings, participate in education or employment programs, and submit to alcohol and drug testing.[10]

## Intensive Therapy Orders

2.10. The Bill will enable the Childrens Court to issue an intensive therapy order (ITO) for children and young people over 10 years old. An ITO provides 'involuntary wraparound therapeutic interventions where voluntary engagement with support services has not been possible or effective and no less restrictive option is available'.[11] An ITO will also allow for confinement of a child or young person for the purposes of assessment and treatment, where their harmful conduct would pose 'a significant risk of significant harm to themselves or others'.[12]

2.11. An application for an ITO must include a risk assessment, evidence that less restrictive measures have already been tried, and a proposed treatment plan to meet the young person's needs. An ITO is the option of last resort, in circumstances where all other attempts to support and engage with the young person have been unsuccessful.[13]

[8] Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023, s 501E(4).
[9] Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023, *Explanatory Statement*, p 59.
[10] Standing Committee on Justice and Community Safety (Legislative Scrutiny), *Scrutiny Report 29*, 23 May 2023, p 17.
[11] Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023, *Explanatory Statement*, pp 7–8.
[12] Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023, *Explanatory Statement*, p 8.
[13] Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023, *Explanatory Statement*, p 33.

2.12. Where a child or young person is subject to an ITO and later sentenced to a TCO, the Community Services Directorate will provide continuity of case management, to ensure consistency of support and management of the child or young person's needs.[14]

# Legislative Scrutiny

2.13. The Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) (the Scrutiny Committee) considered the Bill in its *Scrutiny Report 29* of 23 May 2023. The report raised concerns about potential limitations on the human rights of children and young people, particularly the protection of privacy provided by section 12 of the *Human Rights Act 2004* (the HRA) and the right to protection from torture and cruel, inhuman or degrading treatment under section 10 of the HRA.[15]

## Potential limitations on human rights

2.14. The Scrutiny Committee noted that the condition of a TCO requiring that an offender complete a program of treatment, including medical treatment, may limit the right to protection from torture and cruel, inhuman or degrading treatment under section 10 of the HRA, which includes the right to not be subjected to medical treatment without free consent.[16]

2.15. The Scrutiny Committee further noted that the Bill will provide assessors carrying out an assessment of an offender's suitability for a TCO with authority to ask any entity to provide information, including documents, for the purpose of the assessment. This information can be shared between the Court, the Director-General and prescribed entities for the purpose of exercising functions under the Crimes (Sentencing) Act. The Scrutiny Committee noted that:

> By providing for the provision of information, including personal information, to be compelled or shared in these ways, the Bill may further limit the protection of privacy provided by section 12 of the HRA.[17]

2.16. The Scrutiny Committee asked that the Minister respond to these concerns prior to the Bill being debated.

## Exceptions under proposed Schedule 1 to the Criminal Code

2.17. The Scrutiny Committee also raised concerns regarding the offences listed in the proposed Schedule 1 of the Criminal Code.

2.18. The Scrutiny Committee acknowledged that the offences listed are 'exceptionally serious and violent' but noted that 'as the UN Committee report indicates, there is insufficient

[14] Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023, *Explanatory Statement*, p 59.
[15] Standing Committee on Justice and Community Safety (Legislative Scrutiny), *Scrutiny Report 29*, 23 May 2023, pp 14–18.
[16] Standing Committee on Justice and Community Safety (Legislative Scrutiny), *Scrutiny Report 29*, 23 May 2023, p 18.
[17] Standing Committee on Justice and Community Safety (Legislative Scrutiny), *Scrutiny Report 29*, 23 May 2023, p 18.

evidence to support the conclusion that children under 14 are sufficiently intentional to warrant criminal culpability'.[18]

2.19. The Scrutiny Committee further noted that no evidence was presented in the *Explanatory Statement* to the Bill to suggest that a child is more likely to cause harm to others after the commission of these offences than they would after other violent offences, or that the therapeutic treatment otherwise provided under the Bill would be less effective in relation to these particular offences in providing for rehabilitation or otherwise protecting against further harm to the community.[19]

2.20. While acknowledging the suggestion in the *Explanatory Statement* that there are practical issues in a small jurisdiction in providing alternative therapeutic approaches for the likely very small number of young people who may commit the offences listed, the Scrutiny Committee expressed concern the provisions are premised to some degree on the need to treat children who have committed the particular crimes in question differently from those that have committed other violent or serious offences.[20]

2.21. The Scrutiny Committee requested that the Minister provide further information on why it is considered necessary that an exception to the protection of children provided by the Bill should be made for the ages and offences in question, and why that exception should be considered proportionate given the consequences of criminal culpability in those circumstances, and asked the Minister to respond with sufficient time to allow the Committee to consider the response prior to the Bill being debated.

## Henry VIII Clause

2.22. The Scrutiny Committee raised concerns that the Bill will insert new transitional parts in the *Crimes Act 1900* (proposed parts 33 and 34), the *Family Violence Act 2016* (proposed part 23 and 24), and the *Personal Violence Act 2016* (proposed parts 23 and 24) setting out transitional provisions to reflect the staged lifting of the MACR, and that these transitional parts include a Henry VIII clause.[21]

2.23. A 'Henry VIII clause' is a provision in an Act that allows for delegated laws to amend an Act of Parliament.[22] As a 'Henry VIII clause' allows for delegated legislation to amend the primary legislation, such clauses detract from the legislative power of the Legislative Assembly.[23]

2.24. The proposed transitional parts include a Henry VIII clause in the following terms:

> (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Justice (Age of Criminal Responsibility) Legislation Amendment Act 2023*.

[18] Standing Committee on Justice and Community Safety (Legislative Scrutiny), *Scrutiny Report 29*, 23 May 2023, p 20.
[19] Standing Committee on Justice and Community Safety (Legislative Scrutiny), *Scrutiny Report 29*, 23 May 2023, p 20.
[20] Standing Committee on Justice and Community Safety (Legislative Scrutiny), *Scrutiny Report 29*, 23 May 2023, p 20.
[21] Standing Committee on Justice and Community Safety (Legislative Scrutiny), *Scrutiny Report 29*, 23 May 2023, p 21.
[22] Australian Law Reform Commission (ALRC), Traditional Rights And Freedoms—Encroachments By Commonwealth Laws (ALRC Interim Report 127), Chapter 16: Delegating Legislative Power, 3 August 2015, p 442.
[23] Standing Committee on Justice and Community Safety (Legislative Scrutiny), *Henry VIII clauses*, November 2011, p 3.

(2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.

(3) A regulation under subsection (2) has effect despite anything elsewhere in this Act.[24]

2.25. The proposed transitional parts will expire five years after their commencement.

2.26. The Scrutiny Committee noted that the *Explanatory Statement* accompanying the Bill does not recognise the nature of these clauses as providing authority for regulations to modify the effect of primary legislation, nor set out a justification for why they have been included.[25]

2.27. The Scrutiny Committee requested further information from the Minister on why the Henry VIII clauses are considered necessary in the context of this Bill and the Crimes Act, Family Violence Act and Personal Violence Act, and asked that consideration also be given to amending the *Explanatory Statement* to include this information.

2.28. The Scrutiny Committee asked that the Minister provide this further information prior to the Bill being debated.

[24] Standing Committee on Justice and Community Safety (Legislative Scrutiny), *Scrutiny Report 29*, 23 May 2023, p 21.
[25] Standing Committee on Justice and Community Safety (Legislative Scrutiny), *Scrutiny Report 29*, 23 May 2023, p 21.

# 3. Issues raised in evidence

## Minimum Age of Criminal Responsibility

3.1. Several submitters[26] noted that, under the Bill, the ACT would be the first jurisdiction in Australia to raise the minimum age of criminal responsibility (MACR) to 14 years old, and that this would set an important precedent. Opinion was divided over the staged approach of first raising the MACR to 12 years, then to 14 years on 1 July 2025.

3.2. In their submission, Justice Reform Initiative (JRI) supported raising the MACR to 14 years old, saying:

> The evidence is clear that children aged between 10 and 14 years of age are not at a cognitive stage of development where they are able to be held criminally responsible. 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.[27]

3.3. Calling for the MACR to be raised to 14 'as a matter of urgency' in her submission, Chloe Maddison described the detainment of children and young people in Australia as 'unjust'. She said that current laws setting the MACR of 10 years old impacted the most disadvantaged and perpetuated 'the cycle of systemic disadvantage of Aboriginal and Torres Strait Islander children and young people'.[28]

3.4. In their submission, Save the Children and 54 Reasons expressed strong support for raising the MACR, citing 'International human rights and child rights standards, medical evidence about child development, and the body of evidence about what works to prevent offending and reduce recidivism' as pointing to 14 years old as the appropriate age.[29]

3.5. Youth Coalition of the ACT noted in their submission that the development of support services and processes as part of raising the MACR would take time and need to be 'thorough and robust', allowing for monitoring and evaluation. For this reason, they supported the staggered raising of the MACR to first 12, and then 14, years.[30]

3.6. In their submission, the Public Health Association of Australia (PHAA) observed that, with the current MACR of 10 years old, 'Australia is out of step with United Nations' recommendations, and current practice internationally regarding the minimum age of criminal responsibility', and noted that the most common MACR internationally is now 14 years old.[31]

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[26] See, for example: Justice Reform Initiative, *Submission 001*, pp 3–4; Save the Children and 54 Reasons, *Submission 004*, p 1; Youth Coalition of the ACT, *Submission 005*, p 1; ACTCOSS, *Submission 008*, p1; Chris Donohue, *Submission 011*, p 5; ACT Human Rights Commission, *Submission 018*, p 2; Australians for Native Title and Reconciliation, *Submission 020*, p 3.

[27] Justice Reform Initiative, *Submission 001*, p 2.

[28] Chloe Maddison, *Submission 003*, p 2.

[29] Save the Children and 54 Reasons, *Submission 004*, pp 1–2.

[30] Youth Coalition of the ACT, *Submission 005*, p 1.

[31] Public Health Association of Australia, *Submission 006*, p 1.

3.7. PHAA argued that that the small number of cases involving children under 14 did not justify delaying raising the MACR to 14 years until support and diversion programs were in place, and that the MACR should be raised to 14 without 'needless delay'.[32]

3.8. The Ted Noffs Foundation said in their submission that there were 'better and more cost-effective ways to work with young offenders than by incarcerating them', and that raising the MACR was sensible as long as young people under the age of 14 who committed offences were provided with 'well-funded and resourced alternatives' to detention.[33]

3.9. In their submission, the ACT Council of Social Service (ACTCOSS) expressed strong support for raising the MACR to 'at least' 14 years old, saying that:

> It is essential for the wellbeing of the ACT community that the ACT government work to consistently reduce the number of children who are in contact with the justice system and eliminate the overrepresentation of Aboriginal and Torres Strait Islander children in the justice system.[34]

3.10. The Centre for Excellence in Child and Family Welfare's submission welcomed the proposal to raise the MACR to 14, saying that criminalising children who have been subject to vulnerabilities such as trauma, intergenerational trauma, neglect and mental health issues was a violation of their human rights.[35]

3.11. In their submission, the Human Rights Law Centre strongly supported raising the MACR to 14 years, saying that reform was 'long overdue'. They noted that:

> Medical experts, child offending experts, psychologists and criminologists agree that children under the age of 14 years have not developed the social, emotional and intellectual maturity necessary for criminal responsibility.[36]

3.12. Citing a 2019 joint policy statement by the Law Council of Australia and the Australian Medical Association[37] and a 2019 UN Committee on the Rights of the Child report[38] both calling for an MACR of 14, Chris Donohue submitted that the MACR should be immediately raised to 14, with no staged approach as proposed by the Bill, or that raising the age to 14 should occur earlier than proposed, for example by the end of 2023.[39]

3.13. The Office of the Director of Public Prosecutions (ODPP), in their submission, emphasised their support for raising the MACR, saying that even when a young offender is capable of forming criminal intent, the exposure of young people under the age of 14 to the criminal justice system has little social benefit.[40]

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[32] Public Health Association of Australia, *Submission 006*, p 2.
[33] Ted Noffs Foundation, *Submission 007*, p 2.
[34] ACTCOSS, *Submission 008*, p 1.
[35] Centre for Excellence in Child and Family Welfare, *Submission 009*, p 1.
[36] Human Rights Law Centre, *Submission 010*, pp 1–2.
[37] Law Council of Australia ad Australian Medical Association, Policy Statement - Minimum Age of Criminal Responsibility - Law Council of Australia (accessed 26 June 2023).
[38] United Nations Convention on the Rights of the Child, *Concluding Observations on the combined fifth and sixth periodic reports of Australia*, CRC/C/AUS/CO/5-6 (un.org) (accessed 26 June 2023).
[39] Chris Donohue, *Submission 011*, p 5.
[40] Office of the Director of Public Prosecutions, *Submission 012*, p 1.

3.14. The ODPP noted that there is no international human rights instrument mandating an MACR of 14 years, and that both the *United Nations Minimum Standard Rules for the Administration of Juvenile Justice (1985)* and the *United Nations Convention on the Rights of the Child (1990)* leave the determination of the MACR to the discretion of the state.[41]

3.15. The ODPP said that the 'fundamental question' to be considered in legislation was whether a child aged between 10 and 14 was capable of forming criminal intent, and suggested that some conduct – such as intentionally killing another person for a reason other than self-defence, or to use physical violence to forcibly take another person's property – would be obviously wrong, immoral and criminal to a young person aged between 12 and 14. However, they argued that such a young person might not appreciate more nuanced situations of culpability, such as consent to a sexual act being invalid where a person is heavily intoxicated.[42]

3.16. In their submission, the Australian Lawyers Alliance suggested that the MACR should be raised to 14 years, and that there was 'no reason in principle or logic' for the MACR to be raised in stages:

> 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.[43]

3.17. The ACT Law Society, in their submission, noted that the presumption of *doli incapax* for children and young people under the age of 14 is complex and can take 'a significant amount of time to resolve', which can add to the trauma of the young person and, in the case of sexual offence proceedings, potentially retraumatise victims if proceedings are commenced and then ended. They considered that the presumption of *doli incapax* could be removed entirely by raising the MACR to 14.[44]

3.18. In their submission, the ACT Human Rights Commission described raising the MACR as 'a vital investment in the safety, wellbeing and human rights of our community into the future'. Noting their own previous calls for the MACR to be raised to 14 'at the earliest opportunity', the Commission nonetheless recognised 'the need for a staged approach' to allow for development of the service system response.[45]

3.19. Change the Record said in their submission that, while 'Nothing dramatic changes in a child's development at 14 years old', there was clear evidence that this age was 'the bare minimum' to expect sufficient neurological development to be held criminally responsible. Change the Record noted that some countries have set their MACR to be 15, 16, or 18.[46]

3.20. In their submission, Australians for Native Title and Reconciliation (ANTAR) said that recognition that children under 14 do not have the neurological development to be held

[41] Office of the Director of Public Prosecutions, *Submission 012*, pp 2–3.
[42] Office of the Director of Public Prosecutions, *Submission 012*, p 5.
[43] Australian Lawyers Alliance, *Submission 014*, p 3.
[44] ACT Law Society, *Submission 015*, p 2.
[45] ACT Human Rights Commission, *Submission 018*, pp 2–3.
[46] Change the Record, *Submission 019*, p 4.

criminally responsible is already recognised and established in Australian law under the doctrine of *doli incapax*, but that this doctrine did not work in practice. ANTAR were 'relieved' that the Bill proposed raising the MACR to 14, and argued that there was 'no justifiable reason why this must be delayed' by first raising the age to 12.[47]

3.21. The Aboriginal Legal Service (NSW/ACT) welcomed the proposal to raise the MACR to 14, but expressed concern that this would be delayed, saying that the justification given in the *Explanatory Statement* to the Bill was 'inadequate' and that children aged 12 to 13 years would remain exposed a system that was 'inappropriate and harmful'.[48]

3.22. The Royal Australasian College of Physicians told the Committee during the public hearing that there was 'a wealth of evidence' of immaturity of children under 14 years old. They noted that 'very significant changes in the brain' are triggered by puberty, which may not start until 13 or 14 years old in many children, and that other factors such as trauma, drug and alcohol use, abuse and neglect could also affect brain development:

> So we are very concerned about the child of 12 still being immature.
>
> There is growing evidence around the development of the brain that is essentially underpinning and instrumental in a person's ability to make decisions and manage their behaviour. Really, it is the onset of puberty that triggers quite a lot of that structural change.[49]

3.23. The Committee received confidential evidence providing feedback based on lived experience:

> Kids get in so young and become so angry.
>
> When you're in Bimberi you lose all hope; you just don't care.
>
> When you first get put in that cell, you get angry, and it changes you.[50]

3.24. In their submission, the Australian Federal Police Association (AFPA) noted that currently in Australia children aged over 10 and under 14 are subject to criminal law but protected by the legal doctrine of *doli incapax*, whereby young people are held to be incapable of committing a crime unless the prosecution can prove that they knew their behaviour was wrong. AFPA questioned how *doli incapax* would apply under the reforms proposed by the Bill.[51]

3.25. ACT Policing expressed support in their submission for raising the MACR to 12 years. They were also strongly in favour of 'national consistency' in relation to the MACR, noting the ACT's porous border with New South Wales (NSW).[52]

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[47] Australians for Native Title and Reconciliation, *Submission 020*, p 4.
[48] Aboriginal Legal Service (NSW/ACT), *Submission 021*, p 3.
[49] Dr Jacqueline Small, President, Royal Australasian College of Physicians, *Proof Committee Hansard*, 15 June 2023, p 43.
[50] Confidential, *Submission 023*, quoted with permission.
[51] Australian Federal Police Association, *Submission 013*, p 4.
[52] ACT Policing, *Submission 016*, p 3.

3.26. During the public hearing on 15 June 2021, ACT Policing reiterated that they support the raising of the MACR to 12 years, in order to 'put the community's needs at the forefront, but also the children'.[53]

3.27. However, ACT Policing were hesitant to raise the MACR beyond 12 years of age, due to its wide-ranging impacts:

> Because we said you will not differentiate between crime types with liabilities. That is the great hesitancy there. As we have seen it act out recently, there are some children who are quite large in stature and they commit very serious crimes—aggravated assaults, burglaries, offensives with weapons and the like. To allow for those children not to be able to be criminally liable I think is a very dangerous slippery slope.[54]

### Committee Comment

3.28. The Committee is of the view that the MACR should be raised to 12 years, as proposed by the Bill.

3.29. The questions of whether the age should be raised to 14, statutory review and exemptions were more nuanced with sometimes divergent views from the members of this Committee. These should be considered by government in conjunction with matters concerning 'carve-outs' and legislation review as described in the following sections, as well as the additional comments and dissenting reports made by individual committee members.

#### Recommendation 1

The Committee recommends that the ACT Government raise the minimum age of criminal responsibility to 12.

#### Recommendation 2

The Committee recommends that the ACT Government should then raise the minimum age of criminal responsibility to 14.

## Review provisions

3.30. The Bill includes provision for a review after a 5-year period, which, according to the *Explanatory Statement*, will 'allow the ongoing need for exceptions to be further considered and tested once the alternative therapeutic system is fully operational and risks can be more accurately assessed'.[55]

3.31. In their submission, JRI favoured the review being brought forward to 2026, to allow for evaluation of three years with the MACR at 12 years old and one year of the MACR being

[53] Ms Linda Champion, Acting Deputy Chief Police Officer, ACT Policing, *Proof Committee Hansard*, 15 June 2023, p 17.
[54] Ms Linda Champion, Acting Deputy Chief Police Officer, ACT Policing, *Proof Committee Hansard,* 15 June 2023, p 17.
[55] Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023, *Explanatory Statement*, p 21.

14 years old. JRI was of the opinion that the review might find that carve outs were unnecessary and could be removed.[56]

3.32. The AFPA recommended in their submission that a report on the impacts of increasing the MACR be prepared and published, and additional consultation be undertaken, before a decision was made to increase the MACR further.[57]

3.33. In their submission, ACT Policing suggested that a review be carried out two years after raising the MACR to 12, to assess the impact and effectiveness of this reform before raising the MACR further. ACT Policing argued that this approach would allow service programs for the therapeutic system to be put in place and increase public confidence in the reforms.[58]

### Recommendation 3

The Committee recommends that the ACT Government ensure that the statutory review of the bill is conducted in a timely manner and no later than as currently drafted.

## Carve outs

3.34. Crimes which are exceptions to the minimum age of criminal responsibility (MACR), such as those proposed to be listed in Schedule 1 of the *Criminal Code 2002* (the Criminal Code), are commonly referred to as 'carve outs'.

3.35. Submitters were divided on whether it was appropriate for the Bill to include carve outs for 12–14 year-olds after 1 July 2025, and whether they should be retained or expanded.

### Support for removing carve outs

3.36. In their submission, JRI argued that 'The frame around which decision-making should be made with regard to the minimum age should be medical and developmental – not political', and that there should not be any exceptions to the MACR.[59]

3.37. JRI said that it was unclear why, for the exceptional offences to be listed in the schedule to the Criminal Code, detainment in a youth detention centre was considered more appropriate than detainment in a therapeutic setting.[60]

3.38. Save the Children and 54 Reasons strongly opposed the proposed carve outs in the Bill, saying in their submission that such exceptions undermined the objectives of raising the MACR and were inconsistent with medical, developmental and human rights-based rationales for raising the age.[61]

[56] Justice Reform Initiative, *Submission 001*, p 3.
[57] Australian Federal Police Association, *Submission 013*, p 6.
[58] ACT Policing, *Submission 016*, p 4.
[59] Justice Reform Initiative, *Submission 001*, p 1.
[60] Justice Reform Initiative, *Submission 001*, p 2.
[61] Save the Children and 54 Reasons, *Submission 004*, p 2.

3.39. In their submission, ACTCOSS argued that the inclusion of exceptions undermined the validity of the legislation, and expressed concern that they may lead to racial bias, resulting in a higher proportion of Indigenous young people in youth detention.[62]

3.40. ACTCOSS was strongly in favour of therapeutic support as an alternative to the criminal justice system, and argued that any children aged 12–13 years convicted of the proposed exceptional offences were likely to be more in need of such support than children facing lesser charges.[63]

3.41. In their submission, the Human Rights Law Centre argued that the MACR should be consistent across all offences, as the 'neuroscientific consensus as to the ability of children to understand and discern right and wrong does not distinguish between particular acts or behaviours'. Noting that children who come into contact with the criminal justice system are 'overwhelmingly' victims of trauma such as abuse, neglect and unmet needs, they said that carve outs to the MACR failed to acknowledge the link between such trauma and challenging behaviours.[64]

3.42. The Australian Lawyers Alliance did not support carve outs, saying:

> Whilst it is natural for the community to want to 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.[65]

3.43. In their submission, the ACT Law Society expressed strong objection to the inclusion of carve outs in the Bill, saying that such exceptions would undermine the purpose and rationale of raising the MACR, and describing the resulting 'inconsistent' MACR as 'deeply problematic'.[66]

3.44. ACT Policing said in their submission that, if the MACR were raised to 14 years, they did not support carve outs for serious offences, and that in ACT Policing's experience, 'children either have the cognitive ability to understand their actions or not, regardless of the crime type'.[67]

3.45. ACT Policing reiterated this view in response to a Question Taken on Notice during the public hearing on 15 June 2023. The Committee had asked them to consider the ODPP's submission listing several offences which the ODPP thought could be considered for inclusion in a schedule of exceptional offences. ACT Policing said that it would continue to work collaboratively with the ACT Government in raising the MACR, 'including an exploration of offence exceptions if required for the reasons raised in the Director of Public Prosecutions' submission'.[68]

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[62] ACTCOSS, *Submission 008*, p 2.
[63] ACTCOSS, *Submission 008*, p 3.
[64] Human Rights Law Centre, *Submission 010*, p 2.
[65] Australian Lawyers Alliance, Submission 014, p 4.
[66] ACT Law Society, *Submission 015*, p 2.
[67] ACT Policing, *Submission 016*, p 3.
[68] ACT Policing, Answer to QTON 2, 27 June 2023.

3.46. In their submission, Legal Aid ACT expressed concern that exceptions to the MACR were 'at odds with both scientific understanding of young peoples' development and criminological understanding of the effects of early exposure to justice procedures'. Nonetheless, Legal Aid ACT supported such exceptions on a temporary basis to allow adequate support and management processes to be put in place.[69]

3.47. The ACT Human Rights Commission expressed concern in their submission that:

> … excepting offences from an increased MACR is inconsistent with the rights protected in the HR Act, including the rights of children (s 11(2)) and the right to equality and non-discrimination (s 8).[70]

3.48. Dr Helen Watchirs, President and Human Rights Commissioner, emphasised during the public hearing on 15 June 2023 that carve outs are unlikely to deter recidivism:

> Also, it is unlikely to deter future offending, and therefore it will not protect the community, because the younger the person comes into detention the more likely they are to be a recidivist, and, of course, there is the disproportionate impact on Aboriginal and Torres Strait Islander young people in compounding their disadvantage. The national average is 14 times, and in the ACT it is slightly lower at 12½ times, but that is still very significant, and we would not want that to be the picture in the ACT.[71]

3.49. The Commission argued that exceptions could not rationally deter offending by children and young people who were likely unable to form criminal intent, and would instead increase the likelihood of further offending by exposing young people to the criminal justice system and detention.[72]

3.50. The Commission in its submission recommended:

> We would therefore recommend that, to ensure consistency with human rights, the ACT Government moves Government amendments to remove the prescribed exceptions from the Bill or otherwise ensure that they are scheduled to sunset within six months of the proposed statutory review.[73]

3.51. In their submission, Change the Record claimed that it was 'extremely rare' for children under 14 years old to be arrested and charged with serious or violent offending, and that children who did engage in such behaviour 'almost invariably' had themselves suffered trauma or violence or had serious mental health and behavioural needs. Change the Record said that carving out offences on the basis of severity was 'the opposite of trauma-informed' and was an incoherent approach.[74]

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[69] Legal Aid ACT, *Submission 017*, p 2.
[70] ACT Human Rights Commission, *Submission 018*, p 4.
[71] Dr Helen Watchirs, President and Human Rights Commissioner, ACT Human Rights Commission, *Proof Committee Hansard*, 15 June 2023, pp 53–54.
[72] ACT Human Rights Commission, *Submission 018*, p 4.
[73] ACT Human Rights Commission, Submission 18, p 6.
[74] Change the Record, *Submission 019*, pp 4–5.

3.52. During the public hearing, Ms Maggie Munn, Acting Executive Officer at Change the Record, stated that they have a series of underlying principles as part of their national campaign, and one of those is that the age must be raised to 14, without exceptions or carve outs:[75]

> The reason that we have settled on no carve outs is that often we can see, when there are carve outs or exceptions in that process, that it might lead to, in a number of instances, the upgrading of charges. You might see in particular circumstances that, if there is a carve out or an exception for theft or stealing, a simple offence or a minor offence in comparison to that could have the potential to be upgraded, which would see a greater number of children come into contact with the system for a higher charged offence.
>
> Additionally, it is our view that all children under the age of 14, regardless of their ability or neurodivergent, neurotypical status, lack that capacity. That is supported by medical evidence and psychological evidence as well. Having a blanket rule on no carve outs or exceptions gives us the opportunity, and gives government the opportunity, to really address the issues at hand.[76]

3.53. Change the Record expressed concern that, if the Bill were to pass in its current form with carve outs, 'there is the possibility for the upgrading of charges, which is a very real risk that could occur', and further that:[77]

> A lot of the issues that we are seeing for children who are coming into contact with the legal system are behavioural in nature, not necessarily criminal in nature. I worry that if there are carve outs for the four offences listed within the bill then that reduces the opportunity for those children to gain access to the services and support mechanisms that will help them navigate their behaviour and address the root causes of what it is that they are doing.[78]

3.54. The Aboriginal Legal Service (NSW/ACT) described the inclusion of carve outs as 'fundamentally inconsistent with the principles underpinning the Bill'. They noted that a child charged with an offence under proposed Schedule 1 to the Criminal Code could be remanded in a youth detention centre while their matter was proceeding, and could later be found not guilty – including by *doli incapax*. They said:

> In these circumstances, a child as young as 12 will experience the adverse impacts of early-life incarceration for a matter that they are ultimately found not guilty of due to their inability to appreciate the wrongness of their conduct due to their young age. Such a situation is a grave outcome of our present system and is not remedied by the reforms proposed by the Bill.[79]

[75] Ms Maggie Munn, Acting Executive Officer, Change the Record, *Proof Committee Hansard*, 15 June 2023, p 48.
[76] Ms Maggie Munn, Acting Executive Officer, Change the Record, *Proof Committee Hansard*, 15 June 2023, p 49.
[77] Ms Maggie Munn, Acting Executive Officer, Change the Record, *Proof Committee Hansard*, 15 June 2023, p 50.
[78] Ms Maggie Munn, Acting Executive Officer, Change the Record, *Proof Committee Hansard*, 15 June 2023, p 50.
[79] Aboriginal Legal Service (NSW/ACT), *Submission 021*, pp 3–4.

3.55. The Aboriginal Legal Service (NSW/ACT) also expressed concern in their submission that allowing for exceptions to the MACR would create a precedent and allow for expansion of such exceptions in future.[80]

3.56. In their submission, the Office of the Inspector of Correctional Services (OICS) said that the introduction of carve outs to raising the MACR was 'fundamentally at odds with human rights and medical evidence'. They said that a child's level of culpability was not determined by their conduct, nor by how serious their actions or the consequences of those actions might be, but by their developmental stage and their ability to appreciate those consequences.[81]

3.57. This was reiterated by Ms Rebecca Minty, Inspector of Correctional Services, at the public hearing:

> To have carve-outs below the age of 14 goes against the very scientific evidence and developmental basis of actually raising the age in the first place. The evidence shows that very few children under the age of 14 commit those most serious offences. So we are talking about very few children, but, nevertheless, it undermines the evidence base, I believe—and I think that has been well documented in various sources.[82]

## Support for retaining or extending carve outs

3.58. In his submission, Bill Stefaniak said that carve outs should remain, and should include 10–12 year-olds, to allow for the prosecution of the most serious crimes. Mr Stefaniak noted that very few 10 and 11 year-olds are charged with criminal offences, and suggested such exceptions be reviewed after five years.[83]

3.59. However, Mr Stefaniak considered the Bill's approach to 12 and 13 year-olds a 'grave mistake', and suggested extending the carve outs for this age group to include other serious offences such as the supply of prohibited drugs and aggravated burglary.[84]

3.60. During the public hearing, Dr John Boersig, Chief Executive Officer of Legal Aid ACT, told the Committee that he is 'comfortable with the carve outs as put forward in the legislation. But not in the long-term'.

> We have seen how important community support is for this kind of change in public policy. Going slower, it seems to me—and to be well supported by CYPS and the police—would contextualise movement through to after 14.[85]

3.61. The ODPP observed that the offences proposed as exceptions to the MACR of 14 appeared to have been chosen due to their significant maximum penalties. They suggested that other offences may equally validly be considered for exceptions:

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[80] Aboriginal Legal Service (NSW/ACT), *Submission 021*, p 4.
[81] Office of the Inspector of Correctional Services, *Submission 022*, p 5.
[82] Ms Rebecca Minty, Inspector of Correctional Services, *Proof Committee Hansard*, 15 June 2023, p 38.
[83] Bill Stefaniak, *Submission 002*, p 1.
[84] Bill Stefaniak, *Submission 002*, p 1.
[85] Dr John Boersig, Chief Executive Officer, Legal Aid ACT, *Proof Committee Hansard*, 15 June 2023, p 29.

> At a minimum, offences which involve intentionally harmful or violent conduct ought to be captured (such as murder, serious sex offences, and intentionally inflicting actual or grievous bodily harm). Further, offences which cause significant harm whilst the offender holds a sufficiently culpable state of mind might also be included (such as manslaughter).[86]

3.62. In an annexe to their submission, the ODPP proposed approximately 20 offences and classes of offences which could be considered for inclusion in the list of exceptions, 14 of which they suggested for 'particular consideration'. These included kidnapping, arson, sexual offences and forcible confinement.[87]

3.63. At the public hearing, Mr Shane Rattenbury MLA, Attorney-General, acknowledged that carve outs were 'a heavily contested part of the legislation':[88]

> The government has determined that there are those four offences that require intention and result serious harm as being the threshold that is considered to strike a principle balanced approach. This will be reviewed after a period of time, which is specified in the legislation.[89]

3.64. Also during the public hearing on 15 June 2023, Ms Rachel Stephen-Smith MLA, Minister for Families and Community Services, expressed concern that the ACT did not currently have a service system capable of responding to very serious offending by a young person:

> I think ACTCOSS pointed out in their evidence today that in fact no young person aged between 10 and 13 have committed any of these four offences in the ACT. Their conclusion from that was that, if it did happen, we could deal with it. My conclusion from a practical sense is that, if it did happen, I am not convinced that we could deal with it in a non-criminal way.
>
> […]
>
> What we would do in such a case in the ACT, I do not know, and I do not believe that we have a service system that could respond. We do not have a psychiatric facility that would be appropriate for confining and detaining a 13-year-old. We could not establish a bespoke response in a short period of time and, if we did establish a bespoke response in a short period of time, it would effectively mean segregating, detaining and confining a young person.[90]

## Therapeutic Support Panel

3.65. In their submission, Youth Council of the ACT said that the TSP will play a 'vital' oversight role on both the individual and systemic levels in ensuring that efficacy of the reforms to the youth justice system made by the Bill. They called for clarity in the TSP's role and

[86] Office of the Director of Public Prosecutions, *Submission 012*, p 8.
[87] Office of the Director of Public Prosecutions, *Submission 012*, pp 13–16.
[88] Mr Shane Rattenbury MLA, Attorney-General, *Proof Committee Hansard*, 15 June 2023, p 62.
[89] Mr Shane Rattenbury MLA, Attorney-General, *Proof Committee Hansard*, 15 June 2023, p 63.
[90] Ms Rachel Stephen-Smith MLA, Minister for Families and Community Services, *Proof Committee Hansard*, 15 June 2023, pp 63–64.

function, and said that it must be given the authority and enabling environment to carry out this role.[91]

3.66. The AFPA suggested in their submission that the part of the Bill governing referrals to the TSP be expanded to include such behaviours as cruelty to animals, noting that this behaviour can be an indicator of serious mental disorder or illness.[92]

3.67. During the public hearing on 15 June 2023, the AFPA noted that arson was another such behaviour, and that early intervention by police when such behaviour occurred may prevent more serious offending in future:

> Getting that young person help earlier is better than letting them commit a more serious offence down the track.[93]

## Committee Comment

3.68. The Committee considers that including behaviours such as cruelty to animals as precursors to referral to the TSP is likely to provide necessary support to troubled young people before their harmful behaviour escalates, and will therefore also contribute to community safety.

### Recommendation 4

The Committee recommends that the ACT Government expand *Section 501Q (1), Part 14A.3 – Referrals to Therapeutic Support Panel* of the Bill to include additional behaviours, such as cruelty towards animals, arson, and starting bush fires, as a precursor for referral to the Therapeutic Support Panel.

3.69. In their submission, the ACT Human Rights Commission argued that successful implementation of the reforms made by the Bill would depend on adequate resourcing of the service system response. They said there was a 'clear need' to build capacity and capability in the child and family support and youth sectors for early response to emerging harmful behaviours and to ensure that wraparound support services could be quickly mobilised. They also called for a rapid response to enable 'children and young people to be transitioned to alternate supports within a minimum of one hour post police intervention'.[94]

3.70. During the public hearing on 15 June 2023, the Public Advocate and Children and Young People Commissioner said that it was important to be able to bring children to the TSP 'at the earliest possible opportunity' and to use the expertise of the panel to identify any additional assessments and supports required.[95]

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[91] Youth Council of the ACT, *Submission 005*, p 1.
[92] Australian Federal Police Association, *Submission 013*, p 7.
[93] Mr Troy Roberts, Government Relationships Manager, Australian Federal Police Association, *Proof Committee Hansard*, 15 June 2023, p 9.
[94] ACT Human Rights Commission, *Submission 018*, pp 9-10.
[95] Ms Jodie Griffiths-Cook, ACT Public Advocate and Children and Young People Commissioner, *Proof Committee Hansard*, 15 June 2023, p 55.

3.71. The Victims of Crime Commissioner also noted during the hearing that, because young people coming into contact with the criminal justice process at a young age often had experience of victimisation and trauma which led to their behaviour, 'the faster we can actually get support to that young person following an incident the better understanding we will have of what those drivers were'.[96]

3.72. Noting that Section 501R of the Bill requires the chair of the TSP to consider a referral 'promptly', the AFPA suggested in their submission that a specific timeframe should be mandated.[97]

3.73. ACTCOSS also recommended, during the public hearing on 15 June 2023, that the TSP be able to respond quickly, suggesting that the panel should be called in to respond and refer young people to specific services within 24 hours.[98]

## Committee Comment

3.74. The Committee is of the view that a specific timeframe for the TSP to act on referrals is in the best interests of the children and young people referred, and will facilitate reporting on the effectiveness and impact of the TSP under the review provisions of the Bill. The Committee's view is that this should preferably be within 12 hours.

### Recommendation 5

The Committee recommends that the ACT Government amend *Section 501R – Panel to act on referrals, part 2, (a)* of the Bill to mandate a specific timeframe, within 12 hours.

3.75. The AFPA expressed concern that it was unclear whether police officers would have access to therapy plans and intensive therapy history when interacting with young offenders, and questioned whether there would be penalties for failing to maintain the Intensive Therapy Register.[99]

3.76. They suggested that the reporting requirements of the TSP be expanded to mandate the production of annual administrative reports.[100]

[96] Ms Heidi Yates, ACT, Victims of Crime Commissioner, *Proof Committee Hansard*, 15 June 2023, p 59.
[97] Australian Federal Police Association, *Submission 013*, pp 7–8.
[98] Dr Gemma Killen, Head of Policy, ACTCOSS, *Proof Committee Hansard*, 15 June 2023, p 21.
[99] Australian Federal Police Association, *Submission 013*, p 6.
[100] Australian Federal Police Association, *Submission 013*, p 8.

### Committee Comment

3.77. The Committee considers that an annual reporting requirement would allow for appropriate oversight and monitoring of the effectiveness and operation of the TSP.

> **Recommendation 6**
>
> The Committee recommends that the ACT Government amend *Part 14A.4 – Reporting by the Therapeutic Support Panel – Section 501T* of the Bill to mandate the production of administrative reports, similar to an annual report tabled in the ACT Legislative Assembly.

3.78. In their submission, the AFPA suggested that where the Director-General's functions under the *Children and Young People Act 2008* were expanded under the Bill to include the provision of services for the safety and wellbeing of children and young people, including those who carry out or are at risk of carrying out harmful behaviour, those functions should specifically include education services.[101]

### Committee Comment

3.79. The Committee agrees that education is an important service to be provided to young people, including those engaged in harmful behaviour, and should be specified in the Director-General's functions.

> **Recommendation 7**
>
> The Committee recommends that the ACT Government amend Part 2 – *Children and Young People Act 2008*, Section 5 of the Bill to add provision of education services to the Director-General's functions in new section 22 (1) (ea) and (eb) as follows:
>
> - (ea) providing, or assisting in providing, services including education for the safety and wellbeing of children and young people;
> - (eb) providing, or assisting in providing, services including education for the safety and wellbeing of children and young people who carry out, or are at risk of carrying out, harmful conduct.

## Intensive Treatment Orders and places of detention

3.80. In their submission, Save the Children and 54 Reasons noted that provisions for places of confinement under Intensive Treatment Orders (ITOs) directly limit children and young people's human rights, including 'the right to protection from torture and cruel, inhuman or degrading treatment'.[102]

[101] Australian Federal Police Association, *Submission 013*, p 6.
[102] Save the Children and 54 Reasons, *Submission 004*, p 2.

3.81. ACTCOSS expressed concern in their submission that ITOs and intensive therapy places 'must not become alternative carceral sites'. They said that assessments, processes and orders or placements made for children under the MACR must be considered a 'wholly alternative process to criminal proceedings' to meet children's needs and respect their rights.[103]

3.82. In their submission, the Human Rights Law Centre described the potential confinement of a child at an intensive therapy place as 'coercive and punitive' and said it was unlikely to be effective. They also expressed concern that intensive therapy places may not be subject to independent oversight under the UN Optional Protocol to the Convention Against Torture (OPCAT).[104]

3.83. The ODPP noted in their submission that raising the MACR would not stop violent and recidivist conduct amongst young people under that age, and said that an inability to detain 'therapeutically (not punitively)' young people presenting a substantial risk to themselves or others would lead to avoidable tragedies. For this reason, the ODPP was supportive of the intensive therapy regime.[105]

3.84. Legal Aid ACT expressed concern in their submission that there was no provision for a young person to have legal representation throughout the ITO process or in TSP proceedings.[106]

3.85. In their submission, the ACT Human Rights Commission welcomed minimum standards for intensive therapy places, and the requirement that such places not also be used to accommodate young detainees. The Commission recommended that minimum entitlements for children and young people confined in intensive therapy places also be legislated by amendments to the *Children and Young People Act 2008*.[107]

3.86. Change the Record said in their submission that 'Engagement with therapeutic support and services should be voluntary and non-coercive', and that it was not appropriate to use coercive measures to force compliance with a therapeutic program. They expressed concern that intensive therapy places would not be subject to oversight by the ACT National Preventive Mechanism and questioned whether the ACT Government would meet its obligations under OPCAT in relation to these places.[108]

3.87. During the public hearing, Change the Record said that it was unclear in the Bill what form confinement for the purposes of an ITO might take, and that one of their key concerns was that forcible confinement for these purposes would be no different to 'placing a child in solitary or in a detention facility'.[109]

3.88. In their submission, the Aboriginal Legal Service (NSW/ACT) welcomed the high standard of 'significant risk of significant harm' to be met before an ITO could be made by the Childrens

[103] ACTCOSS, *Submission 008*, p 4.
[104] Human Rights Law Centre, *Submission 010*, p 3.
[105] Office of the Director of Public Prosecutions, *Submission 012*, pp 8–9.
[106] Legal Aid ACT, *Submission 017*, p 3.
[107] ACT Human Rights Commission, *Submission 018*, pp 6–7.
[108] Change the Record, *Submission 019*, pp 7–8.
[109] Ms Maggie Munn, Acting Executive Officer, Change the Record, *Proof Committee Hansard*, 15 June 2023, p 52.

Court, but expressed concern that there was no requirement to demonstrate that less restrictive measures had been tried, or to consider that non-voluntary treatment or confinement could lead to greater harm, rather than 'merely being likely to reduce harmful conduct'.[110]

3.89. The Aboriginal Legal Service (NSW/ACT) also expressed concern that an intensive therapy place should be differentiated from a youth detention centre, and should be subject to the oversight of the ACT National Preventive Mechanism and meet the ACT's obligations under OPCAT.[111]

3.90. The Office of the Inspector of Correctional Services argued in their submission that, if children and young people were to be confined at intensive therapy places, those places should not be places formerly used to accommodate young detainees, or within any facility whose purpose was to house young detainees, such as a building or area within Bimberi Youth Justice Centre not being used to accommodate detainees.[112]

3.91. During the public hearing on 15 June 2023, Ms Rebecca Minty, the ACT Inspector of Correctional Services, elaborated:

> The reason for putting that recommendation is essentially that a detention centre has a security focus. There is a secure perimeter and there are various arrangements that are focused on safety and security.
>
> I definitely acknowledge there are services for children and young people in Bimberi. There is a lot of great work being done by staff in Bimberi that have a therapeutic focus. But, if we are to realise the objective of wraparound intensive therapy, an environment that is a correctional centre or a former correctional centre, in my view, is not an appropriate place for those to be.[113]

## Committee Comment

3.92. The Committee considers that confinement for the purposes of intensive therapy should be clearly differentiated from punitive detention. The Committee is of the opinion that detention facilities and former detention facilities are not appropriate environments to provide therapeutic support for children and young people, and that such places should not be used as intensive therapy places.

### Recommendation 8

The Committee recommends that the ACT Government amend the Bill so that Cl 12 589 explicitly states that places can only be declared intensive therapy places if they have not formerly been used to accommodate young detainees and are not located in any part of a facility whose purpose is to house young detainees.

[110] Aboriginal Legal Service (NSW/ACT), *Submission 021*, p 5.
[111] Aboriginal Legal Service (NSW/ACT), *Submission 021*, p 6.
[112] Office of the Inspector of Correctional Services, *Submission 022*, p 11.
[113] Ms Rebecca Minty, ACT Inspector of Correctional Services, *Proof Committee Hansard*, 15 June 2023, pp 40–41.

3.93. The OICS, in their submission, noted that the *Human Rights Committee General Comment No. 35 Article 9 (Liberty and security of person)* had cautioned that administrative detention 'not in contemplation of prosecution on a criminal charge' should only be used in 'the most exceptional circumstances'.[114]

3.94. The OICS said that the ACT National Preventive Mechanism bodies should, in accordance with OPCAT, have 'unfettered' access to all people, places and information in relation to places where people may be deprived of their liberty, and that these places must include intensive therapy places.[115]

3.95. During the public hearing on 15 June 2023, Ms Rebecca Minty, ACT Inspector of Correctional Services reiterated this position, noting that '[a] place can be therapeutic focused and still be a place of detention'.[116]

## Committee Comment

3.96. The Committee is of the opinion that, as intensive therapy places will have the potential to be places of confinement of children and young people, the ACT National Preventive Mechanism bodies, including the OICS, should have access to these places to meet the ACT's commitments under OPCAT.

### Recommendation 9

The Committee recommends that the ACT Government amend the Bill to explicitly provide that the ACT National Preventive Mechanism bodies, including the Office of the Inspector of Correctional Services, have unfettered access to intensive therapy places, in accordance with the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*.

### Recommendation 10

The Committee recommends that the ACT Government amend the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018* to enshrine the requisite powers, privileges and immunities of the ACT National Preventive Measures bodies, in accordance with the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.*

3.97. The Office of the Inspector of Correctional Services also noted that the Inspector was not listed in the Bill as an 'accredited person' for the purposes of visiting a child or young person or having access to an intensive therapy register.[117]

[114] Office of the Inspector of Correctional Services, *Submission 022*, p 7.
[115] Office of the Inspector of Correctional Services, *Submission 022*, p 8.
[116] Ms Rebecca Minty, ACT Inspector of Correctional Services, *Proof Committee Hansard*, 15 June 2023, p 39.
[117] Office of the Inspector of Correctional Services, *Submission 022*, p 10.

3.98. In their submission, the AFPA suggested that a young person's general practitioner be added to the list of accredited people able to visit a child or young person in intensive therapy.[118]

### Committee Comment

3.99. The Committee agrees that the Inspector of Correctional Services should be an accredited person and able to visit any child or young person in an intensive therapy place, and have access to the intensive therapy register. The Committee is also of the opinion that it is appropriate for a child or young person to have the support of their general practitioner while in intensive therapy.

#### Recommendation 11

The Committee recommends that the ACT Government amend the Bill to include the Inspector of Correctional Services under Cl 12 578 and 597(1).

#### Recommendation 12

The Committee recommends that the ACT Government amend *Division 16.3.3 – Visits by accredited people, section 578 – who is an accredited person* of the Bill to include a young person's general practitioner.

## Indigenous and cultural input

3.100. Several submitters[119] noted that Indigenous children and young people are over-represented in the youth justice system.

3.101. In their submission, the AFPA expressed concern that the proposed makeup of the TSP would not adequately reflect the diverse cultures and heritages of ACT citizens, and recommended that the provision for Aboriginal and Torres Strait Islander representation on the TSP be extended to other culturally and linguistically diverse people living in the ACT.[120]

3.102. Change the Record expressed concern that Indigenous children would continue to be disproportionately affected by measures under the Bill, including possible confinement under an ITO.[121]

3.103. Change the Record also noted in their submission that, while the Bill requires at least one Aboriginal or Torres Strait Islander person to be appointed to the TSP, and at least one person 'to represent Aboriginal and Torres Strait Islander people[122], this second person was

[118] Australian Federal Police Association, *Submission 013*, pp 8–9.
[119] See, for example: Chloe Maddison, *Submission 003*, pp 2–3; ACTCOSS, *Submission 008*, p 1; Centre for Excellence in Child and Family Welfare, *Submission 009*, p 1; Australian Federal Police Association, *Submission 013*, p 1; Australian Lawyers Alliance, *Submission 014*, p 5; Change the Record, *Submission 019*, p 7; Aboriginal Legal Service (NSW/ACT), Submission 21, p 3.
[120] Australian Federal Police Association, *Submission 013*, pp 6–7.
[121] Change the Record, *Submission 019*, p 7.
[122] Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023, subcl 501E (4) (a).

not themselves required to be Indigenous and therefore only one Indigenous person was required to be included on the TSP. They expressed concern that this would not adequately provide for self-determination over the care and support of Aboriginal and Torres Strait Islander children and young people, and said the 'limited' role of the Aboriginal and Torres Strait Islander Children's Commissioner was not sufficient to address these concerns.[123]

3.104. During the public hearing, Change the Record said that services could be provided in community:

> We have Aboriginal health services who provide quite a lot of culturally safe services within our communities. There could be opportunities for greater investments to have a focus on therapeutic responses, not just for children but also for the family.[124]

3.105. They also expressed concern that intergenerational trauma could be perpetuated without culturally appropriate interventions being available:

> There is an intergenerational impact of the stolen generations. When we have looked at the trajectory, parents have gone through the current system that we have in regard to incarceration. What we see is that—and evidence demonstrates this—people come out more traumatised than they would if they were receiving any therapeutic-type response and supports.[125]

3.106. In their submission, ANTAR said that Indigenous input was 'critical' to decision-making regarding children's care being credible, culturally safe and supported by the community.[126]

## Committee Comment

3.107. The Committee is of the opinion that culturally appropriate care is important to ensure the wellbeing of children and young people from all backgrounds, and that the Therapeutic Support Panel should include elders from different cultures and especially sufficient representation from local Indigenous communities.

### Recommendation 13

The Committee recommends that the ACT Government amend *Section 501E* of *Part 14A.2 – Therapeutic Support Panel for Children and Young People* of the Bill to support the inclusion of panel members regarded as elders within their own cultural groups.

[123] Change the Record, *Submission 019*, p 8.
[124] Ms Maggie Munn, Acting Executive Officer, Change the Record, *Proof Committee Hansard*, 15 June 2023, p 52.
[125] Ms Maggie Munn, Acting Executive Officer, Change the Record, *Proof Committee Hansard*, 15 June 2023, p 52.
[126] Australians for Native Title and Reconciliation, *Submission 020*, p 6.

## Criminal records

3.108. In their submission, Change the Record expressed strong support for the extinguishment of criminal records for children and young people.[127]

3.109. ACT Policing's submission also supported the proposed extinguishment of convictions for children and young people under the MACR. However, they recommended that the ACT recognise interstate criminal orders which may apply to children and young people under the ACT MACR. ACT Policing noted that this would be consistent with the ACT Government's commitment to the National Domestic Violence Order Scheme which ensures that all Family Violence Orders issued in an Australian state or territory are recognised and enforceable across Australia.

> For example, allowing ACT Policing to enforce a Family Violence Order that has been issued by a New South Wales court to an 11-year-old who has breached their conditions. ACT Policing notes this approach would align with the ACT Government's commitment to the National Domestic Violence Order Scheme which, since 25 November 2017, has provided that all Family Violence Orders issued in an Australian state or territory are automatically recognised and enforceable across Australia. In practice, this means ACT Policing has committed to enforcing the conditions of a Family Violence Order, regardless of where it was issued. [128]

3.110. In their submission, JRI supported the extinguishment of convictions for children and young people under the MACR, but expressed concern that this would not be the case for the purposes of Working With Vulnerable People (WWVP) checks. JRI stated that this exception posed a risk that offences by (for example) 12-year-old children could pose a life-long barrier to employment.

> We believe that the WWVP process, while absolutely vital to protecting vulnerable people in our community, needs to also provide for people to rehabilitate and not prevent them from employment or volunteer work when they are no longer a risk to our community. [129]

3.111. During the hearing, the Attorney-General noted the risk assessment process involved in issuing a Working With Vulnerable People card, saying:

> That does not mean a person cannot get a working with vulnerable people card; it simply means that that history needs to be disclosed for the purposes of the risk assessment.[130]

### Committee Comment

3.112. However, the Committee notes that under amendment A2020-29, section 65A was introduced into the *Working with Vulnerable People (Background Checking) Act 2011* (the

[127] Change the Record, Submission 019, p 10.
[128] ACT Policing, *Submission 016*, pp 6–7.
[129] Justice Reform Initiative, *Submission 001*, pp 4–5.
[130] Mr Shane Rattenbury MLA, Attorney-General, *Proof Committee Hansard*, 15 June 2023, p 78.

Act), effective 1 February 2021, meaning that a WWVP card cannot be granted to someone who has been convicted of a 'Class A disqualifying offence' as listed in Schedule 3, Part 3.2, of the Act. This also applies to a person who already held a WWVP card but had previously been convicted of a Class A disqualifying offence. At the time of the publishing of this report, there were 90 offences listed in Schedule 3: 89 under the *Crimes Act 1900* and one under the *Sex Work Act 1992*. In other words, an individual who had been convicted of one of these 90 offences can never be registered under the WWVP scheme, seemingly a contradiction to principles of restorative justice.

3.113. The Committee appreciates that risk to the community must be weighed against risk to the young person concerned when conducting a Working With Vulnerable People assessment, but that the current approach is against restorative justice practice. The Committee considers that a discretionary approach to such convictions is required.

### Recommendation 14

The Committee recommends that the ACT Government include a discretion in relation to the eligibility for the Working With Vulnerable People card that is in line with restorative justice practice.

## Family violence and protection orders

3.114. In their submission, the ACT Law Society expressed concern that, under the Bill, children below the age of 14 could not be listed as respondents to applications for family violence orders or protection orders. They remarked that criminal intent was not relevant to whether an applicant feared or required protection from a child or young person, but also noted that whether a child should be held criminally liable for breaching such an order was a separate matter. They noted that access to therapeutic pathways under the Bill did not require that a child had committed a criminal offence, and suggested that such pathways should be made available to a child who breached such an order.[131]

3.115. Change the Record supported the provisions removing the potential for children to be respondents to family violence orders and protection orders, and praised the government for including these provisions in the Bill.[132]

3.116. During the public hearing on 15 June, Mr Chris Donohue suggested that there was a need for children and young people to be able to be listed as respondents to such orders:

> My view is that to change that system and not allow personal protection orders against children misbehaving in the way that is envisaged in the act would be not a good thing. It is proposed to not allow any orders to be made against children. I think the community needs the protection of the opportunity to say, "I am in my home alone. My next-door neighbours have got rampant children. I need to get an order to stop them from coming over my fence and chasing my dog, cutting

[131] ACT Law Society, *Submission 015*, p 4.
[132] Change the Record, *Submission 019*, p 10.

> things and generally terrorising me." So they get the order. If it is made permanent and there is a breach of the order, then that is the point when it becomes criminal and that is where the criminal sanctions do not apply. It goes into the therapeutic approach.[133]

3.117. Legal Aid ACT agreed that there could be reason to list a child or young person as a respondent to a protection order:

> …from our point of view, there is a real and palpable reason for protections being in place in certain circumstances. Here is a good example of where, if we are proposing an alternative, you need to have some process to catch those issues that would otherwise be managed through family violence orders. They are very important, currently, for the protection of some young people. We need a viable alternative before we want to go down this way.[134]

### Committee Comment

3.118. The Committee is of the view that children and young people should be able to be listed as respondents to family violence and protection orders.

#### Recommendation 15

The Committee recommends that the ACT Government ensure protections are accessible to victims of domestic and family violence from children under the minimum age of criminal responsibility.

## Victims of crime

3.119. In their submission, the AFPA said that the introduction of the Bill was likely to have a negative impact on victims of crime, who would no longer be able to be heard during court proceedings or be involved at the crucial points of an investigation. The AFPA was also concerned that the Bill may impact victims' eligibility for victim support services and financial aid, as these usually require a crime number.[135]

3.120. ACT Policing's submission supported the provisions in the Bill allowing victims of crime to access victim support, to apply for financial assistance, and to provide a harm statement to the TSP. ACT Policing further noted that there was often a family relationship between young offenders and their victims, and said that sufficient support to identify victims and the risks in their environment was important to prevent re-victimisation.[136]

3.121. ACT Policing also supported the retention of restorative justice for children under the raised MACR, 'as this may allow an offender to take responsibility regarding their actions,

[133] Mr Chris Donohue, *Proof Committee Hansard*, 15 June 2023, pp 30–31.
[134] Dr John Boersig, Chief Executive Officer, Legal Aid ACT, *Proof Committee Hansard*, 15 June 2023, p 31.
[135] Australian Federal Police Association, *Submission 013*, p 5.
[136] ACT Policing, *Submission 016*, p 6.

acknowledge the impact on the victim and provide the opportunity to repair harm and rehabilitate'.[137]

3.122. The ACT Human Rights Commission also welcomed the Bill's provisions allowing access to victim support, financial assistance and restorative justice.[138]

3.123. During the public hearing on 15 June 2023, Ms Heidi Yates, ACT Victims of Crime Commissioner, welcomed the 'significant weight' given to the consideration of victims' rights and interests in the Bill:

> The amendments that are coming with the bill, including to the Victims of Crime Act, are necessary just to make abundantly clear that people harmed by the conduct of young people between the ages of 10 and 12, and then 10 to 14, will remain eligible for advocacy, support and assistance under the Victims of Crime Act and under other acts like the Victims of Crime (Financial Assistance) Act.[139]

3.124. The Commission's submission suggested that the proposed new Division 3A.3A of the *Victims of Crime Act 1994*, as a subset of victims' rights, would be more logically placed immediately prior to Division 3A.7 (implementing victims' rights) than the location proposed in the Bill, being the Victims Charter of Rights. The Commission noted that:

> It is essential, from a victims' rights perspective, that the Victims Charter of Rights is logically sequenced, delineated and easy for those experiencing vulnerability to understand on the face and structure of the legislation.[140]

## Committee Comment

3.125. The Committee agrees that proposed new Division 3A.3A of the *Victims of Crime Act 1994* is more logically placed immediately before Division 3A.7.

### Recommendation 16

The Committee recommends that proposed Division 3A.3A from clause 129 be relocated to just prior to Division 3A.7 in the *Victims of Crime Act 1994*.

3.126. The ACT Human Rights Commission also expressed concern that the definition of a victim, for the purposes of proposed new Division 3A.3A of the *Victims of Crime Act 1994* may be too narrow in situations where a primary victim dies because of the actions of a child or young person:

> The definition of 'victim' in such circumstances is limited to a person who was financially or psychologically dependent on the primary victim *immediately* before the primary victim's death.[141]

[137] ACT Policing, *Submission 016*, p 6.
[138] ACT Human Rights Commission, *Submission 018*, p 7.
[139] Ms Heidi Yates, Victims of Crime Commissioner, *Proof Committee Hansard*, 15 June 2023, p 57.
[140] ACT Human Rights Commission, *Submission 018*, p 7–8.
[141] ACT Human Rights Commission, *Submission 018*, p 8.

3.127. The Commission noted that the word 'immediately' did not offer sufficient flexibility in the definition of 'victim' to include people who may be deeply affected by the primary victim's death but who were no longer financially or psychologically dependent on them at the time of death. The Commission further noted that comparable definitions of 'victim' in other sections and other legislation were not similarly restricted.[142]

## Committee Comment

3.128. The Committee is of the opinion that the word 'immediately' in the definition of victim for the purposes of proposed Division 3A.3A of the *Victims of Crime Act 1994* does not allow enough discretion in identifying a secondary victim.

### Recommendation 17

The Committee recommends that, to allow an appropriate degree of discretion to the Therapeutic Support Panel or Victims of Crime Commissioner in identifying whether a person is a secondary victim, the ACT Government amend the Bill to remove the word 'immediately' from paragraph (b) of the definition of 'victim' for the purposes of proposed Division 3A.3A of the *Victims of Crime Act 1994.*

3.129. The Commission further noted that proposed new section 15CG(d) of the *Victims of Crime Act 1994* requires that a victim of harmful behaviour be informed of their entitlement to make a harm statement, and how that statement may be used, including that 'a copy of the statement may be given to the child'.[143]

3.130. The Commission expressed concern that such advice may dissuade a victim from making a harm statement, when under proposed section 15CF(2)(b) a copy of a harm statement or part of a harm statement could only be provided to the child with the agreement of the maker of the statement.[144]

[142] ACT Human Rights Commission, *Submission 018*, p 8.
[143] ACT Human Rights Commission, *Submission 018*, p 8.
[144] ACT Human Rights Commission, *Submission 018*, pp 8–9.

### Committee Comment

3.131. The Committee is of the opinion that proposed section 15CF(2)(b) should clarify that a harm statement may only be given to the child if the maker of that statement agrees.

#### Recommendation 18

The Committee recommends that the ACT Government amend s 15CG(d) of the Bill to read:

- (d) how a statement may be used by the therapeutic support panel in carrying out its functions, including that—
- (i) a copy of the statement may be given to the child [if the maker of the statement agrees]; and
- (ii) the panel must consider the statement in carrying out its functions.

3.132. The Commission expressed concern that the amendment proposed by clause 132 of the Bill, which adds 'including a victim under division 3A.3A' to the definition of a victim, would not have any legal effect. The Commission noted that the definition of 'victim' under section 6 of the *Victims of Crime Act 1994* requires that the person has suffered harm in the course of, or as a result of, the commission of any offence or as a result of witnessing an offence, and argued that a person would meet this definition for the purposes of eligibility for victim support services whether or not a person alleged to have committed the offence could be found criminally responsible. The Commission suggested that the proposed amendment in clause 132 would undermine this interpretation.[145]

### Committee Comment

3.133. The Committee agrees that the proposed amendment is unnecessary and could have the unintended consequence of undermining the definition of victim for the purposes of eligibility for victim support services.

#### Recommendation 19

The Committee recommends that the ACT Government amend the Bill to remove the proposed amendment in Clause 132.

## Restorative justice

3.134. In their submission, Legal Aid ACT called for an increase in the availability of research-based diversions for young people to accompany the raising of the MACR. They noted that the only diversion currently available is Restorative Justice, which often has significant waiting periods.[146]

[145] ACT Human Rights Commission, *Submission 018*, p 9.
[146] Legal Aid ACT, *Submission 017*, p 5.

3.135. Legal Aid ACT suggested that funding a variety of early intervention programs found to be successful in other jurisdictions, such as 'on country' programs, drug and alcohol counselling services, cognitive behavioural therapy, anger management, family conflict resolution, and incentives related to school attendance, would ensure that the raised MACR was paired with 'an array of measures' to address the complexity of needs and behaviours of children and young people.[147]

3.136. During the public hearing on 15 June 2023, Ms Jodie Griffiths-Cook, Public Advocate and Children and Young People Commissioner, noted the beneficial effects possible from engaging in restorative justice practices:

> I have certainly seen in other jurisdictions that those restorative justice type processes, for example, where a child or a young person for the first time actually recognises and realises the impact that their behaviours have had on other people, can make a huge difference to the chances of them offending again.[148]

### Committee Comment

3.137. The Committee is of the view that restorative justice practices and other diversionary and early intervention practices should be extended and made more readily available to children and young people in the ACT.

#### Recommendation 20

The Committee recommends that the ACT Government ensure timely practice of restorative justice practices in the ACT to allow for these practices to be offered as part of therapeutic interventions for young people.

## Police powers

3.138. In their submission, the Human Rights Law Centre asserted that 'Police should not have any powers to arrest or detain children under the MACR in any circumstances'. They described exposure of young people to the criminal legal system as 'criminogenic', and called for an alternative model centring a therapeutic health response.[149]

3.139. ODPP said in their submission that the fact that police were not able to criminally charge and prosecute a young person under the MACR should not mean that the young person could retain stolen property, illicit drugs or weapons, and that it was essential that police retain the power to:

> • Detain young people whom police reasonably believe present an immediate risk to themselves or others for the purpose of having them delivered into the

[147] Legal Aid ACT, *Submission 017*, p 5.
[148] Ms Jodie Griffiths-Cook, ACT Public Advocate and Children and Young people Commissioner, *Proof Committee Hansard*, 15 June 2023, pp 57–58.
[149] Human Rights Law Centre, *Submission 010*, p 2.

safe custody of a parent or guardian, or delivered to a secure facility for intensive therapy if necessary;

- Search young people whom police reasonably believe have a weapon or some other dangerous implement on them, and seize such items; and

- Search a young person's person or their premises (under the authority of a warrant, where practicable) whom police reasonably believe are in possession of illicit drugs or 'otherwise' stolen property, or in possession of evidence of a crime committed by someone else.[150]

3.140. In their submission, the Australian Federal Police Association noted that Tasmania had recently introduced legislation which would raise the minimum age of detention while retaining an MACR of 10, and that this retained the powers of police relating to arrest, search and holding of young people aged 10 and over.[151]

3.141. ACT Policing noted in their submission that under the Bill police would retain all powers to intervene 'where there may be harm or a risk of harm, including their powers to search, arrest and detain a child or young person who is under the revised MACR'. They supported this provision, to protect the community and the individual.[152]

3.142. In their submission, Change the Record called for 'an end to the active policing of children', arguing that 'any engagement with the criminal legal system causes harm to a child - from police contact right through to deprivation of liberty in youth detention'. They said that options for skilled youth workers to engage with young people instead of, or in collaboration with, police should be explored as a matter of priority.[153]

3.143. The Aboriginal Legal Service (NSW/ACT) argued in their submission that the Bill 'misses an opportunity to ensure that no child under the MACR is subject to the trauma of arrest by police', and said that the low threshold for the use of any force by police when interacting with young children was of concern. The service opposed the maintenance of police powers to arrest a child.[154]

[150] Office of the Director of Public Prosecutions, *Submission 012*, p 9.
[151] Australian Federal Police Association, *Submission 013*, p 5.
[152] ACT Policing, *Submission 016*, p 5.
[153] Change the Record, *Submission 019*, pp 5–6.
[154] Aboriginal Legal Service (NSW/ACT), *Submission 021*, p 6.

### Committee Comment

3.144. The Committee notes that children and young people who may not be capable of forming criminal intent are nonetheless capable of causing harm, and considers that police should be able to protect the community from such harm and potential harm. However, police powers should recognise that their interaction should be with the parent or guardian of the child rather than the child themselves.

> **Recommendation 21**
>
> The Committee recommends that the ACT Government amend the Bill to ensure that ACT Policing retain search warrant powers when interacting with the parents and guardians of young people under the age of criminal responsibility, so that property can be seized if required for public safety or to return stolen goods.

## Throughcare

3.145. In their submission, JRI noted that there is a 'Throughcare' model available to some people leaving the Alexander Maconochie Centre (AMC),[155] and suggested that a similar model should be available to all young people on exit from detention. JRI said that this model of care 'should not be seen as an optional extra, rather as a necessary part of the detention process'.[156]

3.146. Confidential evidence[157] received by the Committee indicated that there was a need for support for young people following release from Bimberi Youth Justice Centre, including transport assistance to meet curfew requirements, a help line for young people to get advice and practical support to meet their bail conditions, and support to find secure accommodation.

> There should be like a 'Kids Correctives' where if you get stuck or get put in a bad situation, you can call and say, 'I'm caught, and I've got this bail condition – can you help?'
>
> …
>
> Kids shouldn't be worried about their next court date or where they're gonna be sleeping, they should be worried about footy training or when their next assignment is due.[158]

[155] ACT Government, Extended Throughcare - Corrective Services (act.gov.au) (accessed 28 June 2023).
[156] Justice Reform Initiative, *Submission 001*, p 7.
[157] Confidential, *Submission 023,* used with permission.
[158] Confidential, *Submission 023,* quoted with permission.

## Committee Comment

3.147. The Committee is of the opinion that support must be provided to young people who have been in contact with the criminal justice system to meet their obligations and help them to make positive life changes.

### Recommendation 22

The Committee recommends that the ACT Government urgently put in place a throughcare case management program at Bimberi Youth Justice Centre.

# 4. Conclusion

4.1. The Committee considers that, given the significance of changing the age of criminal responsibility and the potential impacts of this change on the ACT community, it was important to conduct this inquiry.

### Recommendation 23

The Committee recommends that, after considering and responding to the recommendations in this report, the Assembly pass the Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023.

4.2. The Committee thanks everyone who participated in this inquiry for their valuable contributions in assisting and informing the Committee's deliberations.

4.3. The Committee has made 23 recommendations in relation to the Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023.

Peter Cain MLA

Chair

July 2023

# Appendix A: Submissions

| No. | Submission by | Received | Published |
|---|---|---|---|
| 1 | Justice Reform Initiative | 02/06/2023 | 08/06/2023 |
| 2 | Bill Stefaniak | 04/06/2023 | 08/06/2023 |
| 3 | Chloe Maddison | 05/06/2023 | 07/06/2023 |
| 4 | Save the Children and 54 Reasons | 05/06/2023 | 07/06/2023 |
| 5 | Youth Coalition | 06/05/2023 | 07/06/2023 |
| 6 | Public Health Association of Australia | 05/06/2023 | 07/06/2023 |
| 7 | Ted Noffs Foundation | 05/06/2023 | 07/06/2023 |
| 8 | ACTCOSS | 05/06/2023 | 07/06/2023 |
| 9 | Centre for Excellence in Child and Family Welfare | 05/06/2023 | 07/06/2023 |
| 10 | Human Rights Law Centre | 05/06/2023 | 07/06/2023 |
| 11 | Chris Donohue | 05/06/2023 | 07/06/2023 |
| 12 | Office of the Director of Public Prosecutions | 06/06/2023 | 14/06/2023 |
| 13 | Australian Federal Police Association | 06/06/2023 | 14/06/2023 |
| 14 | Australian Lawyers Alliance | 06/06/2023 | 14/06/2023 |
| 15 | ACT Law Society | 07/06/2023 | 14/06/2023 |
| 16 | ACT Policing | 07/06/2023 | 14/06/2023 |
| 17 | Legal Aid ACT | 08/06/2023 | 14/06/2023 |
| 18 | ACT Human Rights Commission | 09/06/2023 | 14/06/2023 |
| 19 | Change the Record | 09/06/2023 | 14/06/2023 |
| 20 | ANTAR | 13/06/2023 | 14/06/2023 |
| 21 | Aboriginal Legal Service | 13/06/2023 | 14/06/2023 |
| 22 | Office of the Inspector of Correctional Services | 14/06/2023 | 15/06/2023 |
| 23 | CONFIDENTIAL | 23/06/2023 | |

# Appendix B: Witnesses

## Thursday, 15 June 2023

### Australian Federal Police Association

- Mr Alex Caruana, President
- Mr Troy Roberts, Government Relations Manager

### ACT Policing

- Mr Peter Whowell, Executive General Manager – Corporate
- Ms Linda Champion, Acting Deputy Chief Police Officer for the ACT

### Justice Reform Initiative

- Mr Gary Humphries, Patrons Co-Chair
- Ms Indra Esguerra, ACT Campaign and Advocacy Coordinator

### ACTCOSS

- Dr Devin Bowles, Chief Executive Officer
- Dr Gemma Killen, Head of Policy

- Mr Chris Donohue
- Mr James Clifford, Managing Solicitor, Children's Legal Practice, Aboriginal Legal Service NSW/ACT
- Dr John Boersig, Chief Executive Officer, Legal Aid ACT
- Ms Rebecca Minty, Inspector of Correctional Services
- Dr Jacqueline Small, President, Royal Australasian College of Physicians

### Change the Record

- Maggie Munn, Acting Executive Officer
- Ms Cheryl Axelby, Co-Chair

### ACT Human Rights Commission

- Dr Helen Watchirs OAM, President and Human Rights Commissioner
- Ms Jodie Griffiths-Cook, Public Advocate and Children and Young People Commissioner
- Ms Heidi Yates, Victims of Crime Commissioner

### ACT Government

- Ms Emma Davidson MLA, Assistant Minister for Families and Community Services

- Ms Rachel Stephen-Smith MLA, Minister for Families and Community Services
- Mr Shane Rattenbury MLA, Attorney-General
- Ms Catherine Rule, Director-General, Community Services Directorate
- Ms Jennifer McNeill, Deputy Director-General, Justice, Justice and Community Safety Directorate

# Appendix C: Questions Taken on Notice

| No. | Date | Asked of | Subject | Response received |
|---|---|---|---|---|
| 1 | 15/06/2023 | Australian Federal Police Association | Powers of police in relation to children and young people | 10/07/2023 |
| 2 | 15/06/2023 | ACT Policing | Exceptional offences to the MACR | 27/06/2023 |
| 3 | 15/06/2023 | Aboriginal Legal Services | Cross-border issues where the MACR differs | 28/06/2023 |
| 4 | 15/06/2023 | Minister Stephen-Smith | Evidence for different perception of culpability at different ages | 03/07/2023 |

# Appendix D: Gender distribution of witnesses

Beginning in April 2023, in response to an audit by the Commonwealth Parliamentary Association, Committees are collecting information on the gender of witnesses. The aim is to determine whether committee inquiries are meeting the needs, and allowing the participation of, a range of genders in the community. Participation is voluntary and there are no set responses.

| Gender indication | Total |
|---|---|
| Female | 11 |
| Male | 8 |
| Non-binary | 1 |
| No data | 3 |

## Appendix E: Additional comments – Mr Andrew Braddock MLA

# Legislative Assembly Standing Committee Justice and Community Safety Inquiry into Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023

Additional comments by Andrew Braddock MLA

As recognised in the committee report, the topic of exemptions received much attention from submitters and witnesses. The comprehensive evidence clearly demonstrated the legal inconsistency of allowing exemptions (carve-outs) for some crimes but not others.

In particular, the suggestion that children who commit serious offences would continue to be protected by the legal application of *doli incapax* is one that was broadly dismantled by the evidence presented to the committee. The entire purpose of these reforms is to avoid children having contact with the criminal justice system. Relying on *doli incapax* relies upon prosecutors failing to rebut the principle in court, by which time the affected child can be expected to have been held on remand sufficiently long enough to have done the lasting psychological damage which these reforms are explicitly attempting to prevent.

My reading of the evidence is that the existence of any exemptions is incompatible with the science of human psychological maturation and the developmental needs of children. Almost all submissions, and all witness at committee hearings, gave me the impression that in an *ideal*

*world*, the exemptions would not be required and would not exist.

Arguments in support of the exemptions came down to two main arguments:

- That support services and arrangements were not yet at the level of maturity or capability to support the change.
- That political and community discourse needs time to adjust to the

change. Dr John Borsig, CEO of Legal Aid ACT, made this nuanced observation:

> *"We have seen how important community support is for this kind of change in public policy, and going slower seems to me—and to be well supported around CYPS and the police— would contextualise movement through to after 14."*

The principal question before the government is not whether or not the exemptions should exist – they clearly should not – but whether we are ready to operate without them.

Also of strong relevance is that the ACT is a human rights jurisdiction – Australia's *first* human rights jurisdiction. We have an established commitment to do what is right, in accordance with the evidence, to advance and improve human rights.

The Human Rights Compatibility of the Bill has been questioned, and so the submission of the Human Rights Commission must be given particular attention. I implore the Government to consider this specific evidence presented by the Human Rights Commission in their submission:

> *"Although the Bill foreshadows a statutory review after 5 years, which will consider the ongoing need for exceptions, this cannot remedy or mitigate the differential protection of the law they will sanction in the intervening period.*
>
> *…*
>
> *"We would therefore recommend that, to ensure consistency with human rights, the ACT Government moves Government amendments to remove the prescribed exceptions from the Bill or otherwise ensure that they are scheduled to sunset within six months of the proposed statutory review."*

The starting assumption should be that the exemptions should not exist due to legal inconsistencies and scientific evidence on the cognitive development of 12-13 year olds. Recognising that the majority of cabinet may be apprehensive or otherwise unwilling to implement a bill without the exemptions, I recommend that the Human Rights Commission's recommendation be adopted, and a sunset clause be applied to the exemptions.

A sunset clause, if passed, would directly address:

1. the inconsistency between the proposed bill and the Human Rights Act.
2. the concerns expressed by some members of ACT Government that services were currently unable to adequately respond to a situation where a 12-13 year old commits one of the four offences, by allowing time for these services to be developed.

Following the statutory review, the ACT Government may then make a conscious decision on whether the exemptions, with their inconsistency with the Human Rights Act, need to be continued.

**Recommendation**

The Government insert a sunset clause to the exemptions of Schedule 1 to ensure that they are scheduled to sunset within six months of the proposed statutory review.

While the government may lack the courage to take such a sensible step, it should be stressed that nothing in my comments limits the conclusion that the bill should be passed. It is inherently an improvement on the status-quo, and one which is long overdue.

Andrew Braddock MLA

12/7/2023

## Appendix F: Dissenting report – Mr Peter Cain MLA

Justice and Community Safety Committee

# Inquiry into Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023) Dissenting report from Peter Cain MLA

# Executive Summary

I dissent from Recommendations 2, 3 and 23 in the Report and provide the following recommendation:

> **Recommendation**
>
> I recommend that two years following raising the age of criminal responsibility to 12 and implementing the therapeutic support regime, the ACT Government implement an independent review of the impact of these changes, and include in such a review an investigation into whether the minimum age of criminal responsibility should be raised further.

I agree with the other recommendations in the Report, unless they are inconsistent with my above dissents or inconsistent with my own recommendation or comments as presented below.

# 1. Issues raised in evidence

## Minimum Age of Criminal Responsibility

1.1 Several submitters[159] noted that under the *Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023* (the Bill), the ACT would be the first jurisdiction in Australia to raise the minimum age of criminal responsibility (MACR) to 14 years old, and that this would set an important precedent. Opinion was divided over the staged approach of first raising the MACR to 12 years, then to 14 years on 1 July 2025.

1.2 While I agree that the MACR should be raised to 12, given that the ACT would be the first jurisdiction to raise it to 12, it seems prudent to evaluate the impact of this raised MACR before committing to any further raising of the MACR.

1.3 This would also allow for a review of the adequacy of the therapeutic support scheme with respect to those aged 12 and under who commit otherwise criminal acts.

1.4 Accordingly I dissent from Recommendation 2 in the report that the MACR be raised to 14, and consequently provide an amended version of Recommendation 3 regarding a review of raising the MACR.

### Recommendation

I recommend that two years following raising the age of criminal responsibility to 12 and implementing the therapeutic support regime, the ACT Government implement an independent review of the impact of these changes, and include in such a review an investigation into whether the minimum age of criminal responsibility should be raised further.

1.5 As a consequence, I also dissent from Recommendation 23, which recommends that the Bill be passed, subject to recommendations in the Report, which includes raising the MACR to 14.

## Carve outs

1.6 As mentioned in the Report, most submissions rejected the proposal in the Bill that for four serious offences a 12+ to 14-year-old should be held criminally responsible after the MACR is raised to 14[160].

1.7 During Public Hearings, the Attorney-General, Mr Rattenbury, stated that the Greens' Ministers did not support the carve outs:

> *As you note, there are four offences, which are identified in schedule 1, that the government has created as exceptions. This is a heavily contested part of the legislation. It*

[159] See, for example: Justice Reform Initiative, *Submission 001*, pp 3–4; Save the Children and 54 Reasons, *Submission 004*, p 1; Youth Coalition of the ACT, *Submission 005*, p 1; ACTCOSS, *Submission 008*, p1; Chris Donohue, *Submission 011*, p 5; ACT Human Rights Commission, *Submission 018*, p 2; Australians for Native Title and Reconciliation, *Submission 020*, p 3.

[160] Committee Report, para 2.2, these being murder, intentionally inflicting grievous bodily harm, sexual assault in the first degree and act of indecency in the first degree.

*is, I think, a known fact that the Greens ministers did not support this during the cabinet process but, nonetheless, the cabinet has resolved to proceed on this basis.*[161]

1.8 During the same session, I asked the Minister for Health, Ms Stephen-Smith, what evidence supported the carve outs:

*THE CHAIR: Back to me. Minister StephenSmith, you said something about the community view of 10 to 11yearsolds versus 13 to 14yearolds. What evidence are you basing that conclusion on?*

*Ms StephenSmith: The government undertook some focus group research in relation to this. I am not sure whether that has previously been made public, but I am sure that we can provide it to the committee if it has not been. I am totally speaking out of turn here, so I will need to check and take it on notice. I think it is important to recognise that the community does have views in relation to this matter. That was informing cabinet considerations, so I will need to take on notice whether I can provide it. I think that, in the context of the conversation we have been having, it would be useful to the committee. I am not the owner of that information, so I will need to check.*

*THE CHAIR: Obviously, the committee would be very interested in that information, so we do request it. We will await your answer.*[162]

1.9 In response to the above question taken on notice (QTON), Minister Stephen-Smith stated:

*The answer to the Member's question is as follows:–*
*In December 2021, Kantar Research was engaged by the ACT Government to conduct research to explore community views, attitudes, and values in relation to raising the minimum age of criminal responsibility in the Australian Capital Territory.*
*The report was compiled with input from the community, including focus groups.*
*The report is attached.*[163]

1.10 I note that both the response to this QTON as well as the report from "Kantar Research" [sic Public][164] (the Kantar Report) are available on the committee website[165].

1.11 The Kantar Report outlined the methodology for its enquiry thus:

*Focus groups and on-on-one interviews were held with 32 people from within the ACT of different ages, life-stages and socio-economic backgrounds, and also included participants from Aboriginal and/or Torres Strait Islander and Culturally and Linguistically Diverse backgrounds. Participants were drawn from all of the major geographical 'districts' within the ACT (e.g. Tuggeranong, Belconnen, Weston Creek/Molonglo, etc)*[166]

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[161] Inquiry into *Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023*, Proof Transcript of Evidence, Thursday, 15 June 2023, p63

[162] Ibid, pp72

[163] Inquiry into Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023 ANSWER TO QUESTION TAKEN ON NOTICE 15 June 2023

[164] Minimum Age of Criminal Responsibility – Exploratory Research Final Report, Kantar Public, authors Craig Donovan, Erin Maher, Joyce van Dijk, Amber-Maree Bedwell and Katelyn Kemp, 25 February 2022

[165] https://www.parliament.act.gov.au/parliamentary-business/in-committees/committees/jcs/inquiry-into-justice-age-of-criminal-responsibility-legislation-amendment-bill-2023#tab2226325-5id

[166] Kantar Report, p4

1.12 The only support for the carve outs that I could find in this report appears to be the following conclusion under the heading "Rationally, there are three key factors that are weighed up, when considering a response to offending by young people…"

> *Perceptions around the severity of different types of crime are subjective, however there was a clear view that crimes against a person (i.e. that would or could lead to physical harm) require a higher level of response. Thinking about the potential severity/impact of crimes also started to erode the initial perception of 'innocence' that participants tended to link to very young offenders.*[167]

1.13 Given that the carve out argument is relevant to the 12+ to 14-year-olds under a raised MACR, which I do not support, I will not focus heavily on this issue. I do note, though, that if (say) a 14-year-old under a raised MACR cannot be held criminally responsible for a one type of crime, it is difficult to see why that same individual would be held criminally responsible for another, albeit more serious, crime.[168]

1.14 The majority of submissions questioned the logic of including carve outs and the ACT Human Rights Commission stated that the carve outs were:

> *inconsistent with the rights protected in the HR Act, including the rights of children (s 11(2)) and the right to equality and non-discrimination (s 8)*[169]

1.15 Further, the Kantar Report made some interesting observations and conclusions regarding the focus groups views on raising the MACR to 14. Under "Key insights and findings – there is support to lift the MACR age, but community sentiment 'hardens' in relation to older offenders":

> *There is little distinction between the youngest offenders (i.e. 10 to 12 year olds) who are typically seen to be victims of circumstance, in that there must be something 'else' causing/driving their offending – they are not 'criminals' as such. Therefore, the community is generally comfortable with a change to MACR that will help 10, 11 and 12 year olds avoid interactions with criminal justice system. This tends to dissipate when thinking about older cohorts (13 years and above).*
> *- Overall, there is a sense that the ACT community would be relatively comfortable with the MACR increasing to 13 years… but beyond this age, there are very mixed views about where the line should be drawn.*[170]

1.16 Under "Key conclusions and take-away learnings":

> *Almost everyone who took part in the research (with very few exceptions) thought that treating children of 10 to 12 as 'criminals' was wrong (both morally and as a policy response). However, the community appetite to raise the MACR to a higher age is impeded by several interrelated issues that can start to act as a negative cognitive loop (there is generally a reduced empathy for offenders who are older than 12; the reasons for the reform are perceived to be 'weaker' when thinking about older children who are committing crimes; and perceptions can coloured by a feeling that MACR reforms could*

[167] Ibid, p22
[168] Committee Report, para 3.33-3.63
[169] Ibid, para 3.46
[170] Kantar Report, p5

*be about reduced ....which in turn feeds lower empathy when thinking about young offenders)*[171]

1.17 One argument from several submissions in support of raising the age to 14, was international consensus. However, the findings of the Kantar Report did little to endorse this reliance and under "Appendix A – detailed analysis of responses to policy/evidence statements":

*The United Nations Committee, as an international body, was not a source that resonated with the audience and felt distant*[172]

*Similarly to the United Nations, participants felt the Australia-wide trusted champions were not close to home and did not resonate*[173]

1.18 I note as well that the focus group with participants from the ATSI community supported a MACR higher than 14, up to 17 in the opinion of some.[174] This reinforces the importance of stronger engagement with our ATSI community to better understand both their needs and how government can better remedy relative inequities and improve outcomes.

1.19 Finally, and relevant to my recommendation, I note the observation about the idea of the ACT leading the nation in reform. Under the heading "NATION LEADING: ACT leading the way", the Kantar Report, Appendix A, stated:

*Being 'nation leading' wasn't seen as a primary reason for change, doesn't change minds, and makes the community feel like we're taking a risk on a reform that others haven't (or won't)*[175]

## Conclusion

1.20 My recommendation should be supported by the government as while it recognises that children up to the age of 12 are better directed away from harmful behaviour via a therapeutic rather than criminal approach, an investigation of the impact of raising the MACR to 12 and the effectiveness of the therapeutic approaches should be conducted to see if there is a case for raising the age further.

Peter Cain MLA

13 July 2023

[171] Ibid, p35
[172] Ibid, p39
[173] Ibid, p40
[174] Ibid, p12
[175] Ibid, p43