



Queensland  
**Human Rights  
Commission**

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# Council of Attorneys-General – Age of Criminal Responsibility Working Group review

**Submission  
to  
Western Australia Department of Justice**

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## Introduction

1. Thank you for the opportunity for the Queensland Human Rights Commission (QHRC) to provide a submission to the Council of Attorneys-General review of the minimum age of criminal responsibility (MACR) in Australia.
2. This submission considers the application of the Queensland *Human Rights Act 2019* (HRA) to the issues raised in light of the recent experience and reviews of youth justice in Queensland. The HRA provides a framework to balance the rights of all Queenslanders. The criminal law limits and promotes several rights, most particularly of a complainant and an accused, as well as the broader community's right to be safe.
3. The HRA draws upon rights in the *International Covenant on Civil and Political Rights* (ICCPR). The three main requirements for limitations on ICCPR rights are: legality, necessity, and proportionality. The substantive requirements of necessity and proportionality are interrelated, which is reflected in the provision for the limitation of human rights in the HRA.<sup>1</sup>
4. Section 13(2) of the HRA sets out factors for deciding whether a limit on a right is reasonable and justified including:
  - (a) the nature of the human right;
  - (b) the nature and purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom;
  - (c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose;
  - (d) whether there are any less restrictive and reasonably available ways to achieve the purpose;
  - (e) the importance of the purpose of the limitation;
  - (f) the importance of preserving the human right, taking into account the nature and extent of the limitation on the human right;
  - (g) the balance between the matters mentioned in paragraphs (e) and (f).
5. Relevant rights that must be fulfilled by the state for victims of criminal acts include the right to liberty and security of the person and the right to life.<sup>2</sup>

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<sup>1</sup> HRA, section 13.

<sup>2</sup> HRA s 29 and s 16.

Children have specific protections by virtue of being children and in the criminal justice system.<sup>3</sup>

6. Section 48 of the HRA states that international law may be used to interpret rights. The UN Convention on the Rights of the Child (CRC) is particularly relevant to this issue, which requires state parties to have the best interests of the child as a primary consideration in all decision making, and that the arrest,<sup>4</sup> detention or imprisonment of a child shall only be used as a measure of last resort.<sup>5</sup> The UN Committee on the Rights of Child has repeatedly recommended that Australia increase the MACR.
7. While the Queensland experience demonstrates that a period of planning and investment is needed, this should not be used as a basis for not increasing the MACR. Evidence suggests that for the majority of children and young people diversion from custody and the youth justice system is likely to far better address their needs and achieve better safety for the community as a whole. This is particularly so for Aboriginal and Torres Strait Islander young people, who are disproportionately represented in the Queensland (and other jurisdiction's) youth justice system.
8. Recommendations and research from many reports and studies emphasise that the criminal justice system is not the appropriate mechanism to deal with the behaviour of children aged under 14, and that instead greater investment and emphasis must be placed on health and education environments. This includes providing support for families and protective factors for children, which could be achieved through a justice reinvestment approach.

## International and National Perspectives

9. In its 2019 Concluding Observations, the Committee on the Rights of the Child urged Australia to raise the MACR to 14 years of age.<sup>6</sup> In August 2019, an Independent Expert recommended to the UN that the MACR should be at least 14 years. In October 2019, the UN Committee on the Rights of the Child published a new General Comment (24) on children's rights in the child justice system. That General Comment suggests that 'States parties are encouraged to take note of recent scientific findings, and to increase their minimum age accordingly, to at least 14 years of

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<sup>3</sup> HRA s 26 and 33.

<sup>4</sup> *Convention on the Rights of a Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) ('Convention on the Rights of the Child'), Article 3

<sup>5</sup> Convention on the Rights of the Child, Article 37.

<sup>6</sup> United Nations Committee on the Rights of the Child, *Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Australia*, 82nd Sess, UN Doc CRC/C/AUS/CO/5-6 (30 September 2019) para 48.

age'. It also recommended that 'no child be deprived of liberty, unless there are genuine public safety or public health concerns' and that countries increase the minimum age of detention to 16.<sup>7</sup>

10. In the Australian context, the NT Royal Commission recommended that the MACR be increased and the Australia and New Zealand Children's Commissioners and Guardians issued a joint statement calling for the MACR to be moved to 14 years of age in November 2019. They called for governments to move away from a justice response to 'a developmentally-appropriate, trauma-informed and culturally safe early intervention model that supports children in their families and communities'.<sup>8</sup> The Australian OPCAT network similarly recommended to the UN Subcommittee on the Prevention of Torture that the MACR be raised to 16 years and that inappropriate child behaviour should be addressed as a public health matter and not as a criminal matter.<sup>9</sup>

## Queensland experience

### Demographics

11. Under s 29(1) of the Criminal Code (Qld),<sup>10</sup> the minimum age at which a person may be arrested for, charged with, or convicted for a crime is 10 years. The Criminal Code codifies the common law presumption of *doli incapax*, under which a presumption against prosecution for children aged under 14 unless the prosecution can prove that at the time of the alleged act or omission the child had capacity to know that they should not do the act or make the omission.
12. From 12 February 2018, legislation commenced to end the practice of treating 17-year-olds as adults in Queensland's criminal justice system. Unfortunately due to the limitations of bed capacity in detention centres, this change resulted in children who remanded in custody being temporarily held in police watchhouses for prolonged periods.
13. This experience demonstrates that planning for transition to a new framework for criminal liability is critical. As the Queensland Youth Justice Taskforce Report ('Atkinson Report') noted, if the MACR were to be raised:

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<sup>7</sup> Noting that the Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), also cited by these reports, maintains 12 as the absolute minimum for MACR.

<sup>8</sup> Australia and New Zealand Children's Commissioners and Guardians, *Raise the age of criminal responsibility*, 2019, <https://ccyp.vic.gov.au/news/raise-the-age-of-criminal-responsibility-australian-and-new-zealand-childrens-commissioners-and-guardians/>

<sup>9</sup> Australia OPCAT Network, *The Implementation of OPCAT in Australia*, 11 February 2020, 158.

<sup>10</sup> Enacted as a schedule to the *Criminal Code Act 1899* (Qld).

...the concern that children are committing offences at younger ages would need to be tested as part of an overall impact study and implementation strategy, similar to that involving the transition of 17 year olds to the youth justice system.<sup>11</sup>

14. Nonetheless, the impact on rights of children in the current system cannot be ignored. As it stands, children aged as young as 10 are arrested and detained in police watchhouses and youth detention centres. In Queensland, while the numbers of children aged 13 and 14 in detention seem to be remaining steady, the number of 10 to 12 year olds is increasing, albeit with a small sample size.
15. In its 2017 report on MACR, the Queensland Child and Family Commission noted that in 2015-16, children aged 10 to 12 years old comprised 6.7% of total admissions to youth detention centres in Queensland. In the same year, children aged 13 to 14 years comprised 35% of admissions to youth detention centres.<sup>12</sup> The most recent data, for 2017-18, shows the proportion of 10 to 12 year old children has risen to 11%, although the number of 13 to 14 years has remained steady at 33%.<sup>13</sup>
16. In 2015-16, on an average day, four children aged 10 to 12 years were held in youth detention, with forty-four children aged 13 to 14 years detained, the latter representing 23.7% of children in detention on an average day.<sup>14</sup> In 2017-18 the number of children aged 10 to 12 years held in detention on an average day had doubled to 8, but again the numbers aged 13 to 14 years remained steady at 44.<sup>15</sup>
17. The Atkinson Report further noted that in 2016-17, 35% of children whose matters were finalised in the Queensland Childrens Court were aged 10-14 years, the highest proportion in Australia, compared to, for example, 13% in Victoria.<sup>16</sup>
18. Like other Australian jurisdictions, Queensland sadly also imprisons Aboriginal and Torres Strait Islander young people on a highly disproportionate basis. On an average day in 2014-15, three of the five children aged 10 to 12 years in Queensland youth detention were

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<sup>11</sup> Youth Justice Taskforce (Department of Child Safety, Youth and Women, Queensland Government), *Report on Youth Justice Version 2*, June 2018 ('Atkinson Report'), 105.

<sup>12</sup> The State of Queensland (Queensland Family and Child Commission) *The age of criminal responsibility in Queensland (2017)* ('QFCC Report')

<sup>13</sup> Queensland Government Statistician's Office, *Justice Report Queensland 2017-18*,

<sup>14</sup> The State of Queensland (Queensland Family and Child Commission) *The age of criminal responsibility in Queensland (2017)* ('QFCC Report'), 83.

<sup>15</sup> *Ibid*, 87.

<sup>16</sup> QFCC Report, 105.

Aboriginal and Torres Strait Islander. For those aged 13 to 14 years, 35 of the 40 children were Aboriginal and Torres Strait Islander.<sup>17</sup>

19. The Atkinson report compiled a 'snapshot' investigation of 25 children aged 10 to 13 years who were in a youth detention centre in Queensland at 13 September 2017 which found:

All had experienced neglect and poor school attendance. Many had been exposed to traumatic events, domestic and family violence, had parents with criminal histories including incarceration.<sup>18</sup>

20. The Queensland Family and Child Commission concludes that there is 'overwhelming evidence proving a direct correlation between criminality and entrenched social and economic disadvantage'. It finds the major risk factors for youth criminality include poverty, homelessness, abuse and neglect, mental illness, intellectual impairment and having one or more parents with a criminal record.<sup>19</sup>

21. The impact of entrenched social and economic disadvantage has been identified as a particular issue for regional, remote and very remote communities in Queensland, particularly for Aboriginal and Torres Strait Islander peoples.<sup>20</sup> Research from the Australian Institute of Health and Welfare found that children from remote locations across Australia were six times more likely to be under youth justice supervision than those from non-remote communities.<sup>21</sup> Two-thirds of Indigenous Queenslanders reside outside major cities and 17 per cent of Aboriginal and Torres Strait Islander peoples live in remote or very remote regions of Queensland.<sup>22</sup> Nonetheless, communities like Townsville have not sought a youth justice response to these issues:

The broad view of the Townsville community was that any strategy for dealing with youth crime should consider social environmental conditions that influence youth development. However, it was also acknowledged that the youth justice system was not the preferred avenue for addressing these wider social environmental challenges.<sup>23</sup>

22. Several recent reports examining the Queensland justice system have recommended an increase in the MACR to 12 years of age, reflecting the

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<sup>17</sup> QFCC Report, 15

<sup>18</sup> Atkinson Report, 31.

<sup>19</sup> Atkinson Report, 16.

<sup>20</sup> Queensland Productivity Commission, *Inquiry into Imprisonment and Recidivism*, August 2019, ('QPC Report'), xxxix

<sup>21</sup> Australian Institute of Health and Welfare, *Youth justice fact sheet no. 89. Remoteness, socioeconomic status, and youth justice supervision: 2015-16, 2017*, as cited by Atkinson Report, page 111.

<sup>22</sup> QPC Report, p 402.

<sup>23</sup> Major General (Retd) Stuart Smith AO DSC (Townsville Community Champion), *Townsville's voice: local solutions to address youth crime*, 5 December 2018 ('Townsville's Voice report'), 13.

United Nations standard at the time. Since these reports were published, the United Nations has changed its approach to MACR. These include the following.

### **Atkinson Report (2018)**

23. The Atkinson Report was commissioned in 2018 to examine the Queensland youth justice system. That Report recommended that the Queensland juvenile justice system be based on four pillars, which were accepted by the Queensland Government:

1. Intervene Early
2. Keep children out of court
3. Keep children out of custody, and
4. Reduce reoffending

24. All four pillars may arguably be met through an increase to the age of criminal responsibility, particularly if coupled with investment in early intervention and diversion. The Atkinson Report noted that pillars 2 and 3 were particularly relevant to the MACR. It recommended that the Queensland Government support in principle raising the MACR to 12 years subject to national agreement, a comprehensive impact analysis and the establishment of needs based programs and diversions for 8-11 year old children engaged in offending behaviour. The Queensland Government is considering these recommendations in light of the consideration at the national level.

25. The report recommended responses that are relevant to this review including:

- a focus on attendance at school and vocational training
- increased options for police to divert child offenders from prosecution
- increased options for courts to divert children from detention centres
- increased options for children to remain in the community rather than be remanded in custody.

26. The Report also suggested that the presumption against prosecution was not a significant impediment to prosecution:

We were told that the presumption of *doli incapax* is rarely a barrier to prosecution. In Queensland, the threshold to rebut the presumption of *doli incapax* is perceived by some stakeholders to be too low, with the result that many children who do not have the level of cognitive functioning required to



be criminally responsible are receiving criminal outcomes and becoming embedded in the criminal justice system.<sup>24</sup>

27. The Report observed that in Queensland a small cohort of children commit a large proportion of crime. Queensland Youth Justice data from 2016-17 shows that 10% of child offenders are responsible for 43% of offences.<sup>25</sup> Most young people who come into contact with police will not offend again:

Neuroscience tells us that adolescent brains are still developing and that behaviour moderation, impulse control, reasoning and consideration of consequences are not yet functioning at the level we expect in adults. Many adolescents will experiment, test boundaries and take risks, but will grow out of their offending behaviour. The system currently responds quite well to one-off adolescent offenders, provided there are sufficient family and community supports in place.<sup>26</sup>

### Queensland Family and Child Commission (2017)

28. The Queensland Family and Child Commission's 'Minimum Age of Criminal Responsibility in Queensland' information paper notes the difficulty in arbitrarily setting a MACR that seeks to identify an age that all young offenders have the capacity to understand what the law requires them to do and the consequences of illegal acts.<sup>27</sup> The Report notes that:

- A study of 90 countries found the median MACR worldwide was 14
- 68% of countries have a MACR of 12 years or more
- There is no established relationship between MACRs over 12 years and higher crime rates.<sup>28</sup>

29. In assessing data provided by the Queensland Department of Justice and Attorney-General, the Queensland Police Service and Queensland Courts, the report concluded that:

The data shows that 10 to 12 year olds accounted for 5.8% of offences committed by children in 2015–16. The majority of offences were classified as 'other' offences. Based on this data we could not anticipate that any changes to the MACR, despite having a profound impact on very young offenders, would result in a reduction in the total number of young children in detention.<sup>29</sup>

30. In assessing scientific studies on the development of children's brains, the information paper notes that young offenders have experienced abuse or neglect which diminishes their ability to develop social, emotional and cognitive skills. It concludes that while the literature does not provide a

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<sup>24</sup> Atkinson Report, 105.

<sup>25</sup> Atkinson Report, 27.

<sup>26</sup> Atkinson Report, 28.

<sup>27</sup> QFCC Report, 2.

<sup>28</sup> QFCC Report, 8.

<sup>29</sup> QFCC Report, 15.

definitive MACR, it provides a consensus that ten years of age is too low. Relevantly for this review, the paper notes that the various MACR advanced by neuroscience and behavioural science experts range from 14 years to 22 years. The paper explores alternative options including:

- Raising MACR to 12 with *doli incapax* retained for 12-14 year olds
- Remove children aged 10 to 12 years from detention.
- Expand the use of youth justice conferencing.

31. The paper concludes:

Given the profound impact contact with the youth justice system has on a child's long-term prospects, it makes sense to keep children under 13 years out of the youth justice system. There is a need to shift the focus from responding to consequences of youth crime to addressing the underlying behaviours, experiences and trauma of young offenders.<sup>30</sup>

### **Independent Review of Youth Detention Report (2016)**

32. The Independent Review of Youth Detention was ordered by the Queensland Attorney General on 19 August 2016 as a Commission of Inquiry. The Review was preceded by the airing of CCTV footage, first person accounts and allegations from young people and staff about excessive force at the Cleveland Youth Detention Centre. Ms Kathryn McMillan QC and Professor Megan Davis were appointed as Commissioners. Among other recommendations, the Review recommended that MACR be raised to 12 in Queensland because it would:

- Make Queensland a leader in the humane treatment of children;
- Alleviate strain on the youth detention system by freeing up beds;
- Address some of the concerns regarding 10 to 18-year-olds in the youth detention centre population;
- Provide more time for government and non-government agencies to address the causes of youthful offending with the addition of negative criminogenic influences associated with incarceration; and
- Create a greater focus on appropriate programming in detention centres towards issues relevant to teenaged youthful offenders, including the provision of vocational education and training.<sup>31</sup>

33. These and other similar factors are regularly cited by other similar reports across Australia including the Australian Human Rights Commission's recently released Children's Rights Report 2019.<sup>32</sup>

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<sup>30</sup> QFCC Report, 37

<sup>31</sup> Independent Review of Youth Detention, *Confidential Report*, December 2016 <<http://www.youthdetentionreview.qld.gov.au/review-of-youth-detention-centres-report-updated-28-June-2017.pdf>>, 171. ('Queensland Independent Review')

<sup>32</sup> Australian Human Rights Commission, *Children's Rights Report 2019*, 2020, 244.

34. The Queensland Independent Review also notes that the Queensland Police Service Operational Procedures Manual allows a child under the age of criminal responsibility to be counselled with the aim of ‘diverting a child from future involvement with the criminal justice system’.<sup>33</sup> The Report suggests that even if the MACR were increased, police would have options to counsel any children or young people as a diversionary strategy.

### **Townsville's voice: local solutions to address youth crime (2018)**

35. In January 2018, the Queensland Premier appointed Major General (Retd) Stuart Smith AO, DSC as the independent Townsville Community Champion, to consult with the community about youth crime. Major General Smith’s report found consensus for a fair and sustainable approach to youth crime addressing five key themes:

- Share more information on action being taken to address youth crime
- Hold youths accountable for their actions
- Support youth and their families to participate in education
- Promote role models and mentors
- Improve the diversionary justice process and timeliness within the youth justice system.<sup>34</sup>

36. The Report does not discuss MACR in detail.

### **Current Situation**

37. In response to the watchhouse issues of 2018, the Queensland Government has undertaken several changes to the youth justice system. There is now greater capacity in youth detention centres in terms of bed numbers and the QHRC understands that there are presently very few children and young people held in watchhouses in Queensland longer than overnight. However, it remains a concern that children in more remote areas of Queensland are still on occasions held in watch houses for longer periods.

38. This suggests that changing ages of responsibility in the criminal system can, with appropriate planning and investment, lead to better outcomes for young people and the broader community.

### **Justice Reinvestment and Alternatives to Detention**

39. In its Women in Prison 2019 Report, the QHRC recommended that the Queensland Government adopt a justice investment approach to support

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<sup>33</sup> Queensland Independent Review, 171.

<sup>34</sup> Major General (Retd) Stuart Smith AO DSC (Townsville Community Champion), *Townsville's voice: local solutions to address youth crime*, 5 December 2018.

the establishment of justice reinvestment initiatives. Justice reinvestment proposes re-directing money spent on prisons to community-based initiatives that aim to address the underlying causes of crime, promising to cut crime and save money. This approach has been recommended by other recent reports in Queensland and Australia.<sup>35</sup>

40. Several of the Atkinson Report recommendations are consistent with this approach and while they should be considered regardless of any change to age of responsibility, would provide a useful roadmap to support any change:
- a. That a Youth Justice strategy include collaborative crime prevention and early intervention initiatives in high-risk communities.
  - b. That a systematic response be developed for cases where indicators identify a need for early intervention.
  - c. That schools become focal points for early intervention for children in need of targeted support, with key agencies working collaboratively to proactively identify, assess and work with families, communities and non-government organisations.
  - d. That targeted resourcing be provided for schools with a high occurrence of children with problem behaviours so that teachers can retain their focus on education while specialist behaviour management staff can focus on those aspects.
  - e. That alternative and flexible schooling options and pathways into them are available for children in the youth justice system and those at high risk of mainstream school disengagement.
  - f. That the Government consider extending drug diversion to drugs other than cannabis for minor drug offences committed by children.
  - g. That pathways for police to refer to nongovernment service providers for the purposes of diversion be enhanced.

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<sup>35</sup> The Queensland Independent Review similarly recommended that consideration be given to the implementation of justice reinvestment collaborations between existing community-based services and youth justice. The QPC Report recommends the Queensland Government prioritise investments in community-led prevention and early intervention in communities with high levels of offending including identifying and funding projects that would be suitable for a justice reinvestment process. See also the Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander*, 2017.



- b. The QFCC notes that restorative youth justice conferences have proven to be a particularly effective Queensland youth justice system response, based on a model used extensively in New Zealand (and increasingly other Australian jurisdictions).<sup>39</sup>
- c. 'The Lighthouse' in Townsville provides an after-hours diversion services for children aged 10-17, including a place where young people can engage in a range of activities including games, exercise, gardening, yarning circle and television. There is an option for overnight stay for some young people if necessary.<sup>40</sup>
- d. Communities that care – which has been implemented in the United States, and parts of Australia including Redcliffe, Queensland. This methodology empowers local community to set their own needs and priorities across family, school and community.<sup>41</sup>
43. In addition, the Queensland Independent Review of Youth Justice Report cited several overseas examples of alternative to detention including:
- The presumption in Belgium that minors are not criminally responsible before their 18<sup>th</sup> birthday, although in exceptional circumstances an offender over 16 may be dealt with in an adult court. Notionally a juvenile judge may not impose criminal sanctions or punishments on a minor (only educational measures), although the Report notes that this may be a question of terminology as other European countries may impose similar measures and label them as 'punishment'. Although in Belgium a juvenile judge cannot order an offender aged under 12 be placed in a closed facility.
  - The use of open and half-open institutions in Belgium, Canada, Greece, Poland, Denmark, Spain and Sweden which include community residential centres, group homes or wilderness camps.
  - Multisystemic Therapy (MST), where a child with serious behavioural disorders remain at home and receives treatment related to family, personal life and school. While developed in the United States, the Report suggests a MST program is run in Western Australia and NSW.
  - The Juvenile Detention Alternatives Initiative (JDAI) which seeks to create new or enhanced non-secure detention alternatives including home detention coupled with day or evening reporting centres.<sup>42</sup>
44. Some of these models were also considered in the Royal Commission into the Detention and Protection of Children in the Northern Territory. The Royal Commission also identified other possible options such as the Missouri Model and the Kibble Education and Care Centre in Scotland.

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<sup>39</sup> QFCC Report31

<sup>40</sup> Atkinson Report, 89 to 90.

<sup>41</sup> Atkinson Report, 83.

<sup>42</sup> Queensland Independent Review, Chapter 6.

Such alternatives demonstrate that there are many options that could potentially replace detention for children aged under 14 in Australia. As the Royal Commission observed, while any overseas model cannot simply be transplanted to Australia, with appropriate community consultation and customisation, there are many lessons that can be drawn from reforms elsewhere to guide a new model in Australia.<sup>43</sup>

45. In terms of less successful models, the Queensland Independent Review of Youth Justice Report also notes that boot camps were for a period used as an alternative to detention in Queensland for a period of up to 6 months. After a review by KPMG the ability of a court to make a youth boot camp order was repealed on 1 July 2016.<sup>44</sup>

### Staged Implementation

46. The Western Australian Department of Justice Consultation website raises questions about whether the MACR could be changed in a staged or nuanced way, rather than immediately moving to a specific age for all criminal liability. These include applying *doli incapax* from 12 to 14 years of age, having different ages based on the seriousness of the offence and legislating a separate minimum age of detention.

47. The Atkinson Report recommended that, while the Queensland Government consider its recommendation to increasing the MACR, the Government should legislate so that 10-11 year olds should not be remanded in custody or sentenced to detention except for a very serious offences:

Apart from the immediate benefit of detaining children and therefore preventing them from committing further offences in the community while they are in custody, youth detention centres are extremely costly to operate and do not reduce offending in the long-term. There is a large body of evidence that supports this.<sup>45</sup>

48. Further, noting the negative consequences of detention, the Atkinson Report recommended that detention be used for serious offenders where public safety is a factor. The report notes that over the previous six years, 40% of offences for which children were detained were categorised as 'offences against the person', that is assaults, abduction, murder and related offences. The other 60% included property crime, fraud, drug, traffic, public order, procedural and miscellaneous offences.

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<sup>43</sup> Royal Commission into the Detention and Protection of Children in the Northern Territory, *Report*, Chapter 26, Page 364.

<sup>44</sup> Queensland Independent Review, 158.

<sup>45</sup> Atkinson Report, 62.

49. The Atkinson Report suggested a staged approach with 14 as a potential final MACR:

...if the MACR is successfully raised to 12, a similar process could be adopted to consider later advancing it to age 14 as criminal justice, human services, health and education systems build the requisite capabilities for non-criminal responses to offending by very young children (up to 13 years of age).<sup>46</sup>

50. The Atkinson Report also recommended that a trial be considered in a specific location where, by agreement only very serious criminal offences were dealt with in the courts.<sup>47</sup>

## Conclusion

51. In conclusion, the QHRC's position is that the MACR should be raised across Australia. This is in light of much of the evidence already cited, not least of which the findings of the Atkinson review that *doli incapax* does not operate as an effective barrier to prosecution.
52. Governments should commit to a MACR of 14, including consideration of a prohibition on those under 16 being detained as recommended by the United Nations committee. Nonetheless, based on the Queensland experience of moving 17 year olds out of the adult justice system, it is critical that this transition is well planned and resourced.
53. The challenges for rural and remote communities to any MACR change should not be ignored. As identified by the Townsville's Voice report, engaging with these communities is critical to developing and funding place-based youth development measures that are trusted and effective.<sup>48</sup> Such measures must be designed with the inherent challenges of place-based approaches in regional and remote communities including attracting and retaining appropriately skilled personnel, building local capability and overcoming coordination issues.<sup>49</sup> Such efforts will likely require a sustained effort over a long period,<sup>50</sup> including engagement with Aboriginal and Torres Strait Islander peoples in particular with the goal of finding Indigenous-led solutions.<sup>51</sup>
54. If necessary, changes to the MACR could be made incrementally. At a minimum, Governments should commit to 10-11 year olds not being

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<sup>46</sup> Atkinson Report, 106

<sup>47</sup> Atkinson Report, 105

<sup>48</sup> Townsville's Voice report, 34

<sup>49</sup> QPC Report, 138.

<sup>50</sup> Ibid.

<sup>51</sup> QPC Report, 438 – discusses principles informing reforms across the justice system to reduce indigenous imprisonment.



remanded in custody or sentenced to detention except for a very serious offence. A more preferable outcome would be to immediately apply *doli incapax* only from 12 to 14 years age, which would also provide certainty for all agencies that children aged 10 or 11 must be provided a non-justice system response to their behaviour.

55. Evidence-based programs must be developed and funded that seek to address the underlying causes of youth crime. Many of the Reports cited in this submission have identified alternatives to the current justice response to those aged under 14 years, and much of this research is cited and replicated across other Australian and International jurisdictions. Renewed and evidence based investment in early intervention, health and education should be prioritised.
56. Community consultation is a critical component of developing such programs, with engagement and funding for rural and remote communities being particularly important. Consideration should be given to trialling this in a jurisdiction or part of a jurisdiction including prioritising interventions to regions with concentrations of at-risk and disengaged children.<sup>52</sup>
57. These interventions should adopt a justice reinvestment approach and must address the gross over-representation of Aboriginal and Torres Strait Islander children in the justice system.

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<sup>52</sup> QPC Report, 145.