

25 February 2020

The Chair
Age of Criminal Responsibility Working Group
COAG Council of Attorneys-General
By email: LegPolicy@justice.wa.gov.au

Dear Chair,

Review of the age of criminal responsibility

Save the Children welcomes the opportunity to contribute to the review of the age of criminal responsibility. The review's outcomes will be critical to the human rights and life opportunities of some of the most vulnerable children in Australia.

We make this submission as the leading international independent child rights organisation, and as an experienced Australian provider of youth justice services. Our work includes preventive, early intervention and diversionary initiatives in every State and the Northern Territory, as well as bail support and other services for children and young people who have had contact with the criminal justice system.

Our submission addresses the review's numbered questions in turn.

- 1. Currently across Australia, the age of criminal responsibility is 10 years of age. Should the age of criminal responsibility be maintained, increased, or increased in certain circumstances only?**
- 2. If you consider that the age of criminal responsibility should be increased from 10 years of age, what age do you consider it should be raised to (for example to 12 or higher)? Should the age be raised for all types of offences?**

Save the Children recognises that the administration of justice must balance a range of important principles which are, at times, in competition. These include, on the one hand, expectations from the community and victims of crime that offenders are held responsible for their actions, there is a disincentive to commit crimes, and that communities are safe from acts of violence and other offending behaviour. On the other hand, offenders themselves have rights, the justice system must have at its core an aim to rehabilitate offenders and reduce recidivism, and governments must prioritise the expenditure of taxpayer money on 'what works' to meet these objectives. For the youth justice system in particular, the aims of responding to the underlying needs that lead to offending, and diverting children from contact with the justice system, are also commonly cited as particularly important.¹

In our view, any reasonable and objective assessment of these principles suggests that we must rethink the way that the Australian criminal justice system deals with young people. As part of this, our strong view is that the minimum age of criminal responsibility should be raised to at least 14. This view is based

¹ See, eg. Armytage, P. and Ogloff, J., 2017. *Youth justice review and strategy: Meeting needs and reducing offending*, Victorian Government, available from <https://www.justice.vic.gov.au/justice-system/youth-justice/youth-justice-review-and-strategy-meeting-needs-and-reducing-offending>; *Report on youth justice*, from Bob Atkinson AO, APM, Special Advisor to Di Farmer MP, Minister for Child Safety, Youth and Women and Minister for Prevention of Domestic and Family Violence, Queensland Government, 8 June 2018, available from <https://www.youthjustice.qld.gov.au/resources/youthjustice/reform/youth-justice-report.pdf>; *Blueprint for Youth Justice Taskforce: Final report*, ACT Government, May 2019, available from https://www.communityservices.act.gov.au/_data/assets/pdf_file/0007/1361149/Blueprint-for-Youth-Justice-Taskforce-Final-Report-2019.pdf.

on evidence and principle. It is widely shared by legal, medical, children's and human rights experts across Australia.

Children are not adults, and no ten, 11, 12 or 13 year old child should be dealt with in the criminal justice system as if they were. The medical evidence about children's brain development is clear: at such young ages, children cannot understand the consequences of their actions, and their decision-making capacity and impulse control are far from fully developed.² It is both unjust and ineffective to treat children under 14 as if their brains were sufficiently developed to make comprehensive judgements and to seek to change their behaviour through punitive approaches.

Moreover, criminalising children's behaviour traps children in a cycle of disadvantage from which many never escape. Early contact with the criminal justice system leads to further, and often escalating, criminal behaviour.³ The younger a child is at their first sentence, the more likely they are to reoffend, including as an adult.⁴ Children who are jailed are not only more likely to reoffend but also less likely to complete their education or find employment.

The current low minimum age disproportionately harms those who are already most disadvantaged, as it is these children who are most likely to have contact with the youth justice system and therefore experience the harmful effects of such contact. It especially harms Aboriginal and Torres Strait Islander children, who comprise a large majority of Australian children sentenced and imprisoned each year.⁵

When children engage in anti-social behaviour, this is an indication that they have needs which are not being met – often associated with cognitive impairment, mental health difficulties, and trauma, abuse and neglect they have themselves experienced. Early intervention approaches which aim to address those needs, direct children (and their families) towards support services, and assist children to understand and take responsibility for the consequences of their behaviour, are more effective in changing children's behaviour than criminalising and punishing them for their acts. Such approaches also make our community more safe in the long run, as they are more likely to change children's pathways and less likely to lead to reoffending – including as adults – than responding by consigning children to the criminal justice system and the increased rates of reoffending that it produces.⁶

Recognising these considerations, United Nations human rights bodies – most recently, the Committee on the Rights of the Child (UNCRC) in late 2019 – have repeatedly called on Australia to raise its minimum age to at least 14.⁷ They have highlighted that Australia's current age of responsibility is, at 10, well below international minimum standards, representing a significant breach of children's rights.

Fourteen is also the most common age of criminal responsibility internationally.⁸ Many countries with a minimum age of 14 or higher also have low incarceration rates for older children who are subject to criminal law, suggesting a lower rate of children being entrenched in the justice system through earlier

² For an overview of the evidence about children's neurocognitive development, as well as their physical vulnerabilities and bio-psycho-social culturally appropriate alternative approaches, see Royal Australasian College of Physicians, 2019. *RACP submission to the Council of Attorneys General Working Group reviewing the Age of Criminal Responsibility*, July 2019.

³ Cuneen, C., 2017. *Arguments for raising the minimum age of criminal responsibility*, Research Report, Comparative Youth Penalty Project, University of New South Wales, pp 11-12, available from <https://www.cypp.unsw.edu.au/node/146>.

⁴ Sentencing Advisory Council, 2016. *Reoffending by children and young people in Victoria*, Victorian Government, pp 25-6 and 30-1.

⁵ Australian Institute of Health and Welfare (AIHW), 2019. *Youth justice in Australia 2017-18*, Data table S78b, available from <https://www.aihw.gov.au/reports/youth-justice/youth-justice-australia-2017-18/data>.

⁶ See footnotes 3 and 4 above.

⁷ Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Australia*, 1 November 2019, para 48(a); Committee on the Elimination of Racial Discrimination, *Concluding observations on the eighteenth to twentieth periodic reports of Australia*, 26 December 2017, para 26(a); Human Rights Committee, *Concluding observations on the sixth periodic report of Australia*, 1 December 2017, para 44; *Report of the Special Rapporteur on the Rights of Indigenous peoples on her visit to Australia*, A/HRC/36/46/Add.2, 8 August 2017, paras 77 and 113(i).

⁸ Committee on the Rights of the Child, *General comment No. 24 (2019) on children's rights in the child justice system*, 18 September 2019, para 20.

offending and punitive contact with police and the justice system and that a cohort of at-risk younger children has successfully been diverted from the youth justice system.⁹

Particularly difficult questions are raised for our society when children engage in very serious anti-social behaviour, especially when the behaviour is violent or directed at other children, or when there is a high risk of such behaviour. In such rare circumstances, a highly intensive and specialised therapeutic intervention in a supervised environment with a strong focus on rehabilitation, including expert clinical and other assessment, is likely to be appropriate. It is important to recall that children under 14 are incapable of truly understanding the consequences of their actions and a punitive – or criminalised – response would be counterproductive.

The raised age should apply to all criminal offences. There is no principled basis for distinguishing between different types of offence for this purpose. As the UNCRC has said, exceptions to the minimum age ‘are usually created to respond to public pressure and are not based on a rational understanding of children’s development’.¹⁰ The UNCRC ‘strongly recommends’ that countries with such exceptions abolish their approaches.¹¹ It would be extraordinary for Australia to actively move in the opposite direction by creating exceptions to the minimum age or different ‘classes’ of offence.

3. If the age of criminal responsibility is increased should the presumption of *doli incapax* be retained? Does the operation of *doli incapax* differ across jurisdictions and, if so, how might this affect prosecutions? Could the principle of *doli incapax* be applied more effectively in practice?

The presumption of *doli incapax* – that children under the age of 14 are criminally incapable due to insufficient intellectual and moral development – is not a compelling reason to retain the current low minimum age of criminal responsibility.

Doli incapax does not safeguard children and is inconsistent in its application. Reliance on the presumption to protect children’s rights and interests, and ensure fair and appropriate outcomes, is problematic. In particular:

- There are significant challenges in how the test is applied. While the prosecution bears the onus of proof, there is a widespread view that in practice the burden more commonly lies with the defence. The defence must commission evidence to prove the defendant’s lack of understanding of the difference between right and wrong, and faces an ‘unofficial reversal of the onus’.¹²
- Challenges also arise due to lack of resources, especially in rural and remote areas. The presumption is intended to facilitate individualised assessment, but in practice expertise or resources are often unavailable to commission critical reports and testing, such as for foetal alcohol spectrum disorder and other impairments.
- The presumption is not applied at the time of arrest. Children may be held on remand for a significant time before any *doli incapax* assessment. The result is that children experience the harmful effects of being held in custody, including increased likelihood of future offending, even if they are subsequently found to lack the understanding needed for criminal responsibility.¹³

These experiences are consistent with those in other countries which have a similar presumption. Internationally, such presumptions have, in practice, resulted in discriminatory practices. This has led the

⁹ Cuneen, above n 3, p 3.

¹⁰ *General comment 24*, above n 8, para 25.

¹¹ *General comment 24*, above n 8, para 25.

¹² Fitz-Gibbon, K. and O’Brien, W., 2019. ‘A child’s capacity to commit crime: Examining the operation of *doli incapax* in Victoria (Australia)’, *International Journal for Crime, Justice and Social Democracy* 8(1): 18-33.

¹³ See Richards, K. and Renshaw, L., 2013, *Bail and remand for young people in Australia: A national research project*, AIC Reports, Research and Public Policy Series 125, Australian Institute of Criminology, pp 1-5.

UNCRC to urge the setting of one appropriate minimum age rather than using presumptions similar to *doli incapax* coupled with a low minimum age.¹⁴

If the minimum age of criminal responsibility is increased to at least 14, the presumption of *doli incapax* will no longer operate.

4. Should there be a separate minimum age of detention? If the minimum age of criminal responsibility is raised (eg to 12) should a higher minimum age of detention be introduced (eg to 14)?

Save the Children makes no comment on this question, except to reiterate that the minimum age of criminal responsibility should be raised to at least 14, and to note that in all circumstances children should only be detained as a last resort.¹⁵

- 5. What programs and frameworks may be required if the age of criminal responsibility is raised? What agencies or organisations should be involved in their delivery?**
- 6. Are there current programs or approaches that you consider effective in supporting young people under the age of 10 years, or young people over that age who are not charged by police who may be engaging in anti-social or potentially criminal behaviour or are at risk of entering the criminal justice system in the future? Do these approaches include mechanisms to ensure that children take responsibility for their actions?**
- 7. If the age of criminal responsibility is raised, what strategies may be required for children who fall below the higher age threshold and who may then no longer access services through the youth justice system?**
- 8. If the age of criminal responsibility is raised, what might be the best practice for protecting the community from anti-social or criminal behaviours committed by children who fall under the minimum age threshold?**

(a) Proven programs, frameworks and strategies exist to support a raised age of criminal responsibility

Save the Children's views about children's criminal responsibility, and about what works to prevent, address and change undesirable behaviour, are informed by our experience directly supporting at-risk children, families and communities. We do this through the provision of early intervention services, programs and partnerships, as well as other services such as bail support programs, across Australia.

We see first-hand the effectiveness of evidence-based prevention and early intervention in supporting and diverting children who are at risk of engaging in criminal behaviour, including where they have already had contact with police or the criminal justice system and require support to change their future behaviour. At the same time, we see the harm caused by treating children who do not yet have the capacity to understand the consequences of their actions as criminals, as though they were adults.

Our programs are innovative, evidence-based and designed to reflect best practice. They emphasise measuring and evaluating impact. Their success is demonstrated by the changed pathways and demonstrably improved life outcomes of children who participate in them. In this submission, we describe two such programs and highlight the elements that have made them successful and that would be more broadly relevant if the minimum age of criminal responsibility were raised.

Place-based early intervention: the Youth Partnership Project

Youth justice is a complex problem which defies technical solutions. Children and young people in the youth justice system are some of the most vulnerable young people in our community. Despite high

¹⁴ General comment 24, above n 8, paras 26-7.

¹⁵ Convention on the Rights of the Child, art 37(b).

expenditure on corrective services, nearly 75 per cent of youth offenders released from sentenced detention return within 12 months.¹⁶ Solutions to the complex problems underlying such behaviour are highly contextual. In our experience, a place-based approach is crucial for success.

Recognising these considerations, since 2014 Save the Children has provided the ‘backbone’ for a strategic early intervention initiative in the south east corridor of Perth, WA, an area of high density youth crime. With 1 in 4 young people entering Banksia Hill Detention Centre coming from this area, and a high proportion of young people returning to youth detention within 12 months, it was clear the system was broken. A better approach, focused on prevention and early intervention, was needed.

Known as the Youth Partnership Project (YPP), this initiative has developed an innovative cross-sector early intervention framework based on early identification of young people with complex needs. This in turn allows partners to provide collaborative, intensive support.

The YPP is a place-based collective impact initiative. Collective impact initiatives differ from traditional ‘programs’ in being organised around structured collaboration to achieve systemic change on complex problems. They involve a dedicated ‘backbone’ support organisation – in this case Save the Children – as part of a set of mutually reinforcing activities with continuous communication and shared measurement across all partners, pursuing a shared goal. All YPP partners share a common goal of getting the right support to the right young people at the right time, aiming to create significant savings in expenditure on tertiary services and enable young people to thrive in their families and communities.

While Save the Children provides the YPP’s backbone, the initiative has been guided by a cross-sector Executive Steering Committee (including representatives from local government, State government departments, community sector organisations, WA Police and other key stakeholders), and by a co-design process involving young people with relevant lived experience. Shared definitions, linked data and genuine co-design with children and young people have been critical. The initial stages of the project were summarised in a detailed report which compiled data and service mapping from multiple sources, some of them not publicly available, to fully understand the complex challenges facing local communities:

We have sought to understand the problem through engaging with over 500 people across state and local government and the not-for-profit community sector, and more importantly 160 young people. We disaggregated, collated and analysed the data and created a shared language around the young people we are seeking to support. We then set about co-designing the solution with young people and service providers to gain an understanding of who should be a part of this solution.¹⁷

The YPP early intervention model developed through this process was piloted as a ‘proof point project’ in Armadale from mid-2017 to December 2019, with developmental evaluation informing learnings and revisions to the model along the way. Operationally, the model works by collectively identifying young people with complex needs, establishing relationships with and collaboratively supporting them, and ultimately transitioning the young people and their families to independently accessing services in the community. The support provided is holistic and across a set of protective factors that were informed by evidence and identified through the co-design process.¹⁸ A particular focus has been boys aged eight to 12 years old – a critical transition period to the age when first offending is most likely to occur.

Early outcomes from the pilot, based on clinical assessments and other data, indicate a substantial decline in suspension rates of participants, as well as improved school attendance, behaviour, literacy skills, life skills and social and emotional development, and attention and concentration, executive function and intellectual, emotional and coping skills since 2017. A formal evaluation of the pilot’s

¹⁶ AIHW, 2019. *Young people returning to sentenced youth justice supervision 2017-18*, pp 13-14.

¹⁷ Youth Partnership Project, 2017. *Change the Story Report*, p 17, available from <http://www.youthpartnershipproject.org.au/publications>.

¹⁸ These protective factors are: social and emotional wellbeing; life skills; family support; access to resources; educational engagement; and safe community spaces.

individual and systemic impact through to December 2019 is expected to be available in early 2020. The initiative was recognised in the 2018 Community Service Excellence Awards (WA) for outstanding commitment to collaborative place-based service or solutions.¹⁹

Following the successful pilot and refinement in Armadale, the YPP early intervention model is now being implemented in Gosnells to further establish the scalability and adaptability of the model. Gosnells has been identified as an area with a need for such an intervention and has a much larger youth population than Armadale.²⁰ Save the Children continues to support this initiative in its new site.

Supporting children and young people to re-engage with education: Out Teach Mobile Education

The correlation between children's and young people's disengagement from education and contact with the criminal justice system is well documented. There is evidence that more than 60 per cent of children and young people in the youth justice system have previously been expelled or suspended from school.²¹ Re-engagement in learning and school is crucial to at-risk children's and young people's future opportunities. Yet children and young people who are in contact with police or the youth justice system face a range of barriers to successful involvement in their communities.

Save the Children's Out Teach Mobile Education program provides individualised support for children and young people who are disengaged from learning. It includes a focus on those who have had contact with the youth justice system. The program employs specialist teachers who work from a trauma-informed approach to develop an individualised education plan with the young person that builds on their strengths and helps them achieve their educational goals.

Out Teach uses a mobile classroom to engage students in outdoor and informal settings. This allows the program to engage with the hardest-to-reach learners in a comfortable and familiar environment. Weekly lessons focus on the specific needs and interests of the student, making learning relevant and engaging. The program helps children and young people by forming positive relationships to guide them along a suitable educational pathway. By addressing associated social barriers and meeting the students' immediate needs, this program aims to alter what young people believe is possible. The comments of one participant are illuminating:

It's heaps easier to meet up with you instead of going to classes. I can just work on relevant stuff instead of getting worksheet after worksheet that teachers don't explain to me. I hate how I feel judged whenever I turn up, like they decide who I am before they know anything about me. But in the van I don't have to deal with that anxiety. I have done more school work in the last few weeks than I have done in the last four years. (John, Out Teach participant)

The program is flexible. For some young people, Out Teach provides support to remain engaged with their school. For others, the goal may be to re-enter education or vocational training after a period of disengagement. To date, children and young people aged 10 and older have benefited from participation. In Tasmania, Out Teach staff work in close collaboration with youth workers in Save the Children's complementary *Transition from Detention* and *Supporting Young People on Bail* programs, offering a dual-worker wraparound approach to ensure participants' immediate needs are met.

¹⁹ Simone McGurk, Minister for Community Services, 'Outstanding community service achievers recognised', Media release, 3 May 2018, WA Government, available from <https://www.mediastatements.wa.gov.au/Pages/McGowan/2018/05/Outstanding-community-service-achievers-recognised.aspx>.

²⁰ For completeness, this does not mean the implementation in Gosnells will necessarily be targeted at a larger number of children and young people compared to in Armadale, given local circumstances and practical resourcing considerations.

²¹ For example, in 2018, 68 per cent of children and young people sentenced to detention or on remand in Victoria had previously been suspended or expelled from school: Youth Parole Board, 2019. *Annual report 2018-19*, Victorian Government, p 29.

Out Teach was independently evaluated by Monash University in 2017. Key findings included:

- Out Teach is ‘clearly a successful and innovative model that has impacted significantly on the lives (and life-chances) of the young people it has served’;
- Out Teach exemplifies the good practices identified in the literature on the delivery of alternative educational programs for disengaged young people: support is tailored to the individual; activities are meaningful, relevant and voluntary, the learning environment does not replicate school environments; and the staff employed are skilled at teaching and relationship-building;
- ‘[g]iven their history of truancy and the link between truancy and criminal behaviour, the attendance rate of the young people in the Out Teach program is remarkable’; and
- Out Teach participants have a ‘markedly lower’ rate of return to youth justice supervision than the general rate.²²

More recent program data shows that these low rates of returns to youth justice supervision have been maintained, along with positive outcomes across indicators including meeting participants’ educational goals, reductions in risk factors, and improvements in literacy.

Out Teach has been recognised as a positive pathway for re-engagement opportunities. For example, the program has been referenced in Youth Court as a key support for a student, resulting in the student avoiding a court sentence. In 2018, the program received a gold award in the Australian Crime and Violence Prevention Awards, which recognise best practice in the prevention or reduction of violence and other types of crime in Australia.²³

Out Teach’s flexible model operates in Tasmania and in Shepparton, Victoria. Aspects of the model have also been adapted in other contexts, including in the Northern Territory.

(b) Best practice approaches exist to support a raised age of criminal responsibility

The YPP and Out Teach represent two well-evidenced and impactful early intervention programs which support children and young people who are at risk of contact, or further contact, with police or the youth justice system. While different in nature and approach, they have important elements in common. Together, they illustrate best practice elements of the programs, frameworks and strategies that could support a raised age of criminal responsibility. They also align with justice reinvestment approaches. These elements are summarised below.

Prevention and diversion from the youth justice system should be priorities, as part of a suite of early intervention supports targeted at children and young people who are at risk. These supports should:

- include supports for children and young people who have not yet had contact with police or the youth justice system, as well as for those who have had already had such contact;
- be directed at supporting the most vulnerable children and young people early;
- be targeted, localised and place-based, with intensive individualised support for individual at-risk children and young people built on one-to-one relationships, rather than ‘one size fits all’ interventions aimed at broad ‘cohorts’, groups or geographic areas;
- bring a cross-section of partners together to take a collaborative approach with a common goal of reducing demand on the youth justice system;

²² Reimer, K., Pangrazio, L. and Selwyn, N., 2017. *Out Teach Mobile Education program evaluation: Final report*, Monash University, pp 11, 15, 18 and 23. For additional assessment of the program, with a focus on the voices of young people involved in the program, see Reimer, K. and Pangrazio, L., 2018. ‘Educating on the margins: Young people’s insights into effective alternative education’, *International Journal of Inclusive Education*, DOI: 10.1080/13603116.2018.1467977.

²³ Australian Institute of Criminology, ‘Out-Teach Mobile Education project recognised for re-engaging youth who have been in contact with the justice system’, Media release, 29 November 2018, available from <https://aic.gov.au/media-centre/media-releases-and-statements/out-teach-mobile-education-project-recognised-re-engaging-youth-who-have-been-contact-justice-system>.

- include a specific function for coordination and/or leadership across service providers and other partners, which might take the form of a ‘backbone’ organisation, depending on the nature of the support being provided, with appropriate resourcing for this function; and
- adopt a long term approach to impact and cost effectiveness.

For those who have been in detention, this includes integrated, evidence-based throughcare services.²⁴

Supports should be holistic and wrap around all aspects of children’s and young people’s lives. Their focus should be on meeting children’s needs and addressing the problems causing their undesirable behaviour, rather than punishing children. Importantly, this should include working with children, families and communities to encourage children’s responsibility and accountability for their actions, to divert them from further harmful behaviour. Restorative and therapeutic interventions, operating at intensity levels reflecting the need being met, are more effective than punitive approaches in avoiding future harm.²⁵

The underlying causes and drivers of children’s potentially criminal behaviour are complex, as are the difficulties at-risk children face in finding a pathway into independent living and healthy engagement in society. A holistic approach should include a recognition of the importance of engagement with learning and employment as protective factors against potentially criminal behaviour.

Engagement with school can be particularly powerful in shifting children’s behaviour and pathways, while also particularly difficult for children who are already disengaged. Accordingly, there should be a strong focus on supporting at-risk children to engage with school and other education, including through ‘alternative education’ programs. Our experience is that, for children at significant risk of contact with police and youth justice, educational engagement requires intensive and individualised support, as these children often do not have the groundwork needed to engage effectively in formal learning environments.

In addition to such intensive and individualised programs which target at-risk children and young people with a particular focus on youth justice concerns (such as Out Teach), well-evidenced programs which support disengaged students more broadly can form part of a system-wide approach to supporting vulnerable children. For example, operating in over 100 schools across Australia, Save the Children’s Hands on Learning model supports disengaged students to undertake practical projects working with artisan-teachers outside the classroom one day a week, and has strong evidence of effectiveness in enhancing students’ connection to school, capacities and skills, and confidence and sense of meaning from what they do at school.²⁶ Programs like Hands on Learning can reach vulnerable children before they engage in low-level antisocial behaviour or have any contact with police, preventing them from experiencing the negative effects of even such initial contact.

Community sector and other non-government organisations such as Save the Children are well placed to provide such supports, and are already doing so through programs like the YPP, Out Teach and others. In addition to our existing work, we can bring and adapt proven approaches to new jurisdictions, enabling best practice to spread nationally. This is important given that youth justice is primarily a State and Territory – not Federal – responsibility.

A focus on prevention and early intervention reflects best practice in protecting the community. A focus on children who are at risk of engaging in dangerous or otherwise undesirable behaviour, particularly at critical transitional periods during their lives, can shift their behaviour. It can address the underlying

²⁴ The Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory recommended the establishment of such a service in the NT: *Final report*, 11 November 2017, Volume 2B, ch 24, p 201 (recommendation 24.1).

²⁵ For a useful overview of diversionary approaches, see Jesuit Social Services, 2019. *Raising the age of criminal responsibility: There is a better way*, available from <https://jss.org.au/raising-the-age-of-criminal-responsibility-there-is-a-better-way/>.

²⁶ Save the Children, 2019. *Future directions: Hands on Learning – Keeping young people connected to education and building capacity for future success*, available from <http://handsonlearning.org.au/wp/wp-content/uploads/2019/03/Hands-on-Learning-Future-Directions-2019-1.pdf>.

causes of that behaviour and support them to find a better path. In many cases, an intensive focus on relatively small numbers of children, often in areas of high density youth crime, can yield significant improvements in population-level outcomes.

9. Is there a need for any new criminal offences in Australian jurisdictions for persons who exploit or incite children who fall under the minimum age of criminal responsibility (or may be considered doli incapax) to participate in activities or behaviours which may otherwise attract a criminal offence?

Save the Children has not developed a position on this question.

10. Are there issues specific to states or territories (eg operational issues) that are relevant to considerations of raising the age of criminal responsibility?

Save the Children has no comments on this question.

11. Are there any additional matters you wish to raise?

As noted above, UN human rights bodies have criticised Australia's low age of criminal responsibility and urged the Australian Government to raise the minimum age to at least 14 in line with international standards.²⁷ The issue also received significant attention during the most recent comprehensive UN peer review of Australia's human rights record, through the Second Cycle Universal Periodic Review (UPR) in 2015, with concerns raised by Croatia,²⁸ the Czech Republic,²⁹ Iceland,³⁰ Norway³¹ and Uruguay.³²

Save the Children anticipates that, through the Third Cycle UPR in 2020, there will again be a significant focus on Australia's low minimum age and international criticism of Australia's failure to raise the age to at least 14. The prominence of the issue has only increased since the UN's 2015 review. We expect that civil society will also highlight Australia's low minimum age in its formal and public engagement with the UPR process in 2020. Save the Children is working closely with the committee coordinating the joint NGO report to the UN on Australia's human rights record – which will be a key input into the UPR review process – and is coordinating the report's content on children's rights.

Lastly, Save the Children observes that Australia has maintained its reservation to article 37(c) of the Convention on the Rights of the Child, which prohibits the detention of children in the same facility as adults (including police cells), among other things. We urge the Australian Government to withdraw this reservation, and we call on all governments to take all steps possible in their own jurisdictions to eliminate joint detention of children with adults given the clear harm it causes to children.

²⁷ See footnotes 7 and 8 above.

²⁸ *Report of the Working Group on the Universal Periodic Review: Australia*, Human Rights Council, A/HRC/31/14, 13 January 2016, p 10.

²⁹ *Universal Periodic Review – Australia*, Second Cycle, 9 November 2015, 'Questions submitted in advance: Addendum 2', available from <https://www.ohchr.org/EN/HRBodies/UPR/Pages/AUindex.aspx>.

³⁰ *Report of the Working Group on the Universal Periodic Review: Australia*, above n 28, p 22.

³¹ *Universal Periodic Review – Australia*, Second Cycle, 9 November 2015, 'Questions submitted in advance: Addendum 1', available from <https://www.ohchr.org/EN/HRBodies/UPR/Pages/AUindex.aspx>.

³² *Report of the Working Group on the Universal Periodic Review: Australia*, above n 28, p 22.

Thank you for considering our views on this critical matter for children across Australia. If we can provide further detail, or to discuss anything in this submission, please do not hesitate to contact either myself or Howard Choo, our Australian Social Policy and Advocacy Adviser, at howard.choo@savethechildren.org.au.

Kind regards,



Mat Tinkler
Deputy CEO & Managing Director of International Programs
Save the Children Australia
Direct Tel: +61 3 7002 1764
Email: mat.tinkler@savethechildren.org.au