



28 February 2020

Submission by Whitelion Youth Services Review of age of criminal responsibility

Whitelion is grateful for the opportunity to respond to the *review of age of criminal responsibility* by the Council of Attorneys-General.

Whitelion is a national not-for-profit whose vision is 'a world where no young person is left behind and where all young people have the right to equitable opportunities to reach their full potential'. Our purpose is 'to build positive connections and pathways to work for young people aged between 14 and 24 who are at risk- www.whitelion.asn.au With 20 years' experience working with young people at risk, we know that criminal responsibility laws require review to reflect contemporary approaches to childhood development and to improve the overall achievement of wellbeing, education and social outcomes for this cohort.

As an organization who believes that all young people have the **right** to equitable opportunities, we recognize and support the *United Nations Committee on the Rights of the Child* appeal for countries to have a minimum age of criminal responsibility set at 14 years or higher, and call on the Victorian government to reflect this international human right standard.

Whitelion is a proud member of the Smart Justice 4 Young People (SJ4YP) network which is a coalition of legal, health, social services and youth advocacy organisations working for evidence-based and effective youth justice reform. We believe that Victoria - as a progressive and innovative leader in youth justice - should lead the way in raising the age at which children can be held criminally responsible. **Whitelion proudly supports the SJ4YP position paper calling on the Victorian Government to raise the age of criminal responsibility to 14 years.**

Whitelion would like to comment on the questions posed through this review where relevant to its experience as follows:

<p>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? Please explain the reasons for your view and, if available, provide any supporting evidence.</p>	<p>Whitelion supports the <i>Smart Justice 4 Young People</i> position paper calling for an increase in the age of Criminal Responsibility from 10 to 14 years for all young people.</p> <p>Whitelion would like to specifically draw reference to the experience of young people in the <i>Out of Home Care</i> space where incarceration rates are significantly higher than the general population. We believe this population group requires specialized consideration linking offending behaviors to complex trauma and instability in childhood. We do not believe that incarceration for young people under the age of 14 is an effective diversion strategy broadly, but it is particularly ineffective when developmental stage and behavioral tendencies are shaped by circumstance and trauma.</p>
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	<p>In addition, Whitelion would like to reference the experience of young people who are Aboriginal and Torres Strait Islander and again, are overrepresented in the youth justice system. We believe that culturally-safe and trauma-responsive services are a more effective approach to reducing offending/reoffending in this cohort, than incarceration (or the threat of incarceration) itself.</p>
<p>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? Please explain the reasons for your view and, if available, provide any supporting evidence.</p>	<p>Whitelion supports the <i>Smart Justice 4 Young People</i> position paper calling for an increase in the age of Criminal Responsibility from 10 to 14 years.</p> <p>Through our experience, and knowledge of childhood and adolescent developmental stages, we understand that between the ages of 10 and 14, children undergo significant mental, emotional and physical growth and development. Their capacity to reason and utilise consequential thinking are not fully developed. Yet, in Victoria, our laws allow primary-school aged children as young as 10 to be arrested, prosecuted and detained in youth jails.</p> <p>When once again calling attention to young people in the Out of Home care system who find themselves in the justice system, this particular demographic of children and young people often have cognitive differences as a result of childhood trauma and complex experiences – meaning their ability to engage in consequential thinking is impaired. Incarceration creates and compounds existing trauma, perpetuating complex behaviours into early adulthood.</p>
<p>3) If the age of criminal responsibility is increased (or increased in certain circumstances) should the presumption of doli incapax (that children aged under 14 years are criminally incapable unless the prosecution proves otherwise) 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? Please explain the reasons for your view and, if available, provide any supporting evidence.</p>	<p>No Comment</p>
<p>4) Should there be a separate minimum age of detention? If the minimum age of</p>	<p>No Comment</p>



<p>criminal responsibility is raised (eg to 12) should a higher minimum age of detention be introduced (eg to 14)? Please explain the reasons for your views and, if available, provide any supporting evidence.</p>	
<p>5) What programs and frameworks (eg social diversion and preventative strategies) may be required if the age of criminal responsibility is raised? What agencies or organisations should be involved in their delivery? Please explain the reasons for your views and, if available, provide any supporting evidence</p>	<p>We strongly believe that prevention, early intervention, and diversionary responses linked to culturally-safe and trauma-responsive services including education, health and community services should be prioritised and expanded. Services like Whitelion has delivered for over 20 years are proven to reduce offending, reoffending and increase overall wellbeing outcomes in young people. For example, Whitelion supported a young person aged 14-years to link in with a volunteer mentor. This young person had 52 offences recorded at the point of engagement with their mentor. Through the power of positive role-modeling this young person has established a strong and trusted bond which can vastly impact outlook and propensity for offending behavior. A recent study by Private/Public Venture found that young people who meet regularly with a mentor are 46% less likely than their peers to start using illegal drugs and drinking.</p> <p>Based on our sectoral experience, Whitelion would suggest that programs and services centered on trauma-informed practice, strengths based practice, resiliency practice and/or participatory youth practice would be most effective in a diversion and preventative context. Whitelion has effectively delivered a range of mentoring programs, adventure therapy programs, work readiness programs, outreach programs and case management programs with proven effectiveness in the prevention of offending/ reoffending. Our experience suggests that programs which seek to unpack and address underlying trauma, utilize strengths and abilities, promote resiliency and empower active participation are most effective when working with high risk young people.</p>
<p>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</p>	<p>No Comment</p>

<p>system in the future? Do these approaches include mechanisms to ensure that children take responsibility for their actions? Please explain the reasons for your views and, if available, provide any supporting evidence or suggestions in regard to any perceived shortcomings.</p>	
<p>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? Please explain the reasons for your views and, if available, provide any supporting evidence.</p>	<p>Whitelion suggests the following activities to prevent the offending/reoffending of young people below the higher age threshold:</p> <ul style="list-style-type: none"> - The provision of <i>wrap around support</i> and <i>service coordination</i> addressing the range of presenting complex needs - Support for <i>family inclusive practice</i> to strengthen the capacity of families to respond to emerging concerns - <i>Community centered practice</i> supporting a localized, specialised and proactive response to concerning behaviours - The provision of increased <i>after hours support</i> for young people - Increased specialised training for residential care staff to reduce the need for police intervention and incarceration - Increased support for children and young people experiencing homelessness (including couch surfing) to reduce <i>crimes of survival</i> - Increased access to mobile and outreach based service to improve service engagement and retention - Support for (and increase in) alternative education options for young people who are disengaged/disengaging from mainstream school <p>We believe that a culturally-safe response to intervention planning requires community-led action, particularly in Aboriginal and Torres Strait Islander communities where system-overrepresentation is the current norm. We believe that effective community change is only possible when decisions are made <i>with</i> people not <i>for</i> people.</p>
<p>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</p>	<p>No Comment</p>

by children who fall under the minimum age threshold?	
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?	No Comment
10) Are there issues specific to states or territories (eg operational issues) that are relevant to considerations of raising the age of criminal responsibility? Please explain the reasons for your views and, if available, provide any supporting evidence.	No Comment
11) Are there any additional matters you wish to raise? Please explain the reasons for your views and, if available, provide any supporting evidence	No Comment

Call for Action:

Whitelion is calling for section 344 of the *Children, Youth and Families Act 2005* to be amended to raise the age of criminal responsibility to 14 years. We believe that Victoria - as a progressive and innovative leader in youth justice - should lead the way in raising the age at which children can be held criminally responsible.

Kindest regards,

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