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Children deserve care, not the criminal justice system

The Law Council has today reiterated its call for the minimum age of criminal responsibility to be raised to 14 and for children aged 10, 11, 12 and 13 to be supported by wrap around services in order to reduce the risk of a lifetime of disadvantage and interaction with the justice system.

“Prison should not be a rite of passage for our children, yet in 2022 we are still locking up children as young as 10 years of age and otherwise bringing them into contact with the criminal justice system,” Law Council of Australia President, Mr Tass Liveris said.

“The Law Council wants to see the minimum age of criminal responsibility raised to 14, which would bring Australia into line with international standards and medical consensus on child brain development.

“When we advocate for this change, we are often asked about an alternative response for children under 14. Today we have released an [addendum](#) to the Law Council’s Policy Statement on the Minimum Age of Criminal Responsibility which outlines the approach we believe should be taken.”

The Law Council recommends that responses for children under the minimum age of criminal responsibility should accord to a range of principles. These include:

- the best interests of the child should be a primary consideration; the core needs of the child and their family unit are met through the provision of wraparound, multidisciplinary, therapeutically led programs and services, drawing on the existing evidence base across medical, legal and social sectors as to what works;
- all levels of government provide long-term, stable investment in this early intervention, diversion and rehabilitation, which is directed at both addressing existing needs and at combatting pathways into the justice system at an older age;
- all sectors involved with children are required to meet certain minimum standards of training and practice, which are child-centred, trauma-informed and culturally safe, recognising that children are distinct from adults in terms of their brain development, capacity for impulse control and reasoning;
- regard is had to the accessibility of services, including in regional, rural and remote areas; and
- services are designed, developed, implemented and reviewed in consultation with children, their families and communities, and in particular Aboriginal and Torres Strait Islander children, families and communities.

The Law Council’s plan released today confirms that children under the minimum age of criminal responsibility should primarily be engaged with outside of the criminal justice system. That is, on a voluntary basis, not dealt with by police, not subjected to formal court processes, and not deprived of their liberty. It recommends additional principles related to policing, courts and coercive powers and facilities that jurisdictions should also adhere to when formulating and implementing non-criminal responses to children under 14.

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Media Release



“It is extremely rare for a young child to commit a serious crime,” Mr Liveris said. “Therefore, in the majority of instances, children’s behaviour is generally dealt with by existing means such as the child’s parents or school.

“Where children do not have the support of a family unit or are disengaged from other protective environments such as schools, their behaviour is more likely to come to the attention of, and be dealt with by, authorities such as police and magistrates.

“Many of these children have overlapping complex needs in the areas of mental and physical health and disability, poverty, insecure housing, abuse and neglect. Our current system compounds the inequity experienced by the most disenfranchised children within our community.

“We must do everything in our power to help all children grow up to lead safe, fulfilled and empowered lives. Evidence shows children remain in cycles of disadvantage and imprisonment due to a lack of early critical support services and a failure to invest in alternatives to criminalisation and imprisonment.

“There is already a precedent for this approach as it is essentially already in place for children under the age of 10 or who are considered to lack the capacity to know that an act is seriously wrong in the legal or moral sense.

“We are asking that we raise the minimum age of criminal responsibility to 14 and invest in initiatives that will keep our kids out of the criminal justice system and out of jail.”

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