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Locking up children should be a last resort – anything else is a human rights violation

New laws passed in the Northern Territory are inconsistent with Australia's international human rights obligations, will likely result in First Nations children being detained in even greater numbers, and undermine the presumption of innocence.

The Law Council of Australia and Law Society Northern Territory are deeply concerned about these changes to NT legislation, from both a human rights and a rule of law perspective.

"These laws, which include lowering the minimum age of criminal responsibility to 10, are a retrograde step which flies in the face of reason and will simply place vulnerable children – many of whom are themselves victims of crime and neglect - on a pathway to more offending," Law Society Northern Territory President, Mr Richard Henschke said.

"There is overwhelming evidence that locking children up does not make our community safer and seriously harms the children concerned. In passing these Bills, the new Government spoke of jail time as being an opportunity for rehabilitation, but these laws appear to only focus on punishment, not addressing the disadvantage a child might face and helping them to turn their lives around."

The failure of the Criminal Code Amendment Bill 2024 to make any special provision for rehabilitation, combined with the reduction in the minimum age of criminal responsibility, is contrary to the requirements of the UN Convention on the Rights of the Child and article 10 of the International Covenant on Civil and Political Rights, to which Australia is a party.

"We are particularly worried about the impact these changes will have on First Nations children," Law Council of Australia President, Mr Greg McIntyre SC said. "The Northern Territory already has Australia's highest rate of child imprisonment, and 94 per cent of 10-13 year-olds in detention in the Territory are First Nations children.

"The changes also walk back recommendations from the 2017 *Royal Commission into the Protection and Detention of Children in the NT*, including with respect to bail being available for young people unless exceptional circumstances exist."

The Law Council and Law Society share strong concerns from a rule of law perspective about laws that expand presumptions against bail including for children. Bail is based on the common law presumption of innocence, which underpins our criminal justice system in Australia.

"More and more people, including children, are being detained for longer periods on remand while they await trial. This should not be the default position as it is contrary to the presumption of innocence. It will also increase the need for cells and detention centres to be funded from taxpayer dollars," Mr Henschke said.

"We have recently written to the Chief Minister regarding the urgent pressures on our justice system and the need to appropriately fund our legal assistance sector. These changes will only exacerbate the potential for additional stresses, costs and injustices."

"The issues plaguing our youth justice system are unfortunately not confined to the Northern Territory," Mr McIntyre said. "The Law Council and Law Society NT want to see serious national change in the area of child justice. A rights-based approach, focussing on children's wellbeing and diverting children from the criminal justice system is the only way forward."

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