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Law Council calls on government to Raise the Age

All comments to be attributed to Law Council President, Dr Jacoba Brasch QC.

“Last night’s call by 31 countries meeting at the United Nations Universal Periodic Review that Australia raise the minimum age of criminal responsibility, is a stark reminder that Australia is falling behind the rest of the world in dealing with juvenile offenders.

The Law Council has long advocated for the minimum age of criminal responsibility to be raised from 10 to 14, in a move that would bring us in line with our international obligations.

According to 2019 figures supplied by the Australian Institute of Health and Welfare, approximately 600 children under the age of 14 across the country are in our prisons every year, some as young as 10 years old. More than half have not even been sentenced yet – but are locked up pending trial.

Indigenous children are disproportionately affected: 835 per 100,000 Indigenous children aged 10-14 were in youth justice supervision on an average day in 2017-2018, compared to 28 per 100,000 non-Indigenous children.

These are some of the most vulnerable children in society – who have frequently experienced issues such as parental incarceration, homelessness, neglect and poor health.

It is unconscionable that in 2021 Australia, while a child under 13 years cannot sign up for a Facebook account; cannot board a plane unsupervised if under 12 but children as young as 10, can be found to be criminally responsible, charged with a crime and kept in detention.

The Law Council is not discounting that there are some legitimate concerns held amongst some parts of the community about community safety and juvenile crime. However, children aged 10-14 are statistically very unlikely to commit serious crimes such as homicide.

However, evidence strongly suggests that having a low minimum age of criminal responsibility of 10 years old does not work. It does not make our communities safer, because it fails to prevent reoffending or to rehabilitate children. It does not make the children themselves safer.

Instead, it is likely to entrench criminality and creates cycles of inter-generational disadvantage that heighten reoffending rates.

Raising the age to 14 would remove the need for courts to consider the confusing and complex common law doctrine of *doli incapax*, which is leading to inconsistencies in different jurisdictions and it is difficult to use in a courtroom.

Instead of incarceration, the Law Council believes that there is a need for alternative, health and welfare-based responses, to introduce policies and programs which maximise the chances of rehabilitating the child, addressing their underlying needs, and upholding community safety in both the immediate and longer-term.

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