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:submission

Submission To The Act Attorney-General:

Minimum Age Of Criminal Responsibility (MACR)

July 2021

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The Australian Childhood Foundation

We thank the ACT MACR Working Group for the opportunity to provide a submission on this topic and we are pleased that that the MACR explicitly recognises the importance of the views, knowledge and expertise of interested stakeholders and individuals.

The Questions this Submission Addresses

This submission addresses the question of whether the age of criminal responsibility (MACR) should be increased and submits that the age should be raised from 10 years old to a minimum of 14 years old in the Australian Capital Territory.

An overview of the key points raised within our submission are outlined within the summary of recommendations. Our responses to the questions, and other relevant material, are set out below.

Summary of reccommendations

The Australian Childhood Foundation (ACF) recommends that the minimum age of criminal responsibility (MACR) in the Australian Capital Territory be reformed in line with the following principles:

1. The minimum age of criminal responsibility be raised to at least 14 years.
2. The increased minimum age of criminal responsibility should be universal, with no exemptions due to extenuating circumstances, even for serious offences.
3. Should the minimum age of criminal responsibility be raised to age 14, the principle of doli incapax ceases to be relevant and should be abolished. However, young people aged 15–17 must still be provided safeguards in their contact with the justice system to ensure it is responsive and supportive of their individual circumstances and that treatment and proceedings are appropriate to their individual needs.
4. That the minimum age of detention be set at 16 years to decrease the likelihood of reoffending and provide greater opportunities for young people aged 10 to 15 years to achieve positive life-long outcomes with a view of detention as a matter of last resort for any young person under the age of 18.
5. Children and young people in the youth justice system have high rates of cognitive impairment, mental illness, and trauma. A therapeutic and supportive response to these children and their families outside of the youth justice system is urgently needed to provide protection not further harm for those in need.
6. That the Australian Capital Territory further develop and implement a Justice Reinvestment Strategy in partnership with community services, with the aim to shift the emphasis of youth justice from punishment to rehabilitation.
7. That funds previously allocated for the criminalisation and detention of children under 14 be re-allocated to prevention, early intervention, and diversionary responses linked to culturally safe and trauma-responsive services for this age-range.
8. That universal services in areas such as education, health, employment, and other community services be integrated into the youth justice system as key drivers of early intervention.
9. Ensure that Aboriginal Community Controlled Organisations (ACCOs) are prioritised and funded to deliver the planning, design and implementation of prevention, early intervention and diversionary responses for Aboriginal and Torres Strait Islander children and young people.

Questions For Discussion

International comparisons

The MACR at 10, is well below the global median of 14 years. The ACT's MACR is out of step with much of the rest of the developed world. For example:

12 years: Belgium, Canada, Israel, Netherlands, Scotland

13 years: Greece

14 years: France, Austria, Germany, Italy, Japan, Spain, Iceland, Russia, Norway

15 years: Denmark, Finland, Iceland, Norway, Sweden

16 years: Portugal, Japan

18 years: Belgium, Brazil, Luxembourg, Peru, Uruguay

Human rights compliance

Australia is a signatory to the Conventions on the Rights of the Child (CRC) and through this has committed to ensuring children enjoy the rights in the CRC. However, the United Nations Conventions of the Rights of the Child (UNCRC) has maintained a longstanding criticism of the low age of criminal responsibility in Australia (UNCRC 1997: [11, 29]; UNCRC 2005: [73]; UNCRC 2012: [82(a)]).

The UN's Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)

While the Beijing Rules and the Riyadh Guidelines, both products of the United Nations (UN) deliberations, address the minimum standards for youth justice and the maturational and development issues relating to children's criminal capacity (United Nations, 1985; 1990) they did stop short of stipulating a MACR. However, almost two decades later the UN Convention on the Rights of the Child (2007) went a step further, noting that a MACR below 12 years is not acceptable, and advised member states that a minimum age of around 14 to 16 years is encouraged. The UNCRC also argued that a higher minimum age of criminal responsibility of 14 or 16 years contributes 'to a juvenile justice system which deals with children in conflict with the law without resorting to judicial proceedings, providing that the child's human rights and legal safeguards are fully respected' (UNCRC 2007: para 33).

Children and young people in the child protection and out of home care system

Children and young people in the child protection and out of home care systems (OOHC) have almost by default experienced some form of physical or mental health trauma (State of Victoria, Sentencing Advisory Council, 2019). The State of Victoria, Sentencing Advisory Council (2019) also found that there was a significant over-representation of children and young people in the child protection/OOHC in the youth justice system. Of relevance to the issue of raising the MACR, the report clearly highlights that the younger children are at first sentence, the more likely they are to be known to Child Protection (i.e., to have experienced trauma).

OF THE 438 CHILDREN AGED 10 TO 13 YEARS AT AGE OF FIRST SENTENCE OR DIVERSION:

- **1 in 2 were the subject to a child protection report**
- **1 in 3 were the subject of a child protection order**
- **1 in 3 experienced OOHC**
- **1 in 4 experienced residential care**

Children who had lived in OOHC were four times more likely to have contact with youth justice system than those who had not lived in out-of-home care (Alltucker, Bullis, Close & Yovanoff, 2006). They were also 15 times more likely to have been in youth detention than children who had not been in OOHC (Cashmore, 2011).

Children and young people who have experienced trauma can exhibit a range of problematic behaviours as a result of this trauma, for many reasons including being in a persistent heightened state, or dissociation due to misreading cues and being quickly triggered into a fear response. This often presents with aggression and behaviours that challenge.

Aboriginal and Torres Straight Islander children

There is also the issue of the high rate of incarceration of Indigenous youth. Just over half of all Australian children imprisoned on any given night are Indigenous. Criminalising children from 10 years old has a significant impact on Aboriginal and Torres Strait Islander children and young people. The tendency to over-sentence Aboriginal and Torres Strait Islander children at an earlier age further entrenches cycles of indigenous disadvantage caused by poverty, intergenerational trauma and systemic discrimination. The outcome of an accumulation of prior convictions which often begins with a minor offence at an early age can be debilitating for education and employment prospects as well as the overall health and wellbeing of Aboriginal and Torres Strait Islander young people later in life.

An increased MACR supports Australia's efforts to Close the Gap in outcomes between Aboriginal young people and non-Aboriginal young people, across a variety of domains not limited to youth justice.

International comparisons alone do not provide an argument for increasing the MACR in the ACT. However, they do demonstrate the feasibility of raising the minimum age and doing so without adverse effects on crime rates.

RECOMMENDATION 1:

The minimum age of criminal responsibility be raised to at least 14 years.

Child development and neurobiology

The present MACR age of 10 years old ignores robust evidence about children's neurological, cognitive, behavioural, emotional, and moral functioning. In the last two decades, a growing body of longitudinal neuroimaging research has demonstrated that adolescence is a period of continued brain growth and change, challenging longstanding assumptions that the brain was largely finished maturing by puberty (Johnson, Blum & Giedd, 2009). As Steinberg (2012) states:

> ***There is now incontrovertible evidence that adolescence is a period of significant changes in the brain structure and function.***

When considering criminal behaviour, it is necessary to consider the cognitive precursors to the offending behaviours. Criminal capacity is dependent on mature decision-making, problem-solving, planning, response inhibition, as well as the abilities to pause long enough to assess a situation, contemplate the options, evaluate possible consequences, and plan and execute a course of action (Pillay & Willows, 2015). The typical, unimpaired adult possesses these capabilities, which is why adults are considered to have criminal responsibility unless proven otherwise.

It is now known that adolescents are unlike adults in a number of ways, especially in decision making, judgment, impulse control and effective planning, with the neurodevelopment and cognitive neuroscience research showing that the adolescent brain is not a fully developed and functional organ, but rather a work in progress (Weinberger, Elvevag, & Giedd, 2005).

Neurobiological evidence clearly demonstrates that children aged 10 to 14 years lack the emotional, mental and intellectual maturity necessary to reflect before acting. The capacity for abstract reasoning matures throughout adolescence and is significantly underdeveloped in children aged 10–13 by comparison with 14–15-year-olds, who are, in turn, outperformed by older adolescents. Research suggests that children and young people's brains are still developing till at least the age of 25.3 This means that the age of criminal responsibility should be lifted to at least 14, if not higher. According to the Sentencing Advisory Council (2012):

> ***This [neurological immaturity] is likely to contribute to adolescents' lack of impulse control, although their attraction to risk and the high value they place on the immediate rewards flowing from risky behaviour, as well as their heavy 'discounting' of the future costs of this behaviour, also contribute. Adolescents are very vulnerable to peer pressure (which in turn can strongly affect their risk-taking behaviour), in part due to the importance they place on peers and in part due to neurological and hormonal changes.***

Higher function, like planning, reasoning, judgement, and impulse control, is only fully developed in a person's third decade (their 20s). Brain development research has been instrumental in court cases that have limited the culpability of young people. Children in grades four, five and six do not have the cognitive development to be held criminally responsible for their actions. Children under the age of 14 years have not yet developed the social, emotional, and intellectual maturity necessary for criminal responsibility. Therefore, children and adults are treated differently by the legal system and afforded different legal rights and capacities at different stages of development. Until a young person is 16 years old, they cannot consent to sexual relations. The age at which you can buy cigarettes

or alcohol, or vote is 18 years. Thus, the law recognises that these actions require a certain level of maturity and capacity and that children need protection from the consequences of their immaturity in various areas of their lives. This should be equally appropriate for criminal responsibility, otherwise childhood becomes irrelevant to criminalisation.

Most fundamentally, how can the 'adultification' of 10-year-old children in criminal proceedings be rendered legitimate when, in every other area of law, the social rights and responsibilities that 'adulthood' conveys are reserved for those aged 18 years plus? To put it bluntly, the low age of criminal responsibility in the ACT and other states and Territory undermines the integrity of law.

Indigenous children who have experienced trauma may be impacted even further. The Australian Early Development Census provides evidence that the types of systemic disadvantage faced by some Indigenous children can have a profound impact on the development of a child's brain, and Indigenous children are more likely to be developmentally vulnerable than their peers. NATSILS (2020) contend that this can have implications for the ability of a child to manage stress, learn, manage their behaviour, and can lead to adverse mental and physical health impacts that may bring the child to the attention of police and law enforcement.

According to Delmage (2013), based on her reading of the neuroscience evidence, in order to bring the minimum age of criminal responsibility more into line with current developmental research: A minimum age of 14 might be sought, whilst children aged 14 and 15 could reasonably be subject to [a] rebuttable presumption of developmental immaturity… with the burden of proving competence resting with the prosecution (2013: 108).

At present the significant developmental issues raised above can only be dealt with for those young people between the ages of 10 and 14 through doli incapax (see below).

BOWER, WATKINS & MUTCH (2018) FOUND THAT OF 99 CHILDREN IN DETENTION IN WESTERN AUSTRALIA, 89% HAD AT LEAST ONE SEVERE NEURODEVELOPMENTAL IMPAIRMENT. THESE IMPAIRMENTS INCLUDED:

- **Foetal Alcohol Spectrum Disorder**
- **Intellectual Disability**
- **ADHD**
- **Trauma / Attachment Depression**
- **Anxiety**
- **Learning Difficulties**
- **Speech and Language Disorders**

This included 36 children who were diagnosed with Foetal Alcohol Spectrum Disorder.

Criminogenic effect of the MACR

Interactions with the criminal justice system have been widely acknowledged as having criminogenic effects on children and young people. Contact with the criminal justice system has a hugely detrimental and destructive impact on children and young people (McAra & McVie, 2005). As Malvaso & Delfabbro (2015) state:

> ***Correctional involvement is recognised as a life outcome that often has significant long-term detrimental consequences for individuals. Juvenile offending is often predictive of adult offending and therefore is a significant risk factor for poorer employment, financial and educational outcomes (p.3562).***

Those young people who come into contact with the criminal justice system are as troubled as they have been troublesome. How the ACT responds to them can significantly change the course of their life. Being drawn into the justice system can stigmatise and label young people and therefore socially marginalise them as they find it more difficult to re-enter life with their peers. Moreover, contact with the criminal justice system at an early age can actually reduce the likelihood that a young person will desist, making future criminal transgressions more likely (McAra & McVie, 2005).

The Victorian Sentencing Advisory Council (2019) found that the younger children are when they receive their first sentence, the more likely they are to reoffend overall, and the more likely they are to receive a sentence for violent offending before the age of 22. The value of deterrence in charging, convicting, and incarcerating is overstated and not effective. Kelly Richards writing for the Australian Institute of Criminology (2009) puts it this way:

> ***It is widely recognised that some criminal justice responses to offending, such as incarceration, are criminogenic; that is, they foster further criminality. It is accepted, for example, that prisons are 'universities of crime' that enable offenders to learn more and better offending strategies and skills, and to create and maintain criminal networks.***

Huizinga, Schumann, Ehret, & Elliott in their 2004 study of the similarities and differences in juvenile justice systems at two sites in different countries (Denver, Colorado, a more severe, punishment-oriented system and Bremen, Germany a more lenient, diversion-oriented system) to determine the effects of distinct features of these systems on subsequent delinquency found that:

> ***the analyses were quite consistent across both sites…there was very little effect of arrest on subsequent delinquent behavior, and when there was a significant effect, arrest had the effect of either maintaining the previous level of delinquency (persistence) or resulted in an increase in subsequent delinquent behavior. In general, there was essentially no indication at the individual level at either site that arrest resulted in a decrease in delinquent behavior'. P.137.***

They also found:

> ***'it was those individuals given more severe sanctions that tended to persist in or have higher levels of future delinquent/criminal involvement'. P.138.***

Children and young people are more likely to reoffend than adults, and the rates of young people who reoffend after receiving a non-custodial sentence is about 44% compared to 64% of those who reoffend after receiving a custodial sentence (Victorian Sentencing Advisory Council, 2019).

Children sentenced between the ages of 10 and 13 had particularly high reoffending rates, with over 80% reoffending overall, and over 60% reoffending by committing an offence against the person (NSW Bureau of Crime Statistics and Research Reoffending, 2019).

The Queensland Productivity Commission's (2019) survey of adult prisoners indicated that a quarter had been in formal contact with police by the age of 14.

The criminal legal system disproportionately affects Aboriginal and Torres Strait Islander children. Among those aged 10–13 that are in detention or supervision, 65% are Aboriginal and Torres Strait Islander children. Aboriginal and Torres Strait Islander young people (aged 10 to 17 years) are imprisoned at 17 times the rate of their non-Indigenous peers.

There has been extensive research in Australia, and around the world, into the impacts of incarcerating children on future offending. Both national and international evidence demonstrates that locking children up does not keep the community safe or reduce future offending by the child.

Cunneen (2017) explains how:

> ***A small number of offenders commit a large proportion of detected offences, and these tend to be those young people who first appeared in court at an early age. For this reason, it is recognised that criminal justice systems can themselves be potentially criminogenic, with early contact being one of the key predictors of future juvenile offending (p. 17).***

Removing these (relatively small number of) children from their communities and placing them in youth detention increases their risk of criminal offending and negative peer influence. Richards (2011) states:

> ***It is widely recognised that some criminal justice responses to offending, such as incarceration, are criminogenic; that is, they foster further criminality. It is accepted, for example, that prisons are 'universities of crime' that enable offenders to learn more and better offending strategies and skills, and to create and maintain criminal networks (p. 6).***

The Armytage and Ogloff Review (2017) of Victoria's legal system confirmed that it is counter-productive to incarcerate a child, saying that:

> ***depriving a child or young person of their liberty is detrimental to adolescent development, dislocates young people from any protective factors they may have, and must only be an option of last resort. No evidence shows that a custodial order reduces offending – in fact, the Sentence Advisory Council (2016) found that more than 80 per cent of young people on a custodial order reoffended, reflecting among the highest rates of recidivism of all young offenders (P. 232).***

Rather than making our communities safer by promoting the positive development and rehabilitation of children, incarceration can increase the likelihood of reoffending. As such, by increasing the minimum age of criminal responsibility the ACT will increase the health, wealth and happiness of young people and contribute to reducing crime.

Doli Incapax

Question: should Doli Incapax have any role if the MACR is raised?

Australia and its States and Territories have sought to counter criticism of its low minimum age of criminal responsibility by arguing that 10 is not an unmitigated minimum, as the common law principle of doli incapax applies to children aged 10–13 and provides a gradual transition to full criminal responsibility. The rebuttable principle of doli incapax holds that children lack the capacity to know that an act is criminal or seriously wrong and, where engaged, this principle has the potential to offer a partial safeguard for children aged 10–13.

The UN Committee on the Rights of the Child has cautioned against systems such as doli incapax that set a low MACR but have a higher age below which sufficient maturity must be demonstrated. It points out:

> ***Initially devised as a protective system, it has not proved so in practice. Although there is some support for the idea of individualized assessment of criminal responsibility, the Committee has observed that this leaves much to the discretion of the court and results in discriminatory practices. States are urged to set one appropriate minimum age and to ensure that such legal reform does not result in a retrogressive position regarding the minimum age of criminal responsibility.***

The Australian Law Reform Commission (2010) states that doli incapax can be problematic for a number of reasons:

> ***For example, it is often difficult to determine whether a child knew that the relevant act was wrong unless he or she states this during police interview or in court. Therefore, to rebut the presumption, the prosecution has sometimes been permitted to lead highly prejudicial evidence that would ordinarily be inadmissible. In these circumstances, the principle may not protect children but be to their disadvantage (P.8).***

The presumption of doli incapax currently fails to protect many young children but would be superseded by raising the age of criminal responsibility to 14. The presumption should apply for those between the ages of 14–17 years.

Assessing and producing evidence to determine whether a child has criminal capacity is not a straightforward task – it is far more complex than may be apparent to those outside the field of mental health or child development. Costs, availability of expert witnesses, and adequacy of measuring instruments are some of the barriers (Crofts, 2016). Apart from not being a simple exercise, the most critical issue is that the determination of children's criminal capacity is not an exact science. It is questionable whether mental health examinations to determine criminal capacity are capable of producing unequivocal results whose reliability and validity can withstand the rigorous tests of the courtroom, and which can irrefutably distinguish children who have criminal capacity from those who do not possess such capacity (Pillay, 2015).

Moreover, this competency must have been present at the time of the alleged offence, which could have been a considerable time before the assessment. This implies that the assessment is always a retrospective process, which immediately raises concern about its reliability and validity.

Children should not be expected to graduate to full criminal responsibility on the day of their twelfth birthday. As highlighted in the literature, adolescent brain development continues between the ages of 14 and 17 years. Not only do children mature at different rates to one another, but factors that contribute to disadvantaged circumstances also affect a child's growth. During this important period of development, children must be protected by the law when necessary. The doli incapax principle offers protection to those children who are not developmentally ready to face the full force of the law. Ensuring the doli incapax principle remains for children aged 15, 16 and 17 years would ensure a graduated response to full criminal responsibility which is reflective of their developmental stages.

RECOMMENDATION 3:

Should the minimum age of criminal responsibility be raised to age 14, the principle of doli incapax ceases to be relevant and should be abolished. However, young people aged 15–17 must still be provided safeguards in their contact with the justice system to ensure it is responsive and supportive of their individual circumstances and that treatment and proceedings are appropriate to their individual needs.

Recommendation 3:

that the current common law application of doli incapax be superseded by raising the minimum age of criminal responsibility to 14 years. Further, ACF recommends that doli incapax be applied for young people between the ages of 14–17 years to ensure that relevant factors for young people are considered and administered consistently by the courts.

Are these the appropriate design principles to underpin the development of an alternative model to a youth justice response? Are there alternatives or other principles that should be included?

Social need and the MACR

Children and young people involved with the justice system face multiple layers of complex disadvantage in circumstances beyond their control. Many have had contact with child protection services, have mental health problems, or experience cognitive difficulties. Most young people in the justice system are themselves victims of trauma, abuse, or neglect (Mendes, Johnson & Moslehuddin 2011).

There is a proven link between socioeconomic disadvantage and youth criminality. Goldson (2009) argues that

> ***'the corollaries between child poverty, social and economic inequality, youth crime and processes of criminalisation are undeniable'. (p. 515).***

The Australian Institute of Health and Welfare (2016) found that 10- to 17-year-olds with the lowest socioeconomic status were six times more likely to be under youth justice supervision than those with the highest socioeconomic status.

Problematic behaviour of children is most often linked with social or environmental factors outside of their control, such as family violence, neglect, socio-economic disadvantage, racism or stigma. Bateman & Pitts, 2005, for example, note:

> ***'those factors which appear to be most closely associated with persistent and serious youth crime … are those which are least amenable to intervention by agents of the youth justice system' (p.257).***

One of the most significant reasons to raise the MACR is that children and young people who come into contact with the youth justice system prior to 15 years are less likely to complete their school education, undertake further education or training, or gain employment (Goldson & Scraton, 1997).

A response that supports young people below 14 years must address the underlying causes of their behaviour by promoting positive social and emotional wellbeing, connection with community, family and culture, and engendering safety.

Investing in support for young people through prevention and early intervention will create better outcomes for children, families, and communities. Early intervention initiatives are also significantly more cost effective than detention. Place-based approaches are most successful in properly supporting young people and keeping communities safe. The Atkinson Report on Youth Justice in Queensland and the Productivity Commission's Draft Report on Expenditure on Children in the Northern Territory both support approaches that are community driven and underpinned by meaningful partnerships between community members, non-government organisations and government agencies, including those responsible for policing, welfare, health, and education.25

In Victoria, the Roadmap to Reform details how the government will improve lives of vulnerable children, young people, and families through reforming the services that work with them. The strategy aims to improve access to universal services and provide holistic supports, targeted interventions and better outcomes for children in out-of-home care.

The Northern Territory government is rolling out Back on Track, which provides early intervention for young people at risk of entering the youth justice system. The program involves case management, bush camps, education and training and improves cultural connectedness, sense of self and wellbeing. The program includes ways for children to take responsibility for their actions through restorative justice conferences with victims, undertaking community service or participating in a supportive boot camp.

Social Reinvestment WA (SRWA) is a coalition of twenty not-for-profits, who have a new vision for an effective and connected approach to justice in Western Australia. They advocate for changes to government policy which prioritise healthy families, implementing smart justice, and creating safe communities. A trial site in Halls Creek managed by all key stakeholders has dramatically reduced offending by employing Youth Engagement Night Officers, guaranteeing traineeships for every high school graduate, and delivering youth rehabilitation and alternative, culturally safe education models.

Similar jurisdictions around the world demonstrate that there are effective ways to address anti-social or harmful behaviour, using welfare-based interventions as the primary response for children in trouble. Some elements of overseas systems can be utilised in a model suitable for the ACT context.

Reduce the number of children facing disadvantage

Question: What universal or secondary services should be introduced and what existing services should be expanded - or alternatively are there any services that could be re-oriented or repurposed - to better support this cohort?

Question: How should the Government/community service providers identify and respond to the needs of children and young people before harmful behaviour/ crisis occurs?

Reducing the number of children facing disadvantage. This reduces their risk of justice-involvement in the first place.

A place-based approach to addressing entrenched disadvantage. This would involve a whole-of-government justice reinvestment approach, particularly investing in areas of locational disadvantage. Holding universal systems of support to account.

There would need to be a reinvestment of the justice budget with a focus on universal services, holding them to account to ensure some children and families do not continue to fall through the cracks. Maternal-child health (with emphasis on the first 1000 days) – strengthening assertive outreach for vulnerable parents with a ‘step-up/step-down’ model of service delivery to recognise and respond to the needs of parents in the early days of a child’s life.

Create community hubs in schools, where services are centralised. This includes allied health personnel (social workers, speech pathologists, occupational therapists) who can support families when problems are identified. Equip teachers and schools to identify warning signs (such as neglect), indications of violent behaviours, and impacts of trauma, and provide them with better options for working with children. Target specific programs and services for children and families to keep children engaged in school as a protective factor.

Strengthen universal systems of housing, health, and mental health support – supporting parents to provide a safe environment for their children.

Take a culturally strengthening approach – ownership over intervention from Aboriginal communities and Aboriginal Community Controlled Organisations, e.g., the Barreng Moorop model.

A range of options should be made available to police, such as, specially trained police readily available in each unit to respond to call outs where children are involved, with social workers working alongside police. Also, upskilling police more generally to respond to the behaviour of young children.

Given that a significant number of children are involved in both the child protection and the youth justice systems, before they turn 14, there needs to be specific attention and support given to education, trauma-informed care, access to therapeutic services, and restorative approaches to conflict resolution between children and carers/peers who are adequately resourced. There is also a need to better equip OOHC care staff to work with children in trauma-informed ways.

Specialist youth justice consultancy and advice should be available to residential care providers to minimise children's risk of offending or reoffending; and having dedicated dual order children's workers (Bowles 2015; Mendes, Snow & Baidawi 2014).

Where children and young people are involved in serious and violent behaviours restorative justice approaches should be utilised that ensure children responsible for harm understand the impacts of their behaviour in full. In these circumstances, wrap around support may be needed: e.g., small-scale, 4 bed facility with trauma-informed, well-trained multi-disciplinary staff and access to education, allows children to be supervised in an intensely therapeutic environment.

However, this supervision should be entirely oriented toward working with the child in a therapeutic way, with all efforts geared toward their rehabilitation and eventual return to the community. Children would undergo thorough assessment to ascertain their specific needs.

This intervention would be reserved for rare cases where no other options are suitable or available and would be determined by a panel of experts (i.e., in the mode of Children's Hearings as per Scotland's model).

Conclusion

The MACR in the ACT at 10 years is one of the lowest in the world. This contravenes international standards and is out of line with other domestic legal minimum ages and the evidence base provided by neurobiology and developmental psychology. The children and young people who commit criminal offences are a highly vulnerable group. These children and young people are typically exposed to complex experiences including intergenerational disadvantage, poverty, homelessness, abuse and neglect, mental illness and the child protection system. Remembering that children in conflict with the law are significantly more likely to have experienced compounding forms of childhood adversity, and that childhood trauma of this kind interferes with a child's cognitive development (van der Kolk, 2003), there is greater utility, and greater humanity, in a systems response that prioritises welfare rather than punishment.

The children and young people who come into contact with the youth justice system at an early age are more likely than other children to become chronic adult offenders. They are also less likely to complete their education or undertake further training or studies. Children and young people's behaviour must be met with restorative, not punitive responses. Their needs should be prioritised over their deeds. The best place for a child is within their family, extended family, or community.

There is a need to shift the focus from responding to consequences of juvenile crime to addressing the underlying causes, behaviours, experiences and trauma of young offenders. Rather than sentencing these children and young people, we should be directing focus and resources to diversionary programs, restorative justice principles, prevention and early intervention models for them and their families.

To achieve positive outcomes for these children we need to apply appropriate interventions rather than sentencing them to youth detention. Given the profound impact contact with the youth justice system has on a child's long-term prospects, it makes sense to keep children under 14 years out of the youth justice system. Raising the MACR, lifting impoverished children out of the youth justice system, decriminalising social need and providing improved 'children focused' services accessible at the point of need, begins to define the contours of a more agreeable and effective approach to children and the crimes they commit.

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