



## AUSTRALIAN LAW STUDENTS' ASSOCIATION

### MEDIA RELEASE

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## ALSA COMMENTS ON RAISING THE AGE OF CRIMINAL RESPONSIBILITY TO 14

The Australian Law Students' Association (**ALSA**) welcomes a discussion surrounding the age of criminal responsibility in Australia but is disappointed by the states' Attorneys-Generals recent statement of support to raise the age to just 12 years old. Across Australia, police currently have the power to arrest, strip-search and imprison children as young as 10. If the age of criminal responsibility is raised to 12 years old, 456 of the 499 children aged under 14 currently incarcerated will remain in prison.<sup>1</sup> ALSA calls on the relevant stakeholders to advocate for the age to be raised to at least 14 years old, consistent with international standards.

A child under the age of 14 does not have adequate capacity to assess risk, predict consequences or control their impulses.<sup>2</sup> The majority of crimes which lead to the incarceration of 10 to 14-year-olds are theft, burglary and property related offences (55%).<sup>3</sup> Others include drug and traffic offences, fraud and public disorder charges. Just over 20% of all offences are regarded as acts intended to cause injury.<sup>4</sup> Statistics

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<sup>1</sup> Australian Institute of Health and Welfare, 'Youth justice in Australia 2019-20 Report' (2020) <<https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2019-20/data>>.

<sup>2</sup> Meg Perkins, 'Science and Raising the Age of Criminal Responsibility' (2019) <<https://www.amnesty.org.au/science-raising-age-criminal-responsibility/>>.

<sup>3</sup> Amnesty International Australia, 'Raise the Age, Kids Belong in Community' (2020) <<https://www.amnesty.org.au/wp-content/uploads/2020/05/Raise-the-Age-Kids-Belong-in-Community-2020.pdf>>.

<sup>4</sup> Australian Bureau of Statistics, 'Criminal Courts 2017-2018 - Table 3 DEFENDANTS FINALISED by Sex and age by principal offence and court level' (2019) <<https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4513.02017-18?OpenDocument>>.

from Queensland indicate that children arrested before the age of 14 are three times more likely to reoffend as adults than children arrested after 14 years of age.<sup>5</sup>

Out of the almost 500 children aged 10-14 currently in prison, Aboriginal and Torres Strait Islander children make up almost two-thirds.<sup>6</sup> The disproportionate number of Indigenous children incarcerated at a young age creates a cycle of imprisonment and recidivism. It has been demonstrated that intervention and diversion programs that focus on rehabilitation and reintegration are best suited to break the cycle and divert children away from the criminal justice system.<sup>7</sup>

Amendments are needed in all jurisdictions in order to raise the age of criminal responsibility to 14. This includes:

- Sections 4M and 4N *Crimes Act 1914* (Cth);
- Sections 25 and 26 *Criminal Code 2002* (ACT) (legislation is expected to be introduced in 2022 in order to raise the age of criminal responsibility to 14);
- Section 5 *Children (Criminal Proceedings) Act 1987* (NSW);
- Section 38 *Criminal Code Act 1983* (NT);
- Section 29 *Criminal Code Act 1899* (Qld);
- Section 5 *Young Offenders Act 1993* (SA);
- Section 18 Sch 1 *Criminal Code Act 1924* (Tas);
- Section 344 *Children, Youth and Families Act 2005* (Vic); and
- Section 29 *Criminal Code Act Compilation Act 1913* (WA) (The WA Government has recently passed a motion to raise the age of criminal responsibility to 14).

Australia lags behind the rest of the world in raising the age of criminal responsibility, at minimum, to 14.<sup>8</sup> The *Convention on the Rights of the Child*, of which Australia has

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<sup>5</sup> Queensland Family & Child Commission, 'The age of criminal responsibility in Queensland' (2017) 30 <<https://www.qfcc.qld.gov.au/sites/default/files/Forpercent20professionals/policy/minimum-age-criminal-responsibility.pdf>>.

<sup>6</sup> Australian Institute of Health and Welfare, 'Table S80b: Young people in detention during the year by Indigenous status and age, states and territories, 2018–19' (2020) <<https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2018-19/data>>.

<sup>7</sup> Amnesty International Australia (n 3) 2.

<sup>8</sup> Australian Human Rights Commission, 'Children's Rights Report' (2016) 187 <<https://humanrights.gov.au/our-work/childrens-rights/publications/childrens-rights-report-2016>>.

been a signatory to since 1990, explicitly details that incarceration of children should be a last resort.<sup>9</sup> Children who are detained or imprisoned are more likely to suffer from poorer physical and mental health, leading to higher rates of self-harm and suicide when compared with other children their age.<sup>10</sup> Global leaders have criticised Australia's failure to protect its most vulnerable citizens from recidivism and crime.<sup>11</sup> The government should endeavour to meet this minimum standard, to cement Australia as a collaborative and humane member of the international community.

On Universal Children's Day, ALSA supports the 'Raise the Age' Campaign and calls on the Attorney-Generals of every state and territory in Australia to push to raise the age of criminal responsibility. ALSA firmly believes that childhood should be spent outdoors, not locked up in a cell.

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**[ENDS]**

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<sup>9</sup> *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 37(b).

<sup>10</sup> See generally, Australian Institute of Health and Welfare, 'National data on the health of justice-involved young people: a feasibility study 2016-2017' (Report, 2018) <<https://www.aihw.gov.au/getmedia/4d24014b-dc78-4948-a9c4-6a80a91a3134/aihw-juv-125.pdf.aspx?inline=true>>; Elizabeth Barnert et al, 'How does incarcerating young people affect their Adult Health Outcomes?' (2017) 139(2) *Journal of the American Academy of Pediatrics* 1; Royal Australasian College of Physicians, *The Health and Well-being of Incarcerated Adolescents* (Report, 2011) <<https://www.racp.edu.au/docs/default-source/advocacy-library/the-health-and-wellbeing-on-incarcerated-adolescents.pdf>>.

<sup>11</sup> See, eg, *Report of the Working Group on the Universal Periodic Review: Australia*, UN GAOR, 47<sup>th</sup> sess, Agenda Item 6, UN Doc A/HRC/47/8 (9 July 2021) [41] (Denmark), [146.40] (Italy), [146.141] (Slovakia), [146.142] (Spain), [146.144] (Sweden), [146.147] (Canada).