

The Hon. Mark Dreyfus QC, MP, Attorney-General

The Hon. Chanston Paech, Attorney-General

The Hon. Guy Barnett, Attorney-General

The Hon. Jaclyn Symes, Attorney-General

The Hon. John Quigley, Attorney General

The Hon. Kyam Maher, Attorney-General

The Hon. Michael Daley, Attorney General

Mr Shane Rattenbury, Attorney-General

The Hon. Yvette D'Ath, Attorney-General

28 November 2023

**AUSTRALIA'S CHILDREN'S COMMISSIONERS AND GUARDIANS' OPEN LETTER:
RAISE THE AGE OF CRIMINAL RESPONSIBILITY**

We, the Commissioners, Guardians and Advocates for Australia's children are tasked with informing governments on measures to protect their safety and rights. We call for urgent action from state and territory governments to raise the age of criminal responsibility to 14 without exception.

It has been five years since Attorneys-General from each Australian jurisdiction made a commitment to reviewing the minimum age of criminal responsibility. We note the progress by the ACT and Northern Territory Governments having raised the age to 12, and future commitments by Tasmania and Victoria. While these announcements are welcome, they will result in a confusion of legislation and practice across the country, and operational challenges for police and service providers.

The minimum age of criminal responsibility in all Australian states and territories must be at least 14 years. That is what the United Nations Committee on the Rights of the Child (UNCRC) has recommended, based on a wealth of evidence and expert advice, and it is the international benchmark.

Every day that the age of criminal responsibility remains unchanged, is another day that children as young as 10 can be taken through police stations, courts and locked up in youth detention centres. This causes ongoing harm to children and fails to deliver on community safety. It particularly harms First Nations children and children with disabilities, who are disproportionately targeted and impacted by the criminal legal system.

There are also substantial human rights issues that have been identified in youth detention across the country. These include, but are not limited to:

- Use of detention for children on remand, not as a last resort, as set out in the UNCRC.
- Detaining children in adult jails, decommissioned adult jails, or police watch houses.
- Solitary confinement and use of rolling 'lockdowns' of children in youth detention centre cells for unlawful periods of time.
- Excessive use of force and punitive operational decision making.

- Lack of age-appropriate and culturally responsive support and rehabilitative programs to support a child's wellbeing and development.
- Allegations and confirmed instances of child sexual abuse.
- Use of spit hoods and other physical, mechanical and chemical restraints on children.

Overwhelming evidence shows the negative exposure during a critical period of brain development adversely impacts the health, wellbeing and long-term outcomes for children. It is particularly harmful to children with developmental delay, disabilities and those who have experienced complex developmental trauma.

Children who encounter the criminal legal system are in need of care, support and protection. That's why we are repeating our call for united and coordinated action in each jurisdiction to raise the age to 14 without exception, alongside significant investment in evidenced-based holistic systems of early intervention and diversion to support children and their families.

All of Australia's children have a right to be safe, protected and treated with dignity.

Collectively we are calling on you, the Attorneys-General of each state and territory, to legislate the raising of the minimum age of criminal responsibility to 14, without exceptions and without delay.

SIGNATORIES

Anne Hollonds, National Children's Commissioner

April Lawrie, Commissioner for Aboriginal Children and Young People (SA)

Helen Connolly, Commissioner for Children and Young People (SA)

Jacqueline McGowan-Jones, Commissioner for Children and Young People (WA)

Leanne McLean, Commissioner for Children and Young People (TAS)

Liana Buchanan, Principal Commissioner for Children and Young People (VIC)

Meena Singh, Commissioner for Aboriginal Children and Young People (VIC)

Natalie Lewis, Commissioner for the Queensland Family and Child Commission (QLD)

Shayna Smith, Public Guardian (QLD)

Shona Reid, Guardian for Children and Young People (SA)

Nicole Hucks, Acting Children's Commissioner (NT)

Zoë Robinson, In her capacity as the NSW Advocate with Children and Young People, together with Shannon Thorne