



Jesuit Social Services is a social change organisation. We work with the most disadvantaged members of the community, providing services and advocacy in the areas of justice and crime prevention; mental health and well-being; settlement and community building; education, training and employment; gender and ecological justice.

The Chair
Age of Criminal Responsibility Working Group
c/- Strategic Reform Division
WA Department of Justice
via email: LegPolicy@justice.wa.gov.au

26 February 2020

Dear Chair

Jesuit Social Services welcomes the opportunity to contribute to the Council of Attorneys-General Age of Criminal Responsibility Working Group review.

The current minimum age of legal responsibility in Australia at 10 years of age harms children, and in particular Aboriginal and Torres Strait Islander children. It is discriminatory, and out of step with human rights standards and medical science on child development.

The United Nations Committee on the Rights of the Child has called for countries to have a minimum age of legal responsibility set at 14 or higher, and recommends that children under 16 should not be deprived of liberty.

Jesuit Social Services supports the position endorsed by key groups across Australia – including National Aboriginal and Torres Strait Islander Legal Services, Law Council of Australia, Australian Medical Association, Change the Record, Amnesty, HRLC and Royal Australasian College of Physicians – that the laws that dictate the age of legal responsibility in all States, Territories and the Commonwealth need to be reformed in line with the following principles:

- **The minimum age of legal responsibility must be raised to at least 14 years.**
- **There must be no ‘carve outs’ to this legislation, even for serious offences.**
- **Doli incapax fails to safeguard children, is applied inconsistently and results in discriminatory practices. Once the age of legal responsibility is raised to 14 years, doli incapax would cease to be relevant and therefore be redundant.**
- **Prevention, early intervention, and diversionary responses linked to culturally-safe and trauma-responsive services including education, health and community services should be prioritised and expanded.**
- **In Aboriginal and Torres Strait Islander communities, the planning, design and implementation of prevention, early intervention and diversionary responses should be community-led.**

Regarding consultation questions 5, 6,7 and 8, Jesuit Social Services has produced a paper – *Raising the Age of Criminal Responsibility: There is a better way*¹ – which shows there is a better way to respond to the small number of children who cause harm to others. It involves holding children to account for their actions while addressing the underlying causes of those actions. It also involves creating a society in which children are less likely to offend in the first place. The paper offers a guide to the principles, policies and programs that can underpin responses when the age of legal responsibility is raised. Fundamentally, we believe there are a number of reasons to make this change:

- Science shows that a child’s brain is still developing (up until at least the age of 25, in fact).
- Society has an interest in the healthy development of all children.
- Many children in the criminal justice system are highly vulnerable.
- There is a better way to respond.

To supplement the details outlined in this paper, we have attached several case studies to illustrate the vulnerability of the children we are working with in the Northern Territory and the inadequate and ultimately harmful response provided by the youth justice system. They highlight the potential to achieve much better outcomes when we remove the lens of criminal justice and respond instead to the welfare needs of the child or young person and their family (see Attachment 1).

Jesuit Social Services would be pleased to attend and contribute to the Working Group’s targeted and public consultations. We also call for the final report with recommendations to the Council of Attorneys-General to be made public in order to respect and promote the views, knowledge and expertise of stakeholders and individuals who contribute to this critical discussion.

We appreciate you taking these matters into consideration and would welcome further opportunity to inform the Working Group’s deliberations.

Yours sincerely



Sally Parnell
Acting CEO, Jesuit Social Services

¹ Available at <https://jss.org.au/raising-the-age-of-criminal-responsibility-there-is-a-better-way/>