

26th September 2022

Jenni Daniel-Yee
Director – Legal Policy
Department of the Attorney-General and Justice
By Email: jane.bochmann@nt.gov.au

Dear Ms Daniel-Yee,

Re: Consultation on Reform to the Minimum Age of Criminal Responsibility

I refer to your correspondence dated 31 August 2022. Thank you for the invitation to provide feedback on the proposed reform to the Criminal Code (Schedule 1 of the Criminal Code Act 1983) focused on raising the minimum age of criminal responsibility.

Jesuit Social Services is pleased to provide feedback on this important reform and commends the Northern Territory Government for progressing this important recommendation from the Royal Commission into the Protection and Detention of Children in the Northern Territory (RCPDCNT). This reform will be life changing for some of the Territory's most vulnerable children and will be a landmark commitment to the wellbeing of all in our community.

Our response to this reform is grounded in our experience as a social change organisation that has delivered services to marginalised communities for 45 years. By way of background, Jesuit Social Services' work in the Northern Territory has a strong focus on supporting children and young people caught up in the youth justice system, through restorative responses, and therapeutic and practical supports. We deliver pre-sentence Youth Justice Group Conferencing in Darwin, Palmerston, Katherine, Tennant Creek and Alice Springs and the restorative element of the Back on Track program in Katherine.

We strongly believe that prison should only ever be used as a last resort, and that community-based responses including restorative approaches are available to help children take responsibility for their actions and steer them towards positive pathways. Jesuit Social Services urges the Northern Territory Government to ensure children remain out of prison and with their families, including by raising the age of criminal responsibility and repealing harmful bail legislation that undermines the wellbeing of our community.

1. Amending sections 38(1) and 43AP to provide that a person under the age of 12 years, rather than 10, is excused from criminal responsibility

Jesuit Social Services advocates the age of criminal responsibility be raised to 14 years of age.

Whilst the RCPDCNT recommend the age be raised to 12 years, we believe the Northern Territory Government can and should go further and raise the age to 14 years. This would finally bring the Territory into line with international human rights standards and lead the way nationally, with the

Australian Capital Territory, on this critical reform. Australia’s failure to act to raise the age is under international scrutiny, with 31 United Nations member states calling on Australia to raise the age in the current Universal Periodic Review process. Australia continues to lag behind international standards in this area of reform, further evidenced in the table below:

AUS	USA	FRA	SWE	NED	JPN
10	6-12	13	15	12	14

Table: Age of criminal responsibility: international comparison¹

Most children who are incarcerated under the age of 14 nationally are Aboriginal children². In 2020-2021, 94 per cent of young people in detention in the Northern Territory identified as Aboriginal³. We urge the Northern Territory Government to be a leader on this reform that will transform outcomes for Aboriginal children and families, and our whole community.

Jesuit Social Services supports evidence-based reform and decision making in youth justice, and whilst we acknowledge the complex political environment this reform debate is occurring in, we urge the Northern Territory Government to listen to the large body of evidence that exists in support of this amendment. As noted by the United Nations Committee on the Rights of the Child (UNCRC), well established research in the areas of adolescent development and neuroscience confirm that brain development of an adolescent continues well beyond the young person’s teenage years which impacts on decision making and consequential thinking. The UNCRC has been clear in its recommendation to Australian States and Territories to raise the age of criminal responsibility to 14 years in line with this evidence⁴. Jesuit Social Services supports the local and international expert evidence that shows children under the age of 14 years are still going through significant stages of childhood development. They are unable to comprehend the consequences of their actions, are more likely to act impulsively and engage in risk taking behaviours without reasoning¹.

We believe a universal systems approach that supports families at the first signs of struggle is integral in supporting children under the age of 14 years to thrive in their communities, as evidenced in the below flow chart. We believe investment already made by the Northern Territory Government in programs such as Back on Track, Families as First Teachers and Maternal Early Childhood Sustained Home-Visiting Program means the Territory is well placed to legislate this reform now.

¹Hazel, N. (2008). Cross-national comparison of youth justice. London: Youth Justice Board for England and Wales.

²Cunneen, C. (2020) Arguments for Raising the Age of Criminal Responsibility, Jumbunna Institute for Indigenous Education and Research, UTS, Sydney. ISBN 9780648798101, <https://jrna228913579.files.wordpress.com/2020/02/macrc-final-2020.pdf>, Available at SSRN: <https://ssrn.com/abstract=4183933>

³ Department of Territory Families Housing and Communities, (2022), Northern Territory Youth Detention Centres Model of Care, https://tfhc.nt.gov.au/data/assets/pdf_file/0009/1132200/northern-territory-youth-detention-centres-model-of-care.pdf

⁴ United Nations Committee on the Rights of the Child (UNCRC) (2019) Concluding Observations: Australia, UN Doc CRC/C/AUS/CO/5-6.



Image taken from Jesuit Social Services paper *Raising the Age: There is a Better Way* (2019) – attached as Appendix A

Building on investment to support this crucial reform, we recommend:

- 1)** Continued investment in holistic, *family-focused*, place-based responses to young people aged under 14 years engaging in anti-social behaviour. This includes support for young people to reengage with education, strengthen cultural connections, access necessary specialist health and therapeutic services, and facilitating restorative responses to harm.
- 2)** Additional resourcing of activity-based youth programs focusing on engagement with children at risk of contact with the youth justice system, staffed by skilled youth workers and actively engaging Aboriginal Elders and strong role models. Initiatives should include after school programs, after-hours activities and school holiday programs, and include a mix of sports, recreational and cultural activities, both in town and on-country.

Taking reform further

Jesuit Social Services urges the Government to implement recommendation 27.1 of the RCPDCNT in its entirety. The RCPDCNT additionally recommended that section 83 of the Youth Justice Act (Northern Territory) be amended to add a qualifying condition to section 83(1)(l) that youth under the age of 14 years may not be ordered to serve a time of detention, other than where the youth:

- has been convicted of a serious and violent crime against the person
- presents a serious risk to the community, and
- the sentence is approved by the President of the proposed Children's Court⁵

We urge the Government to include this amendment in this suite of important reforms and submit that children who may be incarcerated under this amendment require intensive, age-appropriate support with a trauma informed focus. We believe no child aged under 14 should be in detention and

⁵ Royal Commission into the Protection and Detention of Children in the Northern Territory, (2017), Findings and Recommendations Report <https://www.royalcommission.gov.au/system/files/2020-09/findings-and-recommendations.pdf>

the evidence is clear that detention harms children⁶. The recently released Northern Territory Youth Detention Centre Model of Care indicates that 89 per cent of children in detention may have a serious neurodevelopmental impairment, 70% had been involved with Child Protection and 94% of children in custody identified as Aboriginal or Torres Strait Islander². Time in custody no matter the length is significantly harmful for children aged 10-14 years who have often already experienced significant trauma, adverse childhood experiences and who are likely to have a neurodevelopmental impairment.

Hand in hand with this reform is repealing regressive amendments made in the *Youth Justice Legislation Amendment Act 2021* alongside the Bail Act. These amendments have increased opportunities for children at risk to have ongoing contact with the justice system through eroded opportunities to access bail, diversionary approaches and group conferencing often resulting in the remand of children under the age of 14 years. The notion of remand means that children and young people are unable to access restorative responses, maintain connection with protective factors such as Country and family, and ultimately, increases the risk of children returning to custody. Repealing these amendments are critical in addressing the overrepresentation of Aboriginal children on remand.

Effective, evidence-based approaches

Jesuit Social Services has delivered the Youth Justice Group Conferencing Program in the Northern Territory since 2017. Grounded in restorative justice principles developed through our Victorian model of the program, a Group Conference brings together those impacted by an offence to repair harm caused through the offending by hearing about the impact of the offence, resetting relationships and developing an outcome plan for the future. Recent evidence shows Group Conferencing does indeed reduce recidivism. Research conducted in Victoria demonstrated that Conferencing was related to a 24% reduced likelihood of recurrent recidivism compared with controls and 40% reduced within-individual likelihood after accounting for individualised propensity⁷.

We believe Group Conferencing and restorative approaches should be implemented within a universal systems approach to supporting families at the first signs of struggle as evidenced in the flow chart below.

⁶ Jesuit Social Services, (2019), [Raising the Age: There is a Better Way](#)

⁷ Bonett R, (2022), Group Conferencing Effects on Youth Recidivism and Elements of Effective Conferences Thesis, Centre for Forensic Behavioural Science, Swinburne University

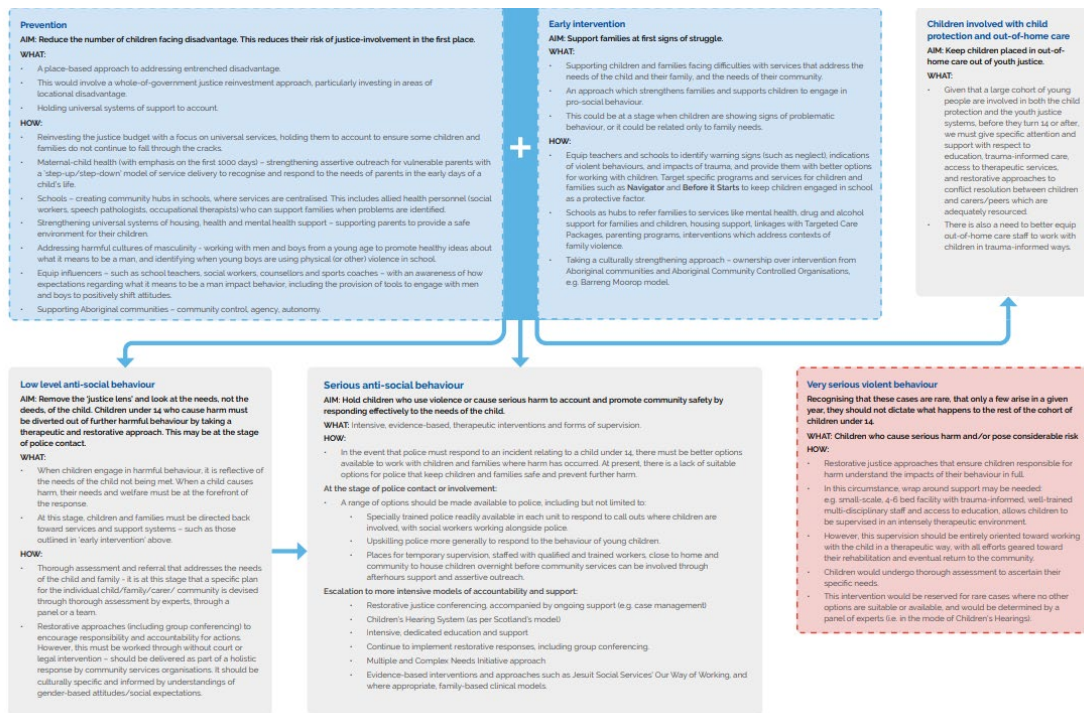


Image taken from Jesuit Social Services paper *Raising the Age: There is a Better Way* (2019) – attached as Appendix A

2. Amending section 38(2) to address the inconsistency between the two tests to determine criminal responsibility of children under 14 years contained in sections 38(2) and 43AQ, so that both tests will reflect the contemporary test found in section 43AQ; and

Following consultation with our colleagues in the legal sector, Jesuit Social Services supports and endorses this amendment. We endorse the Northern Territory Legal Aid Commission's (NTLAC) and the Northern Australia Aboriginal Justice Agency's (NAAJA) submission responses to this area of amendment.

3. Adding relevant provisions to provide for expungement and, where required, discontinuance of criminal matters involving offending by 10 and 11 year olds, upon commencement

Following consultation with our colleagues in the legal sector, Jesuit Social Services supports and endorses this amendment. We endorse the Northern Territory Legal Aid Commission's (NTLAC) and the Northern Australia Aboriginal Justice Agency's (NAAJA) submission responses to this area of amendment.

Jesuit Social Services welcomes the opportunity to respond to this important consultation on raising the age of criminal responsibility and we believe this reform will be landmark in the history of the Northern Territory's justice system establishing this jurisdiction as a national leader in innovative



youth justice reform. We welcome the opportunity to work alongside the Northern Territory Government and our sector colleagues to fully support the implementation of this reform.

Should you require any further information about our submission or would like to meet to discuss further details in person, please contact Peter Solly, General Manager – Northern Territory on 0400 303 887.

Yours sincerely,

Julie M. Edwards

Julie Edwards
Chief Executive Officer

Appendix A

Jesuit Social Services, (2019), [Raising the Age: There is a Better Way](#)