

# Bill Brief

Parliamentary Library and Information Service

Research Note | ISSN: 2204-4779 (Print) 2204-4787 (Online)

No. 1 | February 2023

# Children, Youth and Families Amendment (Raise the Age) Bill 2022

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## Introduction

Raising the minimum age of criminal responsibility (MACR) has been an ongoing debate in Australia. Apart from the Northern Territory (NT), where the laws were amended in 2022 to raise the age to 12, the MACR is 10 years of age in all jurisdictions. Advocates for increasing the age to 12 or 14 argue that young children are harmed more by their interactions with the criminal justice system than any deterrent or punishment effect. Those who believe that the age should remain at 10 argue that community safety and rights will be eroded if there is a change to the MACR.

Although, the MACR is set by each jurisdiction, the Council of Attorneys-General (CAG) has been looking to standardise any increase across Australia through a working group convened in 2019 (CAG 2018). CAG has not yet reached a consensus, leading advocates to push states and territories to amend their laws before a national approach is agreed to (Age of Criminal Responsibility Working Group 2020, p. 1; Human Rights Law Centre 2022). The Children, Youth and Families Amendment (Raise the Age) Bill 2022, introduced by the Victorian Greens is one example of this.

The Victorian Government has said that they would prefer to wait until CAG reaches a consensus, however, on 16 February 2023, Premier Daniel Andrews stated that he is open to raising the age if CAG does not come to a timely consensus (Ilanbey 2022; Kolovos & Bucci 2023).

Increasing the MACR has been supported by organisations including the Australian Medical Association (AMA), Royal Australian College of General Practitioners (RCGP), Law Council of Australia, the First Peoples' Assembly of Victoria, Amnesty International, and Jesuit Social Services. Many of these groups have been vocal for years about what they perceive as the harm caused by holding children on remand, in residential centres or youth justice centres.

A survey by the Australia Institute found that only seven per cent of Australians know that the MACR is 10 years of age (Trevitt & Browne 2020, p. 13). Fifty-one per cent of those surveyed (including a majority of both Coalition and ALP supporters) supported or strongly supported raising the age and 72 per cent believe that politicians should be guided by medical experts when making decisions. Sixty-five per cent of respondents believe that the money spent on prisons could be better spent elsewhere (Trevitt & Browne 2020, p. 13).

This paper will outline selected aspects of proposed changes to the *Children, Youth and Families Act 2005* in relation to raising the age of criminal responsibility. It will provide a jurisdictional comparison on what other Australian jurisdictions have done in this space and outline some of the arguments for and against raising the MACR.

## Second reading

The second reading speech was given by the leader of the Victorian Greens, Dr Samantha Ratnam on 8 February 2022. She opened by stating:

*Two years ago, I said I was proud and humbled to be introducing a Bill to raise the age of criminal responsibility ... to make Victoria the first state in the nation to raise the age. (Ratnam 2022, p. 124)*

Dr Ratnam was referring to the Children, Youth and Families (Raise the Age) Amendment Bill 2021, which was second read on 25 May 2021 but lapsed at the end of the 59th Parliament (Ratnam 2021, p. 1854).

Dr Ratnam reiterated her belief that there are 'no longer any credible arguments or reasons not to raise the age in Victoria' and was critical of the government waiting for consensus among all jurisdictions (through CAG) before changing the law in Victoria (Ratnam 2022, p. 124). Dr Ratnam agreed with the need to develop better programs to help rehabilitate 10- to 14-year-olds who commit offences, 'but all this is no excuse to abandon human rights' (Ratnam 2022, p. 124).

Dr Ratnam outlined her reasons for including a new second part of the Bill, which was not included in the 2021 Bill. This portion would prohibit the use of solitary confinement in youth justice facilities (Ratnam 2022, p. 125). A 2019 Victorian Ombudsman report into the use of solitary confinement in Victorian prisons had identified the possible harms from the use of solitary confinement. Dr Ratnam said:

*This Bill also proposes, somewhat incredulously in the year 2023, that we act to ensure that we no longer treat children that are held in detention in a way considered torture under international law (Ratnam 2022, p. 127).*

## The Bill

The Children, Youth, Families Amendment (Raise the Age) Bill 2022 would amend the *Children, Youth and Families Act 2005* (Principal Act) and make consequential amendments to the *Crimes Act 1958*, the *Fines Reform Act 2014* and the *Infringements Act 2006*. The Act would commence on the day or days it is proclaimed or before 1 July 2024.

In the Principal Act, the definition of ‘child’ would be modified to be anyone under the age of 14. Section 344 currently reads, ‘It is conclusively presumed that a child under the age of 10 years cannot commit an offence’. The new text would read, ‘It is conclusively presumed that a child under the age of 14 years cannot commit an offence’.

Part 2, clause 6 would amend section 401(1)(b) of the Principal Act to clarify that the court can only make a youth residential centre order for anyone who on the day of sentencing is 14 years of age. Currently, it applies to those ‘aged 10 years or more but under 15 years’.

A new section 487AA would be inserted to prohibit the use of solitary confinement ‘in relation to a person detained in a remand centre, youth residential centre or youth justice centre’. Solitary confinement is defined as ‘the physical isolation of a person without meaningful human contact for more than 22 hours within a 24-hour period’.

The Bill would require the Secretary to prepare minimum requirements for meaningful human contact for a person placed in isolation in a youth justice centre, remand centre or youth residential centre (part 2, clause 10).

The Bill clarifies that the new provisions would not be retroactively enforced, and the current definition of child would remain until commencement. In practice this means that any 10- to 14-year-old who is arrested before commencement day could still be detained (part 3, clauses 18, 20 & 22).

The Bill also proposes amendments to the definition of ‘child’ in the *Crimes Act 1958* and the *Fines Reforms Act 2014* (part 3, clauses 13–17, 19).

## Current Victorian situation

Currently in Victoria, anyone over the age of 10 can be found responsible for a crime. Section 344 of the Principal Act states:

*It is conclusively presumed that a child under the age of 10 years cannot commit an offence.*

This is the case across all Australian jurisdictions, except for the Northern Territory where the minimum age is 12. In instances when a child aged between 10 and 14 commits an offence, the common law doctrine of *doli incapax* applies (Davis 2022, p. 1-4). The prosecution is required to prove not only that a child committed a criminal act, but also that the child knew that their actions were morally wrong. This requires the prosecution to prove that a child knew that their actions were morally wrong, and not just that they committed a criminal act (AMA and Law Council of Australia 2019, p. 3). In Victoria, this rebuttable presumption is common law and is not written into any legislation (Davis 2022, p. 3). Should the minimum age of responsibility be increased to 14, it would render *doli incapax* redundant.

Section 465 of the Principal Act restricts the transfer of children under the age of 14 from residential centres to youth justice centres. It can only be done in exceptional circumstances.

Under section 410, a court may make a youth residential order if on the day of sentencing the child is aged 10 years or more but under 15 years.

## Background

### *Youth Justice Strategic Plan 2020-2030*

In May 2020, the *Youth Justice Strategic Plan 2020-2030* plan was released. The plan was written to guide the implementation of the *Youth Justice Review and Strategy: Meeting needs and reducing offending* report, which is intended to strengthen and modernise the youth justice system in Victoria. The plan identifies the need to provide solutions specifically for dealing with children between 10 and 14 years old who encounter the youth justice system including:

1. Improving diversion and supporting early intervention and crime prevention
2. Reducing reoffending and promoting community safety by supporting children and young people to turn their lives around
3. Strengthening partnerships with children and young people, families and all services and professionals who support rehabilitation
4. Investing in a skilled, safe and stable Youth Justice system, and safe systems of work (Victorian Government 2020, pp. 24-25)

### *Legal and Social Issues Committee inquiry*

In March 2022, the final report of the Legislative Council Legal and Social Issues Committee's inquiry into Victoria's criminal justice system recommended that the government raise the MACR and noted that it is being considered by several jurisdictions (Legal and Social Issues Committee 2022, p. 134).

The committee noted that there is overwhelming support for increasing the age from stakeholders and that the submissions to the inquiry were strongly in favour of an increase. The government has not responded to the recommendations, and a minority report by Liberal committee members Cathrine Burnett-Wake and Craig Ondarchie stated that they wanted the government to wait for the Council of Attorneys-General to finalise their proposal before making any legislative changes in Victoria (Legal and Social Issues Committee 2022, p. 914).

### *Criticism from the United Nations*

The United Nations Human Rights Council (UNHRC) has been critical of Australia's stance on both the low minimum age of criminal responsibility and the use of solitary confinement for juvenile offenders (UN Human Rights Council 2021a). The UN High Commissioner on Human Rights, Michelle Bachelet, wrote to the federal Minister for Foreign Affairs, Marise Payne, after Australia's Universal Periodic Review in January 2021. She encouraged Australia to consider 'Raising the minimum age of criminal responsibility from 10 years to an internationally accepted level and to at least 14 years' and to:

*Prohibiting the use of isolation and force as punishment in juvenile justice facilitates, promoting non-judicial measures for children accused of criminal offences and, wherever possible, the use of non-custodial sentences and in cases where detention is unavoidable, and ensuring that children are detained in separate facilities and, for pre-trial detention, that detention is regularly and judicially reviewed (Bachelet 2021).*

Thirty-one countries called on Australia to raise the minimum age of criminal responsibility from 10 to 14 (UN 2021b).

In 2019, the Office of the United Nations High Commissioner for Human Rights encouraged states to set 14 as their MACR and commended those that had it set to 15 or 16. The Council expressed concern over the exceptions some countries have which lower the MACR for specific crimes (UN Committee on the Rights of the Child, p. 9).

## Statistics

According to the Australian Institute of Health and Welfare (AIHW), there were 818 young people in youth detention on average in the June quarter 2022. Ninety per cent were male and only and only 19 per cent were aged 10–13. Fifty-six per cent of the young people in detention on an average night in the June quarter 2022 were Aboriginal and/or Torres Strait Islander (461 of 818). The rate of young people in detention (both sentenced and unsentenced) on an average night in Victoria has fallen since the June quarter 2018 from 191.4 to 119.9 (AIHW 2022b). In 2020–21, Victoria had the lowest rates of any type of supervision among people aged 10–17, 7.3 per 10,000. The Northern Territory had the highest at 32 per 10,000 (AIHWa, 2022, p. 8)

The number of children who commit or allegedly commit offences in Victoria each year is also small. The statistics published by the Crime Statistics Agency show that ‘Crimes against the person’ and ‘Property and deception offences’ are the most prevalent alleged offences among the 10–13 cohort.

		2020		2021		2020		2019		2018	
		Gender									
		F	M	F	M	F	M	F	M	F	M
Age	10	16	38	14	38	17	52	6	64	6	91
	11	62	132	43	91	37	143	40	233	44	184
	12	199	463	134	362	117	385	159	323	178	406
	13	528	1,097	449	865	373	885	644	946	399	1,050

Figure 1. Alleged offender incidents of youth by sex and age (year ending September). Source: Crime Statistics Agency Victoria, *Table 7: Alleged offender incidents and rate per 100,000 population of youth offenders by sex and age - October 2012 to September 2022*, Table 7, Data Tables Alleged Offender Incidents Visualisation Year Ending September 2022.

	2022		2021		2020		2019		2018	
	Females 10-14	Males 10-14	Females 10-14	Males 10-14	Females 10-14	Males 10-14	Females 10-14	Males 10-14	Females 10-14	Males 10-14
Crimes against the person	794	1,251	626	1,008	590	1,174	627	1,118	491	1,056
Property and deception offences	791	1,952	515	1,413	653	1,799	879	1,840	795	2,287
Drug offences	21	52	20	51	26	73	34	73	24	65
Public order and security offences	90	257	53	224	59	228	57	217	45	245

Figure 2. Alleged offender incidents by sex, age and principal offence. Source: Crime Statistics Agency Victoria, *Table 4: Alleged offender incidents by sex, age and principal offence - October 2012 to September 2022*, Data Tables Alleged Offender Incidents Visualisation Year Ending September 2022.

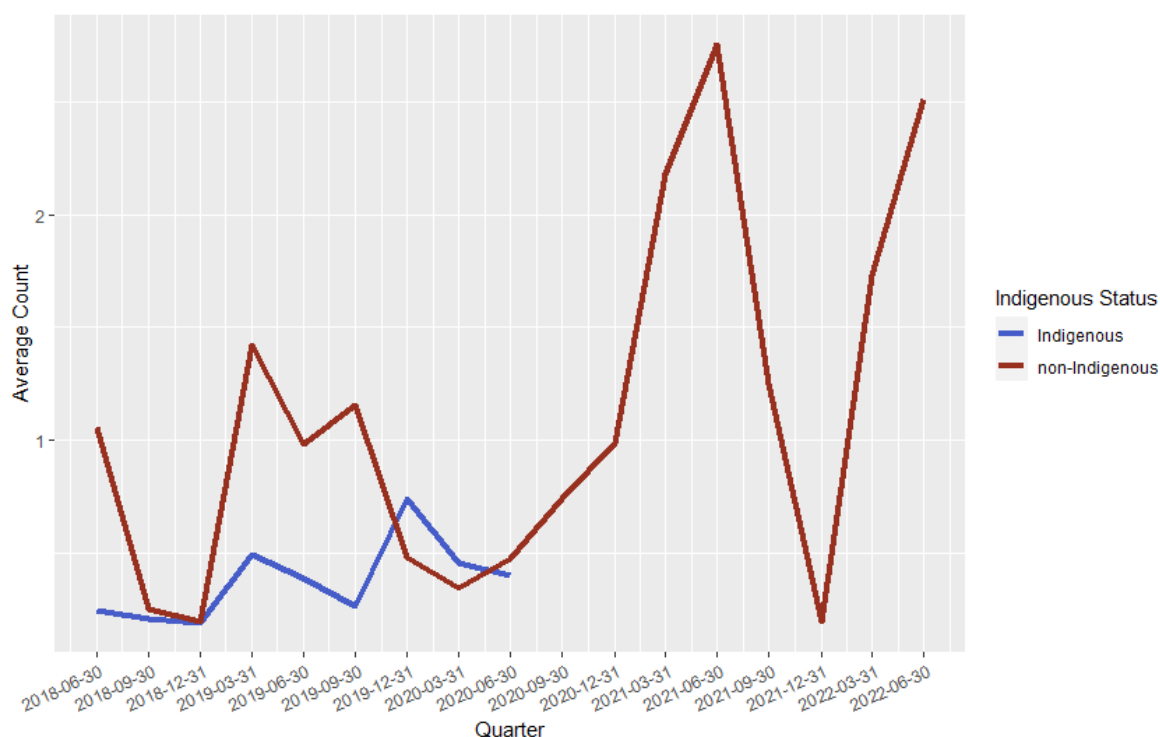


Figure 3. Time series of young people aged 10–13 in detention on an average night in Victoria. Source: Australian Institute of Health and Welfare. Source: AIHW (2022) Table S2: Indigenous young people aged 10–13 in detention on an average night by sex, states and territories, June quarter 2018 to June quarter 2022 and Table S7: Non-Indigenous young people aged 10–13 in detention on an average night by sex, states and territories, June quarter 2018 to June quarter 2022 *Youth Detention population in Australia 2022*

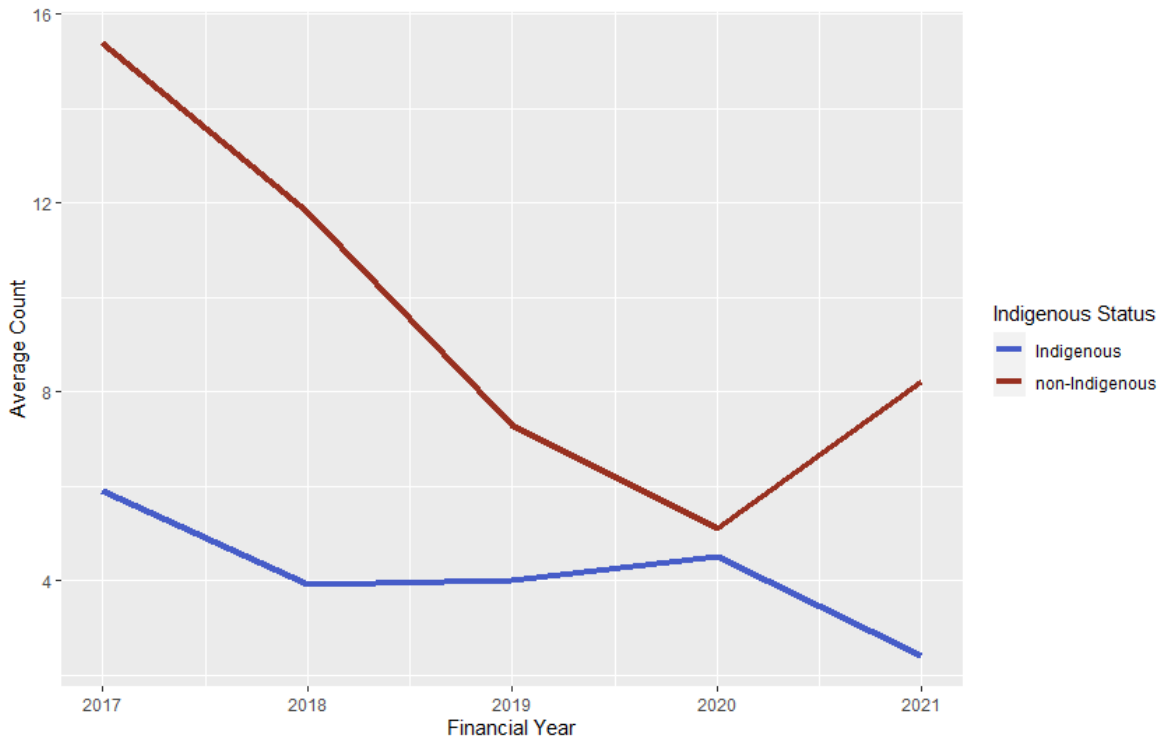


Figure 4. Time series of young people aged 10-13 under supervision on an average day in Victoria. Source: Australian Institute of Health and Welfare (2022) Table S128a: Young people under supervision on an average day by age, sex and Indigenous status, Victoria, 2016-17 to 2020-21, *Youth justice in Australia 2020-21*.

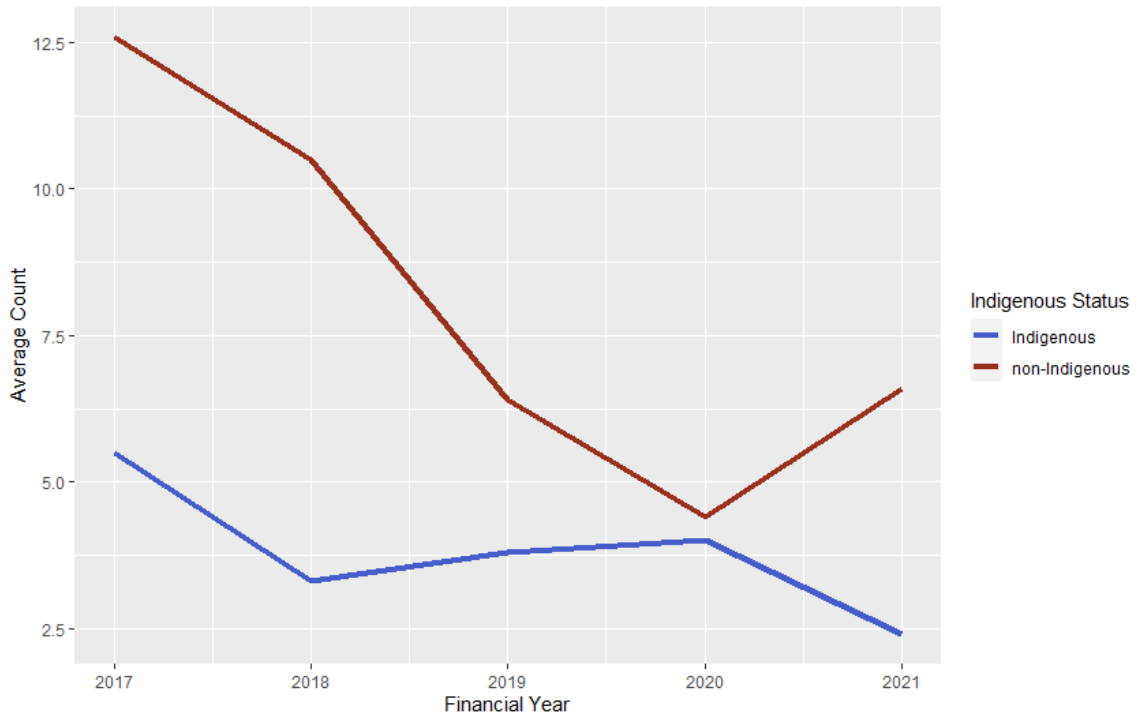


Figure 5. Time series of young people aged 10-13 under community-based supervision on an average day in Victoria. Source: Australian Institute of Health and Welfare (2022) Table S128b: Young people under community-based supervision on an average day by age, sex and Indigenous status, Victoria, 2016-17 to 2020-21, *Youth justice in Australia 2020-21*.



## Jurisdictional comparison

### Commonwealth

Up until changes to the Northern Territory laws in late 2022, the minimum age of criminal responsibility was consistent across all Australian jurisdictions (Davis 2022). However, the calls for it to be raised from 10 had been around for years prior to that change. This led to CAG agreeing to examine the issue in November 2018 (CAG 2018). A working group was established in February 2019 chaired by the Western Australian Department of Justice and comprising policy officers from each state and territory, and the Commonwealth. The report was finished in 2020 but was not released until after the Council of Attorneys-General meeting in November 2022 (Age of Criminal Responsibility Working Group 2020; Standing Council of Attorneys-General 2022).

The report was never agreed to by all jurisdictions at an officer level and was never presented to CAG, but in 2020 the attorneys-general of all states and territories did agree that the age needed to be raised to 12 (Age of Criminal Responsibility Working Group 2020; Council of Attorneys-General 2021). The Age of Criminal Responsibility Working Group has been reconvened, chaired by Western Australia and the Commonwealth.

The working group recommended that the MACR should be raised to 14—or for it to be raised to 14 with the exception of serious crimes or raised to 12 with the minimum age of detention being 14. They based this conclusion on the following:

1. Medical and scientific evidence clearly establishes that children under the age of 14 years are unlikely to be capable of understanding the consequences of their actions and do not have the maturity required for criminal responsibility.
2. A minimum age of criminal responsibility of 14 years is in line with UN Committee recommendations and the average international age.
3. The concentration of Indigenous children under supervision is increased in the 10–13-year-old age bracket. Removing these children from the justice system will therefore be an important step towards addressing the over-representation of Indigenous children in the criminal justice system.
4. There is only a very small number of 10–13-year-olds who are sentenced to detention each year, but comparatively high numbers on remand.
5. Children aged 10–13 years almost never commit the most serious crimes (Age of Criminal Responsibility Working Group 2020, p. 80–81).

Rebekah Sharkie introduced a Private Members Bill, the Crimes Legislation Amendment (Age of Criminal Responsibility) Bill 2019, to the Australian Parliament on 14 October 2019. This would have raised the minimum age of criminal responsibility from 10 to 14 (Cth 2019). The Bill did not proceed.

### Australian Capital Territory

In November 2022, the ACT Government's position paper on raising the age of criminal responsibility was published. The government had previously committed to raising the age of criminal responsibility and had established a working group to examine the issues, including services gaps, implementation issues and alternative models to meet the needs of 10- to 13-year-olds (McArthur et. al. 2021). In the position paper the government committed to raising the age to 12 upon commencement of the legislation and raising it to 14 no more than two years after the legislation commences (ACT Government 2022, p. 4). Although children under 12 will be completely removed from the criminal justice system, there will be exceptions meaning that 12- and 13-year-olds who have committed the most serious offences can be charged (ACT Government 2022, p. 5).

## New South Wales

In 2018, a Legislative Assembly Committee on Law and Safety report, into the adequacy of youth diversionary programs in New South Wales recommended that the New South Wales Government conduct a review to examine raising the age of criminal responsibility (Committee on Law and Safety 2019, p. 26). In its response, the government stated it was participating in the national working group and would examine the issue further when that review was complete (NSW Government 2019, p. 6).

In 2021, the first report of the Legislative Council Select Committee on the High level of First Nations People in Custody and Oversight and Review of Deaths in Custody, recommended that the age of criminal responsibility and the age of children in detention be increased to 14 (2021, p. 51). Again, the government responded by saying that it supported the work being undertaken by CAG and that 'appropriate alternatives to the criminal justice system would need to be available to address offending behaviour by those deemed too young to be criminally responsible for their actions' (NSW Government 2021, p. 8).

The Children (Criminal Proceedings) Amendment (Age of Criminal Responsibility) Bill 2021 was introduced by Greens member David Shoebridge in November 2021 (NSW 2021). The Bill would have raised the age of criminal responsibility to 14 years and restricted children under 16 from being detained or imprisoned as a penalty for a criminal offence. The second reading was negated on division in the Legislative Council on 30 March 2022.

## Northern Territory

The Northern Territory is the first jurisdiction to raise the age of criminal responsibility from 10 to 14 (Perera & Abram 2022). The Royal Commission into the Protection and Detention of Children in the Northern Territory recommended that the age of criminal responsibility be increased from 10 to 12, with *doli incapax* still applying to those aged between 12 and 14 (Royal Commission into the Protection and Detention of Children in the Northern Territory 2017, p. 46). It also recommended that children under the age of 14 years should not serve time in detention, apart from specific and uncommon circumstances.

The *Criminal Code Amendment (Age of Criminal Responsibility) Act 2022* passed the Northern Territory Parliament on 29 November 2022. The legislation raised the age of criminal responsibility from 10 to 12 and specified that 'a child aged 12 or 13 years can only be criminally responsible for an offence if the child knows that the child's conduct is wrong'. All past records of criminal offending by under 12s would also be expunged.

Attorney-General Chansey Paech and sponsor of the Bill, said that 'to make our community safer we must adopt smarter solutions that reduce crime' (Perera & Abram 2022). Yolngu man and Malka MLA Yingiya Guyula supported the passing of the legislation but reiterated his commitment to the MARC being set to 14 (Perera & Abram 2022). Shadow Minister for Territory Families Josh Burgoyne did not support the Bill, saying the government had rushed into this change without a plan to deal with 10- and 11-year-old offenders (Perera & Abram 2022).

## Queensland

In June 2018, former Queensland Police Commissioner, and former Commissioner on the Royal Commission into Institutional Responses to Child Sexual Abuse Bob Atkinson published the *Atkinson Report on Youth Justice*. In it, he recommended that Queensland should support the national approach to raising the MACR to 12 years of age and in the interim should consider legislating to ensure that 10- and 11-year-olds are not held in detention (Atkinson 2018, p. 106). In its response, the Government reiterated its commitment to the national approach (QLD Government 2018, p. 17)

Queensland Greens MP Michael Berkman introduced the Criminal Law (Raising the Age of responsibility) Amendment Bill 2021 on 15 September 2021 (Qld 2021). The Community Support and Service Committee examined the Bill. The committee recommended not that the Bill be passed but that the government should work on the national approach to raising the age from 10 to 12 (Community Support and Service Committee 2022, p. 7). The Bill was defeated on 16 August 2022.

## South Australia

The SA Greens have introduced a bill to raise the MACR twice. In 2020, MLC Mark Parnell introduced the Young Offenders (Age of Criminal Responsibility) Amendment Bill 2020 and in 2022, Robert Simms introduced the Young Offenders (Age of Criminal Responsibility) Amendment Bill 2022 (SA 2020, 2022). Neither Bill has proceeded past the first-reading stage. The Bill would raise the age of criminal responsibility from 10 to 14.

The South Australian Government has committed to the process being run by the Council of Attorneys-General, with South Australian Attorney-General Kyam Maher highlighting the need to make 'the community safer by putting other supports around children that display this sort of antisocial behaviour without locking them up' (Richards 2022; Opie & Pestrin 2022).

## Tasmania

In June 2022, Minister for Education, Children and Youth Roger Jaensch announced that the government would raise the minimum age of detention from 10 to 14, as part of a wider reform of the youth justice system in Tasmania (Jaensch 2022). The government aims to complete these changes by the end of 2024. In the media release announcing this change, Attorney General Elise Archer reiterated that the Tasmanian government is also committed to a national approach to raising the minimum age of criminal responsibility (Jaensch 2022).

## Western Australia

At the end of 2021, Western Australian Labor passed a motion to raise the age of criminal responsibility from 10 to 14 (Knowles 2021). A spokesperson for the Attorney-General John Quigley said there were already discussions at the federal level and that:

*Any changes would require resources and careful consideration to ensure that the small number of children who exhibit serious offending at a young age can be properly managed outside the criminal justice system. (Knowles 2021)*

In 2022, Premier Mark McGowan dismissed calls to increase the MACR in Western Australia, stating that the government needed to balance community safety and the rehabilitation of offenders (Collard 2022).

## Key issues to consider

### *Cognitive development of children under 14*

Some studies have shown that, due to their brains still developing, children under the age of 14 do not have the ability to understand the impact of their actions and therefore should not be held criminally accountable. The 2019 UN General Comment on children's rights in juvenile justice states that:

*maturity and the capacity for abstract reasoning is still evolving in children aged 12 to 13 years due to the fact that their frontal cortex is still developing. Therefore, they are unlikely to understand the impact of their actions or to comprehend criminal proceedings. (UN 2019)*

Many leading medical organisations, including the AMA, RACGP and RACP, have argued that significant brain development occurs in the early teen years and that many children have not matured enough to understand their criminal behaviour (AMA & Law Council of Australia, p. 3; RACP 2019, p. 4).

In a letter to all premiers, chief ministers, attorneys-general and health ministers, 32 health organisations collectively argued that children who commit offences are in most cases responding to trauma:

*A range of behaviours in 10- to 13-year-old children that are currently criminal under existing Australian law are better understood as behaviours within the expected range in a typical neurodevelopment of a 10- to 13-year-old with a significant trauma history (Aboriginal Health Council of SA et. al. 2021, p. 2)*

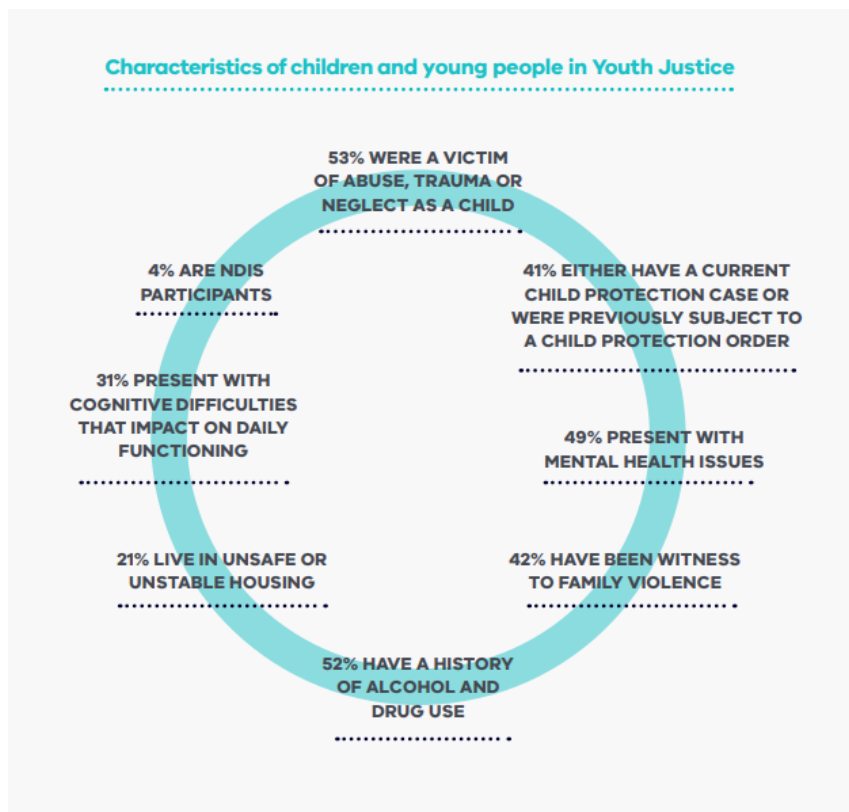
Furthermore, insufficient brain development means that children may not understand what is happening during legal proceedings, causing them to accept plea deals or make false statements (Age of Criminal Responsibility Working Group 2020, p. 50).

### *Disadvantage of offenders*

Studies of children who have committed offences have consistently shown that they come from disadvantaged backgrounds and often have experienced trauma. The Age of Criminal Responsibility Working Group heard that 'approximately 80 per cent of young people in the juvenile justice system have experienced multiple traumatic stressors' (Age of Criminal Responsibility Working Group 2020, p. 53). Some of these stressors include:

- physical and sexual abuse,
- neglect and lack of affection,
- family violence,
- poverty,
- homelessness
- previous relationship with the out of home care system
- mental health issues
- speech, language and hearing impairment
- 'cognitive diversity and neurodiversity' (including foetal alcohol spectrum disorder)

(Jesuit Social Services 2019, p. 3; AMA & Law Council 2019, p. 6; VALS 2022, p. 4; Commission for Children and Young People 2021, p. 151; Age of Criminal Responsibility Working Group 2020, pp. 55- 63; Sentencing Advisory Council 2020, pp. 5-30; McArthur et al. 2021, pp. 17-22)



Source: Youth Justice Strategic Plan 2021, p. 9

A report from the Sentencing Advisory Council of Victoria on vulnerable children in the youth justice system found that:

*it is evident that childhood trauma is a key contributor to many children becoming involved in the criminal justice system ... trauma can lead to an increased risk of contact with the criminal justice system. Importantly, there are numerous reasons for this: it is not simply a matter of traumatised children being more predisposed to criminality. Instead, it is related to a combination of behavioural factors, such as misbehaviour, whether wilful or a trauma response; environmental factors, such as more frequent exposure to police; and systemic factors, such as the reporting of behaviour in residential care homes that might not have been reported to police if it occurred in the family home. These factors combined increase the odds that children who have experienced trauma will become and stay involved with the criminal justice system. Such offending behaviour can be seen as externalised consequences of neurological or psychological adaptations that may have helped the individual survive childhood but can cause immense harm outside situations of necessity (Sentencing Advisory Council 2020, pp. 26–27).*

### *Impact of detention on children*

Many stakeholders have identified that detention—even only spending time in remand centres—can have a negative impact on children. This can mean disrupting normal brain development, exacerbating pre-existing trauma or increase broken ties with their community. Many argue that these impacts have a longer impact on children than any short-term deterrent or punishment effect.

Children who experience detention are more likely to face increased chances of experiencing depression, self-harm or suicide, having a broken education and experiencing fractured family relationships (Age of Criminal Responsibility Working Group 2020, p. 54).

### *Recidivism and the deterrent effect*

Although the deterrent effect has been cited as a reason for setting the MACR at 14, statistics show that recidivism among children under the age of 14 is high. The Northern Territory Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory found that detention was not a deterrent; in fact, children who believe that they will be severely punished are more likely to commit more crime (Royal Commission into the Protection and Detention of Children in the Northern Territory 2017).

The Sentencing Advisory Council report, *Reoffending by children and young people in Victoria* found that reoffending rates were the highest for young people between 10 and 14 than any other cohort (Sentencing Council of Victoria 2016, p. 4). More than 80 per cent of this cohort will reoffend at some time with more than 60 per cent reoffending against the person (Youth Justice Strategic Plan 2021, p. 25).

### *Overrepresentation of Aboriginal and/or Torres Strait Islander peoples*

Aboriginal and/or Torres Strait Islander youth are disproportionately represented in the youth justice system and often have individual risk factors, such as mental health, homelessness, and family violence (Sentencing Advisory Council 2020, p. xii, McArthur et. al. 2021, p. 21; ACT Working group p. 21). Indigenous groups have been very vocal in their support for raising the age (NATSILS 2020, VALS 2022, First Peoples' Assembly of Victoria 2022).

Aboriginal and/or Torres Strait Islander children also need culturally appropriate systems in place to ensure that they cease to have interactions with the system. Having more targeted services for these groups can assist in halting of harmful behaviours (Children and Young People & Victorian Equal Opportunity and Human Rights Commission 2018; Sentencing Council 2020, p. 49). Many groups have advocated for ensuring that, along with raising the age, culturally safe services for Aboriginal and/or Torres Strait Islander children are in place.

National Aboriginal and Torres Strait Islander Legal Services (NATSILS), in their submission to the Attorneys-General working group, wrote about the importance of the connection to the land for Aboriginal children and how 'some Aboriginal and Torres Strait Islander children experience compounding levels of disadvantage not experienced by their non-indigenous peers' (NATSILS 2020, p. 11). These include the ongoing effects of colonisation, dispossession of land, systematic attempts to destroy culture and language, racism, discrimination and the trauma of forced family separations and removals.

### *Doli incapax*

Although the presumption of *doli incapax* should apply to all children aged 10 to 13, a number of organisations have expressed concern that it is not 'an effective safeguard' (CCYP 2021, p. 155 & p. 10; Law Council of Australia 2020, pp 20–26; National Legal Aid 2020, pp 21–31, HLRC 2021, p. 1). The Law Council of Australia called it 'complex, confusing and difficult to apply'. Advocates for raising the MACR also argue that the fact that a hearing of some sort—either summary hearing or trial—needs to be held to apply *doli incapax* means that children are still exposed to the harmful aspects of the criminal justice system (CCYP 2021, p. 155).

### *Community safety and victims of crime*

Advocates for keeping the MACR at 10 believe that raising it will mean that community safety will be compromised and that those who have committed a crime will not receive punishment (Jesuit Social Services 2019, p. 5). Some perceive children as being able to 'get away' with offences when the possibility of detention is removed (ACT Government 2022, p. 5). In the Northern Territory and ACT proposals, frameworks to ensure that there is guidance for rehabilitating young people have been included.

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### Legislation

#### *Victoria*

- [Children, Youth and Families Act 2005](#)
- [Crimes Act 1958](#)
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- [Infringements Act 2006](#)

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- [Children \(Criminal Proceedings\) Amendment \(Age of Criminal Responsibility\) Bill 2021 \(NSW\)](#)
- [Criminal Code Amendment \(Age of Criminal Responsibility\) Act 2022 \(NT\)](#)
- [Criminal Law \(Raising the Age of responsibility\) Amendment Bill 2021 \(QLD\)](#)
- [Crimes Legislation Amendment \(Age of Criminal Responsibility\) Bill 2019 \(Cth\)](#)
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### Suggested citation

Wright, A. (2023) Children, Youth and Families Amendment (Raise the Age) Bill 2022, Melbourne, Parliament of Victoria

### Acknowledgements

The Parliament of Victoria Library acknowledges the Traditional Owners of the lands across Australia on which we work and live. We pay our respects to Aboriginal and Torres Strait Islander Elders past and present, and we value Aboriginal and Torres Strait Islander history, culture and knowledge.

The author would like to thank Caleb Triscari, Angus Tonkin and Debra Reeves for their help in the preparation of this paper.



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