



The Hon Vickie Chapman MP
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Via: Claire Morgan, Legal Officer, Legislative Services

CC: Minister for Child Protection
Minister for Human Services

18 February 2020

Dear Attorney General

Council of Attorneys-General – Age of Criminal Responsibility Working Group review

Thank you for your invitation to provide feedback as part of the Council of Attorneys General Age of Criminal Responsibility Working Group review. Unfortunately, I do not have capacity to fully address all questions posed in the terms of the review, so this feedback is of a general nature.

The current minimum age of criminal responsibility of ten years disproportionately affects our most vulnerable and disadvantaged children, with earlier contact with the youth justice system exacerbating disadvantage. It also increases the likelihood of further offending and a trajectory of life-long involvement in the criminal justice system.

As you would be aware, there is growing momentum across Australia to raise the minimum age of criminal responsibility to at least 14 years. This is my position, and the position of other members of the Australia and New Zealand Children's Commissioners and Guardians group. This is strongly based on both scientific and social outcomes evidence, and human rights.

I refer the Attorney General to the position stated in the Australia and New Zealand Children's Commissioners and Guardians meeting communiqué from November 2019 -

We need to raise the minimum age of criminal responsibility and increase investment in diversionary supports.

Currently, the minimum age of criminal responsibility across Australia and New Zealand is 10.

The ANZCCG acknowledges recent recommendations by the UN Committee to raise the minimum age of criminal responsibility and the work of the Australian Council of Attorneys-General, which has established a working group to review the matter.

The ANZCCG recommends the age of criminal responsibility should be raised to at least 14 years, in line with the UN Committee recommendation. ANZCCG members will continue to advocate for this reform.¹

Raising the minimum age of criminal responsibility should be undertaken in conjunction with implementing measures to ensure that children who are at risk of offending are able to receive appropriate community support. I am not aware of any such services currently existing in South Australia.

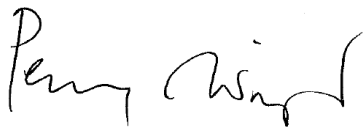
I endorse the information contained in the joint submission on the Minimum Age for Criminal Responsibility made by the Law Council and the Australian Medical Association. It presents the relevant evidence and makes a compelling case for increasing the age in relation to all aspects: human rights and child wellbeing, financial value and community safety and benefit.

Please refer to the addendum to this letter which outlines some of the implications associated with the current low minimum age of criminal responsibility which pertain particularly to my area of responsibility in South Australia.

Please contact my Senior Policy Officer, Ms Jessica Flynn, on 8226 8570 or at jessica.flynn@gcyp.sa.gov.au if you require any further information about, or wish to discuss, this feedback.

As is commonly my practice, it is my intention to publish an edited version of this submission on my office's website. Please contact Ms Flynn by Friday 6 March 2020 if you have any concerns or wish to discuss this further.

Yours sincerely



Penny Wright

**Guardian | Child and Young Person's Visitor | Training Centre Visitor
Office of the Guardian for Children and Young People**

¹ Australian and New Zealand Children's Commissioners and Guardians Communiqué: November 2019, available here - <https://www.humanrights.gov.au/our-work/childrens-rights/publications/australian-and-new-zealand-childrens-commissioners-and-1>

Response to the Council of Attorneys-General – Age of Criminal Responsibility Working Group review

From Penny Wright

Guardian for Children and Young People, Child and Young Person's Visitor and Training Centre Visitor

18 February 2020

The current minimum age of criminal responsibility of ten years disproportionately affects Aboriginal children, those with disabilities, and those in care.

- During 2017-18 in South Australia, there were 37 Aboriginal 10-13 year olds detained compared to 17 non-Aboriginal 10-13 year olds.²
- In a recent project conducted by the Department for Human Services Youth Justice Directorate, it was found that high rates of residents at the Adelaide Youth Training Centre had an intellectual disability.³
- In a Victorian study, it was found that the younger a child was at first sentence, the more likely they were to have experienced out of home care, with a strong association with time spent living in residential care.⁴ These figures are not currently collected or reported on in South Australia.

To look beyond the financial costs and negative social impacts on children and young people and communities, youth justice involvement is associated with injurious life outcomes that include early mortality and likely progression to the adult criminal justice system.⁵ Such realities reflect a failure of the state to meet the obligation to ensure the best possible outcomes for children and young people in South Australia, particularly those removed from family, and for whom the state is the legal guardian.⁶

To illustrate this failure, I will use the example of Charlie (a pseudonym), who is an Aboriginal child in care. Charlie's experience is not isolated.

² Australian Institute of Health and Welfare 2019. Youth justice in Australia 2017–18 Cat. no. JUV 129. Canberra: AIHW, Table S80b: Young people in detention during the year by Indigenous status and age, states and territories, 2017–18.

³ Amanda White, Luke Francis, 'A Multi-Disciplinary Allied Health Approach to Youth Justice services in SA' Department for Human Services, Government of South Australia <<http://www.ayjconference.com.au/wp-content/uploads/2019/05/Luke-Francis.pdf>>.

⁴ Victorian Sentencing Council 'Crossover Kids': Vulnerable Children in the Youth Justice System Report 1: Children Who Are Known to Child Protection among Sentenced and Diverted Children in the Victorian Children's Court, June 2019 pp 90-91.

⁵ Baidawi, S. and Sheehan, R. 'Cross-over kids': Effective responses to children and young people in the youth justice and statutory Child Protection systems. Report to the Criminology Research Advisory Council. Canberra: Australian Institute of Criminology. pp 16-17 referring to Lynch, M., Buckman, J., & Krenske, L. (2003). 'Youth Justice: Criminal Trajectories'. *Trends & Issues in Crime and Criminal Justice* (265), 1-6; Tarolla, S. M., Wagner, E. F., Rabinowitz, J., & Tubman, J. G. (2002). 'Understanding and treating juvenile offenders: A review of current knowledge and future directions. *Aggression and Violent Behavior*, 7, 125-143.

⁶ Ibid.

At the time of first contact with the Guardian's advocates, Charlie was 11 years old. The contact with our office was initiated through an invested agency. It was reported to our office that;

- Charlie was running away from their residential care placement and consequently breaching their imposed court bail agreement;
- Their placement was not culturally safe and there was minimal family contact via access arrangements; and
- The agency raised concerns that Charlie lacked the capacity to plead to pending charges.

A Department for Child Protection psychological assessment identified that Charlie has an intellectual disability and another behavioural diagnosis. It is clear that Charlie lacks insight into the consequences of their offending behaviours, but despite this, SAPOL continued to arrest them on minor charges.

Charlie continued to offend, resulting in numerous incarcerations in the Adelaide Youth Training Centre before a formalised position of *doli incapax* was determined and accepted by the Court. Whilst incarcerated, Charlie was subjected to restricted routines based upon behavioural issues they had whilst within the centre. Documentation sighted by the Guardian and Training Centre Visitor's advocates indicates mechanical restraints were utilised to de-escalate incidents.

Staff of the Training Centre Visitor report that following an incident, Charlie was placed on a restricted routine and placed in handcuffs, then detained in a safe room. South Australian law requires that no child under the age of 12 years should be placed in a safe room.⁷

Charlie was subjected to incidents within the Adelaide Youth Training Centre that left them curled up in a ball crying.

Charlie's Child Protection Case Manager, the community, and SAPOL had limited options for them in regard to addressing their offending behaviours. Supports are extremely limited in the area Charlie lives. There have been concerns raised that the Adelaide Youth Training Centre is being used as an intervention to their offending behaviours, despite the determination of *doli incapax*.

The Department for Child Protection cited behavioural improvement during each period of incarceration as a result of Charlie being subjected to routine. It appears the Department's attempt to replicate this routine within the community is not working, as Charlie continues to be detained at the Adelaide Youth Training Centre.

Last financial year, 51 individual children and young people aged between 10 and 13 years were admitted to the Adelaide Youth Training Centre.⁸ They were admitted a total of 131 times, meaning that on average, each was detained at the centre more than twice. This indicates that detention does not act as an effective deterrent or serve a rehabilitative function. I cannot report on how many 10 to 13 year olds were diverted elsewhere in the youth justice system.

⁷ s 28(2) *Youth Justice Administration Act 2016*.

⁸ This data is provided to the Training Centre Visitor on an annual basis for use in reporting.