

Raising the Minimum Age of Criminal Responsibility in the ACT

REPORT ON WHAT WE HEARD

Across Australia, the minimum age of criminal responsibility (minimum age) is 10 years. This means that children as young as 10 can be charged, convicted and imprisoned for a criminal offence. Exposing children and young people to the criminal justice system can have a significant impact on their neurological and social development and can result in life-long interactions with the justice system.

The ACT Government is considering how a higher minimum age could be implemented in the ACT. This reform is being pursued as a legislative priority under the Parliamentary and Governing Agreement of the 10th Legislative Assembly of the ACT. This is an opportunity to improve the safety and wellbeing of children, young people and their families, while also safeguarding the Canberra community.

THE CONVERSATION

To support the community's consideration of key issues involved with raising the minimum age in the ACT, the ACT Government released a public Discussion Paper on 23 June 2021. Submissions on the Discussion Paper closed on **5 August 2021**.

Alongside the Discussion Paper, the ACT Government has met with a range of community and legal groups, child and youth service providers, Aboriginal and Torres Strait Islander groups, and victims of crime and justice organisations to discuss what impact raising the minimum age would have on the Canberra community.

An independent group leading a review of the service system in relation to raising the minimum age in the ACT has also consulted with a range of justice and community stakeholders, including young people and family members with lived experience of the youth justice system, to consider what needs to be done to support children and young people if the MACR is raised.

WHO WE ENGAGED

We received **fifty-two** (52) responses to the Discussion Paper. Forty-six of these are published on the ACT Government's YourSay online engagement platform, while six remain confidential at the request of the authors. We received responses from:

Category of respondent	Number of submissions
Peak bodies and advocacy groups	19
ACT service providers	11
Community members	10
Aboriginal and Torres Strait Islander organisations	6
Academics	3
ACT Government entities	3
	52

Key insights from the community

This Listening Report reflects on a broad range of key issues raised through this critical consultation process including: raising the minimum age; *doli incapax*; exceptions for serious and repetitive behaviour; principles to guide a new approach; gaps in support services for children and young people; support for children and young people; voluntariness; Multidisciplinary Therapeutic Panel; Aboriginal and Torres Strait Islander children and young people; supporting victims; crisis accommodation; police responses; and information sharing and privacy.

Raising the minimum age of criminal responsibility in the ACT

1. There is strong support to raise the minimum age in the ACT. Most submissions (45 responses) supported raising the minimum age to at least 14 years of age. Two submissions supported raising the minimum age to 12.
2. We heard about the importance of raising the minimum age for the safety and wellbeing of the children and young people in the ACT and the need for the criminal justice system to better reflect the medical evidence around children's development.

Northside Community Service, a not-for-profit community-based organisation that supports children and young people through youth programs and family support services in North Canberra, said:

"[Northside Community Service] strongly supports the raising of the MACR to at least 14, with no exceptions or carve-outs. When a 10-year old is imprisoned – we have all failed ... The research is clear that imprisoning children as young as 10 is detrimental to their health and wellbeing, creates lifelong trauma, and does not reflect an evidence-based understanding of children's development."

The **Aboriginal Legal Service (NSW/ACT)**, an Aboriginal Community Controlled Organisation that assists Aboriginal people in the ACT and NSW with criminal law, care and protection law, and family law matters, and undertakes broader policy and law reform work told us:

"Australia is lagging behind the rest of the world. Currently, the MACR in all Australian jurisdiction is 10 years, compared to a global median MACR of 14.5 years. This is despite overwhelming evidence - from Aboriginal organisations and our communities, medical experts, legal experts and human rights bodies - that detention, as well as any other interaction with the criminal justice system, harms children. There is a critical need to raise the MACR to at least 14 years of age in all Australian jurisdictions, without delay and without exceptions"

An **ACT community member** said:

"I would be very proud to be a member of the ACT community should we be the first in Australia to raise the minimum age of criminal responsibility. I feel like this should be progressed as a matter of priority."

Doli incapax

3. We asked about the role that *doli incapax* should have in this reform. *Doli incapax* presumes a child under the age of 14 cannot be held criminally responsible for an offence unless the prosecution proves that they knew what they were doing was seriously wrong. We heard that, while the *doli incapax* principle should shield children and young people under the age of 14 from prosecution unless they know their behaviour was seriously wrong, the practical application of *doli incapax* fails to provide consistent protection for vulnerable children and young people.

In their joint submission, **Amnesty International**, an organisation that campaigns on a wide range of issues to protect and defend human rights within Australia and internationally, and **Marque Lawyers**, a private commercial law firm, told us:

“In practice, however, it appears that more often than not the onus falls upon the defence to prove that the accused did not understand their conduct was wrong... For many young people, particularly those who rely on public defenders, proving that a young person lacked the requisite understanding that their conduct was wrong is overly burdensome (and resource dependent). As such, doli incapax fails to afford protection to young people consistently.”

Exceptions for serious and repetitive behaviour

4. **Two thirds** of submissions (**35 responses**) argued strongly against the creation of exceptions to the minimum age for serious or repetitive behaviour. These respondents told us that the use of exceptions is inconsistent with the medical evidence that children under the age of 14 are developmentally and neurologically unable to form criminal intent, so should not be held criminal responsible for their actions.
5. **Four responses** were in favour of the use of exceptions as an avenue for holding children accountable for their behaviour. These respondents told us that the use of exceptions may be a necessary tool for protecting the community when children or young people engage in serious behaviours that cause harm to others.
6. The remaining **13 submissions** made no comment on the use of exceptions.

Save the Children, the world’s leading independent organisation for children, wrote:

*“Save the Children’s strong view is that the minimum age of criminal responsibility should be raised to 14 for all offences, with no exceptions or ‘carve outs’.
There is no principled basis for distinguishing between different types of offence for this purpose. The criminal justice system is an inappropriate and ineffective way of dealing with children whose brains are still developing and who are still learning right from wrong, regardless of their actions.”*

Canberra Restorative Community Network, a network of practitioners, professionals, academics and interested people with a goal to expand restorative justice principles and practice across the Canberra community, argued that:

“This evidence supports a lay observation that although most kids know simple ‘right from wrong’ most get swept up and influenced unduly by the ‘storm of adolescence’, some have deeply dysfunctional family lives and rarely do any have a perspective that allows them to see consequences far beyond their current circumstances. Knowing this, it does not make sense in logic or principle to have exceptions even for serious offences among the 10 to 14 yr age group...”

Frances Rose OAM and Ross Dunn OAM said:

“We need to keep open the option to respond to serious crime under the current system... We suggest starting with a model that makes exceptions to the increased MACR for serious crime. A review after (say) two years would assess results, e.g. comparing outcomes with the current system, cost/benefit, public acceptance, etc. With that evidence a sensible decision to progress, modify or revert could then be made.”

ACT Policing said:

“By removing criminal justice interventions as an avenue to address the harmful behaviour of children and young people, it is important to recognise that the consequences for harmful behaviours are not being removed, particularly where they may be serious, violent or repetitive. Appropriate models should be implemented to manage these individuals and their behaviours, ensuring responses balance the need to support youth in accessing relevant services whilst safeguarding community safety. ACT Policing supports a tiered or triaged approach for responding to children and young people who repetitively engage in serious or violent harmful behaviours, particularly in instances where they are not participating in diversion or other support processes...

This type of approach could be managed through creating exceptions for serious offences (as is the case in New Zealand) for which a young person under the MACR could be prosecuted. The benefit of this approach is allowing the courts to have the discretion to mandate an individual’s engagement in therapeutic interventions. ACT Policing supports the ability to mandate the young person’s involvement in therapeutic interventions in serious circumstances – whether this is through the courts or another mechanism.”

Principles to guide a new approach

7. We asked what principles should underpin the development of an alternative service model for children and young people that engage in risky, dangerous or harmful behaviour. We heard that our proposed principles are generally sound, and that there is strong support for **self-determination as the paramount consideration** when designing an approach for Aboriginal and Torres Strait Islander children and young people.
8. We heard that design principles should also ensure that an alternative pathway is:
 - a. Flexible, proactive, and adequately resourced to provide sustained and comprehensive case management.
 - b. Trauma-informed and centred on the needs of individual children and their families.
 - c. Based in interagency collaboration and able to address the underlying causes of harmful behaviour.

The ACT Human Rights Commission, a statutory body that promotes and protects human rights in the ACT, suggested the inclusion of several other principles, including:

- *“Early intervention and diversion that aims to prevent children and young people reaching the point that harmful behaviours occur and responding appropriately in those instances where harmful behaviours nevertheless eventuate.*
- *Child-centred ensuring that all processes and procedures are designed with the child at the centre, so as to be accessible, understandable and relevant to children and young people.*
- *Restorative ensuring that the rights of victims are maintained, and that accountability for harmful behaviour is integral to the new approach. A broader range of restorative practices must be able to be incorporated flexibly to maximise therapeutic and diversionary benefit to the child or young person; opportunities for victim participation and recognition of harm caused, and long-term safety of the community.*
- *Meet diverse needs. While currently ‘culturally appropriate’ is mentioned as one aspect of one principle, the principles collectively do not reflect an essential responsiveness to diversity and inclusion. The new approach will need to meet the specific needs of individuals and families with a range of diverse and complex, intersecting needs, not only cultural diversity. Examples include disability, developmental stage, communication ability, gender, care experiences, intergenerational trauma, and socio-economic disadvantage.*

- *Trauma informed. Recognising that harmful behaviours among young people aged 10-13 years almost invariably have their roots in trauma and complex needs, all supports and processes in the new approach must be trauma informed. Trauma informed approaches are also essential in supporting victims of harmful behaviours*
- *Adequately funded. Any alternative model for the ACT will fail to divert young people from a criminal justice pathway without an injection of funding into fundamental support services. Funding must extend to not only a bespoke new arrangement for identification and coordination of support for children under the MACR, such as a therapeutic assessment panel, but also to community-based, wraparound support services.”*

The Royal Australasian College of Physicians, a body that connects, trains and represents medical specialists in Australia and New Zealand and advocates for healthcare policies that promote the interests of the medical profession, patients, and communities, also provided that:

“Other principles that we recommend be considered include;

- 1. Interagency collaboration- particularly involving health, education, disability and child protection systems and characterised by supportive governance and funding models.*
- 2. Provision of sustained, comprehensive, flexible and culturally sensitive case management or coordination is essential to support engagement and collaboration.*
- 3. Meaningful outcomes should be identified, measured and reported that might include educational attainments/engagement, identification and treatment of health, developmental or cognitive conditions.”*

Gaps in support services for children and young people

9. We heard that there **are limited services** for children and young people aged 10—13.
10. There can be long waiting lists and narrow eligibility criteria for services, including specialised **mental health, disability, and drug and alcohol services**.
11. Services specifically for Aboriginal and Torres Strait Islander and culturally and linguistically diverse children and families are particularly **limited and difficult to access**.
12. We heard that the lack of **Functional Family Therapy (FFT)** and other family-centred, evidence-based, and well evaluated programs is a key gap.

Barnardos, a not-for-profit children’s social care organisation that provides family support and out-of-home care to children and their families in the ACT and NSW, told us:

“We note there are significant existing service gaps to better support this cohort which include:

- *Mental health inpatient services for youth. There is currently one service (STEPS) and what required is services across the continuum, including inpatient services for young people with acute mental health problems.*
- *Continuity of support for young people exiting detention – after leaving Bimberi services are typically no longer available in the community.*
- *Multifaceted services that can support children and young people with comorbidity (e.g [alcohol and other drugs]; mental health difficulties).*
- *Resources for schools to identify children who are at risk of offending early and more full-time counsellors and psychologists positions located in schools to intervene earlier.*
- *Sufficient family support intervention services for conflict resolution (there are long waiting lists).*
- *Affordable mental health services– there are long waiting lists currently for free services.”*

Change the Record, Australia's only national Aboriginal-led justice coalition of legal, health and family violence prevention experts, drew attention to further gaps. This position was supported by several community service providers and advocacy groups that provided submissions.

- *“The lack of a multidisciplinary panel or board that can identify, assist and refer a child to receive the wrap-around services and support they may need, including for further assessment as needed, and assistance and treatment for drug and alcohol misuse.*
- *The absence of Function Family Therapy - Youth Justice and/or other evidence-based programs targeted to this cohort of children.*
- *The limited availability of psycho-social services for young people, particularly those with disabilities.*
- *The lack of services and accommodation for children under the age of 16 years old who are homeless or at risk of homelessness.*
- *A broad need for greater education across services to improve the identification of, and response to, disability support needs.”*

Support for children and young people

13. We were told that providing **needs-based, integrated, accessible, trauma-informed services** will be critical to **the success of this reform**.
14. Early support for children, young people and their families will be critical to prevent harmful behaviour and meet the needs of children and young people.
15. Several responses also noted the need to improve the capacity of universal and secondary services, like schools, as touchpoints for early and coordinated support

In their joint submission, **Families ACT**, a not-for-profit organisation that advocates on behalf of vulnerable children, young people and families in the ACT region, and **the Youth Coalition of the ACT**, a youth affairs body in the ACT responsible for representing and promoting the rights, interests, and wellbeing of young Canberrans, told us:

“We know that with the right early intervention programs, universal and secondary services provided to children and young people (aged 7-13) with concerning and/or harmful behaviours should prevent individuals from escalating. If the needs of a child or young person are being appropriately assessed and supported by universal and secondary supports as well as the education system, then this [reform] should be able to achieve real outcomes for children, young people and the community at large.”

ACT Policing, the community policing arm of the Australian Federal Police responsible for providing policing services to the ACT told us:

“ACT Policing’s key concern for implementation [of a higher MACR in the ACT] is that children and young people have access to the relevant support services they need, when they need it. It is critical that the system which replaces criminalisation ensures that therapeutic interventions successfully divert youth away from harmful behaviours, improve their overall wellbeing and result in positive holistic outcomes for community safety in the ACT.”

The Lowitja Institute, Australia's national institute for Aboriginal and Torres Strait Islander health research, said:

“Shift the focus away from late, crisis-driven, punitive responses to offending behaviours and invest in effective, prevention, early interventions and supports that meet the individual needs and reflect the unique

experiences of Aboriginal and Torres Strait Islander children and young people to keep them in the community and out of the system”

Voluntariness

16. There is strong support for prioritising **voluntary engagement with services** in any new approach. We heard that requiring mandatory engagement is usually ineffective and unable to meet the needs of children and young people that display harmful behaviours.
17. Some stakeholders raised the need for the ACT Government to explore the use of civil orders to develop an accountability mechanism for young people and/or service providers. A few responses noted that mandatory responses may be necessary in select instances, but that these should only be used as a **last resort**.

The ACT Human Rights Commission told us that:

“The Commission does not support a framework that posits children and young people as ‘subject to a mechanism that mandates them to engage with services and support’. Rather, the Commission supports a strong statutory framework mandating mutuality of both service provision and engagement. A framework of this kind should, in our submission, place obligations respectively on the child or young person, their families and guardians, on service providers, and on government to adequately resource and facilitate timely service provision... mandating that a child, young person, or their family engage with services should only be contemplated as a last resort and where all reasonable options to engage the person on a voluntary basis have been pursued.”

Multidisciplinary Therapeutic Panel

18. We suggested that a Multidisciplinary Therapeutic Panel (MTP) could be established to coordinate support services for children and young people. There was broad support for such a mechanism, along with recommendations that the ACT develop a wraparound service to work directly with children, young people and their families to help them access the supports they need to thrive.

In their joint submission, **Families ACT** and **the Youth Coalition of the ACT** recommended that:

“...the multidisciplinary panel be complemented by a wraparound therapeutic response ‘program’ consisting of a wraparound coordinator, an embedded youth outreach worker working with the police force and 4-6 therapeutic care coordinators who are assigned to work closely with the child/young person and their families. This wraparound therapeutic response requires a well-trained and skilled team of wraparound coordinator and therapeutic care coordinators.

The multidisciplinary panel will be able to provide specific advice on an individual case, supporting the assessment of the child’s needs and therapeutic care coordination undertaken by the wraparound coordinator. The panel will be regularly updated by the wraparound coordinator about the child/young person’s progress, allowing the panel to assess if the treatment plan is working or needs to be adjusted.

The wraparound coordinator conducts needs assessments and is available 24/7, allowing police and other first responders to refer a child or young person displaying harmful behaviour anytime day or night. Being available 24/7, the wraparound coordinator can be either contacted during a crisis, after a crisis, or when crisis continues to occur. Based on the outcome of the needs assessment, the wraparound coordinator will be responsible to assign the case to a therapeutic care coordinator who works closely with the child and family, supporting them to access the identified supports and services.”

Aboriginal and Torres Strait Islander children and young people

19. We heard how important it is that this reform respond to the causes of overrepresentation of Aboriginal and Torres Strait Islander children and young people in the ACT youth justice, and Child and Youth Protection systems.
20. It is critical that any alternative responses for Aboriginal and Torres Strait Islander children are developed and delivered in partnership with Aboriginal and Torres Strait Islander community members and service providers.

Winnunga Nimmityjah Aboriginal Health and Community Services, an Aboriginal Community Controlled primary health care service operated by the Aboriginal and Torres Strait Islander community in the ACT, said:

"[We] support the proposal to raise the age of criminal responsibility, as proposed, to the age of 14 and I commend the ACT Government for its commitment to so doing.."

However, for present purposes, [our] major concern, and indeed the purpose of this submission is to insist that measures be put in place to deal immediately and fully with all of the differing incidents of disadvantage endured by Aboriginal and Torres Strait Islander children living in Canberra... If this is not done then raising the age of criminal responsibility, by itself, is likely to do no more than delay for a few years an Aboriginal child's entry into juvenile detention. In which case it will, with justification, be seen as being little more than a cheap political stunt."

The Australian Childhood Foundation, an organisation that supports children to recover from the impacts of abuse, neglect, and family violence, told us:

"Aboriginal Community Controlled Organisations (ACCOs) should be prioritised and funded to deliver the planning, design and implementation of prevention, early intervention and diversionary responses for Aboriginal and Torres Strait Islander children and young people"

Australians for Native Title and Reconciliation (AnTAR), a national advocacy organisation, solely focused on justice, rights and respect of First Nations People in Australia:

"The ACT Government needs to engage with the Aboriginal community organisations in Canberra to identify what support they would need to enable them to support and rehabilitate young people under 14 who come into contact with the Law. Aboriginal community organisations have indicated a need for greater funding for Functional Family Therapy..."

Supporting Victims

21. Protecting the rights and safety of victims must be a priority when reforming the minimum age.
22. We heard that victims of a child or young person's harmful behaviour should continue to have access to existing supports, even if the child or young person is too young to be found criminally responsible.

The Human Rights Law Centre told us:

"Children caught in the legal system are most often victims of abuse, trauma and neglect, and any offending behaviour tends to follow earlier or continuing experiences of serious crimes in which they have been the victims. As such, raising the MACR is a measure which inherently considers the rights of some of the most vulnerable victim cohorts in the community, whilst working to support instead of punish them."

Frances Rose OAM and Ross Dunn OAM said:

“The rights of victims of young offenders, whether they are convicted or otherwise found culpable, must continue to be protected in victims’ legislation and the Charter of Victims’ Rights.

- *Ensure there is no reduction in rights or care for victims of offences under the revised MACR.*
- *Ensure that the revised MACR does not result in two classes of victims.*
- *Offer victims a role in redemptive programs accompanying revised MACR.*
- *We think too much reliance is placed on RJ [restorative justice] for change in young offenders. Overall RJ outcomes compared with effort needs cool assessment of the evidence. We need to enhance RJ’s effectiveness with more new or improved techniques to instill in young offenders awareness of the harm they do, and better choices they could make.”*

Crisis accommodation

23. Some respondents acknowledged the limited supported and secure after-hours crisis accommodation for children and young people aged 10–13 that are unable to return home.
24. Respondents expressed the importance of developing and appropriately funding 24/7 crisis support services, including crisis accommodation options, to support children and young people.

ACT Policing said:

“Notably, there are currently limited services for children and young people to access afterhours, particularly in terms of temporary or crisis accommodation. The current options include placing a young person in police custody, or Bimberi, to securely ‘hold’ individuals and young people who have committed a criminal offence until alternative arrangements can be made or the relevant services open during normal business hours.”

Change the Record also identified accommodation as a key gap:

“One example of a specific need which we are aware is currently unmet is accommodation options (crisis, short and medium term) for 10 to 17 year olds. We have heard repeated concerns from police, for example, about the difficulty they face if they come into contact with a young person exhibiting challenging behaviours where that young person does not have a safe family environment they are able to return to, or where they do not have stable accommodation to which they are willing to return. Providing safe, supported accommodation for children and young people in this age bracket who may come into contact with law enforcement or other services, and require somewhere safe to stay, is essential.”

Police Responses

25. Responses acknowledged the importance that, as first responders, police have the tools to assist in deescalating harmful situations and to help prevent a child or young person from harming themselves or others.
26. We heard suggestions about developing alternative police responses for children and young people in crisis.
27. While many stakeholders agreed with expanding the current police powers for under 10s to cover children under any increased minimum age, some stakeholders told us that current powers may need additional safeguards.

The Australian Childhood Foundation said:

“A range of options should be made available to police, such as, specially trained police readily available in each unit to respond to call outs where children are involved, with social workers working alongside police. Also, upskilling police more generally to respond to the behaviour of young children.”

Canberra Community Law, a community legal centre that provides legal services to people in Canberra on low incomes across areas such as social security law, housing law, and human rights law, urged:

“...the ACT Government and ACT Policing should explore alternative first responder options - some jurisdictions deploy youth workers either in lieu of, or accompanying, police to respond to children and young people. Aboriginal and Torres Strait Islander community interventions should be funded to engage with First Nations young people who may come into contact with law enforcement. The goal should always be to deescalate and respond to the needs of the child to ensure their safety, and community safety, is maintained.”

Information sharing and privacy

28. Very few submissions provided responses on the role of information sharing when reforming the minimum age. Those that did argued very strongly against the use of any information gathered in an alternative mechanism for the purposes of later criminal prosecution.

Youth Law Australia, a community legal service dedicated to helping children and young people in Australia via legal assistance, child rights monitoring and advocacy, and legal education, told us that:

“Information sharing laws that enable relevant agencies to share information about the safety and wellbeing of children and young people within the ACT, and between the ACT and other jurisdictions, are required:

- *to ensure risk factors for children and young people are identified early, and that they are connected with appropriate early intervention services*
- *to ensure services for children and young people who exhibit harmful behaviours or who may be at risk work collaboratively and effectively*
- *to protect children and young people from those who may pose a risk (including children and young people exhibiting harmful sexual behaviours).*
- *For these reasons, we consider that nationally consistent information sharing laws will be an important component of the effectiveness of MACR reforms, as well as other child protection related schemes.”*

WHAT'S NEXT?

The ACT Government will consider the feedback that you have provided to us and plan the next steps for reforming the minimum age of criminal responsibility in the ACT.

To stay informed in the process of the minimum age reforms and other initiatives, policies and projects in Canberra visit the ACT Government's online engagement platform YourSay: www.yoursay.act.gov.au. You can also visit the ACT Government's Raising the Age project page here: <https://justice.act.gov.au/safer-communities/raising-age>

Key Timings

June 2021

The public Discussion Paper on raising the minimum age of criminal responsibility in the ACT is released for community feedback.

August 2021

The ACT Government receives the Final Report of the independent review on the implementation requirements of raising the minimum age of criminal responsibility in the ACT (located here: <https://justice.act.gov.au/sites/default/files/2021-10/Raising%20the%20Age%20-%20Final%20Report.PDF>). Submissions on the public Discussion Paper close.

October 2021

The ACT Government releases this Listening Report, telling you what we heard through this consultation process.

THANK YOU FOR YOUR FEEDBACK ON OUR DISCUSSION PAPER:

<p>We received</p> <p>52</p> <p>submissions</p>	<p>The ACT Government met with</p> <p>18</p> <p>stakeholders to discuss key issues</p>	<p>1,269</p> <p>People visited the YourSay webpage on the minimum age</p>
<p>47</p> <p>submissions supported raising the minimum age in the ACT</p>	<p>4</p> <p>were either neutral or made no comment on raising the minimum age</p>	<p>1</p> <p>respondent was against raising the minimum age in the ACT</p>