

Aboriginal Peak Organisations Northern Territory (APO NT)

An alliance of the Central and Northern Land Councils, Aboriginal Housing NT and Aboriginal Medical Services Alliance Northern Territory

The Chair
Age of Criminal Responsibility Working Group
c/- Strategic Reform Division
Department of Justice
GPO Box F317
PERTH WA 6841
Via email: LegPolicy@justice.wa.gov.au

Friday 28 February 2020

Dear Chair,

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

The Aboriginal Peak Organisations of the Northern Territory (APO NT) welcomes the opportunity to make a submission to the Council of Attorneys-General – Age of Criminal Responsibility Working Group review.

Since its establishment in 2010, APO NT has been working to develop constructive policies on critical issues facing Aboriginal people in the Northern Territory and to influence the work of the Australian and Northern Territory Governments. As peak organisations in the Northern Territory, we share the aim of protecting and advancing the wellbeing and rights of Aboriginal people and communities. Aboriginal empowerment, local ownership and community control are critical factors underpinning our work. We also advocate for strengths-based approaches that nurture children and their families and promote the child's development and wellbeing. APO NT considers that Aboriginal community control, empowerment and a trauma-informed approach should underpin the delivery of all services to Aboriginal children and their families. This applies to a range of areas, including policing, child protection and youth justice.

APO NT has long advocated for the rights of children and considers the current age of criminal responsibility to be a fundamental breach of the United Nations Convention on the Rights of the Child.¹ APO NT is particularly concerned about the discriminatory application of the current age of criminal responsibility and the disproportionate impact that this has on Aboriginal and Torres Strait Islander children, young people, their families and the community.

Aboriginal and Torres Strait Islander children and young people are 24 times more likely to end up in detention than their non-Aboriginal peers.² In the NT, it is estimated that 96% of the youth

¹ UN, 1990

² NTG, 2019, p. 59

detention population are Aboriginal and that more than 70% of young people in youth detention are on remand.³

The Australian Institute of Health and Welfare (AIHW) states that 94% of children aged between 10 and 12 who have been in detention returned to sentenced supervision, compared with 75% of those aged 15 and 18% of those aged 17.⁴ The report also highlights that 27% of children whose first supervised sentence was detention, received five or more supervised sentences between the ages of 10 and 18.⁵ Early involvement in the criminal justice system creates a vicious cycle of disadvantage and reoffending. It has been shown that the younger the child is when they first become involved in the criminal justice system, the higher the likelihood of re-offending.⁶ Further, children who are involved in the criminal justice system are less likely to participate in and complete their education and hence, struggle to find employment.⁷ Lack of education is a strong precursor to and indicator of health, social and economic disadvantage.

The Attorney General's National Taskforce report on Children Exposed to Violence highlighted the vast number of children who are caught up within the Juvenile Justice System have been exposed to violence and are living with the trauma of that experience. The 2014 Review of the Northern Territory Youth Detention System reported that many young people in the youth justice system come from homes where poverty, alcohol abuse, violence and dysfunctional relationships are the norm.⁸ This was further supported in the findings of the NT Royal Commission into Child Protection and Youth Justice. It is not surprising that there is a very high percentage of detainees who have witnessed violence within their lifetime.

There is ample evidence to show that traumatic experience impacts the developing brain, causing a person to stay activated in their protective mode, believing themselves to be in perpetual danger and causing symptoms such as isolation, aggression, lack of empathy and impulsive behaviour.⁹ Often children in the Juvenile Justice system may appear to be violent, aggressive, oppositional, unreachable or disturbed. However, science has now been able to confirm that what underlies these behaviours is the grief of a child who has had to live through traumatic experiences. This child can be feeling powerless, anxious, and depressed.¹⁰

For this reason, systems that focus on punishment as a form of behavioural management will only perpetuate the child's belief that their world is unsafe, and further compound and escalate complex and violent behaviours. If the emotional and psychological wounds do not get appropriately addressed then there is risk of a lifelong pattern of anger; aggression; self-destructive behaviours; academic and employment failures; and rejection, conflict, and isolation

³ Ibid, p. 41

⁴ Australian Institute of Health and Welfare, 2019, p. 8

⁵ Ibid, p. 11

⁶ Australian Institute of Health and Welfare, 2013

⁷ Human Rights Law Centre, 2018

⁸ Vita, 2015

⁹ Perry, 2008

¹⁰ Dierkhising, Ko, & Halladay Goldman, 2013

in every key relationship. We must take a different approach to break this cycle of trauma and violence.

Research shows that a brain is still in development throughout childhood and adolescence and continues into their early twenties¹¹. Children therefore often lack the ability to up to reflect on the consequences of their actions and their behaviour is often influenced by their environment, peer pressure, increased risk-taking and an inability to manage and regulate emotions.¹² Children do not have the mental capacity or cognitive level to understand the criminal nature, seriousness, or the consequences of their actions.¹³ The current age of criminal responsibility ignores the evidence of brain science as it holds that a child as young as 10 years of age is capable of forming the *mens rea* required to commit a crime and understand the difference between 'right' and 'wrong'. This contradiction provides a platform for breaches of international human rights standards.¹⁴

Internationally, the UN Committee on the Rights of the Child recommends that the minimum age of criminal responsibility must be 14 years of age.¹⁵ Australia fails to uphold this standard across all states and territories including the Northern Territory. The *Royal Commission into the Detention and Protection of Children in the Northern Territory* recommended that the age of criminal responsibility be raised to 12 years.¹⁶ While the Northern Territory Government has given in-principle support for this recommendation, it has not yet been enacted. As has been discussed, this inaction continues to significantly and disproportionately affect Aboriginal and Torres Strait Islander children and young people.

APO NT's position echoes the sentiments of the Human Rights Law Centre, Amnesty International, and the Council of Social Services Network in calling for reform to the laws that dictate the age of criminal responsibility in all states, territories and the Commonwealth in line with the following principles:

1. The minimum age of criminal responsibility must be raised to at least 14 years.
2. There must be no 'carve outs' to this legislation, even for serious offences.
3. *Doli incapax* - fails to safeguard children, is applied inconsistently and results in discriminatory practices. Once the age of criminal responsibility is raised to 14 years, *doli incapax* would cease to be relevant and therefore be redundant.
4. 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.

¹¹ Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, 2017, p.133.

¹² National Research Council, 2013

¹³ Human Rights Law Centre, 2018

¹⁴ Australian Human Rights Commission, 2019

¹⁵ Ibid

¹⁶ Australian Government, 2017

5. In Aboriginal and Torres Strait Islander communities, the planning, design and implementation of prevention, early intervention and diversionary responses should be community-led.

APO NT recommends in addition to principle 5 that current and emerging Aboriginal Community Controlled Organisations that are running diversionary and rehabilitation programs, continue to be resourced to deliver their services and programs with a strong focus on cultural context and identity. Further, APO NT recommends that reform occurs in line with the recommendations made by the United Nations Committee on the Rights of the Child, that ‘no child be deprived of liberty, unless there are genuine public safety or public health concerns’. In this context a child is defined to be 16 years of age or below. Deprivation of liberty includes any form of detention, imprisonment, or custodial setting in which a person is not free to leave.¹⁷

APO NT thanks the Working Group for considering our submission. The age of criminal responsibility critically and disproportionately impacts Aboriginal children and their social outcomes. This in turn has lifelong effects on health and well-being, education, employment, housing, connection to culture and relationships. APO NT hopes that through reform of the criminal age of responsibility we will see positive changes in the quality of these areas of life, for Aboriginal children and young people that filter into their adult lives.

APO NT looks forward to the outcome of the review and hopes that our submission has been of some assistance. Please contact the APO NT Coordinator, Brionee Noonan on (08) 8944 6672 or via email: Brionee.noonan@amsant.org.au should you wish to discuss the details of this submission further.

Yours faithfully,



John Paterson
On behalf of the APO NT CEOs:

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Mr. Joe Martin-Jard
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Ms. Leanne Caton
Chair AHNT



¹⁷ United Nations Convention on the Rights of the Child, 2019

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