

## ACTION ALERT AA 20-3: AGE OF CRIMINAL RESPONSIBILITY

*As Quakers we seek a world without war. We seek a sustainable and just community. We have a vision of an Australia that upholds human rights and builds peace internationally, with particular focus on our region. In our approach to government we will promote the importance of dialogue, of listening and of seeking that of God in every person. We aim to work for justice and to take away the occasion for war.*

August 2019

*This Alert refers to proposals to raise the age from 10 to 14. It is being considered by all governments in Australia.*

### Background

The age of criminal responsibility is defined as “the age below which a child is deemed incapable of having committed a criminal offence”. At present the Commonwealth, and all States and Territories, have adopted ten (10) as this age. Between the ages of 10 and 14, the presumption can be challenged in a legal process (under the concept *Doli Incapax*) by proving beyond reasonable doubt that the child knew the act to be wrong morally. Following a call from many medical experts in 2018 for raising the age to 14, the commonwealth and state attorneys-general are undertaking a review, and are due to meet at the end of July. This gives an opportunity for citizens to make their voices heard through their A-Gs.

### Commentary

In a media release on 25 March 2019, the president of the Australian Medical Association, Dr Tony Bartone, said that raising the minimum age of criminal responsibility will prevent “the unnecessary criminalisation of vulnerable children”. He made the following points:

- Australia has one of the lowest ages of criminal responsibility in the world.
- The criminalization of children is a nationwide problem especially for Aboriginal and Torres Strait Islander children.
- Most children in prison come from disadvantaged backgrounds, with experience of violence, abuse, disability, homelessness, and drug/alcohol misuse.
- Criminalising children creates a vicious cycle of disadvantage and entrenches them in the criminal justice system.
- Children forced into the criminal justice system are less likely to complete their education and find employment.

On 22 February 2020, the Joint Council of Social Service Network made a statement to all Attorneys-General supporting a change in the age of criminal responsibility, on many of the same grounds as the AMA. Some further points covered were:

- The United Nations Committee on the Rights of the Child has called for countries to have a minimum age of criminal responsibility set at 14 or higher and recommends that children under 16 should not be deprived of liberty.
- Medical evidence highlights this distinct developmental stage of adolescence and supports raising the age. The current age of criminal responsibility is inconsistent with research on brain development. Children lack the necessary components of criminal responsibility, both in terms of behaviour control and moral awareness.
- Detention should also be considered a last resort for all young people who offend.
- *Doli incapax* is an old, common law rebuttable presumption that children lack the capacity to be criminally responsible for their acts. In order to rebut the presumption, it must be proved that at the time of an offence the child knew that his or her actions were seriously wrong in the moral sense. By the time *doli incapax* is applied in court, the child has already been exposed to many stages of criminal procedure (like arrest and detainment) and the resulting criminogenic effects of exposure to the criminal justice system. Once the age of criminal responsibility is raised to 14 years, *doli incapax* would be redundant.

The Network further said that responses to child offending must:

- Be child-centred, strengths based and trauma-informed. This includes responding to the holistic needs of the child, the underlying causes of their offending, and the needs of their family and natural supports.
- Assume shared accountability and responsibility for offending, on the basis that the majority of child offending is a consequence of the failings of the institutions intended to support the child.
- Prioritise and invest in early intervention, prevention and diversion as the most effective ways to reduce child and youth offending and re-offending.
- Commit to addressing the overrepresentation of Aboriginal and Torres Strait Island children and young people, CALD children and young people and young people who have been involved with out-of-home-care.
- Adopt a justice reinvestment framework that focuses on prevention and place-based responses to address disadvantage.
- In Aboriginal and Torres Strait Islander communities, the planning, design and implementation of prevention, early intervention and diversionary responses should be community-led.

**Action**

You are encouraged to make known to State/Territory/Commonwealth Attorneys-General your concern that the present age of criminal responsibility is inappropriate and should be raised. The following contact details may assist.

ACT Gordon Ramsay MLA [ramsay@act.gov.au](mailto:ramsay@act.gov.au)

NSW Mark Speakman MLA see website [www.nsw.gov.au/attorney-general](http://www.nsw.gov.au/attorney-general)

NT Natasha Fyles MLA [minister.fyles@nt.gov.au](mailto:minister.fyles@nt.gov.au)

Qld Yvette D'Ath MLA [attorney@ministerial.qld.gov.au](mailto:attorney@ministerial.qld.gov.au)

SA Vickie Chapman MLA [AttorneyGeneral@sa.gov.au](mailto:AttorneyGeneral@sa.gov.au)

Tas Elise Archer MLA [elise.archer@parliament.tas.gov.au](mailto:elise.archer@parliament.tas.gov.au)

Vic Jill Hennessy MLA [Attorney-General@justice.vic.gov.au](mailto:Attorney-General@justice.vic.gov.au)

WA John Quigley MLA [Minister.Quigley@dpc.wa.gov.au](mailto:Minister.Quigley@dpc.wa.gov.au)

Canberra, July 2020