



Quaker Peace & Legislation Committee

WATCHING BRIEF 23:7 UPDATE: YOUTH AND CRIME INCREASING 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.

December 2023

This Watching Brief on increasing the age of criminal responsibility updates the QPLC Action Alert 20-3: Age of Criminal Responsibility and has been an ongoing concern of the committee. On 22 October 2023, Greg Parkhurst, the Canberra and Region Quakers (CRQ) QPLC correspondent, delivered a presentation about youth and crime to the monthly CRQ discussion group hosted by QPLC. The full version of the presentation is available on the Quakers Australia website.

Youth crime continues to be a subject of sometimes heated debate. According to the Australian Institute of Criminology report, the rate of youth crime has actually dropped some thirty-six per cent between 2008 and 2019. It's the idea of young people in restraints and subjected to strip searches which raised both public and expert concerns.

Three of the most important youth justice issues are:

- Over-representation of Indigenous youth
- The age of criminal responsibility
- Youth detention

Over-representation of Aboriginal and Torres Strait Islander youth

Recent figures from the Australian Institute of Health and Welfare show that Aboriginal and Torres Strait Islander young people are detained at a rate twenty-three times higher than non-Indigenous youth. In New South Wales alone during 2021-2022 thirty-seven per cent of those attending a youth justice conference identified as Aboriginal or Torres Strait Islander and forty-three per cent of youth who were under community supervision. Of course, this doesn't include those people who chose to not identify as Aboriginal or Torres Strait Islander. For those young people remanded in custody, the figure was forty-eight per cent and for those sentenced to detention it was thirty-nine per cent.

Governments say they are working with Indigenous populations to implement early intervention and diversionary programs to address the over representation of young Indigenous people in the juvenile justice system. However, the consistently high numbers of Indigenous young people admitted to youth justice systems year on year would suggest that these initiatives are having limited success at best.

Age of criminal responsibility

This is a contentious area of criminal justice policy. It is difficult to set an age which reflects the transition from an age of innocence to an age of maturity and full responsibility under the criminal law. Currently, the law in each Australian jurisdiction provides that a child under the age of 10 cannot be held criminally responsible for an offence. The lack of uniformity across Australian

jurisdictions reflects that this is a difficult and contentious area of youth justice policy. In May this year, the Commonwealth Attorney-General wrote to Quakers on this issue. The Commonwealth Government supports an increase in the age of criminal responsibility. The Attorney-General's letter advised that an Age of Criminal Responsibility Working Group has been reconvened for the Standing Council of Attorneys-General. The Working Group is developing a proposal to increase the minimum age of criminal responsibility, for the purpose of, among other things, addressing the overrepresentation of Indigenous young people in the criminal justice system.

In November 2023, the **ACT Legislative Assembly passed** legislation to increase the age of responsibility to 12 years, with another rise to 14 years on July 1, 2025. However, those youth between the ages of 12 and 13 could still be charged with serious crimes such as sexual offences and murder. In announcing this decision, Attorney-General Shane Rattenbury indicated that the legislation reflected the need to have 'effective systems in place to support these children and young people, and their families, as well as safeguarding the community, when the age is raised.' The ACT Budget included an expanded Safe and Connected Youth Program to provide wraparound support for young people aged 8 to 15. The government was keen to put these support structures (and committed funding) in place prior to passing the legislation.

It's possible that other Governments are also ensuring that necessary support services are in place before passing related legislation. As of October 2023, the following information on the status of relevant legislation was accurate.

The **Victorian Government** announced in April 2023 that it also planned to increase the age of criminal responsibility to 14 years of age. Legislation is to be introduced to the Victorian Parliament in 2023 raising the age to 12 in 2024. The Victorian Attorney-General has said that the government's aim is to increase the age to 14 by 2027.

The **Queensland Government** has rejected a bill to raise the age to 14, although a Parliamentary committee has recommended raising it to 12.

The **Tasmanian Government** has announced that it will raise the minimum age for detention to 14, but has made no change to the age of criminal responsibility.

A private members bill to raise the age in **South Australia** was introduced to the South Australian Parliament in July 2022, but appears to have not passed.

In **NSW** a private Members bill in 2021 to increase the age of criminal responsibility was not passed. The NSW Greens announced in 2023 that they intended to introduce a new bill in the future.

The **Northern Territory Government** is raising the age to 12 in 2023.

In November 2022, the former premier of **Western Australia**, Mark McGowan, rejected calls to raise the age to 14. He said that WA was participating in discussions to increase the age to 12.

Youth detention

While most adults in prison are serving a sentence, a high proportion of young people in detention centres are there because they have been refused bail by the police or the courts, and are in custody awaiting a trial or a sentencing hearing.

Young people in custodial remand are: usually separated from their families and communities, experience disruption to their education and employment, sometimes housed with sentenced youth or held in police lockups, and unable to access drug, alcohol or anger management programs. In some cases they are even incarcerated in adult prisons.

A rights respecting approach to youth justice issues

This approach to youth justice could include:

- Improvements to, and resources for, early intervention and prevention programs
- Investments in diversion programs, especially at the early stages of criminal development, and in rural and remote locations
- Investments in mentoring programs which are culturally and linguistically appropriate
- Limiting the powers of police to refuse giving cautions
- Greater emphasis on restorative justice programs, including the use of family group conferencing
- Detention should remain the sentencing option of last resort
- Where relevant, youth justice systems and services should be designed, controlled and delivered by Aboriginal and Torres Strait Islander communities
- Young offenders who are from diverse cultural, faith and/or language backgrounds should also have access to support and services which respect their identity

Possible action

Where relevant, Friends may wish to contact their state/territory Attorney-General and express your concern that the present age of criminal responsibility is inappropriate and should be raised. The following contact details may assist:

NSW: The Hon Michael Daley MP

email: maroubra@parliament.nsw.gov.au

VIC: The Hon Jaclyn Symes MP

email: Jaclyn.symes@parliament.vic.gov.au

Tasmania: The Hon Guy Barnett MP

email: guy.barnett@parliament.tas.gov.au

SA: The Hon Kyam Maher MLC

email: attorneygeneral@sa.gov.au

WA: The Hon John Robert Quigley MLA

email: minister.quigley@dpc.wa.gov.au

NT: The Hon Chanston Paech MLA

email: minister.paech@nt.gov.au

QLD: The Hon Yvette D'Ath MP

email: attorney@ministerial.qld.gov.au

ACT: Mr Shane Rattenbury MLA

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