

28 February 2020

The Chair  
Age of Criminal Responsibility Working Group  
c/- Strategic Reform Division  
Department of Justice

By email to: [LegPolicy@justice.wa.gov.au](mailto:LegPolicy@justice.wa.gov.au)

Dear Chair

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

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) welcomes the opportunity to provide a submission to the Council of Attorneys-General Age of Criminal Responsibility Working Group Review (the Review).

The RANZCP is the principal organisation representing the medical specialty of psychiatry in Australia and New Zealand and is responsible for training, educating and representing psychiatrists on policy issues. The RANZCP represents more than 6700 members in Australia and New Zealand, and is guided on policy matters by a range of expert committees, including the Section of Child and Adolescent Forensic Psychiatry, the Faculty of Forensic Psychiatry, the Faculty of Child and Adolescent Psychiatry, the Section of Youth Mental Health and the Aboriginal and Torres Strait Islander Mental Health Committee. The RANZCP is well-positioned to provide assistance and advice about this issue due to the breadth of academic, clinical and service delivery expertise it represents.

Please see attached for the RANZCP's submission, which responds to the Review's consultation questions. This submission endorses the minimum age of criminal responsibility being raised to 14 years for all federal, state and territory criminal offences in Australia. It also identifies improvements which should be made to youth justice systems to better address the mental health needs of the young persons who are involved in youth justice systems.

If you would like to discuss any of the feedback provided, please contact Rosie Forster, Executive Manager, Practice, Policy and Partnerships via [rosie.forster@ranzcp.org](mailto:rosie.forster@ranzcp.org) or by phone on (03) 9601 4943.

Yours sincerely



Associate Professor John Allan

**President**

Ref: 1709



The Royal  
Australian &  
New Zealand  
College of  
Psychiatrists



Council of Attorneys-General  
**Review of the age of criminal responsibility**

February 2020

**Improve the mental  
health of  
communities**

### About the Royal Australian and New Zealand College of Psychiatrists

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) is a membership organisation that prepares doctors to be medical specialists in the field of psychiatry, supports and enhances clinical practice, advocates for people affected by mental illness and advises governments on mental health care. The RANZCP is the peak body representing psychiatrists in Australia and New Zealand and as a bi-national college has strong ties with associations in the Asia-Pacific region.

The RANZCP has over 6700 members including more than 4800 qualified psychiatrists and over 1600 members who are training to qualify as psychiatrists. Psychiatrists are clinical leaders in the provision of mental health care in the community and use a range of evidence-based treatments to support a person in their journey of recovery.

### Introduction

The RANZCP welcomes the opportunity to contribute to the Council of Attorney Generals' Review of the age of criminal responsibility (the Review). The recommendations contained within this submission are based on extensive consultation with the RANZCP's Section of Child and Adolescent Forensic Psychiatry Committee, Faculty of Forensic Psychiatry, Faculty of Child and Adolescent Psychiatry and Section of Youth Mental Health. The RANZCP is well positioned to provide advice about this issue due to the breadth of academic, clinical and service delivery expertise it represents.

The RANZCP has provided advice and information to the Council of Attorneys-General in relation to increasing the age of criminal responsibility on several occasions and most recently in July 2019 and November 2019. We have also made submissions to a number of inquiries into youth justice, including:

- [the Royal Commission into the Protection and Detention of Children in the Northern Territory](#)
- [the Inquiry into youth justice centres in Victoria](#) and
- [a submission in relation to the Youth Justice Strategy in Queensland](#).

The RANZCP has consistently advocated for the age of criminal responsibility to be increased at both federal and state and territory levels. We have also emphasised the importance of ensuring that child and youth justice strategies, programs and infrastructure are established and operationalised in a way which encourages young people to rehabilitate, rejecting punitive approaches in detention. The RANZCP continues to advocate for these changes to policy in this submission.

This submission will respond to the relevant consultation questions, as published on the Review's website. The RANZCP has chosen not to respond to questions nine, 10 or 11, given the content of those questions does not fall within our realm of expertise.

### Key findings

- The minimum age of criminal responsibility should be raised to 14 years in line with neurodevelopmental research and international human rights standards
- The minimum age of detention should be raised to allow more young people to avoid detention and be diverted away from the youth justice system
- Following an increase to the minimum age of criminal responsibility, prevention and early intervention programs should be expanded to meet an anticipated greater need
- Diversionary and rehabilitative approaches are most beneficial for the mental health of young people in the youth justice system

### Submission

- 1. Currently across Australia, the age of criminal responsibility is 10 years of age. Should the age of criminal responsibility be maintained, increased, or increased in certain circumstances only? Please explain the reasons for your view and, if available, provide any supporting evidence.**

The RANZCP strongly advocates for the minimum age of criminal responsibility to be raised across Australia, for all federal and state and territory criminal offences.

Adolescents are neurodevelopmentally immature and, as such, we regard that they should not be held criminally responsible for actions which, if perpetrated by adults, would be considered criminal. They should therefore be protected by a higher minimum age of criminal responsibility, preventing them from entering the criminal justice system and experiencing the harms that are associated with detention.

- 2. If you consider that the age of criminal responsibility should be increased from 10 years of age, what age do you consider it should be raised to (for example to 12 or higher)? Should the age be raised for all types of offences? Please explain the reasons for your view and, if available, provide any supporting evidence.**

The RANZCP believes that the minimum age of criminal responsibility should be raised to 14 years. Our view is rooted in the medical and scientific evidence pertaining to child and adolescent neurodevelopment.

Neurodevelopmental evidence demonstrates that adolescence brings with it increased impulsivity and sensation-seeking behaviour [1], as well as a heightened vulnerability to peer influence [2], both of which affect decision-making capacity [3]. Additionally, the brain continues to develop physically until a person enters their early twenties [4], including the frontal lobe. Given that the frontal lobe plays a key part in various elements of cognition including judgement, empathy, consequential thinking, the inhibition of impulses and coherent planning, the under-development of the frontal lobe in adolescents also contributes to immaturity in decision-making.

In contrast to the frontal lobe's slow-paced development, the amygdala (which is the part of the brain responsible for reward and emotional processing) develops more quickly, and this imbalance is thought to be a major factor accounting for increased risk-taking behaviour in adolescence [5]. Additionally, children aged 12 to 13 years are limited in their capacity for abstract reasoning, meaning that they are unlikely to comprehend the true effect of their actions and criminal proceedings [6].

As such, the RANZCP strongly recommends that the minimum age of criminal responsibility is raised to 14 years. This is consistent with the September 2019 recommendation set out in General Comment No. 24 issued by the Committee on the Rights of the Child, namely that Australia should 'bring its child justice system fully into line with the Convention [on the Rights of the Child] and to raise the minimum age of criminal responsibility to an internationally accepted level and make it conform with the upper age of 14' [7]. It is also consistent with the recommendations of other professional medical bodies, such as the Australian Medical Association and the Royal Australasian College of Physicians [8].

- 3. If the age of criminal responsibility is increased (or increased in certain circumstances) should the presumption of doli incapax (that children aged under 14 years are criminally incapable unless the prosecution proves otherwise) be retained? Does the operation of doli incapax differ across jurisdictions and, if so, how might this affect prosecutions? Could the principle of doli incapax be applied more effectively in practice? Please explain the reasons for your view and, if available, provide any supporting evidence.**

The RANZCP recognises that there are inconsistencies in the way that the doli incapax presumption is applied across different matters and jurisdictions. Addressing these inconsistencies in application, whether that be through narrower application or abolition of the presumption, would provide more certainty for young people who may find themselves before a court.

- 4. Should there be a separate minimum age of detention? If the minimum age of criminal responsibility is raised (eg to 12) should a higher minimum age of detention be introduced (eg to 14)? Please explain the reasons for your views and, if available, provide any supporting evidence.**

The RANZCP recognises that there is a 'high prevalence of mental health disorders in Australian youth justice systems' [9]. Research has demonstrated that over 75% of young persons in detention have one or more psychiatric disorders [10], and that youth detention is associated with 'increased risks of suicidality and psychiatric disorders including depression, substance use, and behavioural disorders' [11]. Exposure to trauma and removal from homes and communities can also contribute to mental health issues [10]. Given the adverse effects that detention can have on the mental health of young persons, the RANZCP does not endorse young people being held in detention.

However, we do acknowledge that some young persons may exhibit particularly violent behaviours which put the public at risk, making detention an appropriate 'last resort' measure. We support the implementation of a higher minimum age of detention, as this would allow more young people to access diversionary programs. Young people who fall above the minimum age of detention should not be prevented from accessing these programs. As we outline below, funding to these programs will need to be increased so that it is commensurate with the new, higher level of demand, should the minimum age of detention be raised.

If it were raised, the RANZCP maintains that detention should be used as a 'last resort' measure for young people, and should have a clear purpose, which should be to rehabilitate and educate young people rather than to punish them [10].

- 5. What programs and frameworks (eg social diversion and preventative strategies) may be required if the age of criminal responsibility is raised? What agencies or organisations should be involved in their delivery? Please explain the reasons for your views and, if available, provide any supporting evidence.**

Raising the age of criminal responsibility could cause fewer children to be involved in the youth justice system. However, as a result, a higher number of children may not be supported in addressing their anti-social or violent behaviours because they do not have access to youth justice services. Failure to address these behaviours could have negative effects on children's mental health and result in the child entering the youth justice system later on in adolescence or adulthood. The RANZCP considers that, if the minimum age of criminal responsibility were to be raised, there would be a greater need for programs which have an emphasis on prevention, early intervention and engagement of children who are vulnerable to or exhibiting anti-social or violent behaviours but fall below the age of criminal responsibility. In establishing the exact extent of that need, the RANZCP endorses the recommendation in the Atkinson Report that a needs analysis be undertaken,

particularly in relation to the needs of eight to 11-year olds, where the need for programs may increase [9].

Below, in our answer to question 6, we outline several current programs which could be extended to provide services to address the probable increased need. Existing services would need to be appropriately tailored to meet the developmental, social and emotional needs of the younger children who would be accessing them. The RANZCP and, in particular its Section of Child and Adolescent Forensic Psychiatry and its Faculty of Child and Adolescent Psychiatry, is well placed to provide advice in relation to how to design those services in a developmentally appropriate way. In some cases, making programs accessible to children in a younger age bracket will also require state and territory governments to change the eligibility criteria of those programs [12]. These services, if expanded, should be funded commensurately.

We also emphasise that despite a likely greater need for prevention and early intervention programs if the age of criminal responsibility is raised, the need for rehabilitation and re-integration programs for older young people should not be ignored.

**6. Are there current programs or approaches that you consider effective in supporting young people under the age of 10 years, or young people over that age who are not charged by police who may be engaging in anti-social or potentially criminal behaviour or are at risk of entering the criminal justice system in the future? Do these approaches include mechanisms to ensure that children take responsibility for their actions? Please explain the reasons for your views and, if available, provide any supporting evidence or suggestions in regard to any perceived shortcomings.**

The RANZCP endorses 'The Four Pillars' for youth justice approaches set out in the Atkinson Report: intervene early, keep children out of court, keep children out of custody and reduce reoffending [9], and we support programs which have these objectives. Below, we discuss programs which aim to prevent anti-social or violent behaviours or intervene in those behaviours at an early stage. We also discuss diversion programs and rehabilitative opportunities for young persons who have become involved in the youth justice system. The RANZCP considers that these programs assist young people in avoiding the mental health issues associated with lengthy involvement in the youth justice system and detention and assists them to remain part of their families and communities.

### Programs for prevention

Programs which aim to prevent disadvantage in the early years of a child's development assist in preventing anti-social and violent behaviours, and, therefore, interaction with the youth justice and criminal justice systems [9]. The first 1000 days of a child's life are fundamental to a child's development. Challenges which can be experienced later in life such as mental health issues and criminality, can be linked back to pathways originating in early childhood [13]. An example of one such program is the [Logan Together Plan](#) implemented in Logan, Queensland, which aims to reduce the rates of developmental vulnerability for children in Logan through a number of community projects, including early development initiatives. The RANZCP supports multi-disciplinary, preventative programs like the Logan Together Plan being rolled out in low socioeconomic areas across Australia to reduce the disadvantage experienced by young children and their families, which is a risk factor associated with anti-social and violent behaviours and entrance into the youth justice system.

Pre-conception support for young women may also be necessary to avoid the detrimental effects that Fetal Alcohol Spectrum Disorder (FASD) can have on the neurodevelopment of children [9]. Young people who experience FASD can have lower levels of executive functioning and decision-making abilities, which can negatively impact a young person's schooling and socialisation, as well as

increase their substance use [9], which may make them more likely to enter the youth justice system as adolescents. Further information about the neurodevelopment effects of FASD and how FASD can be prevented can be found in the RANZCP's [recent submission](#) to the Senate Standing Committee on Community Affairs' inquiry into effective approaches to prevention, diagnosis and support for Fetal Alcohol Spectrum Disorder.

### Programs for early intervention

In addition to preventative measures being taken in early developmental stages, initiatives which engage young people in education and training opportunities can assist in keeping them out of the youth justice system. These programs provide an early intervention opportunity. Many young people involved in the youth justice system have experienced academic failure or school exclusion and have become disengaged with the education system [9]. In 2017, approximately a third of children who were of compulsory school age (15 and under) in the youth justice system were not enrolled in school, and these rates were higher for Aboriginal and Torres Strait Islander young people [9]. To limit the effect of these risk factors, programs within schools can increase engagement with education and therefore reduce the risk of anti-social and violent behaviours. Educational institutions can provide young persons with positive, supportive environments and communities, which in turn can improve a young person's sense of inclusion and their mental health. In Victoria, the Navigator case management program provided by the Department of Education and Training assists young people to 'return to education and learning' [14]. This program would assist young people who are not yet part of the youth justice system. There are also programs which support educational engagement in a youth justice context, such as the Education Justice Initiative in Victoria, which assists disengaged young persons in the youth justice system to return to a learning environment and allows information about the child's education history to be provided to the court to assist in decision-making [9]. In the first year of that initiative, 75% of participants reconnected with education and showed improved school attendance [9]. For these approaches to be effective, appropriate collaboration and information sharing between the relevant state and territory departments of education and justice should be established. Mentoring programs, as well as tailored learning programs for young persons with developmental and intellectual disabilities, can assist in reintegrating young people into the education system and lifting them out of the youth justice system cycle.

It is important that early interventions are family- and community-based and families and communities should have access to programs which support them in keeping young people out of the youth justice system. The RANZCP considers that the multisystemic therapy (MST) approach is one which can have positive outcomes for young people who are exhibiting anti-social or violent behaviours. This therapy can offer support to families, such as parent education, in-home support workers and respite care for children with severe behavioural challenges and developmental disabilities. The Western Australian Department of Health currently provides an MST Service, which is 'an intensive four to five month program that provides parents and carers with knowledge and skills to help their children' [15], and is available where young people are experiencing behavioural programs are at risk of entering the out-of-home care system, being expelled from the education system or entering the youth justice system [16]. This approach has been very successful in Western Australia, with the majority of families which completed the program reporting noticeable improvements in the young person's behaviour, which were sustained over at least 12 months [17]. The RANZCP applauds the positive results of the MST program in WA and urges the MST approach to be adopted by other state and territory governments in order to prevent children from entering the youth justice system, when they have been identified as being at risk. The best place for young people to be is with their family and in their communities so that they can be supported and cared for while they undertake these early intervention programs.

### Diversionsary programs

As set out above, the RANZCP endorses measures which prevent young people from entering the youth justice system. However, if they do become involved in that system, we support young people having access to diversionsary measures, which can prevent young people from being incarcerated. Avoiding incarceration can prevent young people from becoming entrenched in the cycle of reoffending. The RANZCP believes that young people should only be incarcerated as an absolute last resort and where the offending behaviour is highly anti-social and violent.

The RANZCP considers that youth justice group conferencing programs have been effective in diverting young people away from the youth justice system and assisting in their rehabilitation. All Australian state and territories have established group conferencing programs which are based on restorative justice principles, and aim to raise a young person's understanding about the impact of their offending (including on the victim) as well as improving their integration into the community and negotiate a plan for 'making amends' for their offence/s [18]. The Northern Territory's program is tailored to the needs of Aboriginal and Torres Strait Islander young people, and Aboriginal Elders are often present at group conferences [18]. Research has demonstrated that conferencing as a diversionsary measure is more effective in reducing recidivism in youth offenders than traditional adversarial measures [19]. There may also be benefits for victims, including feeling empowered to voice how the offence affected them [19].

We consider that diversionsary programs are most effective when they are designed with the particular developmental and socio-economic factors of young people who become involved in the youth justice system in mind. This group of young people often come from low socio-economic backgrounds, may be developmentally immature or have a developmental disability, have suffered trauma and experiencing mental illness. It is well-documented that Aboriginal and Torres Strait Islander young people and young people experiencing disabilities are over-represented in the youth justice system [9]. Aboriginal and Torres Strait Islander young people are more likely to be remanded in custody and sentenced with community-based orders and detention [9], rather than have access to diversionsary programs. As such, all diversion programs should also be culturally safe, sensitive to the needs of young people with developmental disabilities and trauma-informed. Diversion programs should also have referral pathways to mental health care services and alcohol and other drug services, as well as disability, education and social services to ensure that young people can easily access the services they need to rehabilitate.

Diversionsary programs should be available to young people as early as possible in the offending process, including at the point of police intervention where a caution or warning may be given for low-level offending, to reduce likelihood of the young person being stigmatised and developing a negative self-identity, which may lead to poor mental health outcomes.

Diversionsary programs should also be underpinned by more comprehensive assessment processes [9], and these assessment processes should include mental health assessments and an assessment of the child's risks and needs [9].

### Rehabilitation, reintegration and mental health care

The RANZCP views detention as being a 'last resort' for young people who are over the minimum age of criminal responsibility and in the youth justice system. However, where detention *is* part of a young person's sentence for public safety reasons, it should be used as a time to rehabilitate the young person and reintegrate them into the community.

Mental health care may be an important part of this rehabilitation and reintegration process, given that young people in the youth justice systems are at increased risk for developing serious and

chronic mental illness [20]. Rates of psychosis amongst young persons in detention is 10 times the level of that in the general population [21]. However, this population does not access mental health services, particularly when they re-enter the community [22]. It is crucial that young people have access or referrals to mental health services, including psychiatrists while in detention and as part of rehabilitation and reintegration programs. Costs of such mental health care, after returning to the community, may be prohibitive for this group of young people, particularly where they come from social-economically disadvantaged backgrounds. The Better Access Scheme allows Medicare to subsidise up to 10 sessions per year with a mental health professional, which, for many young persons who are leaving detention, may not be adequate for comprehensive treatment. The RANZCP urges the reconsideration of this 10-session subsidy, to increase access for young people who have been in detention. Additionally, the mental health care offered to young persons should be recovery-oriented and promote the independence of the young person, as well as connecting them again to the community and a positive self-identity. For further information about how psychiatrists can play a role in the design and delivery of recovery-oriented systems, please see the RANZCP's [Position Statement 86: Recovery and the Psychiatrist](#).

- 7. If the age of criminal responsibility is raised, what strategies may be required for children who fall below the higher age threshold and who may then no longer access services through the youth justice system? Please explain the reasons for your views and, if available, provide any supporting evidence.**

Please refer to our answer to question 5.

- 8. If the age of criminal responsibility is raised, what might be the best practice for protecting the community from anti-social or criminal behaviours committed by children who fall under the minimum age threshold?**

Please refer to our answer to question 6.

### Conclusion

The RANZCP urges the Working Group to consider recommending that the age of criminal responsibility be raised in Australia, both at federal and state and territory levels, to the age of 14. With this change, it is important to ensure that all young people who fall below that age can access programs which will divert them away from becoming involved in the youth justice system, including preventing and early intervention programs. It will also be crucial to support those young people who enter the youth justice system in their rehabilitation and reintegration journeys through diversion and restorative justice measures. The age of criminal responsibility in Australia should be in line with neurodevelopmental realities and youth justice systems should reflect the particular needs of children and seek to rehabilitate them, rather than punish them.

Should you wish to discuss this submission, please contact Ms Rosie Forster, Executive Manager of the Practice, Policy and Partnerships Department on (03) 9601 4943 or at [rosie.forster@ranzcp.org](mailto:rosie.forster@ranzcp.org).

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