

# This is a health issue - look after our most vulnerable children and increase the minimum age of criminal responsibility to 14 years

## RACGP Raise the Age Position Statement – March 2025

*GPs know what supports health and wellbeing. The developmental outcomes of children and young people are almost entirely related to the circumstances they inhabit. Incarcerating children harms them and their communities. It is also very expensive and does not reduce rates of crime. As a nation we must look after children who experience the impacts of trauma and deep disadvantage. The RACGP restates our commitment to Raise the Age, urging governments to take a health first approach, increasing the minimum age of criminal responsibility to 14 years across all jurisdictions.*

### The RACGP and our position on supporting Australia's most vulnerable children

The Royal Australian College of General Practitioners (RACGP) is the voice of general practitioners (GPs) in our growing cities and throughout rural and remote Australia. Patient-centred care is at the heart of everything we do. The RACGP joins many health and justice organisations in support of Australia's most vulnerable children at risk of incarceration. The most common minimum age of criminal responsibility internationally is 14 years.<sup>1</sup> The need for trauma informed, coordinated and integrated services for vulnerable children is stark - ethically, empirically and economically. Currently, children who have experienced multiple adverse childhood experiences and/or neurodevelopmental disorders such as Attention Deficit Hyperactivity Disorder (ADHD) are too often pushed down a path, by policy decisions and systems, into the criminal justice system, with disproportionate impacts on Aboriginal and Torres Strait Islander children. We urge governments to lead with compassion and courage and take a health first approach to supporting children – including raising the minimum age of criminal responsibility to 14 years. This will reduce the number of young people in the criminal justice system and better support safer, healthier communities.<sup>2</sup>

### Key messages:

- This is a health issue, and shouldn't be a justice issue
- Children with neurodevelopmental disorders and those who have experienced multiple adverse childhood experiences need healthcare and support, not criminalisation
- The developmental outcomes of children and young people are almost entirely related to the circumstances that they inhabit
- Incarcerating children is inhumane and:
  - it robs them of their future
  - it is very expensive
  - it doesn't work to reduce rates of crime
  - it disproportionately harms Aboriginal and Torres Strait Islander children and families
  - it breaches Australia's international obligations under numerous conventions, including the [United Nations Convention on the Rights of the Child](#)
- The most common minimum age of criminal responsibility internationally is 14 years
- The need for trauma informed, coordinated and integrated services for vulnerable children is stark

### RACGP Recommendations

- Raise the minimum age of criminal responsibility to 14 years to bring Australia in line with international human rights standards, the average minimum age of criminal responsibility in European Union countries, and with medical consensus on child brain development.
- Implement trauma-informed approaches which can inform systemic responses that are individualised and recognise the relevance of trauma for children at risk of criminalisation.<sup>3</sup> A whole system approach is needed, with cross-cutting policy portfolios, prioritising the health and wellbeing needs of children and their families.

- Implement the [24 evidence based actions](#) as outlined in the 2024 *'Help Way Earlier'* report
- Invest the money saved from reducing the number of children in the justice system in designing and implementing intensive, individualised, evidence and trauma informed services.
- Increase investment in family support that keeps kids in their communities and prevents risks of incarceration.
- Fund holistic, trauma-informed wrap around healthcare to help young people at risk of incarceration who experience significant physical, psychological and behavioural health issues.<sup>4</sup>
- Where a child is at risk of incarceration, prioritise early intervention and prevention, including improving specialist child development services in the community to identify and support children with neurodevelopmental disorders before they become involved in the justice system.
- Resource and support GPs to work with multidisciplinary teams and agencies to be part of intensive and individualised support.
- In Aboriginal and Torres Strait Islander communities ensure that health and justice solutions are community led.
- Improve specialist child development services in the community to identify and support children with neurodevelopmental disorders before they become involved in the justice system.
- Establish and resource ADHD and Fetal Alcohol Spectrum Disorder (FASD) services linked to primary care to ensure early diagnosis and management of ADHD and FASD symptoms, in connection with co-existing medical conditions, potentially preventing criminal behaviour associated with poor impulse control.
- As incarcerating children is harmful – to children, their families and their communities – the arrest, detention or imprisoning of children must be a last resort and occur for as short a time as possible.
- The federal Government set reform principles to drive action. For example:
  - The federal health minister to facilitate the leadership of the Aboriginal Community-Controlled Health sector in the policy, design, and delivery of health services for Aboriginal and Torres Strait Islander peoples in partnership
  - The federal health minister to establish a national partnership agreement on strategy, United Nations obligations, collective actions, performance requirements and shared data
  - Legislate stronger protection of human rights
  - Establish a [Ministerial Council for Child Wellbeing](#) as outlined in the *Help Way Earlier* report

## The disproportionate impact on Aboriginal and Torres Strait Islander people and communities

- Aboriginal and Torres Strait Islander families and children experience ongoing and compounded impacts of intergenerational trauma and direct trauma as a result of colonisation and racism.<sup>5</sup> These can include disconnection from family and kinship systems, Country, spirituality and cultural practices, and the loss of parenting practices.<sup>6</sup>
- Aboriginal and Torres Strait Islander young people are grossly over-represented in the youth justice system, particularly during the younger ages, which in turn intensifies over-representation in adult prisons. Sixty three percent of young people aged 10-17 in custody are Aboriginal and/or Torres Strait Islander people, and they experience incarceration at relatively younger ages than non-Indigenous children.<sup>7</sup>
- High rates of systemic injustice, poverty, trauma, grief and disconnection from support networks though incarceration compounds the trauma experienced by these children.
- A disproportionate level of punishment has also been demonstrated against Aboriginal and Torres Strait Islander young people due to the impacts of racism in health and justice systems. There has been a failure to recognise or support the complex health and social needs of Aboriginal and Torres Strait Islander young people.<sup>8</sup>
- In QLD and the NT over 90% of people under justice supervision between the ages of 10 and 14 are Aboriginal or Torres Strait Islander kids.<sup>9</sup>

## The evidence - supporting children at risk of criminalisation

- Children's brains are still developing through their adolescent years.<sup>10</sup>
- Many young people at risk of incarceration experience significant health issues, including in physical, psychological and behavioural health, and so need holistic healthcare and wrap around support.<sup>11</sup>
- Adversities such as social disadvantage, traumatic experiences, substance use, and mental illness are common precursors to incarceration of young people.<sup>12</sup>
- Adverse childhood experiences may result in childhood trauma which can result in a discrepancy between chronological age and developmental age of a child.<sup>13</sup>
- Adverse childhood events are highly prevalent among children who engage in behaviours that constitute offending.<sup>14</sup>

- Developmental trauma can result in structural abnormalities in the limbic system, impacting a child's ability to reason, to regulate stress and to control their emotions and impulses.<sup>15</sup>
- Raising the age of criminal responsibility provides an opportunity to respond to children at risk outside of the justice system in ways that can reduce future criminalisation and risk of harm to the community.<sup>16</sup>
- Non-punitive responses to children who offend reduce future recidivism and conversely, more punitive responses to children who offend result in greater levels of criminality.<sup>17</sup>
- Programs for young people that involve rehabilitation rather than incarceration and punishment work. They have been shown to lower rates of recidivism.<sup>18,19,20,21</sup>
- Youth justice is expensive – most of each youth justice agency's costs are associated with detention-based services.<sup>22</sup> Just as one example, in South Australia it costs \$3827 a day, or \$1.4 million per child a year to keep a child in detention.<sup>23</sup> And nationally, over \$1 million per year per child.<sup>24</sup>
- Claims that diversionary practice are soft options that drive up crime are unfounded.<sup>25</sup>
- Children in prison are less likely to complete school, to complete further education and training, or to gain employment.<sup>26</sup>
- When children enter the justice system, they are highly likely to return as adults and contact with the criminal justice system aggravates existing health issues and increases the chances of incarceration over the life course.<sup>27,28,29,30</sup>
- Commissions in the Northern Territory and Tasmania indicated that current practice in youth detention centres is often in direct violation of children's rights.<sup>31</sup>
- The legal presumption of *doli incapax*\* is flawed, inconsistent in practice and with questionable efficacy.<sup>32</sup>
- Policies to lower the age of criminal responsibility go against the UN Convention on the Rights of the Child, which Australia signed up to in 1990.<sup>33</sup>
- RACGP members and their patients are experiencing the impacts of health and justice systems that are not set up to support vulnerable young people.\*

*"I have recently seen a young person for whom part of the court recommendation of their diversion away from incarceration was an assessment by a paediatrician. The child's family could not afford a private paediatrician, and the current wait time for public paediatric clinic in my area is two years. A further request was that I was to create a treatment plan for specific developmental/behavioural conditions identified and was required to notify the court if the child and family did not comply. The result of this would be that if I notified the court of noncompliance the child would be incarcerated. This arrangement put me in an extremely difficult position... I am happy to support diversion strategies - but I cannot make the public referral system work faster, and I am not a probation officer."*

\*RACGP Member input [into RACGP submission](#) – Inquiry into Australia's Youth Justice and Incarceration System Oct 2024

## Discussion

Raising the age of criminal responsibility will reduce the number of children who are criminalised and detained in custody and provide opportunities for children who have experienced multiple and chronic adverse events to access the support they need.<sup>34</sup> Punitive criminal justice responses are driven by policy phases in which the issue of youth crime is politicised when parties deem this to be to their electoral advantage.<sup>35</sup> These actions are in direct conflict with government closing the gap commitments to reduce over-representation of young Aboriginal and Torres Strait Islander people in incarceration.<sup>36</sup>

Any arguments that lowering the age of criminal responsibility offers a diversion for the young person have been debunked by enquiries such as the [Royal Commission into the Protection and Detention of Children in the Northern Territory](#) which clearly shows the ineffectiveness of incarceration as a means of rehabilitation for young people. As pointed out by Australian Commissioners Natalie Siegel-Brown and Selwyn Button, locking up more children actually increases youth crime.<sup>37</sup>

Too often children who have experienced multiple disadvantages and trauma are pushed down a path, by policy decisions and systems, into the criminal justice system. Experiences of abuse and neglect, out-of-home care, domestic violence, social and educational exclusion, homelessness, physical and mental health, or impaired cognitive development should lead to intensive trauma informed support for these children. A low age of criminal responsibility results in punitive measures which compound trauma and reduce the opportunity for achieving wellbeing.<sup>38</sup> These are children powerless to alter most factors that propel them further into the system.<sup>39</sup>

Early intervention, diversion and joined-up services work.<sup>40,41,42,43,44,45</sup> They are particularly effective for diversion of young people<sup>46</sup> and for young Aboriginal and Torres Strait Islander people where is it community led.<sup>47</sup>

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As just one example, the Maranguka Justice Reinvestment Project<sup>48</sup> showed that sustainable outcomes and savings can be achieved through diversionary and community development initiatives. Outcomes included:

- 38 per cent reduction in charges across the top five juvenile offence categories
- 31 per cent increase in year 12 student retention rates
- 23 per cent reduction in police recorded incidences of family violence
- Gross impact of \$3.1 million, with operational costs of \$600,000 demonstrating positive economic impacts at five times greater than operational costs.

Criminal justice responses to offending increase government costs, with the costs of detention particularly high.<sup>49</sup> Despite this we see numerous state and territory governments invoking policies and legislative changes that are expensive and ineffective.

Compassionate approaches are associated with far lower youth justice problems, and with safer communities.<sup>50</sup> And they honour the rights of children under the [United Nations Convention on the Rights of the Child](#). For example:

Article 23: Children who have any kind of disability should receive special care and support so that they can live a full and independent life

Article 24: Children have the right to good quality health care, clean water, nutritious food and a clean environment so that they will stay healthy

Article 28: Every child has the right to an education

Article 30: Every indigenous child or child from a minority has the right to enjoy their own culture, religion and language

Article 31: Children have the right to relax, play and to join in a wide range of leisure activities

Article 36: Children should be protected from any activities that could harm their development

Article 39: Children who have been neglected or abused should receive special help to restore their self-respect

\* *Doli Incapax* is a common law principle meaning 'incapable of wrong'. In Australia, it applies to children aged between 10-13 years who are presumed incapable of criminal intent even if the criminal act is committed. This presumption is rebuttable, and if rebutted, can result in criminal penalties, including imprisonment. It has been argued that *doli incapax* is rarely a barrier to prosecution and can actually cause greater disadvantage to children as prejudicial evidence, which would ordinarily be inadmissible, may be used to rebut *doli incapax*.<sup>51</sup>

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- <sup>6</sup> Australian Institute of Health and Welfare (2024) *Youth detention population in Australia 2024*, AIHW, Australian Government, accessed 09 January 2025.
- <sup>7</sup> Australian Institute of Health and Welfare (2024) *Youth detention population in Australia 2024*, AIHW, Australian Government, accessed 09 January 2025.
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