

The Hon. Daniel Andrews
The Hon. Jaclyn Symes, Attorney-General

5th April 2023

Dear Premier and Attorney-General,

We write to you today as a coalition of 60 Aboriginal and Torres Strait Islander, health and medical, legal, social and community services providers, and their respective peak bodies, from across Victoria to reiterate the call to raise the age of criminal responsibility to at least 14 years of age with no exceptions.

We understand that there have been ongoing discussions at the Standing Council of Attorneys-General (SCAG) around raising the age to only 12 years of age and that this group is due to meet again at the end of April. Our coalition wishes to state in no uncertain terms that raising the age to only 12 and/or raising the age for some conduct but carving out other conduct as exemptions is completely inconsistent with medical evidence and will not be endorsed by our coalition. The call of the Raise the Age campaign has always been to raise the age of criminal responsibility to at least 14 with no carve outs and we will continue to run a strong, loud and unified campaign until this is achieved.

We welcomed Premier Andrews' comments that Victoria was willing to lead the nation, and raise the age sooner than the delayed national SCAG process to maintain Victoria's reputation as the most progressive jurisdiction in Australia. We stand ready to work with the Victorian government to support this crucial reform and implement the framework that would be put in place to support children aged 10-13 engaging in problematic behaviour. However, to maintain a reputation as the most progressive jurisdiction, Victoria must fully commit to following the recommendations of the [Draft Final Report 2020 – Council of Attorneys-General Age of Criminal Responsibility Working Group](#) and almost 50 organisations who put in [submissions](#) which informed this report, the [bipartisan report from the 2022 inquiry into Victoria's criminal justice system](#), the [Yoorrook Justice Commission June 2022 Interim Report](#), and [advice from the UN Committee on the Rights of the Child](#)¹, all of which recommend raising the age to at least 14 and none of which recommended exemptions.

These reports also make clear that the medical and health evidence confirms that prison is harmful for *all* children, and that internationally accepted human rights standards call for an increase to 14 as the bare minimum age of criminal responsibility to protect the rights and health of young children.

As outlined in a [letter](#) sent to all Premiers, Attorneys-General, and Health Ministers in December 2021 from a coalition of 32 health and medical organisations, medical consensus regarding child brain development shows that children under the age of 14 are undergoing significant growth and development, which means that they may not have the required capacity to be criminally responsible. Research shows that immaturity can affect a number of areas of cognitive functioning “including impulsivity, reasoning and consequential thinking”. Scientific advances related to the understanding of child cognitive development favour a minimum age of criminal responsibility of at least 14, taking into account the time it takes for the adolescent brain to mature.²

¹ The UN Committee of the Rights of the Child also recommends that the minimum age of detention should be at least 16 years of age.

² Chris Cunneen, 'Arguments for Raising the Minimum Age of Criminal Responsibility' (Research Report, Comparative Youth Penalty Project, University of New South Wales, 2017) citing Sentencing Advisory Council, *Sentencing Children and Young People in Victoria* (2012) 11; Thomas Crofts, 'A Brighter Tomorrow: Raise the Age of Criminal Responsibility' (2015) 27(1)

There is also clear evidence that Victorian children in our criminal legal system have high rates of additional neurocognitive impairment, trauma and mental health issues.³ Given the high rate of neurodevelopmental delay experienced by children in youth prisons, some behaviours often reflect the developmental age of the child, which may be several years below their chronological age. Judging criminal responsibility on the basis of a chronological age is inappropriate for children who may have a much lower developmental age due to a number of medical and developmental conditions. The evidence overwhelmingly shows that when children in the very young age bracket of 10 to 13 years of age are forced through a criminal legal process during their formative developmental phases, they suffer immense and enduring harm. Worse still, this compounds the disadvantage they were experiencing prior to their first contact with the legal system, particularly for those who are chronically over-represented in the criminal legal system.⁴

Raising the age to 14 is a straightforward reform to implement with the backing of the service provision and legal sector. Data from 2021 shows that 29 primary-school aged children were locked up in Victorian prisons the year prior. This small number means the transition to a new system can be relatively easy.⁵

Polling shows that raising the age has broad public support, and it would have an immediate impact on Victoria's ability to meet its Closing the Gap, Victorian Aboriginal Justice Agreement and Wirikara Kulpa Aboriginal Youth Justice Strategy targets.

Raising the age to anything less than 14 would put the Victorian government completely at odds with the medical consensus, internationally accepted standards, the recommendations of the CAG report and the Yoorrook Justice Commission's Interim Report, and its stated commitments to Voice, Treaty and Truth with Victorian First Peoples.

We urgently call on the Victorian government to cement its position as the most progressive jurisdiction in Australia and commit to raising the age to at least 14 with no exceptions. Our organisations stand ready to support this crucial reform and work with the Victorian government to ensure that every child in Victoria has the chance to thrive.

Sincerely,



Aboriginal Justice Caucus



Amnesty International Australia

Current Issues in Criminal Justice 123; Enys Delmage, 'The Minimum Age of Criminal Responsibility: A Medico-Legal Perspective' (2013) 13(2) Youth Justice 102

³ Commission for Children and Young People, Our youth, our way: inquiry into the over- representation of Aboriginal children and young people in the Victorian youth justice system, Summary and recommendations (2021) 151-154.

⁴ Ibid; Meurk C, Steele M, Yap L, Jones J, Heffernan E, Davison S, et al. Changing direction: mental health needs of justice-involved young people in Australia. Sydney: Kirby Institute (2019); Sentencing Advisory Council, 'Crossover kids': vulnerable children in the youth justice system. Reports 2 and 3, Sentencing Advisory Council, Melbourne, (2020).

⁵ The 2023 Productivity Commission also confirmed that Victoria is spending up to \$5,050 per day to imprison a child in custody. This coalition believes that funds used to imprison children are better spent reinvested into an alternative response framework that meaningfully assists young children to address problematic behaviour in the community.



ARC Justice



Australian Association for Restorative Justice



Australian Lawyers Alliance



Barwon Community Legal Service



Catholic Social Services Victoria



Centre for Innovative Justice



Centre for Multicultural Youth



Change the Record



COTA Victoria



Sharing stories, finding solutions
Djirra



Disability Discrimination Legal Service



Eastern Community Legal Centre (ECLC)



Emma House Domestic Violence Services Inc.



Federation of Community Legal Centres (Victoria) Inc.



Fitzroy Legal Service



Inner Melbourne Community Legal



inTouch CLC



Human Rights Law Centre



Hume Riverina Community Legal Service



Indigenous Law and Justice Hub, Melbourne Law School



Jesuit Social Services



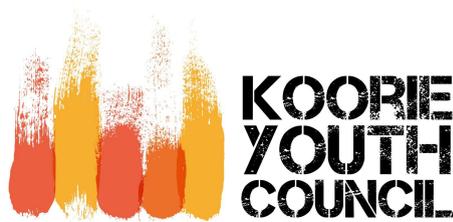
Justice Connect



Justice-involved Young People (JYP)
Network @ The University of Melbourne



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Koorie Youth Council



Liberty Victoria



Law and Advocacy Centre for Women Ltd



Mallee Family Care Community Legal
Centre



Melbourne City Mission



Mental Health Legal Centre Inc.



Moonee Valley Legal Service



National Justice Project



Orygen



Peninsula Community Legal Centre



Seniors Rights Victoria



Southside Justice



South-East Monash Legal Services



Southport Community Legal Service Inc.



Smart Justice for Young People



The Kimberley Foundation



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SYNOD OF VICTORIA AND TASMANIA

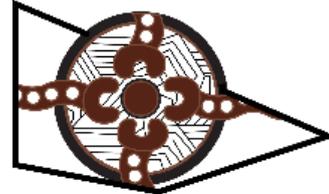
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Victorian Aboriginal Community Services
Association Limited



Vacro



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Victorian Aboriginal Community Controlled
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Victorian Aboriginal Corporation for
Languages



Victorian Aboriginal Education Association
Inc.



Victorian Aboriginal
Legal Service

Victorian Aboriginal Legal Service (VALS)



VCROSS
Victorian Council
of Social Service

Victorian Council of Social Service



West Heidelberg Community Legal

WEstjustice

WEstjustice



Whitelion Youth



Whittlesea Community Connections



Women and Mentoring (WAM)



Women's Health Victoria



Women's Legal Service Victoria



Youth Affairs Council Victoria (YACVic)



Youthlaw



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