



18 March 2024

Legislative Services
Attorney-General's Department
GPO Box 464
Adelaide SA 5001

Via email: LLPSubmissions@sa.gov.au

Submission to the Attorney General's Department in response to the Discussion Paper "Minimum Age of Criminal Responsibility – alternative diversion model"

The Public Health Association of Australia (PHAA) is recognised as the principal non-government organisation for public health in Australia working to promote the health and well-being of all Australians. It is the pre-eminent voice for the public's health in Australia and seeks to drive better health outcomes through increased knowledge, better access and equity, evidence informed policy and effective population-based practice in public health.

PHAA welcomes the opportunity to provide input to the Attorney General's Department Discussion Paper regarding the minimum age of criminal responsibility (the MACR) alternative diversion model. We commend SA Government for this inquiry but we will outline concerns with specific content of the discussion paper and offer alternative approaches that are informed by the international evidence. *We request that our submission be made public and grant the Attorney General's Department permission to do so.*

Raising the Age of Criminal Responsibility

As stated in the Discussion Paper, there is significant evidence-based research that supports raising the age of criminal responsibility from 10 to 14 years. PHAA has continuously supported the Raise the Age campaign, alongside over 100 other Australian organisations who have advocated for the MACR to be raised to 14 years. The United Nations Committee on the Rights of the Child has directly called out Australia for failing to do so. Despite this, the South Australian government is only proposing raising the age from 10 to 12 years, with exceptions for serious offences, and a proposed commitment to review the MACR after two years. PHAA instead argues:

- 1) **The MACR should be raised from 10 to 14 years**, given the overwhelming child development and neuroscience evidence, and the ongoing human rights law violation in failing to do so (see [Human Rights Law Centre submission](#) for a summary).
- 2) **There should be no exceptions to the MACR.** It is concerning that the MACR is in place so that no child under that age can or should be criminalised for any reason as they cannot understand that their behaviour was wrong in a criminal sense and therefore cannot be held criminally responsible. This is highlighted in the Discussion Paper, and yet the proposed changes still allow for children under the MACR to be criminalised for serious offences.
- 3) **A clearer justification and scope for the MACR 2-year review should be provided.** Other Australian jurisdictions (Northern Territory, ACT, Victoria, Tasmania) have clearly stipulated

their timelines to raising the age to 14 years whereas South Australia's two year plan remains vague.

Alternative Response Model

PHAA agrees with the Discussion Paper that any alternative response model should be culturally led and trauma-informed. However, the current proposed model appears to lack this focus in its design. First responders should be adequately trained and supported to work with children and young people and therefore should not be the role or function of the police. The response needs to have the best interests and rights of the child in mind, while addressing the complex needs that many children who come into contact with the justice system face. The model should also take into account key social determinants of health that impact the circumstances in which the child has grown up in, rather than focus on simplistic behaviour modification practices. Finally, given the over-representation of Aboriginal and Torres Strait Islander children in the criminal justice system, we strongly advocate the Attorney General's Department engage the First Nations Voice to SA Parliament once established, to support the design of an alternative response model. This would also support the Closing the Gap Target 11 to reduce the rate of Aboriginal and Torres Strait Islander young people in detention by at least 30 per cent.

Key Recommendations

From a public health perspective, the evidence is clear that raising the age of criminal responsibility from 10 to 14 years will improve health, well-being and education outcomes for the child. Early intervention and prevention strategies that focus on developing a comprehensive framework for the health and well-being of all children and young people, taking into account the rights of the child and the social determinants of health, should be the South Australian government's focus.

PHAA recommends the South Australian Government raises the MACR from 10 to 14 years, without exception.

PHAA recommends that alternative response models should focus on prevention and early interventions, which take into consideration the rights of the child, their complex needs, is culturally-led, trauma informed, considers the social determinants of health, and importantly, engages with the First Nations Voice to SA Parliament in its design.

The PHAA appreciate the opportunity to make this submission. Please do not hesitate to contact us should you require additional information or have any queries.

Sincerely,



Professor Jacquie Bowden
PHAA Branch President (SA)
Public Health Association of Australia