



AMA

MINIMUM AGE OF

CRIMINAL RESPONSIBILITY



POLICY STATEMENT



Law Council
OF AUSTRALIA

MINIMUM AGE OF CRIMINAL RESPONSIBILITY

INTRODUCTION

Prison should not be a rite of passage for any child. Yet, in Australia, children as young as 10 can be imprisoned.

This is a national tragedy recognised by both the Australian Medical Association (AMA) and the Law Council of Australia (LCA).

That is why our organisations are calling on all levels of government – state, territory and federal – to increase the minimum age of criminal responsibility (MACR) to 14.

This would bring Australia into line with international human rights standards and medical consensus on child brain development.

To put the current situation into context:

- a child under 13 years cannot sign up for a Facebook account;
- a child under 12 years cannot board a plane unsupervised; and
- in some states, a child under 16 years cannot get their ears pierced without parental permission.

In comparison, the minimum age of criminal responsibility in all Australian jurisdictions is 10 years old.*

Children who are forced into contact with the criminal justice system at a young age are less likely to complete their education or find employment, and more likely to die an early death.¹

Of particular concern is the disproportionate impact the MACR has on Indigenous young people, who are consistently imprisoned at much higher rates than non-Indigenous young people.

The AMA and LCA believe the arrest, detention or imprisonment of a child should be used only as a measure of last resort and should only occur for the shortest appropriate period of time.

RESOLUTIONS

- The age of criminal responsibility in Australia should be increased to 14.
- Prison should not be seen as a rite of passage for Aboriginal and Torres Strait Islander children.
- Communities and society will not be safer or healthier if children are in prison.
- Early intervention, prevention and rehabilitation solutions should be prioritised.
- In Aboriginal and Torres Strait Islander communities, health and justice solutions should be community-led.
- Investment in critical support services for children and families must be increased.
- Children belong in their communities.
- Australia should abide by its international obligations, particularly regarding the rights of the child.
- The arrest, detention or imprisonment of a child should always be a last resort for children and should only occur for the shortest appropriate period of time.

*Children aged between 10 and 14 are subject to a legal presumption known as *doli incapax*, which presumes that they are incapable of the requisite intent to commit a criminal act. This presumption can be disproved or rebutted in court by leading evidence to show that a child knew his or her actions were morally wrong.

THE AGE OF CRIMINAL RESPONSIBILITY IN AUSTRALIA SHOULD BE INCREASED TO 14

The MACR of 10 in place across all Australian jurisdictions is out of step with medical consensus regarding child brain development.

Children under the age of 14 are undergoing significant growth and development, which means they may not have the required capacity to be criminally responsible.² Scientific advances related to the understanding of child cognitive development favour a higher MACR, taking into account the time taken for the adolescent brain to mature.³ Research shows immaturity can affect a number of areas of cognitive functioning "including impulsivity, reasoning and consequential thinking".⁴

Other laws and policies recognise and are based on an understanding of graduated child development. For example, in Queensland, it is a criminal offence for a parent or guardian to leave a child under the age of 12 years unsupervised for an unreasonable time.⁵

Other states and territories do not set a specific age, but most have legislative standards regarding parental responsibility for the supervision of children.⁶

Common law, as well as state and territory laws and policies, recognises that young people must be of sufficient maturity to consent to medical treatment.⁷ The Department of Human Services' policy states that only those over 15 years can apply for their own Medicare card.⁸

In addition, the legal presumption of *doli incapax*, which is used to justify the low MACR, is flawed and does not serve its purpose in practice. Both the United Nations Committee on the Rights of the Child and the Australian Law Reform Commission have expressed criticisms of this presumption.⁹

Doli incapax means the law presumes a child under the age of 14 does not possess the necessary knowledge required to have criminal intent. However, it can be disproved or rebutted by leading evidence to show a child knew his or her actions were morally wrong.

In practice, the presumption has proven extremely difficult to apply in court and creates confusion as to whether the defence or prosecution bears the burden of proving a child knew their conduct was wrong.

Raising the MACR to 14 would remove the need for courts to consider the confusing and complex *doli incapax* presumption.

PRISON SHOULD NOT BE SEEN AS A RITE OF PASSAGE FOR ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN

Juvenile detention disproportionately impacts Aboriginal and Torres Strait Islander children.

Aboriginal or Torres Strait Islander young people aged 10-17 are 23 times more likely to be in detention than non-Indigenous young people, skyrocketing to 38 times in some states.¹⁰

In the Northern Territory, at least 94 per cent of detainees in juvenile detention are Aboriginal or Torres Strait Islander.¹¹ At times, this statistic has been 100 per cent.¹²

The reasons for the high rates of criminal justice interaction experienced by Aboriginal and Torres Strait Islander young people are complex and multifaceted. However, cycles of poverty, intergenerational trauma and grief, as well as experiences of systemic injustice that accumulate over a lifetime, are major causal factors.¹³

Practices and policies in the realm of juvenile justice contribute to the criminalisation of Aboriginal and Torres Strait Islander young people.

For example, Aboriginal and Torres Strait Islander young people who commit minor offences often receive harsh sentences including imprisonment, setting them on a path of future crime and imprisonment, when they should be diverted into Aboriginal and Torres Strait Islander community-led programs. Studies have found that Aboriginal and Torres Strait Islander young people receive limited and inconsistent access to diversionary options, and are more likely to be processed through the courts than non-Indigenous young people.¹⁴

Detention can be particularly harsh for Aboriginal and Torres Strait Islander children due to factors such as the location of juvenile detention centres away from their mob and other support networks.

Certain health issues have been identified as significant drivers of the imprisonment of Aboriginal and Torres Strait Islander young people.

- Current evidence suggests that Aboriginal and Torres Strait Islander people with diagnosed mental health disorders have substantially more contact with the police than their non-Indigenous peers.¹⁵
- Further, among Aboriginal and Torres Strait Islander prisoners with an intellectual disability, first contact with the criminal justice system occurs earlier than for those without.¹⁶

- Research indicates a significant number of Indigenous young people who end up in detention centres and prisons suffer from previously undiagnosed foetal alcohol syndrome (FASD).¹⁷
- A recent study in Western Australia's Banksia Hill Detention Centre found the prevalence of FASD among Aboriginal youth detainees was 47 per cent.¹⁸ It also found nine out of ten incarcerated young people have at least one form of severe neurodevelopmental impairment.¹⁹

Governments must focus on policies and critical support programs that address the underlying causes of imprisonment and break these cycles.

Early intervention and prevention is important because it can substantially reduce the risk of secondary medical, social, emotional and behavioural problems.

COMMUNITIES AND SOCIETY WILL NOT BE SAFER OR HEALTHIER IF CHILDREN ARE IN PRISON

A low MACR is not in the public interest and does not make our communities safer.

It is very rare for children aged 10 to 14 to commit serious crimes – and the rate is decreasing.²⁰

The large majority of children affected by the low MACR are not serious offenders. Further, 60 per cent of young people in detention are unsentenced.²¹

In countries where the MACR is 14 years or higher research indicates "there are no negative consequences to be seen in terms of crime rates".²²

Life trajectory outcomes for young people forced into contact with the criminal justice system are grim. They are less likely to complete their education or find employment and are more likely to die an early death.²³

And the low MACR contributes to a criminal pathway.

Research indicates the younger a child is when first having contact with youth justice, the more likely it is the child will become entrenched in the justice system.²⁴ Early contact with the criminal justice system is one of the key predictors in juvenile and adult offending.²⁵

In Victoria, for 10-12 year-olds, the recidivism rate is approximately 86 per cent. For 13-14 year-olds it is 84 per cent. For 17 year-olds it is 51 per cent.²⁶

There is also a strong association between poor health and contact with the criminal system. The health needs of young people in the youth justice system are particularly striking.

Young people within youth justice systems have significantly higher rates of cognitive impairment compared with the general population of young people.²⁷ This aligns with research indicating that young people with cognitive disability are particularly vulnerable to criminalisation.²⁸

A New South Wales study found almost half of young people in detention had "borderline" or lower intellectual functioning, indicating significant impairment. One quarter had left school before the age of 14.²⁹

The cognitive functioning of young people in detention is worse than for those in the general community, with speech, language and communication problems significantly higher.³⁰

EARLY INTERVENTION, PREVENTATIVE AND REHABILITATION SOLUTIONS SHOULD BE PRIORITISED

Australia's juvenile justice system is based on a false economy. The financial burden of keeping young people in prison is huge.

In 2017-2018, youth detention saw total government spending of more than \$509 million.³¹ And it costs about \$531,075 per year to keep a young person in detention.³²

This money would be better spent on early intervention, prevention, and rehabilitation services and programs, which address the underlying causes of criminal behaviour and help prevent future offending.

Some of Australia's most vulnerable children are being processed through the criminal justice system, instead of receiving the health and social interventions they need.

Evidence shows children remain in cycles of disadvantage and imprisonment due to a lack of early critical support services including health services, and a failure to invest in alternatives to criminalisation and imprisonment.

Justice reinvestment projects, which fund front-end, community-driven strategies to help prevent criminalisation, make sense. Instead of punitive measures, money is invested in preventative, diversionary and community development initiatives.

There are emerging success stories we can look to and learn from, such as Bourke's Maranguka Justice Reinvestment project, which was implemented from 2015.

It provides a promising example of an innovative and common-sense approach to community-based intervention that works, addressing the causes of offending before it begins.

Between 2015 and 2017, the community has recorded:

- an 18 per cent drop in the number of major offences;
- a 34 per cent drop in non-domestic violence related assaults;
- a 39 per cent fall in domestic violence related assaults;
- a 39 per cent fall in the number of people proceeded against for drug offences; and
- a 35 per cent reduction in the number of people proceeded against for driving offences.

In March 2019, an additional \$1.8 million in government funding was announced to keep the project going. That additional contribution cost less than keeping four children in detention for a year.

IN ABORIGINAL AND TORRES STRAIT ISLANDER COMMUNITIES, HEALTH AND JUSTICE SOLUTIONS SHOULD BE COMMUNITY-LED

The AMA and LCA agree that Aboriginal and Torres Strait Islander community-controlled organisations are most appropriately placed to provide services and speak on behalf of Aboriginal and Torres Strait Islander peoples.

Federal, state and territory levels of government should provide ongoing resourcing for Aboriginal and Torres Strait Islander communities to ensure, as Change the Record has stated, "that policy solutions are underpinned by the principle of self-determination, respect for Aboriginal and Torres Strait Islander people's culture and identity, and recognition of the history of dispossession and trauma experienced by many communities."³³

Many Aboriginal and Torres Strait Islander people have intergenerational and/or personal experience of mainstream services working "against them" instead of "for them". This lack of trust affects all aspects of interaction with mainstream health and justice services and therefore the effectiveness of these services in delivering support or positive change.

Culture is a protective factor and a great source of strength for Aboriginal and Torres Strait Islander people. Distrust, communication barriers and trauma are increased when mainstream institutions and services ignore cultural background.

Where communities are empowered to lead on the issues that affect them, culturally competent solutions are more likely to be identified and implemented.

At a service-delivery level, community-controlled organisations build strength and resilience in communities and provide local solutions to local problems. This is particularly applicable to Aboriginal and Torres Strait Islander peoples, where, as Change the Record articulates, community-controlled organisations "have the unique capacity to provide culturally appropriate services, and are able to provide localised, tailored solutions that have the support of the community".³⁴

Successful solutions are developed in consultation and partnership with Aboriginal and Torres Strait Islander peoples, rather than imposed from the top down.

INVESTMENT IN CRITICAL SUPPORT SERVICES FOR CHILDREN AND FAMILIES MUST BE INCREASED

Prevention and early intervention strategies aim to address the underlying factors which can lead to poor justice and/or health outcomes. These underlying factors include poverty; homelessness; intergenerational trauma; discrimination and racism; poor education; and substance abuse.

A range of critical support services is needed to combat likely pathways into the justice system - such as family support; mental health; disability support; youth engagement; and rehabilitation services. Access to safe, secure housing also underpins better justice outcomes in multiple ways.

Broader social and economic disadvantages experienced by Aboriginal and Torres Strait Islander people are known

as “social determinants” and have been estimated to explain more than one-third of the health gap between Aboriginal and Torres Strait Islander people and non-Indigenous Australians.³⁵

The Australian Institute of Health and Welfare has highlighted how social determinants lead to imprisonment for Aboriginal and Torres Strait Islander people, as well as how flow-on impacts of imprisonment affect an individual’s social determinants.³⁶

CHILDREN BELONG IN THEIR COMMUNITIES

Separation from family resulting from detention can be extremely harmful to children’s health and development. Wherever possible, it is best for children to remain in their communities.³⁷

There is a crossover cohort between the child protection system and children in detention and a clear “care to crime” pathway that must be addressed.

A high proportion of children in contact with the criminal system are subject to child protection orders or are in out-of-home care, with research indicating “young people placed in out-of-home care are 16 times more likely than the equivalent general population to be under youth justice supervision in the same year”.³⁸

Children in out-of-home care have high levels of contact with the criminal justice system, leading to youth detention and “the almost inevitable progression to the adult corrections system”.³⁹ These children are generally victims of abuse, neglect and trauma.

They require help, not criminalisation.

AUSTRALIA SHOULD ABIDE BY ITS INTERNATIONAL OBLIGATIONS, PARTICULARLY REGARDING THE RIGHTS OF THE CHILD

Australia’s current MACR is out of step with international human rights standards.

We have binding obligations under the Convention on the Rights of the Child and the United Nations Committee on the Rights of the Child recommended Australia raise the MACR “to an internationally acceptable level” in 2005⁴⁰ and again in 2012.⁴¹

The UN Committee has revised its previous position on MACR from requiring an age of “12 as the absolute minimum” to finding that this is “still low” and encouraging states to increase it to “at least 14”.⁴² While its findings are not legally binding, they are highly persuasive interpretations of Australia’s relevant obligations.

Globally, the average MACR is 12.1 years of age⁴³ and over the past decade there has been a trend for countries to raise their MACR.⁴⁴

The average MACR for countries in the European Union is 14 years.⁴⁵

It is time Australia’s Commonwealth, state and territory governments increased the MACR to align with international best practice.

¹ Australian Medical Association, 'AMA calls for age of criminal responsibility to be raised to 14 years' (Media Release, 25 March 2019) <<https://ama.com.au/media/ama-calls-age-criminal-responsibility-be-raised-14-years-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) *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 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) *Current Issues in Criminal Justice* 123; Enys Delmage, 'The Minimum Age of Criminal Responsibility: A Medico-Legal Perspective' (2013) 13(2) *Youth Justice* 102.

⁴ Chris Cunneen, 'Arguments for Raising the Minimum Age of Criminal Responsibility' (Research Report, Comparative Youth Penalty Project, University of New South Wales, 2017) quoting Nicholas Lennings and Chris Lennings, 'Assessing Serious Harm Under the Doctrine of *Doli Incapax*: A Case Study' (2014) 21(5) *Psychiatry, Psychology and Law* 791, 794.

⁵ *Criminal Code Act 1899* (Qld) s 364A.

⁶ See, eg, *Children, Young Persons and Their Families Act 1997* (Tas) s 92; *Children, Youth and Families Act 2005* (Vic) s 494.

⁷ 'Gillick competent' from the House of Lords decision in *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] AC 112 and applied in Australian common law: see, eg, *Department of Health and Community Services v JWB and SMB* 175 CLR 218 ('*Marion's Case*'). See also *Consent to Medical Treatment and Palliative Care Act 1995* (SA) ss 6, 12(b); *Minors (Property and Contracts) Act 1970* (NSW) s 49.

⁸ Department of Human Services, *How to get your own Medicare card at 15 years old* (Web Page, July 2019) <<https://www.humanservices.gov.au/individuals/services/medicare/medicare-card/how-get-your-own-card-15-years-old>>.

⁹ Australian Law Reform Commission, *Seen and Heard: Priority for Children in the Legal Process*, (Report No 84, September 1997) [18.19]; United Nations Committee on the Rights of the Child, *General Comment No 24 on children's rights in the child justice system*, UN Doc CRC/C/GC/24 (18 September 2019) [25] <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f24&Lang=en>.

¹⁰ Australian Institute of Health and Welfare, *Youth Justice in Australia 2017–18* (2019) 9. This also states that Aboriginal and Torres Strait Islander young people were 17 times more likely than non-Indigenous young people to be under supervision (which encompasses both community-based supervision and detention).

¹¹ *Royal Commission into the Protection and Detention of Children in the Northern Territory* (Interim Report, March 2017) 9.

¹² See, eg, Lorena Allam, 'All children in detention in the Northern Territory are Indigenous', *Guardian* (online, 26 January 2018) <<https://www.theguardian.com/australia-news/2018/jun/25/all-children-in-detention-in-the-northern-territory-are-indigenous>>.

¹³ Law Council of Australia, 'Aboriginal and Torres Strait Islander Peoples', *Justice Project Final Report* (2018) 8.

¹⁴ Law Council of Australia, 'Aboriginal and Torres Strait Islander People' (Justice Project: Final Report, August 2018) 72, citing Aboriginal Family Violence Prevention and Legal Services Victoria, Submission to the Victorian Royal Commission into Family Violence (June 2015) 23.

¹⁵ Australian Medical Association, *2015 AMA Report Card on Indigenous Health – Treating the high rates of imprisonment of Aboriginal and Torres Strait Islander peoples as a symptom of the health gap: an integrated approach to both* (November 2015) 9 citing Eileen Baldry et al, *People with Intellectual and other Cognitive Disability in the Criminal Justice System* (2012).

¹⁶ Australian Medical Association, *2015 AMA Report Card on Indigenous Health – Treating the high rates of imprisonment of Aboriginal and Torres Strait Islander peoples as a symptom of the health gap: an integrated approach to both* (November 2015) 9.

¹⁷ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, Parliament of Australia, *Doing Time – Time for Doing: Indigenous Youth in the Criminal Justice System* (Report, June 2011) 101 [4.49].

¹⁸ Carol Bower et al, 'Fetal alcohol spectrum disorder and youth justice: a prevalence study among young people sentenced to detention in Western Australia' (2018) 8 *British Medical Journal Open* 1, 6 and 7.

¹⁹ Carol Bower et al, 'Fetal alcohol spectrum disorder and youth justice: a prevalence study among young people sentenced to detention in Western Australia' (2018) 8 *British Medical Journal Open* 1. See also Nicolas Perpich, 'Nine out of 10 Banksia Hill youth detainees have severe brain impairment' *ABC News* (online, 15 February 2018) <<https://www.abc.net.au/news/2018-02-14/majority-banksia-hill-detainees-have-mental-impairment/9435364>>.

²⁰ Australian Bureau of Statistics, 4519.0 - *Recorded Crime – Offenders, 2016–17* (Web Page, 2018) <<https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4519.0-2016-17-Main%20Features-Youth%20Offenders-4>>.

²¹ Australian Institute of Health and Welfare, *Youth Justice in Australia 2017-18* (2019) 16.

²² Chris Cunneen, 'Arguments for Raising the Minimum Age of Criminal Responsibility' (Research Report, Comparative Youth Penalty Project, University of New South Wales, 2017) quoting Dunkel (1996) 38.

²³ Australian Medical Association, 'AMA calls for age of criminal responsibility to be raised to 14 years' (Media Release, 25 March 2019) <<https://ama.com.au/media/ama-calls-age-criminal-responsibility-be-raised-14-years-age>>.

²⁴ Chris Cunneen, 'Arguments for Raising the Minimum Age of Criminal Responsibility' (Research Report, Comparative Youth Penalty Project, University of New South Wales, 2017) citing S Chen et al, 'The Transition from Juvenile to Adult Criminal Careers' (2005) 86 *Crime and Justice Bulletin 1*; Jason Payne 'Recidivism in Australia: Findings and Future Research' (Research and Public Policy Series No 80, Australian Institute of Criminology, 2007); L McAra and S McVie, 'Youth Justice? The Impact of System Contact on Patterns of Desistance from Offending' (2007) 4(3) *European Journal of Criminology* 315.

²⁵ Chris Cunneen, 'Arguments for Raising the Minimum Age of Criminal Responsibility' (Research Report, Comparative Youth Penalty Project, University of New South Wales, 2017) citing W Agnew-Pauley and J Holmes, 'Re-Offending in NSW' (Crime and Justice Statistics Brief No 108, Bureau of Crime Statistics and Research, 2015).

²⁶ Victorian Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria* (2016) 26 <https://www.sentencingcouncil.vic.gov.au/sites/default/files/2019-08/Reoffending_by_Children_and_Young_People_in_Victoria.pdf>.

²⁷ See eg, Justice Health and Forensic Mental Health Network and Juvenile Justice New South Wales, *2015 Young People in Custody Health Survey: Full Report* (2017) 65; New South Wales Law Reform Commission, *People with Cognitive and Mental Health Impairments in the Criminal Justice System: An Overview* (Consultation Paper No 5, 2010) [1.36]; Alasdair Roy et al, *Children and Young People with Complex Needs in the ACT Youth Justice System* (Report, ACT Children and Young People Commissioner, March 2016) 31.

²⁸ Chris Cunneen, 'Arguments for Raising the Minimum Age of Criminal Responsibility' (Research Report, Comparative Youth Penalty Project, University of New South Wales, 2017) citing R McCausland and E Baldry, 'I feel like I failed him by ringing the police': Criminalising disability in Australia' (2017) 19(3) *Punishment & Society* 290; Amnesty International, *A Brighter Tomorrow: Keeping Indigenous Kids in the Community and out of Detention in Australia* (2015) <https://www.amnesty.org.au/wp-content/uploads/2016/02/A_brighter_future_National_report.pdf>; Gray et al, Law and Justice Foundation of NSW, *Cognitive Impairment, Legal Need and Access to Justice* (2009); D Kenny and C Lennings, 'The relationship between head injury and violent offending in juvenile detainees' (2007) 107 *Contemporary Issues in Crime and Justice* 1.

²⁹ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time - Time for Doing, Indigenous Youth in the Criminal Justice System* (June 2011) 98.

³⁰ Australian Institute of Health and Welfare, *National Data on the Health of Justice-Involved Young People: A Feasibility Study* (Cat No JUV 125, 2018).

³¹ Productivity Commission, *Report on Government Services 2019* (22 January 2019) vol F, ch 17, Table 17 A.8.

³² 'Nationally in 2017-18, the average cost per day per young person subject to detention-based supervision was \$1455': Productivity Commission, *Report on Government Services 2019* (22 January 2019) vol F, ch 17, 17.25.

³³ Change the Record, *Blueprint for Change* (2016) 5 <https://www.reconciliation.org.au/wp-content/uploads/2017/11/Change-the-Record-Blueprint_web.pdf>.

³⁴ Change the Record, *Blueprint for Change* (2016) 6 <https://www.reconciliation.org.au/wp-content/uploads/2017/11/Change-the-Record-Blueprint_web.pdf>.

³⁵ Australian Institute of Health and Welfare, *The health & welfare of Australia's Aboriginal & Torres Strait Islander people* (2017) <<https://www.aihw.gov.au/reports/indigenous-health-welfare/indigenous-health-welfare-2015/contents/table-of-contents>>.

³⁶ Australian Institute of Health and Welfare, *The health & welfare of Australia's Aboriginal & Torres Strait Islander people* (2017) <<https://www.aihw.gov.au/reports/indigenous-health-welfare/indigenous-health-welfare-2015/contents/table-of-contents>>.

³⁷ Change the Record Coalition, *Free to be Kids: National Plan of Action* (2017) 1 <<https://changetherecord.org.au/blog/news/a-plan-to-transform-the-justice-system-for-aboriginal-and-torres-strait-islander-children>>.

³⁸ Australian Law Reform Commission, 'Pathways to Justice - An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples', *Cross-over out-of-home care into detention* (Web Page, 11 January 2018) [15.9] <<https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/15-child-protection-and-adult-incarceration/crossover-out-of-home-care-into-detention/>> citing Australian Institute of Health and Welfare, *Young People in Child Protection and under Youth Justice Supervision 2014-15* (2016).

³⁹ Katherine McFarlane, 'From Care to Custody: Young women in out-of-home care in the criminal justice system' (2010) 22(2) *Current Issues in Criminal Justice* 345, 348.

⁴⁰ Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention - Concluding Observations: Australia*, 40th sess, UN Doc CRC/C/15/Add.268 (20 October 2005).

⁴¹ Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention - Concluding Observations: Australia*, 60th sess, UN Doc CRC/C/AUS/CO/4 (28 August 2012).

⁴² United Nations Committee on the Rights of the Child, *General Comment No 24 on children's rights in the child justice system*, UN Doc CRC/C/GC/24 (18 September 2019) <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f24&Lang=en>.

⁴³ UNICEF, *Age Matters! Exploring age-related legislation affecting children, adolescents and youth* (Youth Policy Working Paper No 4, November 2016) 4 <<http://www.childrenandaids.org/sites/default/files/2018-11/Age%20Matters%20-%20Exploring%20age-related%20legislation%20affecting%20children%2C%20adolescents%20and%20youth.pdf>>; Riley Morgan, 'How young is too young? The age of criminal responsibility around the world', *SBS News* (online, 22 November 2017) <<https://www.sbs.com.au/news/how-young-is-too-young-the-age-of-criminal-responsibility-around-the-world>>.

⁴⁴ Chris Cunneen, 'Arguments for Raising the Minimum Age of Criminal Responsibility' (Research Report, Comparative Youth Penalty Project, University of New South Wales, 2017) citing Neal Hazel 'Cross-national comparison of youth justice' (Research Report, London Youth Justice Board, 2008).

⁴⁵ Chris Cunneen, 'Arguments for Raising the Minimum Age of Criminal Responsibility' (Research Report, Comparative Youth Penalty Project, University of New South Wales, 2017) citing Barry Goldson 'Unsafe, unjust and harmful to wider society: grounds for raising the minimum age of criminal responsibility in England and Wales' (2013) 13(2) *Youth Justice* 111.