

30/11/2017

Dear Premier Andrews,

Like most Victorians, we were horrified by the violence uncovered at the Don Dale prison. Images of children being physically abused, restrained with hoods and doused in tear gas are hard to comprehend, let alone forget, and have no place in modern Australia.

But the Victorian Inquiry into Youth Justice Centres revealed a hard truth: the treatment of children in this state has not been much better.

Victoria once proudly led the way in evidence-based youth justice policy. With an emphasis on diversion, we drove down the rates of youth and overall crime.

Victoria can once again lead the nation.

We, the undersigned, call on you to raise the minimum age of criminal responsibility from 10 to 14 years of age.

We urge this change for three reasons.

It reduces crime:

Youth detention centres are places of punishment, not rehabilitation. They exacerbate reoffending, meaning more crimes are committed, not less.

The Sentencing Council of Victoria estimates that if a child is arrested before the age of 14 they become three times more likely to develop into chronic adult offenders.¹

The same research reveals that a child first sentenced at age 12 or younger has an 86% chance of reoffending. The rate for children first sentenced in their late teenage years is just 33%.²

The average age of minimum criminal responsibility across Europe and much of the world is 14 years of age. There is a clear link between age of criminal responsibility and reoffending. Victoria has an adult recidivism rate of 42.8%.³ This compares to 20% in Norway and 30% in Spain, where the age of criminal responsibility is 15 years.

¹ Sentencing Advisory Council (2012) *Sentencing Children and Young People in Victoria*, Sentencing Advisory Council, Melbourne.

² As above.

³ <http://www.abc.net.au/news/2017-10-19/victorian-prisoner-recidivism-rates-increase-justice-department/9065752>

Its evidence based:

Treating children as criminals runs counter not only to contemporary cognitive science, but international standards of youth justice.

Victorian law already recognises that most children under the age of 14 do not have the cognitive development to be held criminally responsible for their actions.

However, this principle of *doli incapax* has proven insufficient to protect their rights. The Australian Law Reform Commission concluded that 'the principle may not protect children but be to their disadvantage' as the court discretion required has allowed 'highly prejudicial' evidence to be presented against accused children.

It's the right thing to do:

As a parent of young children, we ask you to reflect on what the impact of being in contact with the criminal justice system would be on your own children.

Imagine your children at primary school age standing in the dock of a court room or locked in a cell no bigger than a parking space, with you – their parents – replaced by prison guards.

Now imagine that you are powerless to protect your child once they have been pushed into the quicksand of the criminal justice system.

No parent should have to watch their child experience this trauma.

While Victorian data is limited, we know that across Australia there are about 600 children aged 10 to 14 who are locked up in prison. We also know that this system unjustly targets Indigenous children. In Victoria, Koori children and young people are 15 times more likely to be in youth custody than are non-Koori children and young people.⁴

We are choosing to inflict a terrible amount of trauma on a small number of children, for no discernible gain.

⁴ Commission for Children and Young People 'The Same Four Walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system.' (Victorian State Government, 2017) 35.

All Victorians want to live in safe communities with opportunities for children to thrive. Every child needs and deserves a chance to belong, to grow, to learn, to feel safe, to be loved, to heal. It's foolish to believe traumatised children will find recovery in a prison, and come out ready for a second chance. Prisons are designed to crush people.

Your government can choose to help our children and build stronger communities by investing in early prevention and support. But currently, the Victorian Youth Justice Budget allocates just 1% of funds to this. Nearly 60% is spent on putting children in prison.⁵ Other critical programs shown to work, such as youth justice conferencing and youth rehabilitation services, also receive just tiny fractions of the budget.⁶

We urge you to work toward a vision of a community that supports and heals its children through evidence-based interventions, instead of traumatising them and entrenching their chances of lifelong involvement in the justice system.

Raising the minimum age of criminal responsibility from 10 to 14 years of age is a critical step towards this vision.

We call on you to take this step now.

Signed:

Aboriginal Catholic Ministry Victoria
Aboriginal Legal Rights Movement SA
Aboriginal Legal Services ACT
Aboriginal Legal Services NSW
Amnesty International Australia
Australians for Native Title and Reconciliation
Balit Ngulu Childrens Legal Service
Barwon Community Legal Service
Berry Street
Bridge of Hope Foundation
CatholicCare
Catholic Social Services Victoria
Central Australian Legal Aid Service
Centre for Adolescent Health, Murdoch Children's Research Institute
Centre for Multicultural Youth

(Continued...)

⁵ See “Youth Justice Review and Strategy: meeting needs and reducing offending”, by Penny Armytage, former Secretary of the Department of Justice and Regulation, and Professor James Ogloff AM. Published by the Department of Justice, State of Victoria, 2017. p71-73.

⁶ As above.

Change the Record Coalition
CREATE Foundation
Disability Discrimination Legal Service
Eastern Community Legal Centre
Federation of Community Legal Centres
Fitzroy Legal Service
Flemington Kensington Community Legal Centre
Gippsland Community Legal Service
Goulburn Valley Community Legal Centre
Goulburn Valley Community Legal Centre AND
Loddon Campaspe Community Legal Centre
Human Rights Law Centre
Inner Eastern Local Learning and Employment Network
Inner Melbourne Community Legal
Jesuit Social Services
JobWatch
Justice Connect
Knowmore
Koorie Youth Council
Murray Mallee Community Legal Service
National Aboriginal and Torres Strait Islander Legal Services
Northern Community Legal Centre
OzChild, Children Australia Inc
Refugee Legal
Save the Children Australia
Seniors Rights Victoria
Sisters Inside
Smart Justice
Smart Justice for Young People
Springvale Monash Legal Service
The Centre for Excellence in Child & Family Welfare
The Kimberley Foundation
The Salvation Army
UMSU Legal Service
Victorian Aboriginal Child Care Agency
Victorian Aboriginal Community Services Association Limited (VACSAL)
Victorian Aboriginal Education Association
Victorian Aboriginal Legal Services
Victorian Council of Social Service
Victorian Student Representative Council
Villamanta Disability Rights legal Service
West Heidelberg Community Legal Service
National Association of Community Legal Centres
WEstjustice
What Can Be Done Steering Committee
White Lion
Whittlesea Community Connections
Youth Affairs Council Victoria
Youthlaw