

Monday, 14 October 2019

Law Council backs push for increase to minimum age of criminal responsibility

The Law Council of Australia has welcomed today's introduction of legislation to Federal Parliament, which seeks to increase the minimum age of criminal responsibility for Commonwealth offences to 14 years.

Law Council President, Arthur Moses SC, said increasing the minimum age of criminal responsibility, if followed by all Australian jurisdictions, would help improve justice outcomes for some of Australia's most vulnerable children, especially First Nations young people.

The objective of the *Crimes Legislation Amendment (Age of Criminal Responsibility) Bill 2019*, introduced by Centre Alliance MP Rebekah Sharkie, is consistent with Law Council policy and recognises Australia's international obligations under the United Nations Convention on the Rights of the Child.

"Across all Australian jurisdictions the minimum age of criminal responsibility is currently 10 – this is a national disgrace and a national tragedy," Mr Moses SC said.

"How is it that a child can't sign up to Facebook until the age of 13 but can be placed in detention at the age of 10? It makes no sense and has long-term impacts. There is clear evidence childhood detention increases the risk of adult imprisonment.

"This bill is a good first step to prompt a debate in parliament and consider broader reforms that need to take place to ensure community safety, including diversionary, preventative and welfare-based programs. The Law Council will offer its assistance to ensure the final form of the bill is effective.

"I congratulate Ms Sharkie for her foresight in introducing this initiative and praise her compassion. The fact is our Attorneys-General know or should know that raising the minimum age of criminal responsibility is the right step but appear to lack the political courage to do what is right.

"What we need is bipartisan support for this policy to ensure our Attorneys-General don't need to look at this through a political prism."

The bill's introduction comes ahead of the release of a report by the Council of Attorneys-General, examining whether the minimum age of criminal responsibility should be increased across Australian jurisdictions.

In June, Law Council Directors unanimously voted in favour of a new policy regarding the minimum age of criminal responsibility. The Law Council supports an increase from 10 to 14.

"There is a significant evidence base relating to child brain development that supports a higher age as children are not sufficiently able to reflect before acting, or to comprehend the consequences of a criminal action," Mr Moses SC said.

"Children belong in their communities, not in detention. Imprisonment should be a last resort when it comes to children, not a first step."

Raising the minimum age of criminal responsibility to 14 would also remove the need for courts to consider the confusing and complex *doli incapax* presumption, which assumes a child under 14 does not possess the knowledge required to form criminal intent.

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