

Raise the age

Shahleena Musk

Senior Lawyer

Aboriginal and Torres Strait Islander Rights Unit
Human Rights Law Centre

Ten-year-old children should be thriving, supported and in school. However law-makers have put in place laws that see children as young as 10 pushed through the harmful youth justice system.

In the NT the age of criminal responsibility is set at 10 years. This is the age our legislatures have determined a child is considered capable of understanding they have done something wrong and able to be arrested by police, charged, hauled before a court and locked up in a youth prison.

Such a low age is in breach of human rights standards and is out of step with the rest of the world, where the median age is 14 years. It is also an age that is out of step with medical research that shows children's brains are still developing in these formative years where they have limited capacity for reflection before action.

Children should be supported to stay with their families and within their communities. As a society we can support this, by helping kids to remain in school and by building the capacity of families and communities to provide the care and support children need.

When a child gets into strife, an adult should be there to guide the child and help them to learn from their mistakes. Instead our governments have chosen to use police, the courts and youth prisons to deal with often vulnerable children who would be better helped if they weren't forced through the youth justice system in the first place.

As a youth lawyer working with children in the NT I was often overwhelmed by how many scared, alone and disconnected children aged as young as 10, 11 and 12 were being hauled before criminal courts. Many of these children went on to spend days, weeks or months in the notorious Don Dale youth prison in conditions clearly dangerous to their health and wellbeing.

Often these kids did not come from loving or safe homes, instead they suffered experiences of trauma, neglect and often abuse. Many had competing health and disability issues. These children did not belong in a jail cell and none should ever have been pushed through a harmful 'justice system', a system unable to help or address their needs.

These children should never have been criminalised for their behaviour and unmet needs, they should have been supported to stay with their families and their communities. Children this young deserve child appropriate and therapeutic supports and services that would help them learn and grow. These children should be treated like children.

Every child has the potential to learn from their mistakes and realise a better future. Criminalising children this young, knowing they are undergoing significant growth mentally and emotionally is counterproductive to this.

The Royal Commission into the Protection and Detention of Children in the Northern Territory found as much, recommending that the age of responsibility be raised to avoid children this young being swept up into an ineffective and harmful justice system.

Yet the criminalisation of young children is not just a Territory problem but an issue nationwide.

Approximately 600 children below the age of 14 are locked away in youth jails each year across Australia. Aboriginal and Torres Strait Islander children fare the worst, making up almost 70% of these kids in youth prisons. In one year close to 9000 children aged 10 to 13 were either charged or dealt with by alternative action including cautions or diversion and approximately 2800 children aged 10 to 13 had charges finalised in the Children's Court.

Recent research found that early contact with the justice system increases the likelihood of poorer outcomes





including being remanded in youth prisons rather than bailed, further offending and potential life-long involvement with the justice system. On the other hand, the NT Royal Commission identified that the vast majority of children who are dealt with outside of the formal criminal justice system do not reoffend.

The solutions for challenging behaviours lie within the community and not a court. The sorts of intervention

and supports that children need are those which foster healthy development and positive behaviours; these don't and will never exist within a prison. I know, as a lawyer for twenty years working in those courts, that children need to be connected to family, culture and community. It is time our governments did what is right and followed calls from expert United Nations bodies, medical experts, and Aboriginal and Torres Strait Islander-led organisations to raise the age to 14 years.

Summary of youth justice reforms

Russell Goldflam

Policy Officer

Northern Territory Legal Aid Commission

In its *Final Report* published on 17 November 2017, the Royal Commission into the Protection and Detention of Children in the Northern Territory recommended substantial statutory reform in the areas of both youth justice and child protection. The Royal Commission made at least 34 recommendations for statutory reform in relation to youth justice, and a further 15 recommendations for the amendment of child protection law.

This brief article summarises the youth justice reforms in response to the Royal Commission that have been enacted so far.

In essence, there have been two such enactments. The first was the *Youth Justice Legislation Amendment Act 2017*, commencing on 5 January 2018, which undertook the

technically complex task of transferring primary statutory responsibility for youth justice and youth detention from the Commissioner of Correctional Services to the Chief Executive Officer of the Department of Territory Families. As Minister Wakefield stated in introducing the legislation to the Legislative Assembly:

Territory Families was established to bring under one area of responsibility a whole-of-life approach to supporting families and placing child protection and youth justice within a broader framework of prevention and early intervention.

Among other things, the Bill established:

- a new statutory officer, the 'community youth justice