

# Submission

**To** Attorney-General's Department

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**Topic** Alternative diversion model for children under the raised age of criminal responsibility

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**Date** 25 March 2024

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## Contact

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## About Uniting Communities

[Uniting Communities](#) is an inclusive not-for-profit organisation working alongside more than 80,000 South Australians each year and have been creating positive change for South Australian communities for more than 120 years.

We help those in need find the courage to move forward through enriching their lives and uniting the communities in which they live. By tackling the deep-seated challenges that affect people's lives, we are working to create systemic change and brighter futures for all South Australians. We have a bold and unceasing commitment to social justice, advocating for change and improvement in the lives of those who need it most.

We provide support services across a range of different areas including legal services, aged care, family and domestic violence counselling, alcohol and other drugs, disability, homelessness, mental health, and child protection.

We understand that dealing with the legal system can be confusing and daunting and staff in the Uniting Communities Law Centre assist people to work through these challenges. The qualified team provides support with information, advice, representation, or referrals and in most instances these services are free.

We utilise this expertise to advocate for systemic change across diverse social justice issues to shape public and social policy that delivers better outcomes for marginalised communities.

## Raising the minimum age of criminal responsibility (MACR) – an alternative diversion model

We welcome the opportunity to provide feedback to the Attorney-General's Department consultation on the proposed increase to the minimum age of criminal responsibility (MACR) and alternative diversion model.

### Our key recommendations:

- **The MACR is raised to 14.**
- **Additional extensive consultation is conducted with relevant key stakeholders and community services.**
- **With the approval of the author, submissions are made publicly available.**
- **The current 3 stage approach is reconsidered to ensure that a therapeutic response is embedded into the model and that the process does not replicate a criminal justice and/or legal response. This includes reconsidering the presence of police in decision making for action plans, inclusion of mandatory orders and instead prioritising therapeutic wraparound support for children, young people, their families and/or carers.**
- **The state government does not reduce the MACR by allowing the 'exceptions' and 'prosecution in extreme circumstances' to apply to those under the age of 10. This would be a regressive step and directly contradicts the intent of this legislative change and research that has been undertaken.**
- **Additional intensive consultations with sector leaders and relevant stakeholders are conducted to determine the most appropriate services and support required.**
- **Early intervention and preventive services are implemented including more proactive methods for screening and identifying children at risk of entering the criminal justice system, earlier and providing them with tailored support.**
- **Other models such as the Victorian Embedded Youth Outreach Program (EYOP) are considered as a part of the first response. The sole presence of a police officer as a first responder is fundamentally a criminal justice response as opposed to a diversional one.**
- **First responders receive training on responding to children and families with complex needs.**
- **Protections against harm are in place for children and young people when placing them in places of safety. Places of safety should be therapeutic services specialising in support for this cohort of children and young people not police stations.**
- **It should be a condition of admittance to 'places of safety' that every effort has been made (and continues to be made) to return the child to their parent or guardian and that such efforts are documented and able to be independently audited.**

Uniting Communities supports children and young people across a range of services, who would be considered "at risk" of entering the criminal justice system. This is often due to a range of factors including increased disadvantage, mental health issues, presence in child protection, or alcohol and other drug challenges.

We recognise the importance of wrap-around therapeutic support to address the underlying causes behind the behaviour of children presenting to the criminal justice system. We know

that therapeutic support reduces the likelihood of reoffending and decreases government expenditure in the long term.

We urge the government to raise the age of criminal responsibility to 14 and recognise the extensive research that has been conducted that supports this recommendation. Although the discussion paper proposes to raise the MACR to 12 and to then conduct a review of the legislative changes in 2 years there is no mention or commitment to later raising the age to 14. Other States conducting similar reviews have committed to 12 years initially with a move to increase to 14 in the coming years. We are disappointed a similar commitment has not been made in South Australia and believe there is a potential for SA to fall behind nationally on this reform.

We are concerned about the lack of consultation that was sought in producing this discussion paper. In ACT, an [independent review](#) was conducted, in consultation with community services and other stakeholders to produce a report that informed the government's implementation plan for raising the MACR. Similarly in Tasmania, a comprehensive Youth Justice Blueprint was created that goes into detail about the current system, the gaps, and what interventions are needed to better support young people in or at risk of entering the criminal justice system. We believe a similar process in South Australia is necessary and would inform that state's approach to supporting children and young people and help to achieve the right outcomes for our state.

In the interest of transparency, and with the approval of the author, we request that submissions are published and made publicly available.

## Additional comments

### *Exceptions*

We are very concerned that the proposed legislative changes will include reducing the minimum age of criminal responsibility below 10 for serious offending for what is referred to as 'exceptions for serious offences.' The wording in the discussion paper says, 'the exceptions would apply to children **younger than the MACR**, allowing them to be prosecuted for these offences.' It is our understanding that this could apply to 'any' age under the MACR rather than just 10- and 11-years old's. We would strongly oppose such a change and believe this would be creating more harm for children in our state and would be in direct contradiction to international standards and research.

### *Features of the first response*

Although we recognise there may be a need for a police presence in some circumstances where the child is an immediate threat to themselves or others, the sole presence of a police officer is fundamentally a criminal justice response as opposed to a diversional one. Wherever possible police should not be the first responder to these situations or at least they should be accompanied by another person that specialises in a therapeutic, trauma-informed approach (for example a social/youth worker).

Similar models to the Victorian Embedded Youth Outreach Program (EYOP) and the ACT Police, Ambulance & Clinician Early Response (PACER) model recently introduced could be considered. The EYOP pairs a police officer with a highly skilled and experienced Youth Support and Advocacy Service worker, to provide after-hours responses to children and young

people encountering police.<sup>1</sup> In this program police officers noticed how effective the youth workers' approach in the EYOP was to de-escalate and engage with young people.<sup>2</sup> Although this was targeted to young people over 14 this could be considered for a diversional model for 10 and 11 year olds.

### ***Training on complex needs (child centred and family focused)***

First responders should receive appropriate training including cultural awareness and disability specific training. Importantly this training should be child-centred, and family-focused and should focus on responding to children and families with complex needs.

Guidelines could be developed that ensures a consistent widespread knowledge of frameworks and practices for supporting children in these circumstances.

### ***Referral process***

The decision to refer children to a secondary response should be informed by appropriate policy frameworks and thresholds.

### ***Places of safety***

The Discussion Paper states that *'it is proposed to set up a network of 'places of safety' where a child younger than the MACR can be taken by first responders (including police)'*. With the absence of detail on what this process would look like we are concerned there will be a lack of protections put in place to ensure children are not harmed in these circumstances. For example, whether there will be strict limitations on the use of force and restrictive practices imposed to protect the interests of young people.

The paper goes on to say that *'if they are engaging in behaviour that is harmful or there is a risk to the child's safety, the safety of others or the community, and it is not possible or safe to return the child to their parent or guardian'*. Behaviour 'that is harmful' and a 'risk to safety' are both open to interpretation and could be easily misused by first responders such as security guards, that do not have the relevant experience or expertise to make this judgement.

If this diversionary model aims to move away from a criminal justice response, then it would not be appropriate to detain children and young people in police facilities in any circumstances. Police stations are rarely a 'safe place,' and exposure to these environments brings with it an increased risk of harm and a heightened risk the child will reoffend later in life.

We recommend:

- There is a limit on which first responders are allowed to take children to 'places of safety.'
- That detailed guidelines are created for police personnel and first responders.
- That it should be a condition of admittance to 'places of safety' that every effort has been made (and continues to be made) to return the child to their parent or guardian and that such efforts are documented and able to be independently audited.

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<sup>1</sup>Review of the service system and implementation requirements for raising the minimum age of criminal responsibility in the Australian Capital Territory - final report; 2021; [https://www.justice.act.gov.au/\\_\\_data/assets/pdf\\_file/0006/2072364/Raising-the-Age-Final-Report.PDF](https://www.justice.act.gov.au/__data/assets/pdf_file/0006/2072364/Raising-the-Age-Final-Report.PDF)

<sup>2</sup> Review of the service system and implementation requirements for raising the minimum age of criminal responsibility in the Australian Capital Territory - final report; 2021; [https://www.justice.act.gov.au/\\_\\_data/assets/pdf\\_file/0006/2072364/Raising-the-Age-Final-Report.PDF](https://www.justice.act.gov.au/__data/assets/pdf_file/0006/2072364/Raising-the-Age-Final-Report.PDF)

- That 'places of safety' should be therapeutic services specialising in support for this cohort of children and young people.
- Additional crisis accommodation/services are resourced so that additional places of safety are established before introducing these changes.

### **Police powers**

It is unclear from the discussion paper what specific police 'powers' will be used. The use of restrictive practices should be a last resort and include inbuilt oversight and accountability mechanisms.

Further consideration should be given to the potential impacts of any powers and practices and what alternative models could be implemented.

This could include a de-escalation model utilising other mechanisms like youth support workers to avoid the need for statutory intervention.

### **Alternative diversion model**

In addition to the process being '*restorative, culturally led, trauma-informed and include professionally developed and led diversionary programs and engage universal services,*' this model should also be child and family centred, holistic, needs based, strengths based, and provide wraparound and therapeutic support.

We believe the primary objective of the diversion model should be based on a public health and therapeutic approach. A therapeutic approach is always going to have a better outcome, leading to positive long-term outcomes for the child, their families, and the community.

We are concerned that the proposed diversion model will still echo a criminal justice and legal response exposing children to harm. Police are central to the criminal justice system in South Australia. Given the diversion model aims to move away from a criminal justice response, it is contradictory to involve police in the secondary response, specifically the creation of action plans that would put police in more contact with the child and their family. This will force more children into contact with police for longer who may have previously had minimal contact.

Not only would SACAT be a legal response instead of a therapeutic one, but it is also unclear whether SACAT will have the capacity to monitor levels 2 and 3. Other models could be considered such as the Wraparound Services Coordinator model in the ACT [Raising the Age Final Report](#). We would caution against positioning this in the Youth Court given this is a criminal justice response.

### **Services and support within the diversion model:**

Children and young people in contact with the criminal justice system have often experienced psychological trauma and have complex needs that require dedicated support. Research has demonstrated that children who are in contact with the youth justice system from a young age (10-13) have often experienced significant social and economic disadvantage at birth, have had contact with the child protection system and experience significant mental health problems.<sup>3</sup>

We believe additional work will need to be undertaken specifically in relation to the services and support required as a part of the alternative diversion model that is beyond this particular process. Extensive consultations occurred in the ACT (where an independent review was

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<sup>3</sup> Early versus late contact with the youth justice system: opportunities for prevention and diversion, Current Issues in Criminal Justice, 36:1, 16-41, DOI: 10.1080/10345329.2023.2214973.

conducted in collaboration with the sector). Work needs to be undertaken to examine what supports currently exist for this cohort and to identify where the gaps are to inform the effective implementation of this diversion model.

The diversion model must prioritise wrap-around therapeutic support for the families of children and young people rather than solely individual support. This is crucial to addressing the root causes of the issues which are often linked to family challenges as well. From our extensive experience in working with young people who have experienced trauma, Uniting Communities is clear that solely working with a young person will not create lasting change.

## **Examples of Uniting Communities' therapeutic services for children:**

### Ruby's

Uniting Communities has been running the Ruby's Reunification Service for 30 years. Ruby's supports young people aged 12-17 years and their families, who are experiencing conflict and relationship breakdown resulting in the young person being homeless or at imminent risk of homelessness. Over 70% of young people who have engaged with Ruby's have chosen to return to their families.

This program has been recently expanded with a new Ruby's now implemented in Canberra ACT (with a minimum age of 10).

Many of the children and young people engaging in the Ruby's program are also in contact with the youth justice system. As such, the Ruby's program has a rich history of working with young people who face all of the complexities of those at risk of contact, or in contact with the youth justice system.

Ruby's is a unique service model because it utilises a combination of family counselling and case management while simultaneously providing a safe place for young people to stay part-time while the family work through their issues. This residential component instantly decreases the level of conflict and tension, as the family are able to spend some time apart. While it can at first seem counter-intuitive, it is this time apart, combined with family counselling and wrap-around support that enables the conflict to be put aside and for change to occur, so that the young person can return to the family home permanently.

When a family engages in Ruby's, they are supported by a team of staff who provide wrap-around support that is available 24/7; even when the young person is at home, family members can contact Ruby's for support via the phone. Ruby's is staffed by a team of qualified, therapeutic staff who work with all family members to create change.

In collaboration with the South Australian Department of Human Services, we conducted an analysis to look at the long-term outcomes of Ruby's clients. The data included clients aged 12 to 17 years old who used the service between 2014 and 2018. After engaging with our Ruby's service, an astonishing 89.8% of young people who had exited the program during these years had never re-presented to a homelessness service in South Australia.

Uniting Communities has previously applied for philanthropic funding to set up a "Youth Justice Ruby's". We are aware that government data shows that, for the small percentage of young people who will eventually have a high level of offending, when they first offend, they are highly likely to require overnight accommodation. Currently, this is in a police station or youth detention centre. Knowing this statistic, we designed a service model in which the young person was transported to a Youth Justice Ruby's home and support could be immediately wrapped around the young person and their family. In our current Ruby's program, we frequently work with families where the parent 'refuses' to have the young person home. However, intensive therapeutic support that combines counselling and a residential response is often able to change this decision.

*“Things are much better at home now – I’m much happier there. Ruby’s really helped us get back on track.” - Ruby’s young person*

*“Ruby’s gave me my son back.” - Ruby’s mum*

### Jo’s – Therapeutic Youth Residential Care

Jo’s is an innovative service that provides long-term residential care to young people aged 10 to 17 who are under the Guardianship of the Minister. We have four three-bedroom residential properties in the north-eastern suburbs of Adelaide where we provide safe, home-like accommodation to young people, while offering therapeutic support.

Since its inception in 2019, Jo’s has always striven to provide a truly therapeutic service. We were the first residential care service to provide mixed gender accommodation and to support biological family members to have contact with young people in our homes. We continue to provide an innovative service model within residential care, recognising that young people thrive in a home-like environment, with genuine, caring relationships with the adults who care for them.

### Streetlink Youth Health Service

Uniting Communities has worked for 30 years with the most vulnerable young people in metropolitan Adelaide. Our Streetlink service provides warm entry through a GP clinic which is free, confidential, safe and provided in an inclusive and respectful environment. Young people are able to access a wide range of services and, because they already have a trusting relationship with Streetlink, they are more likely to engage in these services. These services focus on alcohol and other drug use and mental health.

Streetlink has developed the “Streetlink Model of Positive Regard” to describe the strengths-based way in which we support young people to create positive change in their lives. Rather than banning or excluding clients who escalate, threaten and/or cause property damage we recognise that these are the coping mechanisms that these young people have developed. As such, the Streetlink Model of Positive Regard supports staff to maintain a relationship with the young person, while challenging poor behaviour and ultimately, creating positive change.

### ***Mandatory component***

Although community and mediated action plans are voluntary, this is contradictory given that if a child does not successfully participate in each stage, they move to a stage 3 mandated response. Mandated measures are often not effective and are not aligned with the therapeutic aims of the approach suggested.<sup>4</sup>

Instead, best practice approaches should be utilised for ensuring children engage with voluntary support. There are known practices that produce more effective results when engaging with children and families with complex needs including “outreach, respectful

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<sup>4</sup> Review of the service system and implementation requirements for raising the minimum age of criminal responsibility in the Australian Capital Territory - final report; 2021; [https://www.justice.act.gov.au/\\_\\_data/assets/pdf\\_file/0006/2072364/Raising-the-Age-Final-Report.PDF](https://www.justice.act.gov.au/__data/assets/pdf_file/0006/2072364/Raising-the-Age-Final-Report.PDF)



persistence, building trust, flexibility, listening to children, responding to what they say; working in trauma-informed ways and removing current barriers to services engagement.”<sup>5</sup>

In addition, an appropriate therapeutic approach would avoid the need for mandatory requirements because these services would employ practices that improve engagement, such as building trust and genuine relationships with children and their families and involving them in the decision-making process.<sup>6</sup>

Within our Ruby’s service, Uniting Communities frequently works with young people who would describe their involvement in our service as “non-voluntary”. Ruby’s has no statutory powers to work with clients unless they agree, and we have therefore developed a high level of skill in engaging young people where they are at and identifying their motivations to ensure they engage with our service and minimise risk to themselves.

### ***Preventive and early intervention services – identifying and assessing needs earlier***

We believe that if support is given early enough, prevention is a much more powerful intervention for improving outcomes for children and young people in South Australia.

We believe that as part of raising the MACR and establishing the diversion model, more work must be undertaken to improve preventive and early intervention responses. This includes more proactive methods for earlier screening and identification of children at risk of entering the criminal justice system (e.g. those displaying anti-social behaviour from a young age) and providing them with tailored support. This would allow for more children to be diverted at a younger age.

The earlier children can access support the more effective the outcome. Research indicates that earlier intervention is effective in young children who experience trauma, maltreatment, are diagnosed with a disability or who are showing challenging behaviours, either in Early Learning and Care or in the early years of school.<sup>7</sup>

### ***Criminal prosecution in extreme circumstances***

*“It is also proposed to introduce an option of last resort to deal with children younger than the MACR who repeatedly engage in extreme or repeated harmful or violent behaviour and where a mandatory action plan has not been effective – by allowing for the criminal prosecution of the child in these circumstances.”*

It is our understanding that this could apply to children under the age of 10 given it refers to children younger than the MACR not those aged 10-11. This is particularly concerning and would be a regressive step and would directly contradict the intention of raising the MACR and the associated research.

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<sup>5</sup> Review of the service system and implementation requirements for raising the minimum age of criminal responsibility in the Australian Capital Territory - final report; 2021; [https://www.justice.act.gov.au/\\_\\_data/assets/pdf\\_file/0006/2072364/Raising-the-Age-Final-Report.PDF](https://www.justice.act.gov.au/__data/assets/pdf_file/0006/2072364/Raising-the-Age-Final-Report.PDF)

<sup>6</sup> Almqvist & Lassinantti, Social work practices for young people with complex needs: An integrative review 2018; <https://psycnet.apa.org/record/2017-56531-001>.”

<sup>7</sup> Review of the service system and implementation requirements for raising the minimum age of criminal responsibility in the Australian Capital Territory - final report; 2021; [https://www.justice.act.gov.au/\\_\\_data/assets/pdf\\_file/0006/2072364/Raising-the-Age-Final-Report.PDF](https://www.justice.act.gov.au/__data/assets/pdf_file/0006/2072364/Raising-the-Age-Final-Report.PDF)

### ***Secure therapeutic facilities***

We recommend there is appropriate accountability and oversight in place to ensure this is only occurring as a last resort and for a strictly limited time. In addition, work would need to be undertaken to ensure these facilities employ genuine therapeutic and restorative approaches.

### **Conclusion**

We thank the Attorney-General for the opportunity to provide input into this consultation. We believe that at its core, the diversion model should be therapeutic and eliminate contact with legal and criminal justice responses. We look forward to further consultation and work being undertaken to develop the required services to support this model.