

Jailing of nearly 500 children under 13 a ‘failure’ by Australia’s top legal officers, advocates say

Justice and health groups say at least 65% of the children jailed in 2020 are Aboriginal or Torres Strait Islander



A coalition of 47 Australian justice and health organisations decries the failure to raise the age of criminal responsibility.

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The ongoing “failure” of Australia’s top legal officers to raise the age of criminal responsibility from 10 to 14 years old has seen 499 under-13s sent to jail in the past year alone, according to a coalition of 47 justice and health organisations.

The coalition – representing welfare, youth and legal advocates, including Anglicare and AcoSS – says attorneys general have “failed” to take action, “despite being handed an expert report overwhelmingly recommending that all states and territories and the federal government change laws to keep children out of prison.”

In 2020, 499 children aged between 10 and 13 were imprisoned. At least 65% of them are Aboriginal or Torres Strait Islander children. 68% of all children in detention were on remand, meaning they were yet to be convicted of any crime.

“Every day that attorneys general refuse to act, they are condemning a generation of our children to a lifetime behind bars. Ten-year-old children who get trapped in the criminal justice system don’t come out,” the co-chair of Change the Record, Cheryl Axelby, said.

“One year ago, every state and territory was given the chance to unite to close the gap and change the cruel laws that lock children as young as 10 years old away behind bars. They failed to take action then, we are calling on them to take action now to raise the age of criminal responsibility and invest in the community programs and family services that will keep our children safe and healthy and strong.”

The coalition has demanded the Meeting of Attorneys-General (Mag) make public any work it has done to identify “adequate processes and services for children who exhibit offending behaviour”, including alternatives to detention, which Mag has repeatedly cited as the reason for the postponement of a decision.

The ACT is the only jurisdiction to have committed to raising the age from 10 to 14 years old.

In May, a large coalition of justice organisations accused federal and state governments of suppressing large volumes of expert evidence about raising the age, and sitting on a crucial report because they “lack the political will to act”.

In 2018, the council of attorneys general (now known as Mag) began investigating potential reforms. It received roughly 93 submissions from youth, medical and legal organisations, most of which are thought to have been supportive of raising the age to 14.

Eighty-eight of the 93 submissions were tagged non-confidential, but none of them has ever been released publicly by the Cag, despite multiple attempts – including through freedom of information and questions in the Senate – to force them to.

The Cag’s draft report has also been kept under wraps. A copy was leaked to media in March, and is said to recommend that the age of criminal responsibility be raised to 14 years old, with exceptions for serious crimes. Despite the leak, the report has still not been made public. It is understood to be facing strong opposition from key states including Queensland and New South Wales.

Now, the 47 organisations are demanding clarity about what the Mag intends to do.

“When the then council of attorneys-general met 12 months ago, it outlined the need for further work to occur “regarding the need for adequate processes and services for children who exhibit offending behaviour”.

“What specific work has been undertaken, and by whom, in the past 12 months to identify adequate processes and services for children who exhibit offending behaviour?” they wrote.

They say they are yet to receive a response to their letter.

A spokesperson for the federal Attorney-General, Michaelia Cash, said the issue was one for states and territories to decide.

“Ultimately, it will be a decision for each jurisdiction whether to raise the minimum age of criminal responsibility. This is primarily an issue for states and territories, as

the overwhelming majority of offences committed by children are state and territory, not Commonwealth, offences.

“The Australian Government continues to engage with jurisdictions to ensure treatment of young people in detention meets all expectations for the safety and protection of children under government care.”

The inaugural meeting of the MAG was held via video