Submission

Minimum Age of Criminal Responsibility - Alternative Diversion Model Discussion Paper
Attorney-General's Department South Australia
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Introduction

The Youth Affairs Council of South Australia (YACSA) is the peak body representing young people aged 12-25 years and non-government services that support them. YACSA is a member-based organisation, and our policy positions are independent and not aligned with any political party or movement. We strive to achieve meaningful improvements in the quality of young people's lives and actively promote their right to participate in and contribute to all aspects of community life, including decision-making processes that impact them. YACSA acknowledges the challenges young people face in engaging with government processes and that children and young people often do not feel represented by decision-makers.

YACSA has an extensive history of advocacy in youth justice, including coordinating the campaign to close the Magill Training Centre in 2009 and hosting the 'Beyond Magill' Policy Thinktank in 2010. In recent years, YACSA has continued to uphold an evidence- and human rights-based approach to supporting children and young people engaged in the youth justice system. We have facilitated member forums, made many submissions, and provided State Government agencies and members of Parliament with direct advice concerning youth justice reform.

As part of YACSA's advocacy on youth justice, we recognise Change the Record's national #RaiseTheAge campaign. Change the Record is Australia's only First Nations-led coalition of legal, health, and family violence prevention experts calling on politicians across Australia to raise the minimum age of criminal responsibility to 14 years. The language used throughout this submission is consistent with advice provided by Change the Record and aims to deconstruct the systems that facilitate continued violations of human rights experienced by incarcerated children across the country.

The South Australian Government, like all governments in Australia, has an obligation to respect and protect the human rights of children, including in relation to youth justice system responses. The evidence to support raising the minimum age of criminal responsibility is unavoidable, and the opportunity before the State Government to improve approaches to diversion, minimise harm inflicted by the current system and address the disproportionate incarceration rates of Aboriginal and Torres Strait Islander children in South Australia must not be wasted.

Children in context

International human rights treaties, the Australasian Youth Justice Administration Principles and South Australian legislation clearly articulate that the objectives of the youth justice system are to support children in rehabilitation by providing access to services and programs, education, healthcare, and cultural support to address their individual needs. As a United Nations Member State, Australian jurisdictions have an obligation to protect human rights and acknowledge the purpose of the youth justice system is not to punish children but to support them. Of vital importance to the effectiveness of any reform is recognition that without accessible and appropriate community-based services to

support children's health and wellbeing, marginalised cohorts will continue to be excessively criminalised[i]. The implementation of effective prevention, as well as wellbeing-focused and trauma-informed early intervention, is needed to address the harm inflicted on children through engagement with the youth justice system response. Prevention and early intervention activity must be co-designed with local communities, adequately resourced, and established prior to reforms to the current system response, as these responses are far more effective than later interventions aimed only at children who engage in harmful behaviour[ii]. The youth sector in SA is currently under-resourced and at capacity and will require additional resources including investment in workforce development and coordination to effectively deliver diversion services.

While diversion and the minimum age of criminal responsibility (MACR) are often considered contentious policies, it is vital that any reform is considered in context. Over the last decade, the rate of children engaging in harmful behaviour has dramatically decreased across the country. In South Australia, over the last five financial years, the rate of children engaging in harmful behaviour has decreased by 39 per cent[iii]. During the same period, however, the proportion of children aged 10-14 years who are engaged by police has increased[iv]. It is also concerning that during the same period, the proportion of children aged 10-14 years proceeded against more than once has increased, and the proportion proceeded against five times or more has increased from under 10 per cent to almost 12.5 per cent[v]. As the Law Society of South Australia reported, this is likely impacted by the high number of 10-14-year-olds incarcerated on the basis of breached bail conditions that are not age-appropriate[vi]. Particularly, curfew and non-association conditions are often imposed.

Minimum Age of Criminal Responsibility

Section 5 of the *Young Offenders Act 1993* (SA) states the MACR in South Australia is 10 years of age despite evidence clearly demonstrating that children aged 10-14 years do not possess the cognitive abilities appropriate for them to be held criminally liable for behaviour that constitutes an offence. Countless reviews, inquiries and commissions have called for the MACR to be raised to at least 14 years and the Standing Council of Attorneys-General (SCAG) and its MACR Working Group accepted this overwhelming evidence and committed to developing reform that would support raising the age. This extensive work included a principles-based framework for reform within each Australian jurisdiction to raise the MACR that provides strong independent oversight mechanisms are 'essential' to ensure accountability"[vii].

Purpose of diversion

Diversionary pathways recognise the wealth of evidence that demonstrates how punitive system responses to a child's behaviour leads to long-term harm, inflicts significant trauma and increases the risk of recidivism by entrenching a child in the system[viii]. This evidence clearly shows that when a child engages in harmful behaviour, a response focused on addressing the needs of the child is most appropriate and effective. The primary objective of diversion is to limit children's exposure to legal system responses and, therefore, limit harm resulting from engagement with the system. This can be achieved by increasing access to services, including assessment and referral, addressing material deprivation, and importantly, avoiding any labelling of children as 'youth offenders', which is incredibly stigmatising[ix]. Diversion should aim to redirect children away from entering the legal system entirely and instead provide community-based support.

Evidence demonstrates that engagement with youth justice system responses can push children further into the system, and the children who experience this are most likely those exposed to the highest levels of physical, social, economic and cultural disadvantage[x]. This indicates that approaches to diversion based on escalating stages of system contact may not achieve the goal of supporting children to desist from harmful behaviour as they age.

Past SA reform in youth justice

South Australia led other Australian jurisdictions away from a welfare approach in the 1970s by shifting to a justice-focused response. South Australia was also the first to adopt alternative diversion by the mid-1990s[xi]. A 1992 Select Committee on Juvenile Justice, which produced the *Young Offenders Act 1993* (SA), stated that human rights contained in the UNCRC and the United Nations Standard Minimum Rules of the Administration of Juvenile Justice (the 'Beijing Rules') were, 'legally enforceable only in so far as Parliament had specifically amended legislations to incorporate them,' and at the time, the Parliament failed to do so[xii]. These reforms created a landscape in South Australia that continues to facilitate undermining children's fundamental human rights[xiii].

Prior to the *Young Offenders Act 1993* (SA), every case of harmful behaviour by a child saw their circumstances reviewed by screening and aid panels before any decision to prosecute could be made[xiv]. Replacing screening and aid panels, the 1993 Act established a diversion model centred on police discretion, as the aim at the time was to strengthen sentencing options and individual accountability. Previous concerns that the panel approach was discriminatory towards Aboriginal and Torres Strait Islander children and that it was incompatible with the State Government's human rights obligations remained entirely unaddressed by the reformed diversion model in the 1993 Act[xv]. Other changes contained within the 1993 Act also undermine human rights, including the expansion of police powers in questioning and the requirement of an admission of guilt to access diversion[xvi].

Overall, the *Young Offenders Act 1993* (SA) failed to recognise and safeguard the best interests of the child, the UNCRC, and the Beijing Rules. Within the context of media, administrative, and political attention on youth justice in recent decades, South Australia has maintained its prioritisation of punitive punishment over the best interests of children despite decreasing rates of crime and growing costs associated with this approach. Successive governments have continued to seek to maintain authority and defend the use of punitive approaches claiming to make no apology for prioritising community protection despite the reality that this approach is detrimental to community safety.

Public rhetoric

Populist public rhetoric that calls for increasingly punitive responses can pressure governments to be overly cautious in policy reform[xvii]. By conforming to this rhetoric instead of supporting the extensive evidence available, governments can inadvertently act as a barrier to shifting the prevailing narrative on 'youth crime'. In reforming the MACR and diversionary pathways, the State Government has a responsibility to ensure rhetoric on 'youth crime' in the public sphere acknowledges an evidence-based approach, the complexities of children's needs and the reality of recent trends in children's harmful behaviour. Punitive 'tough on crime' rhetoric, which does not consider evidence and human rights, has impacted state-based reform in the past and must not be able to have the same effect in the future. The State Government cannot rely on punitive populist approaches that may provide an electoral advantage but that entirely fail to protect the rights of children or improve community safety.

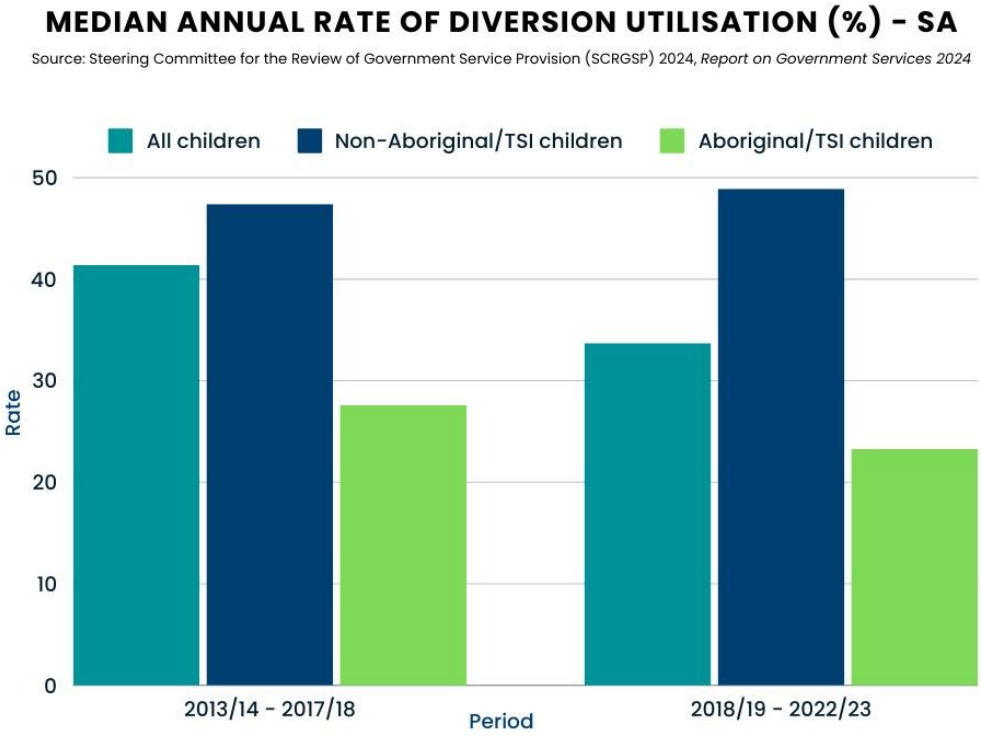
Use of diversion

Diversion works to stop children from re-offending, becoming entrenched in the system and continuing into the criminal justice (adult) system[xviii]. While meta-analysis has shown that children diverted from engaging with the system are less likely to offend, evidence on current diversionary pathways utilised across Australian jurisdictions demonstrates considerable barriers to realising the full effectiveness of diversion[xix]. Inquiries conducted recently highlight the need to improve diversionary pathways, including improvements to the consistency and efficiency of appropriate

therapeutic diversion referrals[xx]. Complete diversion allows a child to be redirected from any further system engagement. This takes the form of informal caution under the *Young Offenders Act 1993* (SA). Referral to services and programs that operate outside a formal justice response also diverts children from further engagement with the system, while approaches to diversion that involve formal legal responses can facilitate continued system engagement.

Current diversion issues

Table 1: Median Annual Rate of Diversion Utilisation (%) – South Australia[xxi]



The median annual rate of diversion utilisation in South Australia has decreased from 41.1 per cent of all children in the 2013-14 to 2017-18 period to 33.7 per cent from 2018-19. Analysing the available data on the use of diversion demonstrates that diversion is utilised at a significantly lower rate for Aboriginal and Torres Strait Islander children compared to non-Aboriginal and Torres Strait Islander children (with the median annual rate of diversion from 2018-19 being 23.3 per cent and 48.9 per cent, respectively). The median annual diversion utilisation rate for Aboriginal and Torres Strait Islander children in the 2013-14 to 2017-18 period was approximately 4.3 per cent higher than in 2018-19 to 2022-23. While the median annual diversion utilisation rate for non-Aboriginal and Torres Strait Islander children from 2013-14 to 2017-18 was 1.5 per cent lower than in 2018-19 to 2022-23. This means the disproportionate application of diversion has increased from 19.8 per cent to 25.6 per cent (an increase of 5.8 per cent). Since 2013-14, the annual rate of diversion utilisation for Aboriginal and Torres Strait Islander children has not been above 30 per cent, with the lowest utilisation rate of 19.6 per cent recorded recently in 2021-22[xxii].

The current system of diversion centres on police discretion as it is primarily police officers who direct children to diversionary pathways based on officers' judgement as to whether a child has engaged in behaviour that constitutes a 'minor offence'. In consideration of whether behaviour is a 'minor offence', an officer considers the extent of the harm caused by the offence, the improbability of a child re-offending, the attitudes of a child and/or their parents or guardians as well as the 'character and antecedents' of a child[xxiii]. The inclusion of the 'character and antecedents' of a child as grounds for determining whether diversionary pathways are accessible is a serious deviation away from

principles contained within various human rights treaties. The discretionary practices of the South Australian Police are an important consideration in reform, as children from certain minority cohorts attract disproportionate police attention and commonly experience adversarial interactions[xxiv].

Reviews of diversionary pathways across Australian jurisdictions show that Aboriginal and Torres Strait Islander children are more likely to appear in court on their first offence and have a greater degree of engagement with the youth legal system, and this increases their risk of further contact with the system[xxv]. Research points to police continuing to prioritise personal views and approaches that are disconnected from the reality known about children's engagement in harmful behaviour'[xxvi]. Additionally, heavy workloads and limited capacity to understand a situation or undertake follow-up actions are cited barriers that police experience when attempting to pursue diversionary pathways[xxvii]. Another significant barrier for police to effectively utilise diversion is limited knowledge of available services, which again, leads to the inconsistent application of diversion. The role of police and police discretion in reform to diversion is a vital consideration, as evidence shows that children aged 10-13 years who engage with police are more likely than other children to have further system involvement [xxviii]. The decision of an individual police officer on whether to divert a child using an informal or formal response will have a significant impact on their future[xxix].

Another significant consideration for diversion is addressing the disparity in its application. Evidence clearly shows that children from minority cohorts, like Aboriginal and Torres Strait Islander children, are less likely to be diverted. Further evidence also shows that while young women are typically overrepresented in diversion programs, their referrals to such programs are more likely to occur due to family conflict and interpersonal issues rather than 'harmful behaviour'[xxx].

Net-widening risks

Reform to the MACR and the development of a diversion model must be careful not to result in phenomena known as 'net widening' which facilitates formal legal system responses in the lives of children who would not have received a formal response prior to reform[xxxi]. An example of this would be a child being referred to a diversion program when they previously would have received an informal caution. When a diversionary pathway results in a child who previously would not have entered the system entering the system via a referral to a diversion program for low-level 'harmful behaviour', this is widening the net. Net widening can also occur when engagement with diversion can be relied on as an aggravating factor in decisions on subsequent harmful behaviour. Equally as problematic, when a child is engaged in the system via a diversionary pathway that leads to escalating criminalisation, this is known as 'deepening' the net.

To avoid unintentional widening and deepening of the net, which would result in pulling more children into the system, policy concerning criteria for diversion access must have a strong evidence base, and available diversion resources need to be focused on where intervention will be most effective[xxxii].

Principles for raising the age

International Human Rights Law

Australia ratified the UNCRC in 1990, and Australian jurisdictions are obligated to adhere to the Convention. The UNCRC contains principles regarding system responses to children who engage in harmful behaviour, like Article 37 of the UNCRC, which outlines that incarceration is only to be used as a last resort and for the shortest possible time[xxxiii]. Article 40.2 details that a child must be provided legal assistance, have their matter addressed without delay and should not be compelled to admit

guilt[xxxiv] and Article 40.4 provides that the primary consideration for decision-making must be the well-being of the child[xxxv]. South Australia's current response is not aligned with the obligations set out in the UNCRC.

Further standards for responses to children that engage in harmful behaviour and the administration of a system response include the Beijing Rules, the *UN Guidelines for the Prevention of Juvenile Delinquency* (the Riyadh Guidelines) and the *UN Rules for the Protection of Juveniles Deprived of their Liberty* (the JDL Rules). These standards should be the foundational basis for any reform[xxxvi].

Medical evidence

The State Government has accepted that children under the age of 14 years are not able to fully understand the impacts of harmful behaviour, and they cannot fully appreciate the potential lifelong consequences of being labelled a criminal. The State Government has also accepted that contact with the system, including incarceration, even for a short period, inflicts irreparable harm on children. Yet current approaches in South Australia are harmful, ineffective and expensive while it has been long known that investment in prevention, early intervention and providing holistic support is what children and their families need.

Children who become involved in the system have complex needs including, but not limited to, trauma, disability, experiences of neglect, physical and mental health challenges, school disengagement, parental incarceration, child protection involvement, housing insecurity, and substance misuse. Experiences of these issues require a holistic approach to supporting children, as well as their families, which cannot be realised through a justice-based response.

Principles from SCAG MACR reform

The SCAG established a national level working group on raising the MACR in 2018, and the long-awaited report on the approach to reform was released in December 2023. The report includes key concepts to underpin reform as well as a principles-based framework on addressing the needs of Aboriginal and Torres Strait Islander children, first responses, secondary responses, victim support and transitional matters[xxxvii]. It is these principles that should inform legislation and policy decisions made by each jurisdiction.

As outlined in the SCAG Report, MACR reform should establish prevention and early intervention support available before a child displays harmful behaviour. After prevention and early intervention support, if a child engages in harmful behaviour, then a first response including assessment and referral, and a scaled secondary response are employed. To be consistent with the principles-based framework developed by the SCAG working group, the first and secondary responses must be covered by an independent oversight mechanism to ensure the safeguarding of the rights of the child. The SA Attorney-General's Department (AGD) discussion paper on the ' alternative diversion model suggests a potential for SACAT or the Youth Court to oversee levels two and three of the proposed secondary response. However, no oversight has been suggested for first responses, assessments, referrals and level one of secondary responses despite the SCAG working group finding strong independent oversight mechanisms to be 'essential'[xxxviii].

A key concept in the SCAG working group report that underpins all factors of MACR reform, consistent with the UNCRC, is for the best interests of the child to guide decision-making. This is an especially relevant consideration given current South Australian legislation fails to position the child's best interests as the paramount consideration in either the *Young Offenders Act 1993 (SA)* or the *Children and Young People (Safety) Act* 2017. The proposed alternative diversion model does not provide for the best interest of the child to be prioritised in decision-making regarding diversion.

Proposed alternative diversion model

Key principles for MACR reform in the SCAG report do not appear to be included in the alternative diversion model proposed in the AGD discussion paper. Primarily, the SCAG report outlines that the best interests of the child must underpin any MACR reform, which is an especially important consideration in South Australia as current legislation on intervention in the lives of children fails to recognise the child's best interests as the paramount consideration. Another important principle resulting from the SCAG report is to ensure policy decisions are based on the extensive evidence available. However, while the AGD discussion paper acknowledges this evidence, it fails to articulate why the proposed reform does not align with the evidence.

Despite recognition of the need to divert children from formal responses within the system, evidence indicates that more recent system responses to children under 14 years continue to criminalise this cohort both directly and indirectly. Focus and resources continue to be concentrated on police, investigation, prosecution and legal adjudication of children aged 10-14 years. The result of this approach is that formal responses are not utilised as a last resort, and there is little therapeutic, educational and social support provided to children[xxxix].

Addressing the needs of Aboriginal & Torres Strait Islander children

Addressing the mass incarceration of Aboriginal and Torres Strait Islander children is a key priority in Closing the Gap and should be a primary consideration in MACR reform[xl]. Evidence on diversion demonstrates that police are less likely to utilise diversionary pathways in relation to Aboriginal and Torres Strait Islander children, including when controlling for age, gender, prior offending, and type of offence. Additionally, it is more likely for re-engagement with the system to occur for Aboriginal and Torres Strait Islander children regardless of the nature of initial contact (being court, caution, conference)[xli].

The SCAG report includes consistently advocated views of Aboriginal and Torres Strait Islander communities and organisations that the MACR must be raised to at least 14 years of age and that no exceptions for any type of behaviour be provided. The proposed alternative diversion model does not include these approaches. The SCAG report also provides significant detail on the principles to be considered in developing reformed system responses towards Aboriginal and Torres Strait Islander children in recognition of the need for a fundamentally different approach to harmful behaviour. Reform must not result in an increase to South Australia's already high reliance on child protection powers as a replacement for other enforcement powers, and every jurisdiction must be cautious not to compromise commitment to the National Agreement to reduce mass incarceration of Aboriginal and Torres Strait Islander children[xlii].

Issues within the proposed alternative diversion model

As acknowledged in the discussion paper, early contact with the youth justice system is a strong predictor of future harmful behaviour. In recognition of this evidence, the alternative diversion model should aim to align more closely to principle 6 from the SCAG report, which states, 'where police respond to a child under the MACR because the child engages in negative behaviours, police contact with the child should be minimal' and principle 7, which states that Governments should 'consider how police engagement with children can best meet the needs of the child and community and should implement appropriate limitations and safeguards on police powers in relation to children under a raised MACR'[xliii].

The reform outlined currently in the discussion paper does not propose limiting police contact with children under the raised MACR to a minimum, nor does it propose limitations to police powers relating to children under the raised MACR. Further, the discussion paper proposes an increase of police powers to allow police to interrogate and collect forensic samples from a child under the MACR.

South Australia currently lacks universal and community-based services and programs to provide prevention and early intervention to children at risk of harmful behaviours. The discussion paper lacks detail on how this service gap will be addressed. Without adequate prevention and early intervention services, the first response is unlikely to be effective in addressing harmful behaviour and could risk additional criminalisation.

Community-based diversion that provides holistic support to children is more cost-effective, reduces negative life outcomes, better supports children not to re-offend, and facilitates connection with family and the local community. Diversion services and programs must have an evidence base and be designed as a community-specific continuum that has determined criteria and clearly identified goals.

Raising or abolishing the MACR

As outlined in the AGD discussion paper, section five of the *Young Offenders Act 1993* (SA)[xliv] provides that the current MACR is 10 years of age[xlv] and that no child under 10 can be held criminally responsible or prosecuted for behaviour that constitutes a criminal offence. YACSA has raised concerns regarding the language of the discussion paper stating the proposed reform would raise the MACR to 12 years of age with exemptions provided that would 'apply to children younger than the MACR, allowing them to be prosecuted for those (exempt) offences'[xlvi]. The intention of the proposed model is to 'replace the criminal justice response to behaviour from children that would otherwise have constituted a criminal offence had that child been older than the MACR'[xlvii]. While YACSA acknowledges the Department's written confirmation that there is no intention to expose children under the age of 10 years to possible criminal liability, it remains unclear whether the proposed model will be utilised for any child under the proposed MACR of 12 years. Exposing children to formal system responses at younger ages increases the risks of re-offending and disproportionately impacts Aboriginal and Torres Strait Islander children[xlviii].

Network of places of safety

Diversion is most effective when it is 'pre-arrest' diversion[xlix] as it results in a child being diverted from being arrested. While the proposed model alludes to pre-arrest diversion, the inclusion of police as first responders and the ability to use police facilities (including cells) as 'places of safety' positions the first response closer to 'post-arrest' diversion[l]. Regardless of whether a child is deemed to be 'arrested', they still experience a response that can involve police holding them in an adult police facility and therefore are still being exposed to harm.

Currently, there is a known lack of 'places of safety' that do not constitute incarceration which is shown in the substantial proportion of children detained on remand and the rate of children being held in police cells. The discussion paper does not indicate how a network of 'places of safety' will be set up or resourced to fulfil this function.

As the Training Centre Visitor has reported, in 2020-21, police cells were used to hold children in custody at least 2,030 times, and almost half of those incidents involved Aboriginal children. In 2021-22, there was an increase in the number of times police cells were utilised to hold children to over 2,800 incidents. At least one in four was under the age of 14 at the time, and some children were held for more than 24 hours[li]. Children held in police cells reported rough restraint methods, verbal abuse

and self-harm, and the Training Centre Visitor (or any other independent body) has no ability to provide oversight in these circumstances[lii]. Any period of incarceration, regardless of what it is referred to, exacerbates the disadvantage experienced by children, especially Aboriginal children[liii]. Police facilities (including cells) are not child-safe environments, as evident in the reports from children held there[liv]. The proposed alternative diversion model would allow for police facilities to be included in 'places of safety' despite these places being unsafe for children.

Additionally, while the proposed model states police facilities are places of safety of last resort, given the rate they are currently used and the likelihood that police will continue to be first responders, it is unlikely this will change under the proposed reforms. Also concerning is the absence of safeguards for dual-involved children, who are often detained due to safety concerns from residential facilities where they are living. It is unclear how 'places of safety' will support these children without alternative accommodation options.

Lessons from Scotland

The Age of Criminal Responsibility (Scotland) Act 2019 raised the MACR from 8 to 12 years old based on evidence gathered through the Edinburgh Study of Youth Transitions and Crime, a large longitudinal study tracking 4,300 children[lv]. This study demonstrated that children engaged in 'serious offending' or those who persistently offend are the most vulnerable, traumatised and victimised children involved in the system. While this is consistent with South Australia's experience, there are critical circumstances to consider in terms of replicating MACR reforms similar to Scotland.

Reform in Scotland occurred within the important context of a whole of government approach to children that does not exist in South Australia. Using evidence-based best practice, Scotland developed the 'Getting It Right for Every Child' (GIRFEC) framework in 2004. This whole system approach aimed to improve outcomes for all children and young people. It was then further strengthened by the *Children and Young People (Scotland) Act 2014*, which established a single planning process of support services and placed responsibility on public agencies to coordinate the planning and delivery of programs and services.

The whole system approach effectively promoted consistency and assisted a system response from across government agencies to coordinate the provision of holistic support for children who engage in harmful behaviour. The revised youth justice strategy 'Preventing Offending: Getting it Right for Children' (2015) further facilitated collaborative efforts to improve outcomes by also involving the Centre for Youth & Criminal Justice, multi-agency Youth Justice Implementation groups, third sector organisations, the Youth Justice Improvement Board, Child Protection, the National Youth Justice Advisory Group, health services, social work bodies, education services, and local authorities.

In reviewing the process of raising the MACR in Scotland, McAra and McVie (2023)[lvi] commented that public populist rhetoric too often seeks increasingly punitive responses to children, and this has resulted in governments being overly cautious in implementing policy based on evidence. The reliance on populist rhetoric can be so strong that a wealth of robust research can struggle to shift the prevailing narrative. While it can be tempting for governments to seek electoral advantage by politicising 'youth crime', this approach only serves to increase the number of children drawn into the system. This is especially relevant in relation to proposed Government approaches to 'persistent young offenders' as a policy that seeks to maintain punitive responses to this cohort widens the net for at-risk children to become 'persistent young offenders.' McAra and McVie also found that for every additional stage a child reaches within a system, the child was less likely to show signs of desisting from harmful behaviour by the age of 16 years[lvii].

Conclusion

The overarching purpose of diversion is to redirect children from a justice system-based response (including out-of-court responses based in the system) via community services and supports that address the needs of those children and young people. This is the ultimate aim of diversion because engagement in formal justice processing results in children being more likely to commit harmful behaviour again, and because the younger a child is when first coming into contact with the youth system, the more likely it is the child will become entrenched in the system and move into the criminal justice system.

Rather than serving the purpose of diverting children away from the youth justice system, the proposed alternative diversion model inserts additional steps into the existing system that largely replicate the current response for children over the current MACR of 10 years. While acknowledging the language difference in the discussion paper, key elements of current responses that the proposed model replicates include those that expose children to significant harm like police engagement, incarceration, and interrogation. This would risk widening the net by engaging children under the proposed MACR of 12 years in the system and, if care is not taken, potentially fast-tracking a child's progression through the system once they reach the raised MACR of 12 years.

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