

Submission

Inquiry into Justice (Age of Criminal Responsibility)  
Legislation Amendment Bill  
2023 (ACT)

ANTAR



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**ANTaR ACT**   
Justice, Rights and Respect for Australia's First Peoples

## **Inquiry into Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023 (ACT)**

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**With thanks:**

This submission was authored by

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**ANTAR is proud to acknowledge and pay our respects  
to First Nations Peoples as the traditional owners  
of the lands on which we work across the continent.**

# About ANTAR

**ANTAR is a national advocacy organisation working for Justice, Rights and Respect for Australia's First Nations Peoples. We do this primarily through campaigns, advocacy, and lobbying.**

ANTAR is working to mobilise Australians to vote YES at the referendum for a First Nations Voice to Parliament enshrined in the Constitution, and for this to be complemented with a Makarrata Commission to drive agreement making and truth-telling processes across Australia.

We also engage in national advocacy across various policy and social justice issues affecting Aboriginal and Torres Strait Islander communities, including cultural heritage protection; justice reinvestment, over-incarceration and raising the age of criminal responsibility; anti-racism campaigns, native title and land rights, and closing the life equality gap.

ANTAR is a foundational member of both the Close the Gap Campaign and Change the Record Campaign Steering Committee, and an organisational and executive committee member of Just Reinvest NSW. ANTAR has been working with Aboriginal and Torres Strait Islander communities, organisations and leaders on rights and reconciliation issues since 1997. ANTAR is a non-government, not-for-profit, independently funded and community-based organisation.

**ANTaR ACT** is an active voluntary group in the ACT which is affiliated with ANTAR National. It has a particular focus on reducing First Nations incarceration, reducing the number of First Nations children in out of home care, the need for Aboriginal community controlled services, full functioning of the Ngunnawal Bush Healing Farm and the 2023 Referendum. We have prepared this submission in collaboration with ANTAR ACT, which locally is also a member of the Raise the Age Coalition of the ACT.

# Introduction

**Thank you for the opportunity to provide some comments to the Australian Capital Territory government Inquiry into the *Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023*.**

ANTAR commends the ACT Government for being one of the leading jurisdictions in Australia to pursue this legislative change. We provided a submission to the ACT Government's 2022 process to consider the minimum age of criminal responsibility (MACR) and refer to that submission as background to this submission.<sup>1</sup>

ANTAR is a founding member of the Change the Record Campaign (which we also auspice) and an active member of the Raise the Age Campaign. We are also organisational members of Just Reinvest NSW and work closely with First Nations communities to achieve some fundamental reforms in the Justice systems in each jurisdiction across Australia.

As a national advocacy organisation, solely focused on justice, rights and respect of First Nations Peoples in Australia, we continue to see a large public response to the calls for raising the age of criminal responsibility across Australia. This is a change whose time has come.

As stated in our November 2022 submission, the ACT Government has recognised in its decision to pursue a raising of the minimum age of criminal responsibility, that this type of reform is essential to reducing the alarmingly high rates of incarceration, recidivism and damage to First Nations communities. It is critical that the legislation that embeds the reform delivers better justice outcomes for children, including Aboriginal and Torres Strait Islander children across the ACT; and is an exemplar piece of legislation for other jurisdictions.

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<sup>1</sup> [ANTAR Submission](#)

Like our fellow Change the Record Campaign organisational members and the Aboriginal legal peak and community-controlled service organisations, we restate the critical principle that there should be ‘no carve outs’ for some offences alleged to have been committed by children between the ages of 12 and 14 and to add carve outs would be inconsistent with the principles underpinning the Bill.

ANTAR’s submission is informed by our work with the Campaigns and coalitions (primarily the Change the Record Campaign) already mentioned and the input of our ANTaR ACT colleagues, the ACT Raise the Age Coalition and the Aboriginal Legal Service NSW/ACT.

## **Regarding the draft Bill**

### **Raising the Age first to 12 and then 14**

We recognise the arguments for an iterative approach to raising the age of criminal responsibility and why it has been drafted accordingly in the Bill. However, the key issues remain that for medical and legal reasons, 12-14 years is not an age group that should be included, in line with medical and legal recommendations (including the Australia Medical Association and the Law Society). We maintain that position now, and while we are relieved that the legislation envisions a direct transition to raising the age to 14, we see no justifiable reason why this must be delayed.

As mentioned in our November 2022 submission, nothing dramatic changes in a child’s development at 14 years old, and many countries have raised the age to above 14 years old. Rather, 14 years is really the minimum age that you could expect a child to have sufficient neurological development to be held criminally responsible. The recognition that children under 14 years old are not sufficiently mature to have this capacity is well established in Australian law – it is reflected in the doli incapax doctrine. This is the legal presumption that children under 14 years old do not have the cognitive capacity to form criminal intent. The problem is that the doli incapax presumption does not work in practice and does not protect the rights of children. Children are too often remanded and

held in prison cells while they wait for court hearings to debate matters of doli incapax.

### **No Carve outs**

As stated in the introduction, ANTAR maintains that there should be no exceptions to the consideration of a minimum age of criminal responsibility. We note the ACT Government's own Position Paper ignores the advice it has received to raise the age to 14 years old with no exceptions. Rather, the societal failures that have led to children interacting with the criminal justice system should be addressed at that level and much more investment is needed in community, family and child supports that address those societal or system failures. We should not punish the child for those failures. The four (4) listed exceptions to the MACR – while obviously very serious – are rare and ultimately a failure of our communities and governments.

As has been noted by others, there are only a small number of children who engage in acts of violence or serious harm (and almost none under 14 years old). Where there are children engaging in this behaviour, they need help and care rather than a criminalising response.

### **New criminal offences – sections 548 and 553**

The proposed new criminal offences in relation to a child's non-compliance with intensive therapy orders and interim orders are very concerning. The fines and threats of imprisonment associated with Sections 548 and 553 for '[engaging] in conduct that contravenes a provision of' an intensive therapy order or interim intensive therapy order are likely to perpetuate the problems this Bill is trying to address in youth justice. There is no stated justification for the creation of these new offences, or clarity about how they might be applied or enforced.

We agree with the Change the Record Campaign submission assessment that 'Creating these offences will criminalise families and carers, which is a particularly perverse outcome given the object of raising the MACR is



decriminalisation and shifting institutional responses from punishment and coercion to care and harm minimisation.’

### **Therapeutic Support Panel and Intensive Therapy**

More work needs to be done to ensure and explain how Aboriginal and Torres Strait Islander representation is embedded in the proposed Therapeutic Support mechanism. Aboriginal and Torres Strait Islander input is critical to having credible, culturally safe and community supported decision making regarding the approach to a child’s care.

We share the ALS NSW/ACT’s concern regarding the Intensive Therapy Order in relation to any coercion applied. If necessary at all, it must be an application of last resort with steps taken to apply less restrictive measures that are culturally appropriate and trauma informed. We share the concern of many that measures such as confinement will continue to be disproportionately applied to Aboriginal and Torres Strait Islander children. There needs to be strong oversight provisions to ensure protection of the child is primary.

As part of the Change the Record Campaign, ANTAR continues to endorse the introduction of a Multidisciplinary Panel that can respond to the individualised need of children that come into contact with the system. As CTR have stated in their submission ‘the establishment of a multidisciplinary panel where children can be referred if they come into contact with police, or if their behaviour raises concerns within the home, community or school, is an essential part of both diverting a child away from the criminal justice system and ensuring that the appropriate assessments, identification of needs and referrals to relevant services occurs.’ This should be a priority.

## **Conclusion**

Thank you again for the opportunity to provide a submission on this important consideration of the *Justice (Age of Criminal Responsibility) Legislation*

*Amendment Bill 2023.* Again, we commend the ACT Government for heeding the community's desire for reform in this area. The Bill should aim to be best practice from the start and an iterative approach to raising the age is unnecessary if there is no practical justification. Supports for children and their families must be commensurate with need and this will do more than anything else to reduce harmful interactions with the justice system. Raising the Age of Criminal Responsibility should be a signal to government services and the community that we hold a collective responsibility to do better for our children.

ANTAR offers our ongoing support to a process that meets the expectations of Aboriginal and Torres Strait Islander peoples in the ACT and we endorse the views of the Change the Record Campaign as the national, Aboriginal-led peak coalition on issues of Aboriginal and Torres Strait Islander justice.

Sincerely

**Paul Wright**

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**Dr Janet Hunt**, ANTaR ACT