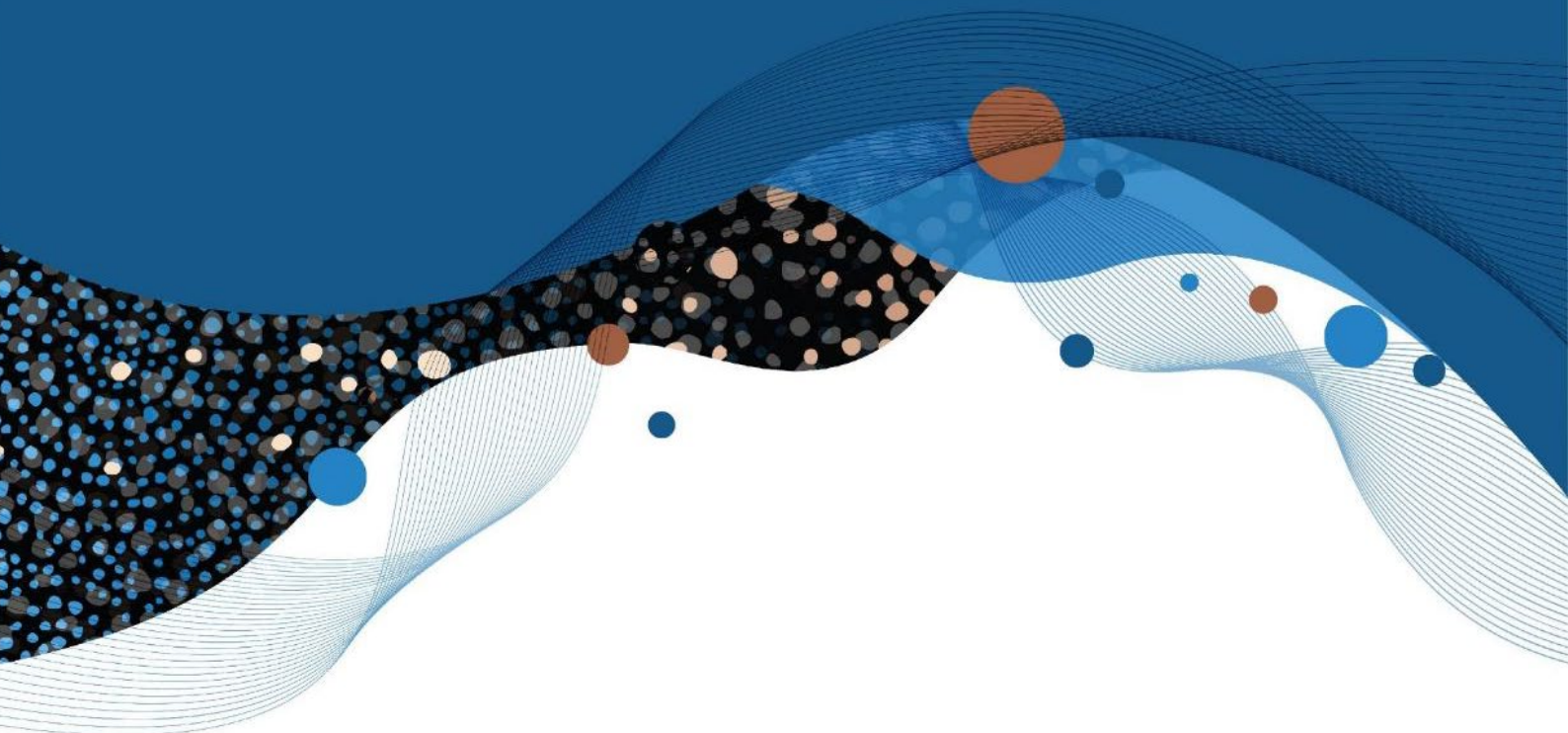


Raising the age of criminal responsibility

Community guide

January 2024



We are consulting the community on a proposal to raise the minimum age of criminal responsibility (MACR) from 10 to 12 years of age, with exceptions.

We are also seeking feedback on a new alternative diversion model that would replace the existing criminal justice process for children who engage in behaviour that would otherwise have been a criminal offence.

Why raise the minimum age of criminal responsibility?

This proposal is all about keeping the community safer.

The younger a child is when first having contact with youth justice, the more likely they will become entrenched in the justice system.

When children are involved in the justice system at an early age, this can often lead to them becoming repeat offenders, with a sometimes-irreversible cycle of recidivism.

If this proposal is adopted for an early intervention, therapeutically-focused approach to address harmful behaviour by children - while still leaving open the option of prosecution for serious offending behaviour as a last resort - we may be able to stop the cycle before it even starts, and prevent the behaviour from being repeated in the future.

Children at risk

Children who come into contact with the criminal justice system often have complex needs, including:

- exposure to abuse and neglect
- exposure to, or lived experience with, drug and alcohol abuse
- homelessness
- poverty
- mental health conditions or disabilities
- a lack of engagement with the education system.

When these at-risk children are criminalised at an early age, there's a high risk that these problems will intensify.

This proposal seeks to improve community safety by reducing the likelihood of this group of children continuing to engage in offending behaviour in the future.

An effective approach

Organisations such as the [Australian Medical Association](#) and the [Law Council of Australia](#) have called for an increased minimum age of criminal responsibility, noting that early contact with the criminal justice system makes children more likely to reoffend later in life.

The most common minimum age of criminal responsibility worldwide is 14 years of age.

Across Europe, the average minimum age of criminal responsibility is 14 years of age (ranging from 12 years of age in the Netherlands to 16 years of age in Portugal) and there is research to show that there have been no negative consequences in terms of crime rates as a result of having a higher minimum age of criminal responsibility.

Serious offences

In considering the minimum age of criminal responsibility, community safety has been the top priority.

While most children will benefit from an early intervention model and the supports that are available, there are cases where interaction with the criminal justice system will provide the greatest assurance to the community that it is being protected.

Importantly, under this proposal, authorities can still prosecute children under 12 in the exceptionally rare instances where they are accused of:

- murder
- manslaughter
- causing serious harm
- rape.

Prosecution as a last resort

In those very rare cases where children under 12 continue to engage in extreme or repeated harmful or violent behaviour - and alternative diversion has not been effective - this proposal will allow authorities to prosecute in some circumstances.

Prosecution will only be pursued where all other options have failed and the child continues to engage in behaviour that poses a significant risk to the safety of the community involving:

- causing death by use of a motor vehicle
- a serious firearm offence
- robbery, theft with force or threatening to use force against another
- serious criminal trespass at a place of residence

- property damage to a building or motor vehicle by fire or explosives
- causing a bushfire
- indecent assault
- acts of gross indecency
- causing serious harm
- shooting at police officers
- possession of an object with intent to kill or cause harm.

Our proposal features stringent procedures around prosecution, including ensuring both South Australia Police and the Office of the Director of Public Prosecutions are satisfied the child's behaviour poses a risk of harm to the community and there is a reasonable prospect of a successful prosecution.

How alternative diversion works

Our proposed alternative diversion model is designed to support the child and protect the community.

It involves a first response and a longer-term secondary response that would be tailored to the needs of the child.

The goal is to help minimise the risk of future reoffending while helping the child change their behaviour and address its root causes.



1

The first response

Authorities are alerted to a child's harmful or dangerous behaviour.

This is usually police, but could also be medical professionals, security guards, social workers or educators.

The child is then either:



returned to their parent
or guardian

or if there is a
risk of harm



taken to a place of
safety

They can stay there while longer term arrangements are made – this might include a referral to child protection or other early intervention services.

2

The secondary response

If the harmful behaviour continues, the child will enter the secondary response.

An escalating system of action plans is proposed, with consideration given to the child's behaviour and their willingness to engage with supports.



Community action plan

This would be a **voluntary** agreement setting out clear expectations for the child to address their harmful behaviour.

A community action plan might include:



attending diversion,
cultural or education
programs



attending counselling
or drug and alcohol
treatment



repairing vandalism
or apologising to a
victim



Mediated action plan

This would be a more intensive response than a community action plan, but is still **voluntary**.

This response may be needed when:

- a community action plan hasn't addressed the harmful behaviour (which has continued or escalated)
- the child is experiencing an increased need for support.

It would be similar to a Family Conference within the current youth justice system.

A mediation session in the South Australian Civil and Administrative Tribunal (SACAT) or other body would help develop the action plan.



Mandatory action plan

A mandatory action plan would represent the most intensive response available for children who have very serious and complex needs.

It would involve formal orders made by SACAT.

Extreme or repeated harmful behaviour

In very rare cases where children under 12 continue to engage in extreme or repeated harmful or violent behaviour and alternative diversion has not been effective, authorities will be able to prosecute in some circumstances.

Prosecution would only be pursued where all other options have failed and the child continues to engage in behaviour that poses a risk to the safety of the community.

How do the action plans work?

As part of the secondary response, time-limited action plans set out the steps to help address a child's harmful behaviour and can include diversionary, educational or behavioural support programs or counselling.

These measures are designed to be flexible, depending on the intensity of the supports needed, the willingness of the child to participate and the level of risk involved.

By diverting very young children away from the criminal justice system and supporting them through alternative pathways, we're giving them the best chance to get back on the right track and avoid future criminal behaviour.

Community action plans

This proposal aims to address underlying causes of harmful behaviour to prevent further instances, and would be made between the child and other parties that could include:

- parents, guardians or caregivers
- educators, medical practitioners or police
- youth workers, social workers or service agencies
- victims
- Aboriginal Elders, or Culturally and Linguistically Diverse Leaders where appropriate.

Programs would be adapted to each individual child, and could include:

- attending diversion, cultural or education programs
- attending counselling, drug and alcohol treatment
- completing other diversion or support programs
- remediation of harm caused by their behaviour (eg repairing vandalism)

Undertakings may be entered into, similar to when a child is cautioned by police.

Mediated action plans

This proposed measure would be used where a more intensive, voluntary response is needed, and would be similar to a family conference. A mediation session in the South Australian Civil and Administrative Tribunal (SACAT) or other body would help develop the action plan, which would involve similar goals.

If the plan does not resolve the harmful behaviour, the child would progress to the most intensive program – a mandatory action plan.

Mandatory action plans

The most intensive proposed response, with formal orders made by the SACAT (or other body), and could involve mandatory participation in specific treatment programs, or compelling a child to reside in a therapeutic facility.

Prosecution for serious offences will remain an option in some circumstances where mandatory action plans fail to change the child's behaviour.



Have your say

Alongside this community guide, there is a more comprehensive discussion paper that outlines the alternative diversion model in more detail.

Visit www.yoursay.sa.gov.au/macr for the discussion paper and more information.

You can also have your say by providing a written submission to LLPSubmissions@sa.gov.au by Monday 25 March 2024.