

Review of the age of criminal responsibility

Submission to the Working Group of
the Council of Attorneys-General

28 February 2020

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About knowmore

Our service

knowmore legal service (knowmore) is a nation-wide, free and independent community legal centre providing legal information, advice, representation and referrals, education and systemic advocacy for victims and survivors of child abuse. Our vision is a community that is accountable to survivors and free of child abuse. Our mission is to facilitate access to justice for victims and survivors of child abuse and to work with survivors and their supporters to stop child abuse.

Our service was established in 2013 to assist people who were engaging with or considering engaging with the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission). knowmore was established by and operates as a program of Community Legal Centres Australia, with funding from the Australian Government, represented by the Attorney-General's Department. knowmore also receives some funding from the Financial Counselling Foundation.

From 1 July 2018, Community Legal Centres Australia has been funded to operate knowmore to deliver legal support services to assist survivors of institutional child sexual abuse to access their redress options, including under the National Redress Scheme.

knowmore uses a multidisciplinary model to provide trauma-informed, client-centred and culturally safe legal assistance to clients. knowmore has offices in Sydney, Melbourne, Brisbane and Perth. Our service model brings together lawyers, social workers and counsellors, Aboriginal and Torres Strait Islander engagement advisors and financial counsellors to provide coordinated support to clients.

Our clients

In our Royal Commission-related work, from July 2013 to the end of March 2018, knowmore assisted 8,954 individual clients. The majority of those clients were survivors of institutional child sexual abuse. Almost a quarter (24%) of the clients assisted during our Royal Commission work identified as Aboriginal and/or Torres Strait Islander peoples.

Since the commencement of the National Redress Scheme for survivors of institutional child sexual abuse on 1 July 2018 to 31 January 2020, knowmore has received 27,322 calls to its 1800 telephone line and has completed intake processes for, and has assisted or is currently assisting, 5,725 clients. Just over a quarter (26%) of knowmore's clients identify as Aboriginal and/or Torres Strait Islander peoples. Over a fifth (23%) of clients are classified as priority clients due to advanced age and/or immediate and serious health concerns including terminal cancer or other life-limiting illness.

knowmore's submission

This section outlines knowmore's overall position on the minimum age of criminal responsibility in Australian states and territories. In summary, knowmore is strongly supportive of raising the minimum age of criminal responsibility to 14 years. Alternatively, if this measure is not adopted, knowmore supports the introduction of a minimum age of detention in all states and territories of 14 years.

This section also outlines the findings of the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) relating to youth detention, which demonstrate that youth detention continues to be a high-risk setting for child sexual abuse and that child sexual abuse in a youth detention environment can have significant, life-long impacts for survivors.

knowmore's overall position on the minimum age of criminal responsibility

knowmore welcomes the Council of Attorneys-General review of the age of criminal responsibility.

Currently, the minimum age of criminal responsibility in Australia is significantly lower than the global average of 12.1 years, and the average in the majority of European Union member states of 14 years.¹ Further, the United Nations Committee on the Rights of the Child has recommended that Australia raise the minimum age of criminal responsibility to 14 years to bring the justice system into line with Australia's obligations under the Convention on the Rights of the Child.² This recommendation is supported by numerous Australian organisations, including the Australian Human Rights Commission.³

knowmore strongly supports raising the minimum age of criminal responsibility in all Australian states and territories to 14 years of age, to bring Australia into line with international best practice and international human rights standards.

knowmore is supportive of measures that will help to keep children out of detention wherever possible. If raising the minimum age of criminal responsibility to 14 years is not supported by the Council of Attorneys-General, knowmore recommends the introduction of a minimum age of detention in all Australian states and territories of 14 years.

knowmore is of the view that these measures are important to:

- Address the over-representation of Aboriginal and/or Torres Strait Islander children in youth detention environments.
- Reduce the risk, incidence and impacts of child sexual abuse in youth detention environments.

¹ Joint policy statement by the Law Council of Australia and the Australian Medical Association, *Minimum Age of Criminal Responsibility*, 17 December 2019, available at: <https://www.lawcouncil.asn.au/media/media-releases/lca-and-ama-call-on-australian-governments-to-raise-the-age-of-criminal-responsibility-to-14>.

² United Nations Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Australia*, 1 November 2019, CRC/C/AUS/CO/5-6, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fAUS%2fCO%2f5-6&Lang=en.

³ Australian Human Rights Commission, *Raising the Age of Criminal Responsibility*, statement by National Children's Commissioner Megan Mitchell, 20 November 2019, available at: <https://www.humanrights.gov.au/about/news/raising-age-criminal-responsibility>.

Article 37(b) of the Convention on the Rights of the Child provides that the arrest, detention or imprisonment of a child shall be used only “as a measure of last resort and for the shortest appropriate period of time”. However, the high rates of incarceration of Aboriginal and/or Torres Strait Islander children demonstrates that Australia is failing to meet this obligation.

According to a report of the United Nations Special Rapporteur on the rights of indigenous peoples following her visit to Australia in 2017, Aboriginal and/or Torres Strait Islander children, including those under 14 years of age, continue to experience routine detention and are up to 24 times more likely to be detained than non-indigenous children.⁴ The Special Rapporteur highlighted the discriminatory and disproportionate impact of incarceration on Aboriginal and/or Torres Strait Islander children, stating:

Aboriginal and Torres Strait Islander children are essentially being punished for being poor and, in most cases, prison will only perpetuate the cycle of violence, intergenerational trauma, poverty and crime.⁵

knowmore is of the view that raising the minimum age of criminal responsibility is a necessary and important step in addressing the inequality experienced by Aboriginal and/or Torres Strait Islander children in the criminal justice system.

In addition, we are of the view that raising the minimum age of criminal responsibility will help to reduce the risk, incidence and impacts of institutional child sexual abuse for all children who come into contact with the criminal justice system, given the Royal Commission’s findings that:

- Youth detention has been, and continues to be, a high-risk setting for child sexual abuse.
- The experience of child sexual abuse in youth detention can have significant, life-long impacts for survivors, particularly in contributing to later criminal behaviour and leading to patterns of recurrent imprisonment.

These issues are discussed in detail in the following section.

Child sexual abuse in youth detention: key findings from the Royal Commission

Youth detention environments are a high-risk setting for child sexual abuse

The Royal Commission identified youth detention as a common setting for institutional child sexual abuse. Of the 6,875 survivors the Royal Commission heard from in private sessions, 551 (8%) had been sexually abused in youth detention.⁶ Experiencing child sexual abuse in youth detention was particularly common among Aboriginal and/or Torres Strait Islander survivors (15%), and survivors who were in prison at the time of their private sessions (33%).⁷

Although the Royal Commission heard from relatively fewer survivors who had been abused in contemporary youth detention institutions since 1990 (91 in total),⁸ it emphasised that youth detention remains a high-risk setting for institutional child sexual abuse. Key reasons for this include that:

- Youth detention institutions are “closed” environments, isolated from society and public scrutiny.

4 Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Australia, 8 August 2017, A/HRC/36/46/Add.2, available at <https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/36/46/Add.2>, at para 74.

5 Ibid, at para 76.

6 Royal Commission, *Final Report: Volume 2, Nature and Cause*, 2017, Tables 2.12 and A.7.

7 Royal Commission, *Final Report: Volume 5, Private Sessions*, 2017, Tables P.13 and S.14.

8 The Royal Commission stated that this was “unsurprising”, given that survivors take 23.9 years on average to disclose childhood sexual abuse (*Final Report: Volume 15, Contemporary Detention Environments*, 2017, p. 26; see also p. 77).

- Key features of youth detention environments — including the significant power imbalance between staff and detained young people, the lack of privacy, and the separation of young people from their family, friends and community — tend to increase the risk of child sexual abuse.
- Children in youth detention frequently have complex needs and histories of abuse, neglect and other trauma that increase their vulnerability to sexual and other abuse while in detention. In this regard, the Royal Commission stated “[i]t is often the most vulnerable children who are deprived of their liberty in detention environments, including many children with prior trauma and multiple needs, and some with behaviours that may cause harm to themselves or others.”⁹
- Compared to other institutions, there is a heightened risk of young people in youth detention being sexually abused by other children. This reflects the fact that, as the Royal Commission noted, “children who have harmful sexual behaviours or have engaged in criminal or antisocial behaviour are disproportionately clustered in youth detention institutions”.¹⁰

In light of the ongoing risk of child sexual abuse in youth detention environments, knowmore is supportive of measures that will help to keep young people out of detention wherever possible, including raising the minimum age of criminal responsibility in all Australian states and territories to 14 years, or alternatively, introducing a minimum age of detention in all Australian states and territories of 14 years.

In addition to reducing the number of children in detention, knowmore is also supportive of measures that create a safer detention environment for children, including the implementation of the Royal Commission’s Child Safe Standards by all institutions involving detention and detention-like practices.¹¹

Child sexual abuse in youth detention can have significant, life-long impacts for survivors

A further reason for knowmore’s interest in reducing young people’s exposure to youth detention is that, when a young person does experience child sexual abuse in detention, the impacts can be significant and life-long. This is particularly so in terms of the experience of abuse contributing to a young person’s further and continued involvement in the criminal justice system.

The Royal Commission found that for many survivors, the experience of child sexual abuse in youth detention contributed to “a cycle of reoffending and incarceration they have struggled to break, often driven by anger, substance use and mental health problems”.¹² For example, some survivors reported feeling “enormous anger” about their abuse, leading them to engage in anti-social behaviour or commit violent offences. Others spoke about using drugs or alcohol to cope, leading them to commit offences either while under the influence or to finance their substance use. Overall, 90 per cent of survivors who had experienced sexual abuse in contemporary youth detention identified their further involvement in the criminal justice system as an impact of the abuse.¹³

These experiences are also reflected in knowmore’s client group. During the Royal Commission, we often heard a story of life-long institutionalisation from clients who had experienced sexual abuse in youth detention environments. Typically, they were males aged between 30 and 45 years. They had had contact with the out-of-home care or child protection system as a child, and experienced early childhood sexual abuse. This led to dysfunctional behaviours such as alcohol and drug misuse, and early offending that saw them spend time in youth detention. Here, they experienced sexual abuse again. Patterns of reoffending and recurrent incarceration in youth detention centres and adult prisons then followed. As a result, many of these clients had spent a significant part of their lives in detention, often living in the community for less than a year before being re-imprisoned for breaches of parole orders or new offences. One such client,

9 Royal Commission, *Final Report: Volume 15*, p. 34.

10 Royal Commission, *Final Report: Volume 15*, p. 82.

11 Royal Commission, *Final Report: Volume 15*, Recommendation 15.1.

12 Royal Commission, *Final Report: Volume 15*, p. 101.

13 Royal Commission, *Final Report: Volume 15*, p. 100.

who was 49 years old at the time, had been incarcerated in youth detention centres and adult prisons for a cumulative 27 years.

These impacts highlight that keeping young people out of detention is not just in their interests in terms of reducing the risk of child sexual abuse in these settings and the experience of further harm. It is also very much in the public interest given the enormous costs of crime, including government expenditure on the criminal justice system.¹⁴

Case studies from the Royal Commission's private sessions

The Royal Commission published 3,954 de-identified narratives based on the accounts of survivors and people directly impacted by institutional child sexual abuse who shared their experiences at the private sessions.¹⁵ This represents about half of all the private sessions held by the Royal Commission.

knowmore has reviewed the published narratives of survivors who reported experiencing child sexual abuse in youth detention environments after 1990, and has reproduced the following two narratives that provide necessary context to the above discussion and emphasise the importance of the proposed reforms to survivors of child sexual abuse.

¹⁴ A 2014 report estimated that crime cost Australia almost \$48 billion in 2011 (R Smith et al., *Counting the Costs of Crime in Australia: A 2011 Estimate*, Australian Institute of Criminology, Canberra, 2014, p. 1). In 2017–18, Australian governments spent about \$16.5 billion on the criminal justice system (Productivity Commission, *Report on Government Services 2019: Justice Sector Overview – Attachment*, Australian Government, Canberra, 2019, Table CA.1).

¹⁵ See Royal Commission website, *Narratives: Private Sessions*, available at: https://www.childabuseroyalcommission.gov.au/narratives?category=All&field_private_session_gender_value=All&field_state_value=All&field_decade_value=All&field_government_value=All&field_atci_value=All&next=1.

Aaron Travis's story – An Aboriginal man from Queensland who was first sent to a youth detention centre around the age of 11

"As a young kid, my grandmother grew me up really, 'cause my mum couldn't... I was doing everything good with Nan, you know, but when Nan passed away that's when me life just turned upside down."

Aaron's grandmother died when he was 10, and it wasn't long before he started getting into trouble. He was moved between different kinship placements, but kept running away, trying to return home to his mother.

"I was 11, 12 years old when I first went to juvie... break and enter, and stealing a car... part of a group of boys... all around the same age."

Aaron spent time in three juvenile detention centres in Queensland in the late 1990s, and was physically and sexually abused in all of them [by three different officers, and a visiting doctor]...

Aaron told the Commissioner [from the Royal Commission into Institutional Responses to Child Sexual Abuse], "I tried to report what happened to me to senior officers and counsellors, but no one was interested in my cry and complaints for help... I lost faith in adults and authorities"...

Once Aaron was released from juvenile detention, his drug use escalated. "I started to inject speed to escape the pain, shame and embarrassment... I was in pain, a lot of pain. I only ever felt good when I was on drugs. I constantly sought refuge from the evil pain of my past in the form of speed... I kept re-offending to pay for my drug habit... I would get out of jail and be back in within weeks or months."

[At the time of speaking to the Royal Commission] Aaron [was] in his mid-30s and [had] been in jail for half his life. During his time inside [he'd] become alienated from his Aboriginal culture. "I became distant from my family, community and culture. I came to believe they would reject me and be ashamed of me."

"I was once a proud man. I'm now a broken man who lost my identity... I lost contact with my culture. I was once a talented artist. I lost my creativity. My inspiration to express my art had abandoned me. I was over-ridden with pain and sorrow. I avoided culture events and gatherings. I stopped my art, dancing, playing music."

After many years of confusion over his sexual identity, Aaron now has a loving partner and young child. His partner was the first person Aaron told about the sexual abuse and she was shocked, but very supportive. When he is released from jail this time, he wants to stay out. When he is released from jail this time, he wants to stay out.

"Looking back, my identity was stolen from me. Those evil men prevented the course of my innocence. I know I have to control my past in order to move on and have closure ... I'm now trying to find myself. I am trying to embrace my culture. I'm back doing my art and starting to open up about what happened to me."

Aaron is worried that his teenage sons are heading down the same path as he did. "[I] just don't want the same thing happening to them when they go to them places."

Extract from Royal Commission, *Narratives: Aaron Travis's story*, <www.childabuseroyalcommission.gov.au/narratives/aaron-traviss-story>. Real names of individuals have not been used.

Nik's story – A former knowmore client from New South Wales who was first sent to a youth detention centre around the age of 12

"My father was really abusive towards me mum, bashed me mum growing up and whatnot. And he went to jail for two years when I was 10, 11 years old. And that's when I ended up getting in trouble with the law... I sort of went a bit out of control, started stealing cars and... Nothing serious but, you know, still breaking the law."

In the 1990s, around the age of 12, Nik was sent to a juvenile justice centre on the south coast of New South Wales. He remembered "a lot of violence", with boys bashing each other and sometimes attacking staff.

When he was released, Nik quickly reoffended and was put back into the same institution. The day after arriving, he was taken to an isolated room by a staff member.

"He took me into an office and pretty much started to do his... do what he was doing straight away. He asked me a few questions and then, you know, had his hands all over me. And I was scared shitless, I didn't know what to do. So it was pretty brazen, you know... he must have had some confidence that no one was going to disturb him..."

"I was in the office with him for 20 minutes or so, and yeah, that was the first time he got me."

The man abused Nik a number of times, often forcing him to perform oral sex. It only stopped when Nik was put in a holding cell after "losing the plot".

"I tried to talk to another staff member about what'd happened, but they just dismissed it, just said, 'You're kidding', you know. Yeah, nothing come of it."

When he went back to live at home, Nik said, his mother knew something was wrong, but he couldn't bring himself to tell her what had happened.

He returned to school but struggled to keep up. He dropped out in Year 8 and was soon back in the juvenile justice system. After a car accident, Nik was sent to a detention centre in the north of the state.

He would occasionally go to the nurse for massages on his injured back. "And it ended up turning to... like I was 15, 16 years old, and she ended up forcing herself on me so to speak as well. But I didn't look at that as nowhere near as bad as what ... it didn't traumatise me nowhere near as much as what the bloke did when I was only a young boy... she was in her mid-30s, and we ended up getting a bit of relationship going ... But at the end of the day I was underage."

By the time he was 18 Nik was in prison, and he's been in and out ever since. When he spoke to the Commissioner, he still had a number of years to serve on his current sentence.

Since the sexual abuse he's used tranquillisers and heroin "because it seems to stop... it's the only thing that stops the pain, and the suffering. It doesn't, you know, it numbs it, but deep down..."

"It's always been there. It's always been there. Like, I've nearly committed suicide numerous times... I blamed myself for many years, even though like, it's stupid, it's just absolutely moronic to do that but yeah... I've just been lost, you know. I felt dirty, really dirty."

For more than 25 years Nik never had counselling or spoke to anyone about the abuse. And when he first contacted the Royal Commission in the mid-2010s, the memories resurfaced, doing what he called "really, really daunting damage" to his mental health. As a result he decided not to tell his story.

"But then, it just kept eating away at me, eating away at me and I thought, no, it's something I have to do."

Nik also got in touch with the legal service, knowmore, and they organised his first counselling sessions.

“I broke down. A few weeks ago I was talking to a counsellor, and I broke down and started blabbering and sobbing and whatnot. But after it I felt like a new person. It really, you know, really helped to get it off me chest...”

“It’s only just now that I’ve been able to... I know it wasn’t my fault. Some people are just sick, you know, and I couldn’t do anything. I was a kid, I was a baby, you know what I mean, wasn’t even a teenager.”

Extract from Royal Commission, *Narratives: Nik’s story*,

www.childabuseroyalcommission.gov.au/narratives/niks-story. Real names of individuals have not been used.

Conclusion

As outlined above, knowmore strongly supports raising the minimum age of criminal responsibility in all Australian states and territories to 14 years of age, to bring Australia into line with international best practice and international human rights standards. If this measure is not adopted, knowmore supports the introduction of a minimum age of detention in all Australian states and territories of 14 years.

In knowmore's view, these measures are critical to keeping children out of detention, and therefore to reducing the risk, incidence and impacts of child sexual abuse in youth detention environments. In addition, the measures are a necessary and important step towards reducing the disproportionate and discriminatory incarceration rates of Aboriginal and/or Torres Strait Islander young people in Australia.

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knowmore is a program of Community Legal Centres Australia
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Community Legal Centres Australia acknowledges the traditional owners of the lands across Australia upon which we live and work. We pay deep respect to Elders past and present.

knowmore
free legal help for survivors