LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY
Mr Peter Cain MLA (Chair), Dr Marisa Paterson (Deputy Chair), Mr Andrew Braddock MLA

Submission Cover Sheet

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

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ACT HUMAN RIGHTS COMMISSION
Australian Capital Territory

Mr Peter Cain MLA
Chair
Standing Committee on Justice and Community Safety
Via LACommitteeJCS@parliament.act.gov.au

9 June 2023

Dear Committee Chair

ACT Human Rights Commission submission to Inquiry into Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023

The Commission is pleased to provide a submission to support the Committee's examination of the Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023.

We welcome the proposal to raise the minimum age of criminal responsibility as essential, from both a human rights perspective and in seeking to facilitate improved outcomes for children and young people. Though a relatively simple legal change in theory, raising the ACT's minimum age of criminal responsibility from 10 years of age will have profound significance for the lives of our most vulnerable children. It is essential that the framework presented by the Bill is adequately resourced and supported by an evidence-based service system response that addresses the needs of children and young people and the safety of the community.

While strongly supportive of the proposed reforms, our submission identifies elements of the Bill that merit further consideration by the Committee, including the human rights implications of excepting certain serious and intentionally violent offences from an increased minimum age.

We do not object to our submission being published in full on the Committee's website and are available to discuss its content with the Committee on 15 June 2023 or as convenient.

Yours sincerely

[redacted]

Dr Helen Watchirs OAM	Jodie Griffiths-Cook	Karen Toohey	Heidi Yates
President and Human Rights Commissioner	Public Advocate and Children and Young People Commissioner	Discrimination, Health Services, and Disability and Community Services Commissioner	Victims of Crime Commissioner

L5 56 Allara St, Canberra City
GPO Box 158, Canberra ACT 2601
T: (02) 6205 2222
TTY: (02) 6205 1666
E: human.rights@act.gov.au
W: www.hrc.act.gov.au

About the ACT Human Rights Commission

1. The ACT Human Rights Commission is an independent agency established by the *Human Rights Commission Act 2005* (HRC Act). Its main object is to promote the human rights and welfare of people in the ACT. The HRC Act became effective on 1 November 2006 and the Commission commenced operation on that date. Since 1 April 2016, a restructured Commission has included:
    i. the President and Human Rights Commissioner;
    ii. the Discrimination, Health Services, Disability and Community Services Commissioner;
    iii. the Public Advocate and Children and Young People Commissioner; and
    iv. the Victims of Crime Commissioner.

2. The Commission has detailed its support for increasing the minimum age of criminal responsibility (MACR) in the ACT in submissions to the then-Council of Attorneys-General Working Group on Raising the Minimum Age of Criminal Responsibility (2020)[1] and the ACT Government's public consultation about increasing the MACR (August 2021).[2] These submissions are publicly available on the Commission's website. Where the Commission has outlined views relevant to the Committee's inquiry in an earlier public submission, these are referenced and enclosed – rather than reiterated – and should be read in conjunction with this submission.

3. The Commission has also actively engaged in the development of the proposed Bill alongside a range of other stakeholders. The Human Rights Commissioner, Public Advocate and Children and Young People Commissioner and Victims of Crime Commissioner were consulted in the development of the Bill through the Age of Criminal Responsibility Working Group. Through this process, we were invited to contribute feedback on an early draft of the proposed Bill in February 2023.

Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023

4. The Commission welcomes the introduction of the Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023 ('the Bill') to raise the MACR in the ACT. It is a matter of significant pride that the ACT Government will be the first Australian jurisdiction to have committed, in law, to raise its MACR to 14 years of age. The Commission has observed in previous submissions that the existing MACR (and any MACR less than 14 years of age) unacceptably limits the human rights of children and young people. We commend these earlier analyses, which explain the Commission's strong and ongoing support for the proposed reforms, to the Committee.[3]

5. The Commission views raising the MACR as a vital investment in the safety, wellbeing and human rights of our community into the future. Raising the MACR seeks to ensure that priority is proactively given to the prevention and diversion of children whose behaviours present a risk of harm to themselves or others; consistent with their rights to special protection reflective of their age, physical and psychological differences, and the vulnerability that can come with depending on adults for their

[1] ACT Human Rights Commission, Submission to Council of Attorneys-General review of age of criminal responsibility (28 February 2020), available at: <https://hrc.act.gov.au/wp-content/uploads/2020/02/20200228-Council-of-Attorneys-General-–-Age-of-Criminal-Responsibility-Working-Group-review-ACT-Human-Rights-Commission-ACTHRC-submission.pdf> (Included with submission as *APPENDIX 1*)
[2] ACT Human Rights Commission, Submission to ACT Government consultation on raising the minimum age of criminal responsibility (5 August 2021), available at: <https://hrc.act.gov.au/wp-content/uploads/2021/08/20210805-ACT-Human-Rights-Commission-Submission-to-ACT-Government-consultation-on-raising-the-minimum-age-of-criminal-responsibility.pdf> (Included with submission as *APPENDIX 2*)
[3] Above 1, 3-19; Above 2, 2-3.

survival and development.[4] The proposed reforms therefore seek to replace counterintuitive juvenile justice responses with a multidisciplinary and whole of system approach that prioritises support for young children (and their families) at the earliest sign of harmful behaviour.

6. Raising the legal MACR must, in our view, be supported by appropriate resourcing of evidence-based programs and service responses that proactively address the underlying therapeutic needs of children and young people whose behaviours may present a risk of harm to themselves or someone else. While engaging with ACT Government in relation to these reforms, the Commission has closely considered community calls for *criminal justice* responses that reflect the gravity and impact of a child's conduct as well as the accountability of the individual child. In this regard, our advocacy has sought to ensure that proposed responses to harmful behaviours are supportive of a child or young person's therapeutic and other needs while also recognising the harm done to victims, including by ensuring their continuing safety and allowing for victim participation, such as through restorative justice or impact statements, as appropriate.

7. The proposed structures, obligations and processes reflected in the Bill, in our view, largely propose an effective framework for addressing the therapeutic and other needs of children and young people as well as the safety of victims and the broader community. We welcome, in particular, the statutory independence of the Therapeutic Support Panel and the obligation on territory entities to take reasonable steps to prioritise services needed to support the physical or emotional wellbeing of the child or young person.[5] We are also pleased that the Bill contemplates amendments to clarify that existing rights of victims of crime, including to financial and other supports, will continue to apply to harmful behaviours of children younger than the increased MACR.

8. The Commission is aware that some stakeholders have criticised the staged approach to raising the MACR to 14 years of age, which is slated to commence from 1 July 2025.[6] While we have similarly called for the MACR to be raised to 14 years of age at the earliest opportunity, we note that the service system response in the ACT is not yet adequately developed so as to ensure all necessary therapeutic options that would support 13- and 14- year olds and their families and to effectively address risks of harmful behaviour. To this end, the Bill provides an alternative sentencing option by which a court may, in the interim, require 13- and 14-year-olds to engage with therapeutic support services (eg counselling and/or relevant medical, psychological or psychiatric treatment; vocational, educational or employment programs etc).[7] In light of this context, the Commission recognises the need for a staged approach in implementing these reforms.

Exceptions

9. Although we broadly support the Bill as drafted, we continue to have serious concerns about one element which is, in our view, incompatible with rights protected in the *Human Rights Act 2004* (HR Act) and the stated rationale for raising the MACR; this being the inclusion of specified exceptions.

10. The Commission acknowledges that the ACT Government has resolved to include exceptions to an increased MACR of 14 years of age for exceptionally serious and intentionally harmful behaviour; these

[4] UN Committee on the Rights of the Child, General Comment 24: Children's rights in the child justice system ('General Comment 24'), UN Doc CRC/C/GC/24 (18 September 2019).
[5] Bill, cl 10 (*Children and Young People Act 2008* ('CYP Act'), proposed new Chapter 14A, s 501R(4)(b)).
[6] As referenced, for example, in Jasper Lindell, 'Delay in raising criminal responsibility age 'betrays' ACT children, advocates say' *Canberra Times* (Online, 9 May 2023) <https://www.canberratimes.com.au/story/8188991/delay-in-raising-criminal-responsibility-age-betrays-act-children/>
[7] See Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023 ('Bill'), cl 86.

being, murder,[8] intentionally inflicting grievous bodily harm,[9] sexual assault in the first degree,[10] and an act of indecency in the first degree.[11] For these offences, the proposed reforms will preserve a lower MACR of 12 years of age.

11. The Statement of Compatibility (SoC), endorsed by the Attorney-General in accordance with s 37 of the *Human Rights Act 2004* (HR Act), presents the ACT Government's view that excepting certain offences from an increased MACR reflects, at this stage ("particularly where the therapeutic system is being established"), a reasonable limit on the human rights of children (HR Act, s 11(2)) in accordance with s 28 of the HR Act. The Commission differs, however, in its assessment of the human rights compatibility of excepting offences from an increased MACR. It is clear, as a technical legal view of human rights consistency, that excepting offences from an increased MACR is inconsistent with the rights protected in the HR Act, including the rights of children (s 11(2)) and the right to equality and non-discrimination (s 8).

12. Excepting specified offences (eg murder, manslaughter and certain sexual offences) from an increased MACR is irreconcilable with neuroscientific evidence that children aged 12 and 13 years may not have the required capacity to be found criminally responsible, irrespective of offence type or community views. Applying a MACR lower than 14 years of age for serious and intentionally violent offences therefore arbitrarily deprives those 12-and 13-year-olds the special protection afforded to other children under an increased MACR and expressly guaranteed in the HR Act. In view of such evidence, the United Nations Committee on the Rights of the Child has indicated that a minimum age of at least 14 years of age is the lowest MACR that is internationally acceptable and consistent with the rights of children.[12]

13. Exceptions cannot, as the explanatory statement suggests, rationally deter offending by children who are likely unable to form criminal intent, irrespective of offence type. The evidence on which raising the MACR is expressly premised indicates the opposite; that the earlier a child is exposed to the harmful effects of detention or interaction with youth justice (whether on remand or sentenced), the more likely they are to continue offending into adulthood and with greater severity. To this end, we commend our earlier public submissions to the Committee, including the following passage:

> 1.5. Incarceration has not been shown to deter future offending by children aged 10 to 13. Indeed, studies have shown that the younger a child is at the date of their first interaction with the justice system, the higher their rate of recidivism. Prescribing offence-based exceptions to the MACR cannot therefore rationally yield a deterrent effect or greater protection of the community from youth offending. In rare situations where younger children do engage in serious harmful behaviours, those behaviours are more likely to be symptomatic of a systemic failure to address their developmental needs and, often, their own experiences of victimisation.
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> 1.6. In addition, the prevailing neuroscientific consensus as to the still-limited ability of children to understand and discern right and wrong (especially in emotional circumstances, peer settings or where overlaid by complex needs) does not distinguish between specific offences. In this regard, the High Court of Australia has affirmed that serious or repeated harmful behaviours cannot, in themselves, demonstrate the requisite capacity of a child to be found criminally liable.[13]

[8] *Crimes Act 1900* ('CA'), s 12.
[9] CA, s 19.
[10] CA, s 51. Nb. An offence 'in the first degree' involves the accompanying infliction of grievous bodily harm, which includes any permanent or serious disfiguring or, for a pregnant person, the loss of, or serious harm to, the pregnancy.
[11] CA, s 57.
[12] Above 4, [22].
[13] Above 2, [1.1]-[1.8]; Above 1, 11.

14. We understand the ACT Government's assessment of compatibility is premised on an argument that a juvenile justice response – including youth detention – is necessary to protect the rights to life and security of person and to ensure public safety, and that no less restrictive alternatives are reasonably available.[14] In particular, the SoC suggests that the alternative therapeutic system may not be capable of providing secure and rehabilitative care for younger children who commit exceptionally serious offences. The SoC points to existing legal features as ensuring the least restrictive impact on human rights, including the rebuttable presumption of *doli incapax*; this despite criticisms outlined in our earlier submissions that its operation is often uneven and counterintuitive in practice.[15]

15. The protection of community safety and rights to life (HR Act, s 9) and security of person (HR, s 18) undoubtedly provide a legitimate aim for the purposes of limiting fundamental human rights. We are advised these exceptions respond to community concerns about raising the MACR to 14 years of age, which we also take seriously and have considered critically.

16. Yet, the assumption reflected in the Bill, that children who commit those excepted offences are inherently unable to be managed within a therapeutic model and so merit longer periods of secure care to ensure public safety is not supported by evidence. Although we recognise and have closely considered calls for criminal justice responses that reflect the gravity and impact of a child's conduct, to the extent that community condemnation is also cited as a justification for exceptions, condemnation alone cannot provide a legitimate aim for the purpose of limiting human rights. Exceptions models that respond solely to public pressure have been criticised by the UN Committee on the Rights of Children as "not based on a rational understanding of children's development."[16]

17. The SoC does not take account of the Director-General's power to take emergency action to confine a child or young person, or to apply for a subsequent intensive therapy order in exceptional situations where the behaviours of a child or young person continue to present a significant risk of significant and imminent harm and where the requisite thresholds and evidentiary requirements are satisfied. In such circumstances, the absence of a conclusive assessment of responsibility for a criminal act does not necessarily mean there is an unreasonable limitation of the child or young person's right to liberty, as the SoC suggests.

18. Beyond these observations, there are also practical questions as to how an exceptions model might operate where a 12- or 13-year-old commits an excepted offence amidst a course of other harmful behaviours for which they cannot be held criminally responsible. Such a situation would likely raise difficult evidentiary and enforcement considerations for justice agencies, including police, prosecutors, legal representatives and sentencing courts, as to whether and how other harmful behaviours (and related information) may be considered as context in criminal proceedings.

19. Given the reasons outlined above, there is a risk that, if challenged as incompatible under s 32 of the HR Act, the proposed exceptions would be found to be incompatible with the rights of children (HR Act, s 11(2)) and right to equality and non-discrimination (HR Act, s 8). Although the Bill foreshadows a statutory review after 5 years,[17] which will consider the ongoing need for exceptions, this cannot remedy or mitigate the differential protection of the law they will sanction in the intervening period.

20. Despite our view that the inclusion of exceptions is incompatible, the Commission recognises that it is open to the ACT Government to introduce legislation that is inconsistent with human rights, and that Cabinet has resolved that the Bill will contain exceptions. We remain extremely concerned, however,

[14] Explanatory Statement, Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023, 18.
[15] Above 1, 11-12; Above 2, 5 [2.1]-[2.8].
[16] General Comment 24, 7 [25].
[17] Bill, cl 93.

that the reasoning in the SoC purports to justify as compatible an exceptions model that is, in our view, plainly inconsistent with human rights. We welcome that the Committee (in its Legislative Scrutiny Role) has similarly questioned whether excepting the offences specified in Schedule 1 of the Bill from an increased MACR of 14 years of age is necessary to ensure community safety.[18] Several other submissions to the present Inquiry, including those by the Human Rights Law Centre, Justice Reform Initiative, Save the Children & 54 Reasons, and ACT Council of Social Services have also questioned the rationale for including exceptions and have recommended they be removed.

21. We would therefore recommend that, to ensure consistency with human rights, the ACT Government moves Government amendments to remove the prescribed exceptions from the Bill or otherwise ensure that they are scheduled to sunset within six months of the proposed statutory review. The Commission does not, however, advocate for debate of the Bill to be suspended on these grounds. Failing to legislate a MACR of less than 14 years of age is, in our view, equally incompatible with the rights of children. It is therefore our preference that the Bill should proceed for debate and implementation at the earliest opportunity. Should the *Justice (Age of Criminal Responsibility) Legislation Amendment Act 2023* retain exceptions to an increased MACR of 14 years of age, the Commission will continue to firmly argue for their removal.

Other issues

Objects clause

22. It is important that any legislative provisions governing the service system response to an increased MACR be expressly interpreted by reference to its therapeutic aims, and clearly situated within a human rights framework.

23. To these ends, we strongly recommend that the new Chapter 16 of the *Children and Young People Act 2008* (CYP Act) incorporate an objects clause that acknowledges the provisions promote early, evidence-based, multidisciplinary responses for children and young people whose behaviour causes, or may cause, harm to themselves or others. The objects clause should indicate, as is emphasised in the explanatory statement, that Chapter 16 is intended to: better respond to the complex needs of children and young people whose behaviours cause harm to themselves or others; facilitate timely access to supports and services that respond to their therapeutic and other needs; divert them from interactions with the criminal justice system; and uphold the human rights of children and young people and the broader community protected in the HR Act.

24. We also recommend that a further object should be included in s 7 of the broader CYP Act to reflect the intent of the new provisions, this being to ensure early therapeutic and diversionary interventions for children and young people whose behaviour causes harm to themselves or others.

Minimum standards for Intensive Therapy Places in primary legislation

25. The Commission welcomes that the Bill envisage Intensive Therapy Places that comply with minimum standards, and requires that such places must not also accommodate young detainees.[19] Such protections are critical to respecting the human rights of those subject to confinement, including their rights to humane treatment while deprived of liberty (HR Act, s 19(2)) and the rights of children (HR Act, s 11(2)).

[18] Standing Committee on Justice and Community Safety (Legislative Scrutiny Role), *Scrutiny Report 29* (Report, May 2023), 19-20.

[19] Bill, cl 12 (CYP Act, proposed Ch 16, ss 589(2) and 592) and cl 24.

26. Despite this, we strongly recommend that the Bill amend the *Children and Young People Act 2008* to expressly prescribe minimum entitlements for children and young people confined to Intensive Therapy Places. Doing so would be consistent with existing provisions in other ACT legislation that govern places where people are deprived of liberty in the Territory, such as s 12 and Chapter 6 of the *Corrections Management Act 2007* and s 141 and Part 6.5 of the *Children and Young People Act 2008* with respect to youth detention settings. Clearly articulating such standards in primary legislation is, in the Commission's view, essential to ensuring that Intensive Therapy Places are declared and operated in accordance with entrenched minimum entitlements, as established by international and domestic human rights law.

27. This is particularly important given that privately operated facilities, such as residential care homes, may be declared Intensive Therapy Places for the purposes of confining particular children and young people under Intensive Therapy Orders. Prescribing such standards by way of a disallowable instrument presents a significant risk of standards being easily amended to conform to the infrastructure and operating model of the proposed Intensive Therapy Place.

Terminology employed in Crimes (Restorative Justice) Act 2004

28. The Public Advocate and Children and Young People Commissioner recommends that proposed amendments to the *Crimes (Restorative Justice) Act 2004* reconsider the proposed language and terminology used to refer to children older than 10 years of age who are, at the time, under the MACR. Continued use of the term 'offender' and the creation of a new term, 'child offender' in relation to children below the MACR, is inappropriately stigmatising. Use of these terms appears to result from the Bill seeking to integrate its new provisions into the existing structure of the Restorative Justice Act.

29. Applying such terminology is, in the Commission's view, starkly at odds with the policy intent and rationale underpinning these important reforms, including that children and young people should be protected from stigma associated with criminal justice approaches and labels and should be reconsidered.

Amendments to Victims of Crime legislation

30. As noted above, we are pleased that the Bill features amendments to the *Victims of Crime Act 1994* (VoC Act) and the *Victims of Crime (Financial Assistance) Act 2016* (VoCFA Act) to confirm that those affected by a child or young person's harmful behaviour remain able to access the victims support scheme and financial assistance through Victim Support ACT. It is also welcome that the Bill incorporates processes by which victims of harmful behaviour may participate by requesting referrals to restorative justice, providing statements of harm to the Therapeutic Support Panel, and being kept apprised of information about a child's harmful behaviours and therapeutic treatment as appropriate.

31. Insofar as these amendments would vary legislation that governs the functions and purview of the Victims of Crime Commissioner and Victim Support ACT, four elements of their structure and framing may, subject to the Committee's examination, benefit from Government amendments:

    i) Clause 129 of the Bill proposes to insert new Division 3A.3A (Victims rights – harm statement etc.) in Part 3A of the VoC Act; this being, the Victims Charter of Rights, which provides detailed guidance to victims and agencies about victim entitlements during criminal justice processes. From a structural point of view, the proposed location of new Division 3A.3A (amid provisions concerning victims access to supports and information about administration of justice processes) is, in our view, incongruous for two reasons.

Unlike other Divisions under Part 3A, the proposed Division 3A.3A canvasses entitlements that traverse the genres of victim entitlement outlined in other Divisions. For example, provisions governing victim statements of harm (ss 15CC-15CF) are broadly analogous to victim participation in proceeding entitlements,[20] while provisions governing disclosure of information are akin to those about keeping victims apprised of criminal justice processes.[21] The key distinguishing feature is that this Division only applies where there is a victim of a child's harmful behaviour (per s 15CB), which risks being easily overlooked.

Moreover, due to the comparatively narrower scope of behaviour to which it relates, we envisage that Division 3A.3A may operate less frequently relative to the other Divisions amid which it is proposed to be situated. It is essential, from a victims' rights perspective, that the Victims Charter of Rights is logically sequenced, delineated and easy for those experiencing vulnerability to understand on the face and structure of the legislation. As a subset of victims' rights, we accordingly consider that Division 3A.3A would be more logically included immediately prior to Division 3A.7 (Implementing victims rights).

ii) Further to the above, we are concerned that the definition of a victim, for the purposes of proposed new Division 3A.3A, may be unduly narrow with respect to situations where a primary victim dies because of the harmful behaviour of a child or young person. The definition of 'victim' in such circumstances is limited to a person who was financially or psychologically dependent on the primary victim *immediately* before the primary victim's death.

The inclusion of the word 'immediately' introduces an ambiguous temporal barrier to classification as a victim for the purposes of making a statement of harm or receiving information with respect to the death of a close personal relation and therapeutic treatment of a relevant child. The explanatory statement does not elucidate the rationale for limiting the definition in this way.

Though we appreciate the requirement of immediacy may serve to narrow who would be entitled to seek information about the child's behaviour and treatment, and so mitigate any related limits on the child's right to privacy, the present definition of 'victim' does not ensure sufficient flexibility to accommodate those who may be deeply affected by a primary victim's death but who were no longer financially or psychologically dependent on them. Closely comparable definitions of 'victim' under s 6(c) the VoC Act and VoCFA Act are not similarly qualified.

We therefore recommend that the word 'immediately' be removed from paragraph (b) of the definition of 'victim' for the purposes of proposed Division 3A.3A of the VoC Act. This should, in our view, enable an appropriate degree of discretion to the Therapeutic Support Panel or Victims of Crime Commissioner in identifying whether a person is a secondary victim. The Panel and the Commissioner will retain a separate discretion as to whether it is appropriate to provide information about the child's harmful behaviour or therapeutic treatment under proposed s 15CH.

iii) Proposed new section 15CG places an obligation on a police officer, the Victims of Crime Commissioner or the Therapeutic Support Panel to notify a victim of harmful behaviour about their entitlement to make a harm statement. Section 15CG(d) requires that, in doing so, the victim must be told how a statement may be used by the therapeutic support panel in carrying out its functions, including that "a copy of the statement may be given to the child."

[20] Eg *Victims of Crime Act 1994* ('VoC Act'), Div 3A.6 (ss 17A-17B).
[21] VoC Act, Div 3A.5 (eg s 16I).

We are concerned that a victim being advised that a statement of harm may be given to the relevant child may, absent further information, dissuade them from making a statement of harm. In this regard, proposed s 15CF(2)(b) affirms that the Therapeutic Support Panel can only provide a copy of a harm statement, or part of a harm statement, to the child where the maker of the statement has agreed. Accordingly, we recommend that proposed new s 15CG(d) be amended to read:

> (d) how a statement may be used by the therapeutic support panel in carrying out its functions, including that—
>
> (i) a copy of the statement may be given to the child *[if the maker of the statement agrees]*; and
>
> (ii) the panel must consider the statement in carrying out its functions.

iv) The Commission has previously called for amendment of the VoC Act to clarify, beyond any doubt, that victims of harmful behaviour by children will remain eligible to access the Victim Services Scheme (VSS) irrespective of their capacity to be held criminally responsible.[22] We are concerned, however, that the amendment presented at Clause 132 of the Bill would not have any legal effect to the extent that the definition of victim under Division 3A.3A, s 15CA is only applicable for the purposes of that Division.[23]

The definition of 'victim' under s 6 of the VoC Act requires that the person has suffered harm in the course of, or as a result of, the commission of any offence or as a result of witnessing an offence. It remains the Commission's view that a person will still meet this definition for the purposes of eligibility for VSS irrespective of whether a person alleged to have committed the offence cannot be found criminally responsible, including by virtue of the MACR. Given this, we suggest that the proposed amendment in Clause 132 may instead risk undermining this interpretation and accordingly would favour its removal.

Need for adequate and sustained resourcing

32. Successful implementation of these reforms will depend on the extent to which the service system response envisaged by the Bill is adequately resourced on an ongoing basis. The Therapeutic Support Panel, the Director-General, oversight agencies and service providers, must each be amply resourced and supported to perform their respective roles in upholding the service architecture that underpins an increased MACR. Given relatively prescriptive evidentiary requirements to support applications (eg intensive therapy plans, risk assessments etc.) and the need for significant coordination to ensure wraparound visibility and support, sufficient resourcing will be imperative in ensuring tailored, coordinated and timely interventions. Adequacy of resourcing should be subject to recurrent review in line with demand for referrals, applications and having regard to stakeholder feedback.

33. In addition to resourcing those service elements prescribed in legislation, there is also a clear need to build capacity and capability in the child and family support and youth sectors to respond early to emerging behaviours that present a risk of harm to self and others, mitigate the risk of intergenerational criminal justice involvement, and ensure an appropriately coordinated mix of wraparound supports that can be quickly mobilised in response to recommendations from the Therapeutic Support Panel.

34. Additionally, it will be necessary to ensure a rapid and timely response that enables children and young people to be transitioned to alternate supports within a minimum of one hour post police

[22] Above 2, 19 ([10.3]).
[23] See Bill, cl 129 (proposed new s 15CA).

intervention. Further, when police intervention occurs after hours, there may also be a need for supportive alternate accommodation options in circumstances when a child cannot be safely returned to their parents/carers.

35. In addition to the Therapeutic Support Panel, appropriately coordinated wraparound supports (including intensive case management), and short-term accommodation/respite options, there is also a need to invest in evidence-based programs such as Functional Family Therapy – Youth Justice and/or Multisystemic Therapy, particularly for those children and young people who need more intensively tailored responses to address underlying factors that contribute to their use of behaviours that cause, or have the potential to cause, harm.

36. The Commission intends to closely monitor the adequacy of funding provided to support the implementation of these significant reforms, so as to raise concerns that may emerge as early as possible in the interests of supporting the success of the MACR reform.