Law Council
OF AUSTRALIA

14 April 2026

Mr Jake Blight
Independent National Security Legislation Monitor
3–5 National Circuit
BARTON ACT 2600

By email: inslm@inslm.gov.au

Dear Mr Blight

Question on notice: sentencing children for terrorism offences

The Law Council thanks you for the opportunity to attend the public hearing conducted as part of your review into the definition of a "terrorist act" in part 100.1 of the *Criminal Code Act 1995* (Cth) on 10 March 2026. At this hearing, the following question was taken on notice:

> *I'm interested in your general comments on your experience of the current system for sentencing children, for federal offences, terrorism in particular about federal offences in general, because I'm a little concerned that it might be somewhat complex and confusing and may vary between jurisdictions depending on where the child is charged or tried, even though it's a federal offence.*

The Law Council shares your concern about the potential for inconsistent treatment of children charged with federal offences. We acknowledge comments by Five Eyes[1] and the Director-General of Security regarding the increased number of children being investigated by both the police and security services in connection with allegations of violent extremism, political violence and terrorism.[2] In doing so, we recognise that young offenders can and do commit crimes that can have significant effects on their victims and the community, and that our society needs to develop effective policy responses to such offending.

Since the review of sentencing children for terrorism offences conducted by Dr James Renwick SC in 2018 (the **Renwick Review**), the Law Council has grown increasingly concerned about two broad trends concerning children and the criminal law across Australian jurisdictions.[3] First, we are concerned about the trend towards responding to youth crime with increasingly punitive legislative changes that purport to combat perceived

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1 Five Eyes, *Young people and violent extremism: a call for collective action* (October 2024) <https://www.asio.gov.au/system/files/2024-12/Young%20people%20and%20violent%20extremism%20-%20a%20call%20for%20collective%20action.pdf>

2 See Mike Burgess, *Director-General's Annual Threat Assessment 2025*, Australian Security Intelligence Organisation (19 February 2025) <https://www.asio.gov.au/director-generals-annual-threat-assessment-2025>.

3 James Renwick SC, *Report to the Prime Minister: The prosecution and sentencing of children for terrorism*, Independent National Security Legislation Monitor (Report, 26 November 2018).

youth crime crises. Second, we are concerned about the increasing divergence of sentencing outcomes for children between jurisdictions in ways that raise questions about Australia's compliance with the Convention on the Rights of the Child (**CRC**).[4] This concern has been heightened by recent amendments to sentencing principles for children across a number of jurisdictions.[5] We are particularly concerned about changes to sentencing principles that erode the principle of detention as last resort,[6] and displace the best interests of the child,[7] in favour of other purposes.

Section 20C of the *Crimes Act 1914* (Cth) (**Crimes Act**) provides that:

> *A child or young person who, in a State or Territory, is charged with or convicted of an offence against a law of the Commonwealth may be tried, punished or otherwise dealt with as if the offence were an offence against a law of the State or Territory.*

This section permits that—in circumstances where children are charged with or convicted of federal offences—a state and territory court may apply state and territory criminal procedure "as if the offence were an offence against a law of the State or Territory".[8] An effect of section 20C is that the law of the Commonwealth "makes specific provision for the picking up of State laws".[9] To this effect, section 20C

> *… is concerned to make it clear that the law to be applied by a State court, upon which jurisdiction has been conferred to deal with charges of federal offences against children, is State law.*[10]

A consequence of this interpretation of section 20C is that in Victoria, the *Children, Youth and Families Act 2005* (Vic) (**CYFA**) has displaced the general federal sentencing considerations in sentencing young offenders as otherwise provided for in Part IB of the Crimes Act. On this point, Justice Fox concluded that:[11]

> *The plain meaning of s 20C is that a federal offence may be dealt with as if it were a State offence. The words 'as if' mean no more than 'as would be the case'. If a child is sentenced in the Children's Court for a federal offence 'as if it were a State offence', the only applicable sentencing legislation is the CYFA. If any person, adult or child, is being punished in Victoria for a State criminal offence, there is no room for a sentencing court to apply any part of the Crimes Act (Cth). To do otherwise would be to fall into error.*

Section 20C of the Crimes Act was drafted to facilitate divergent approaches and outcomes between the states and territories in responding to federal criminal offences. In the second reading debates of the Bill that introduced section 20C, then Attorney-

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4 Convention on the Rights of the Child, opened for signature 20 November 1989, GA res 44/25, UNTS 1577 3 (entered into force 2 September 1990).

5 A summary of recent changes is available in Law Council of Australia, *Australia's youth justice and incarceration system* (Submission to Senate Legal and Constitutional Affairs References Committee, 23 December 2025), 6–26.

6 Convention on the Rights of the Child, opened for signature 20 November 1989, GA res 44/25, UNTS 1577 3 (entered into force 2 September 1990) art 37(b).

7 Convention on the Rights of the Child, opened for signature 20 November 1989, GA res 44/25, UNTS 1577 3 (entered into force 2 September 1990) art 3(1).

8 *Crimes Act 1914* (Cth) s 20C.

9 *CDPP v XY* [2025] VSC 661, [54] (Fox J).

10 *Newman v A (a Child)* (1992) WASC 643, 10 (Murray J).

11 *CDPP v XY* [2025] VSC 661, [57] (Fox J).

General Sir Garfield Barwick noted that the application of section 20C "might yield different results in different States".[12] His argument, and the approach reflected in section 20C, is one that prioritised the autonomy of the states (and by extension the territories) in matters relating to criminal law over consistency of procedure or outcomes for federal offences:

> *It is not a good thing for any State to allow two standards for the people—one in relation to Commonwealth law and one in relation to the State.*[13]

This conclusion related to Barwick's view of the proper relationship between federal and state criminal laws, procedure, and institutions in Australia's federation, namely that:

> *… Commonwealth law has to accommodate itself to the laws of the States, and live up to a fairly general principle in this matter. As far as possible the Commonwealth system is fitted in with the State systems. We use the States' laws as to evidence, very largely. We use a number of the State procedures too. The idea is to allow the Commonwealth legislation to run with the State legislation as nearly as possible.*

Section 20C was drafted as an accommodation to the role the Commonwealth played at the time; in what was a much less mature system of federal criminal law that exists today. Importantly, we observe that fewer federal offences in 1960 were likely to be committed by children than is the case today. Since this time, there have been dramatic changes in terms of the volume of offences, the likelihood of young offenders being charged and prosecuted, and in the administration of justice at a federal level. Nevertheless, section 20C has remained substantively unamended since its insertion into the Crimes Act in 1960.[14] Its introduction also predates important developments in international human rights law, most important being Australia's ratification of the CRC in 1990.[15]

Prior to the 2025 federal election, the Law Council published a Call to Parties containing recommendations to protect the rule of law, promote the administration of justice, support the exercise of rights under law, and commit to principles of good law making. We called on those persons and parties seeking election to commit to the following recommendations, amongst others, which are relevant to this discussion concerning the sentencing of federal offenders:[16]

- Lead and coordinate a national response to child justice that is evidence based and consistent with Australia's international human rights obligations;
- Review the operation of section 20C of the Crimes Act; and
- Develop federal minimum standards to ensure the adequacy of laws and practices with respect to the sentencing, administration and release of young federal offenders. These should reflect the principles that the well-being of the

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12 Commonwealth, *Parliamentary Debates*, House of Representatives, 17 November 1960, 3017 (Sir Garfield Barwick, Attorney-General).

13 Ibid.

14 Section 20C was inserted into the *Crimes Act 1914* (Cth) by the *Crimes Act 1960* (Cth). The caveat "substantially" is employed because the text of section 20C was originally section 20C(1) until section 20C(2), which prohibited the sentencing of the death penalty for young offenders was removed from the Crimes Act in 2018, and subsection (1) was renumbered.

15 Convention on the Rights of the Child, opened for signature 20 November 1989, GA res 44/25, UNTS 1577 3 (entered into force 2 September 1990). Australia ratified the treaty on 17 December 1990, see <tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRC>.

16 Law Council of Australia, Call to Parties: Shaping Australia's future: Protecting the rule of law and promoting access to justice (March 2025) 25.

young person shall be a guiding consideration; and detention should be used as a measure of last resort, and only for the shortest appropriate period.

The Law Council is concerned by the increasing potential for inconsistent outcomes for children prosecuted for Commonwealth offences, including for sentencing. This concern is exacerbated by recent amendments to child justice and sentencing principles for children in some jurisdictions. For example, in 2024 Queensland removed the principle of detention as a last resort as a sentencing principle when courts sentence a child.[17] In addressing concerns that the removal of detention as a last resort was likely inconsistent with article 37(b) of the CRC,[18] the Queensland Attorney-General wrote in the explanatory materials to the Bill that:[19]

> *I also acknowledge that, according to international human rights standards, the negative impact on the rights of children likely outweighs the legitimate aim of making children more accountable for their crimes. That is particularly because the principle that children should only be detained as a last resort is deeply ingrained in the common law as well as international law.*
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> *I therefore acknowledge that the amendments are incompatible with human rights.*

In contrast, when sentencing children who have been convicted or found guilty of a criminal offence in the ACT, section 133C(2) of the *Crimes (Sentencing) Act 2005* (ACT) requires that a court must consider the purpose of promoting the rehabilitation of the young offender and may give more weight to that purpose than it gives to any of the other purposes. Furthermore, in the ACT a sentence of imprisonment can only be ordered for offenders of any age where "the court is satisfied, having considered possible alternatives, that no other penalty is appropriate".[20] Where the offender is a child, a sentencing judge or magistrate in the ACT is required to be further satisfied that "the sentence of imprisonment must be a last resort and for the shortest appropriate term".[21]

The Law Council is concerned that, as these examples demonstrate, the degree of inconsistency between state and territory approaches to child justice and sentencing has expanded in the years following our 2018 submission to the Renwick Review. At that time, we commented that:

> *Given there is no Commonwealth legislation providing for the trial of children, or special procedures to be following in sentencing children, it is plainly desirable that a court exercising federal jurisdiction be able to pick up State or Territory laws dealing with those matters. Those laws deal with such issues as the age of criminal responsibility, special procedures to be adopted during trials and more*

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17 The *Making Queensland Safer Act 2024* (Qld) ss 15 and 50 made a series of amendments to section 150 of the *Youth Justice Act 1992* (Qld) that included, amongst other changes, amending subsection (1) to read:

> *(1) In sentencing a child for an offence, a court must not have regard to—*
> *(a) any principle that a detention order should only be imposed as a last resort; or*
> *(b) any principle that a sentence that allows the child to stay in the community is preferable.*

18 Convention on the Rights of the Child, opened for signature 20 November 1989, GA res 44/25, UNTS 1577 3 (entered into force 2 September 1990) art 37(b).

19 Human Rights Statement of Compatibility, Making Queensland Safer Bill 2024 (Qld) 6.

20 *Crimes (Sentencing) Act 2005* (ACT) s 10(2).

21 *Crimes (Sentencing) Act 2005* (ACT) s 133G(2).

> *flexible approaches to sentencing. In the longer term, it may be desirable for Commonwealth legislation to be enacted ensuring a consistent, and best-practice, approach on such matters … However, in the interim, given the small number of potential young federal offenders the limited experience of the Commonwealth in this area and the significant resources that the drafting of such legislation would require, the current requirements should be retained until this work has been properly scoped.*[22]

Ultimately, Dr Renwick concluded that:

> *… it is not clear … that the applicability of juvenile sentencing principles in one State or Territory in circumstances where equivalent principles would not apply in other jurisdictions, would cause material inconsistencies in sentencing outcomes.*

We believe that recent changes in state and territory approaches to child justice, particularly those concerning sentencing, demonstrate that there is now a significant risk of material inconsistencies between jurisdictions and that this now warrants the attention of the Australian government.

While the absolute number of young offenders remains small by comparison to the number of adult offenders, other considerations that weigh in favour of further consideration by the government include: likely inconsistencies with international human rights obligations; the gravity of the offences in question; and changes to the threat environment that now sees a greater number of young people under investigation for potential terrorism offences.

In the time since our submission to the Renwick review, we have become less certain that it can be assumed that the existence of specialised laws, courts, detention facilities, and supervision systems operate to ensure that child justice arrangements throughout the country are consistent with Australia's international human rights obligations, are evidence-based in their approach to effective rehabilitation, and appropriately reflect the significance of the immaturity of children.

The Australian Law Reform Commission has previously indicated that, while they supported the continued use of state and territory juvenile justice systems, "there is a strong case for ensuring that these [state and territory] laws meet certain minimum standards, which should be set out in federal sentencing legislation".[23] They recommended that standards relevant to sentencing include "that the well-being of the young person shall be a guiding consideration rather than the guiding consideration in his or her sentencing",[24] and that the principle that detention should be used as a measure of last resort and for the shortest appropriate period of time… should also be expressly stated in federal sentencing legislation".[25] These recommendations have not been implemented.

Taken together, we are concerned that the underlying assumptions regarding the suitability of state and territory legislation in lieu of best-practice Commonwealth law

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22 Law Council of Australia, *Review of the prosecution and sentencing of children for Commonwealth terrorist offences* (Submission to the Independent National Security Legislation Monitor, 27 June 2018), [189].

23 Australian Law Reform Commission, *Same Crime, Same Time: Sentencing of Federal Offenders* (Report No 103, April 2006), [27.37].

24 Ibid [27.39].

25 Ibid [27.40].

warrant reconsideration. The Law Council considers that a preventive and protective approach to child justice in line with Australia's international human rights obligations and the best available research represents best practice—for the sake not only of children who might break the law, but of victims, their families, and the broader community.

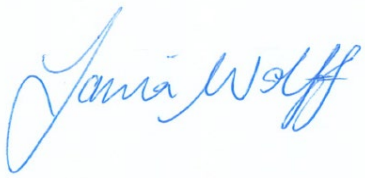
An effective federal child justice policy is important to Australia's national security, obligations under international human rights law, and ensuring that the Commonwealth fulfils its responsibilities to children who are charged, detained and sentenced on the basis of federal law. If concerns regarding national security and young Australians are as serious as suggested by the Director-General of Security, then there ought to be an imperative toward effective and evidence-based criminal justice responses that prioritises the long-term rehabilitation and deradicalisation of children. We refer to our recently-published Policy Statement on Child Justice Reform,[26] in this regard.

The definition of a "terrorist act" was inserted into the *Criminal Code Act 1995* (Cth) to respond to some of the most serious and challenging acts of violence outside of armed conflict. The increasing involvement of children in radicalised activities and political violence is a tragic development in this space. However, the entanglement of young people with federal criminal law is becoming an issue of broader application as a growing suite of federal offences are increasingly likely to capture the conduct of children.[27] Although beyond the scope of this review, we would like to see a holistic approach to sentencing children for Commonwealth criminal offences that provides greater direction to the states and territories when dealing with young offenders who remain the responsibility of the Commonwealth insofar as their convictions are sustained on the basis of federal jurisdiction.

We understand that a thorough response to the concerns raised in this letter fall outside the scope of the review into the definition of a terrorist act. The Law Council supports an extensive review of the sentencing of children who commit federal offences to ensure that the Commonwealth maintains appropriate responsibility for children convicted of federal offences, and that their treatment is consistent—both at sentencing and in terms of the standards of any subsequent period of detention or incarceration—with Australia's international human rights obligations.

We thank you again for the opportunity to respond on notice to the above question. Please contact Dr Thomas Andrews, Senior Policy Lawyer [redacted] for further information regarding this submission.

Yours sincerely



Tania Wolff
President

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[26] Law Council of Australia, *Policy Statement on Child Justice Reform* (March 2025), [2] <https://lawcouncil.au/resources/policies-and-guidelines/policy-statement-on-child-justice-reform>.

[27] See Law Council of Australia, *Criminal Code Amendment (Hate Crimes) Bill 2024* (Submission to Senate Legal and Constitutional Affairs Legislation Committee, 29 November 2024), 32–34.