

MEDIA RELEASE



NEW SOUTH WALES
BAR ASSOCIATION

NSW BAR ASSOCIATION CALLS FOR ACTION ON LONG OVERDUE CRIMINAL JUSTICE REFORMS

17 March 2022

The NSW Bar Association calls on the NSW Government to act now on two long overdue areas of criminal justice reform.

“Questioning in Budget Estimates this week revealed there is still no progress on treating personal drug use as the health issue that it is, or on raising the minimum age of criminal responsibility from 10,” Michael McHugh SC, President of the NSW Bar Association, said today.

It has been over two years since the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants (the **Special Commission**) recommended that the NSW Government “implement a model for the decriminalisation of the use and possession for personal use of prohibited drugs”, which it considered to be a “fundamental and necessary reform”.

In the alternative, it also recommended, in conjunction with increased resourcing for specialist drug assessment and treatment services, that the NSW Government introduce a legislated police diversion scheme for use and possession for personal use of prohibited drugs.

The Association supports all the Special Commission’s recommendations, while recognising that the diversionary program is an important step towards the harm minimisation goal. Under this diversionary approach a person found, for instance, in possession of illicit drugs for personal use would be referred by police to an appropriately tailored health, social and/or education intervention, for up to a maximum of three referrals.

“Diverting drug users towards health intervention, education and rehabilitation is not being ‘soft on crime’, nor does it mean this behaviour is not without consequences. It is being smart on crime with the focus on harm reduction for drug users – not drug dealers,” Mr McHugh said.

“A depenalisation model is not a radical approach,” Mr McHugh said. “It has been adopted in a number of jurisdictions around the world, and a number of depenalisation programs are already operating in NSW, including the Cannabis Cautioning Scheme.”

“There is no sense in throwing more public money at a model which does not work. We know that the current model is simply perpetuating a cycle of drug use and that personal drug use is on the rise,” Mr McHugh said. “Doing the same thing over and over again and expecting a different result is the very definition of madness.”

It was also revealed in Budget Estimates that there appears to have been little progress and no national consensus in relation to raising the minimum age of criminal responsibility. This is notwithstanding all governments considering the issue for three years from November 2018 before agreeing in November 2021 to develop a proposal to raise the minimum age to 12.

“At ten, the current minimum age of criminal responsibility has created a cycle of disadvantage which has had a grossly disproportionate impact on Aboriginal and Torres Strait Islander children. Reporting from Budget Estimates revealed that there were 293 children aged between ten and 13 who spent time behind bars, fifty-four per cent of whom were Aboriginal or Torres Strait Islander. First Nations children are significantly over-represented in the New South Wales juvenile justice system, as are children with intellectual and psychosocial disabilities.”

“Today, on National Close the Gap Day, it is particularly important to recognise the disproportionate impact of the minimum age of criminal responsibility on First Nations’ children. The NSW Government

has signed up to clear targets to Close the Gap but we have seen no definite action on this important reform,” said Mr McHugh.

“While we wait for Government, children as young as ten are being brought before the courts and held in detention when the medical consensus is that a child’s brain is not sufficiently developed until the age of 14, and that they do not have the required intellectual capacity to be considered criminally responsible,” Mr McHugh said. “The Association calls on the NSW Government not to delay and raise the minimum age of criminal responsibility to 14.”

The legacy of involvement in the criminal justice system, particularly at an early age, can be far-reaching and long-lasting and can entrench criminality. It can affect a person’s ability to obtain and maintain employment, housing and education.

“Both these reforms will remove people from the criminal justice system who frankly shouldn’t be there. The Government has taken years to consider these reforms. They are long overdue and it is time for action,” Mr McHugh said.

Media contact: Tom Synnott, 0438 489 429 / tsynnott@nswbar.asn.au