

30 November 2021

Committee Secretary
Community Support and Services Committee
Parliament House
George St
Brisbane QLD 4000
By e-mail: CSSC@parliament.qld.gov.au

Dear Secretary,

Submission to the Community Support and Services Committee regarding Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021 ("the Bill")

Thank you for the opportunity to make a submission in response to the Bill.

The Queensland Council of Social Service (QCOSS) is the peak body for the social service sector in Queensland. Our vision is for equality, opportunity, and wellbeing for every person, in every community.

Our member organisations provide daily support to children and families who are in contact with the youth justice system.

QCOSS position on raising the age of criminal responsibility

Young children do not belong in the criminal justice system, including prison.

In consideration of Queensland's *Human Rights Act 2019* and following evidence of how best to respond to young children who engage in criminal activities, the Queensland Parliament should raise the minimum age of criminal responsibility (MACR) from 10 to 14 years of age, and provide services and support to children, families, and communities.

QCOSS members are supportive of raising the MACR to 14. In a survey conducted in November 2021, 100 per cent of our member organisations supported raising the MACR, with two-thirds of respondents providing services to children and families who were in contact with the youth justice system.

When asked why their organisation supported raising the age, organisations said:

Custody is not appropriate for children. Custodial sentences and detention for those on remand is expensive and does not work to reduce offending and keep the community safer.

Genevieve Sinclair, Youth Empowered Towards Independence (YETI), Cairns

The current MACR is a breach of human rights and is outside of the UN Conventions statement on the rights of children. Criminalising children for behaviours usually out of their control for a complex range of reasons only sets up children to a life of recidivism and disadvantage. Of all cohorts, children should be our first priority in a rehabilitative approach to addressing crime. There is no way, in any evidenced understanding of child development, a child aged between 10 - 13 has the brain development to fully grasp consequences and 'right from wrong'. That the MACR effects largely disadvantaged children, particularly First Nations children, represents systemic racism in our legal and social systems.



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Samantha Wallwork, North West Youth Accommodation Service, Brisbane

Children under 14 years do not have the ability to understand the consequences fully of breaking a law. Children of this age are normally breaking the law due to trauma responses and as such should be supported by other interventions outside the criminal justice system.

Joanne Trenting, UnitingCare

Children and young people need to be supported and mentored to address inappropriate behaviours - not jailed.

Sandy Paton, Capricorn Community Development Association, Rockhampton

Children who are experiencing trauma should not be incarcerated.

Tabatha Young, Aboriginal Family Violence Legal Service Southern Queensland

The criminalisation of Queensland's children

The scientific evidence against criminalising children is clear. The Australian Medical Association and Law Council of Australia's joint statement provides that:

Children under the age of 14 are undergoing significant growth and development, which means they may not have the required capacity to be criminally responsible. Scientific advances related to the understanding of child cognitive development favour a higher MACR, taking into account the time taken for the adolescent brain to mature. Research shows immaturity can affect a number of areas of cognitive functioning "including impulsivity, reasoning and consequential thinking".¹

Data on youth offending shows that the number of children and young people aged 10-17 coming to police attention in Queensland has generally reduced, dropping by 22 per cent in the decade to 2018.²

On any given day during 2019-20, 17 children aged 10-13 were imprisoned in Queensland's youth detention centres.³

In 2018, the Report on Youth Justice from Bob Atkinson AO, APM, Special Advisor to Di Farmer MP, Minister for Child Safety, Youth and Women and Minister for Prevention of Domestic and Family Violence ('the Atkinson Report') indicated that 84 per cent of the children aged 10-14 years in youth detention centres on an average day in 2014-15 were Aboriginal and Torres Strait

¹ Australian Medical Association and Law Council of Australia 2019. 'Minimum age of criminal responsibility policy statement'. <https://www.lawcouncil.asn.au/files/pdf/policy-statement/AMA%20and%20LCA%20Policy%20Statement%20on%20Minimum%20Age%20of%20Criminal%20Responsibility.pdf?21fb2a76-c61f-4ea11-9403-005056be13b5>. See also Cunneen, Chris. 2017. 'Arguments for Raising the Minimum Age of Criminal Responsibility'. University of New South Wales, Sentencing Advisory Council 2012. 'Sentencing Children and Young People in Victoria', Crofts, Thomas 2015. 'A Brighter Tomorrow: Raise the Age of Criminal Responsibility'. *Current Issues in Criminal Justice* 27(1): 123, Delmage, Enys 2013. 'The Minimum Age of Criminal Responsibility: A Medico-Legal Perspective'. *Youth Justice* 13(2): 102.

² Queensland Government 2019. 'Working Together, Changing the Story: Youth Justice Strategy 2019-2023'.

³ Department of Children, Youth Justice and Multicultural Affairs 2021. "Youth Justice annual summary statistics: 2015-16 to 2019-20". <https://www.cyjma.qld.gov.au/resources/dcsyw/youth-justice/resources/yj-annual-summary-stats-detention.pdf>



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Islander.⁴ The Australian Institute of Health and Welfare (AIHW) reports that in the five years from 1 July 2014 to 30 June 2019, 57 per cent of young people under youth justice supervision were in contact with the child safety system in Queensland as well.⁵

Youth offending is closely linked to poverty and disadvantage. Children who offend are also more likely to have experienced child abuse and neglect, disability, mental illness, drug and alcohol abuse, exposure to crime and violence and homelessness.⁶ As the Atkinson Report states, “Many recidivist child offenders also have highly traumatic histories and some live day to day in harmful or neglectful environments that contribute to their risk of offending”.⁷

Early contact with the criminal justice system increases the probability of poor outcomes for already vulnerable children, and of recidivism. AIHW data for 2018-19 found that 90 per cent of children first sentenced when they were aged 10-12 years returned to sentenced supervision, as opposed to just 4 per cent who were first sentenced when they were 17-years-old.⁸

A rights-based response

Queensland’s *Human Rights Act 2019* (‘the Act’) provides a framework to protect and promote the rights of Queenslanders. When a child is treated as a criminal a range of their rights are limited. This includes protection from inhumane treatment and rights to liberty, family, culture and the specific rights of children in connection with the criminal justice system.

For a limitation on a child’s rights to be compatible with the Act, it must be demonstrated that the limitation is reasonable and justifiable. Among other things, for a limitation to be reasonable and justifiable, it should be demonstrated that the limitation is able to achieve a legitimate purpose and that there is no less restrictive way of achieving the purpose.

Generally, the purpose of criminal law is to change the behaviour of the offender and increase community safety. A child-centred, service and community response to young children who engage in criminal activities is more likely to achieve this purpose. Given that it is also a less restrictive way of achieving the purpose, it is also an option that is more likely to be compatible with human rights.

A child-centred, service and community response

A specific service-based response to young children engaging in criminal behaviour in Queensland should be designed and implemented, with the following characteristics:

- Prioritise and invest in early intervention, prevention and diversion as the most effective ways to reduce child and youth offending and re-offending.

⁴ Atkinson Report p15 (to properly cite)

⁵ Australian Institute of Health and Welfare 2020. ‘Young people under youth justice supervision and in child protection 2018-19’. Data linkage series no. 26. Cat. no. CSI 28. Canberra: AIHW. <https://www.aihw.gov.au/getmedia/8442b61a-f3b9-4741-a5d7-75023cb0cd19/aihw-csi-28.pdf.aspx?inline=true>

⁶ Jesuit Social Services 2013. ‘Thinking Outside: Alternatives to remand for children’. https://jss.org.au/wp-content/uploads/2015/10/Thinking_Outside_Research_Report_Final_amend_15052013.pdf

⁷ Atkinson report p28 (to cite properly)

⁸ Australian Institute of Health and Welfare 2020. ‘Young people returning to sentenced youth justice supervision 2018–19’. Juvenile justice series no. 24. Cat. no. JUV 133. Canberra: AIHW. <https://www.aihw.gov.au/getmedia/a8c424e3-9664-4690-a1e0-55cb78a3822a/aihw-juv-133.pdf.aspx?inline=true>



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- Be child-centred, strengths based and trauma-informed. This includes responding to the holistic needs of the child, the underlying causes of their offending, and the needs of their family and natural supports.
- Assume shared accountability and responsibility for offending, on the basis that most child offending is the result of the failings of the institutions intended to support children.
- Commit to addressing the overrepresentation of children in the criminal justice system who are Aboriginal and/or Torres Strait Islander, from a culturally and linguistically diverse background and/or who are in connection with the child protection system.
- Adopt a justice reinvestment framework that focuses on prevention and place-based responses to address disadvantage.⁹

QCOSS' members and the community sector engage with children and families across Queensland in programs that positively intervene in the lives of children who are at risk of engaging with the criminal justice system. Submissions made by these services would illustrate the impact they have on the lives of Queensland children.

Early prevention and intervention services are underfunded compared to the crisis end of the system in youth justice centres, courthouses and watchhouses. While the additional investment from the Queensland Government recently and following the Atkinson report release and development of the Youth Justice Strategy Action Plan 2019-2021 is welcome where it provides support to children and families, funding for these services is dwarfed in comparison to the millions spent each year to run youth detention centres in the state.

In our survey, member organisations detailed what supports their services needed to respond to children who are in contact with the youth justice system. Organisations described their programs, including diversionary responses and crisis responses like bail support, as oversubscribed and underfunded for the amount of children and families in need of support.

For example, Genevieve Sinclair from YETI said:

Ideally bail support could be doubled to enable employment of a youth lawyer in Cairns and extension of Yarrabah Bail Support from one worker to three workers. Caseloads are also ridiculously high in Cairns and we are unable to meet demand.

Several organisations indicated that funding for after hours and weekend programs is needed to better respond to children aged 10-13 in identifying and addressing behavioural issues and supporting their needs. Other responses included the need for onsite therapeutic workers and educational and home school workers for children in residential care, improved mechanisms for hearing the voices of children and young people in the child safety system, diversionary funding directed to Community Controlled Organisations, culturally appropriate and ongoing services so they are not time limited, and greater funding for counselling to promote healing from trauma and violence.

Specific comments on Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021

QCOSS supports the intent of the *Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021*, and has some specific recommendations with regard to amendments to the *Youth Justice Act 1992*.

⁹ Adapted from Councils of Social Service Network 2020. 'Review on Raising the Age of Criminal Responsibility: Joint Council of Social Service Network statement to the Council of Attorneys-General.' <https://static1.squarespace.com/static/5eed2d72b739c17cb0fd9b2d/t/60a39224d4e6c9327721cde6/1621332520253/COSS.pdf>



In relation to the insertion of new pt 11, division 20 transitional provisions for Criminal Law (Raising the Age of Responsibility) Amendment Act 2021, QCOSS recommends:

- Section 407(1) be amended. To avoid any doubt, insert a provision to ensure transitional provisions apply to children and people who, before the commencement, are alleged to have committed an offence or committed an offence when the person was under the age of 14 years.
- Section 410(2b) be amended to read 3 days after the commencement.
- Section 412 be amended to include all court findings including but not limited to verdicts, bail reports, failure to appear.

A way forward

Government must work collaboratively with children, families, communities and the community sector to design a framework and service system to raise the minimum age of criminal responsibility.

If the Queensland Government is genuinely committed to Closing the Gap, raising the age of criminal responsibility is a key reform needed to reduce the overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system.

Thank you again for the opportunity to provide our response to the Bill.

Yours faithfully,



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Chief Executive Officer

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