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24 October 2021

**SUBMISSION TO THE QUEENSLAND PARLIAMENT: COMMUNITY SUPPORT  
AND SERVICES COMMITTEE ...**

RE: the Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021  
introduced by Mr Michael Berkman MP on 15 September 2021.

On 15 September 2021, Mr Michael Berkman MP, Member for Maiwar, introduced the Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021 (Bill) into the Queensland Parliament. The Bill was referred to the Community Support and Services Committee for detailed consideration and report.

The Committee invites written submissions on the inquiry from interested stakeholders and members of the public ... The closing date for lodging written submissions is 5:00pm on Tuesday 30 November 2021.

**My name is Margaret May Perkins. I am known as Meg Perkins. I support the  
Bill to raise the minimum age of criminal responsibility.**

I have a BA degree in Psychology and Sociology, and an Honours degree in Clinical Psychology from the University of South Africa (1986). My PhD was awarded by the University of Queensland in 2015, and nominated for a national excellence award. The thesis title was "Risk, Offending Behaviour, and Young People in the Cook Islands: A Study of Cultural Resilience".

I have been working in the areas of clinical and forensic psychology in Queensland and New South Wales for 32 years. **I was employed by the Queensland Corrective Services Commission from December 1991 to September 1993.** Since that time, I have done many hundreds of psychological assessments and court reports for offenders, both men and women, adults and youth, in Queensland and in New South

Wales. I continue to do so, and I wrote a pre-sentencing report for a young person on 21st October 2021.

From my own personal experience working with young people at the old Wacol Correctional Centre (later called Moreton B, now closed down) I have seen how young **offenders are the most disadvantaged of Australian youth** ... products of child protection systems, school exclusion, developmental disabilities (low intelligence, ADHD, learning disorders), trauma, and substance misuse. The only prisoner I worked with at Wacol Correctional Centre who had not been a victim of child abuse and neglect at home, had been severely beaten in a Catholic school due to his dyslexia. Many of the male and female prisoners I worked with had been sexually abused by teachers, counsellors, and clergy. One of the psychologists working in the prison system at the time was subsequently convicted of sexually assaulting the prisoners.

Research by criminologists tells us about the effects of trauma and disabilities in the lives of offenders, but working with people one on one every day, who were both disabled and disadvantaged, changes one's perspective on crime and what it is, and how to prevent it. As a new Australian in 1991 I also learned about the history of Aboriginal people in Queensland, about living "under the Act", and how Aboriginal people born on the native reserves (Cherbourg, Woorabinda) felt that they had been "incarcerated since birth". I thought that was odd, but discovered that the residents of the reserves were not allowed to leave without permission.

**In 1991 the Aboriginal and Torres Strait Islander population of the Australian prison system was 14% of the total number. In 2021 (June quarter statistics) it is 30% and has been rising steadily for 30 years.** There is an urgent need to prevent young people entering the justice system as they tend to become trapped ... the more time they spend in prison the less employable they become, the more likely they are to be homeless, and the more their family networks break down. First Nations people are particularly likely to become trapped in the prison system as they start from a more disadvantaged place, in every way. First Nations children are more likely to be removed from their parents' care, more likely to be vulnerable when they start school, and more likely to be suspended or excluded from school. We also know now that First Nations people are more likely to have developmental disabilities, including fetal



alcohol spectrum disorders, which are fetal brain injuries due to prenatal exposure to alcohol (as stated by Bunuba woman June Oscar OA Social Justice Commissioner).

Research in Western Australia, published in 2018, showed that 65% of the young people in the Banksia Hill Youth Detention Centre had multiple severe neurodevelopmental disabilities – pervasive brain dysfunction. In about half of these cases, it could be confirmed that their mothers had consumed alcohol during the pregnancy, and so 36% were diagnosed with fetal alcohol spectrum disorders or FASD. 89% had at least one severe disability ... such as an intellectual disability [REDACTED], a speech and language disorder, ADHD, or dyslexia.

**These brain-based disorders make it impossible for many of the young people to manage in a mainstream school**, and we do not have an efficient system to deal with children who are different to their peers. Often, the children behave badly in school, due to frustration, or to mask their lack of ability. They will tell you that it is better to get into trouble for being naughty than to be humiliated for being “stupid”. Children who behave aggressively at school are suspended and then they are out on the streets, mixing with older children who have already disengaged from school. Boys, especially, tend to get into trouble, and as these are disadvantaged children, they may steal from shops or trespass on strangers’ property. Some of them have told me that it is a lot of fun to run away from the police, and be chased through a car park.

Wealthy parents who have children with ADHD, autism, or learning disabilities take them to see doctors, paediatricians, psychologists, speech therapists, and occupational therapists. This support may help them to stay in school, even if it does not cure their brain-based difficulties. Disadvantaged parents may wait two years to see a paediatrician and may never be able to afford speech therapy. Medicare offers only five allied health sessions per year, when a child whose language skills are lagging behind may need weekly sessions for a year – 50 sessions not 5 sessions.

**Children who start high school with literacy and numeracy skills at a Year One level struggle through Year Seven and by the middle of Year Eight they have usually dropped out of school altogether.** They are getting into trouble with the police, drinking alcohol, smoking cigarettes and marijuana, leaving their homes at night and spending time out on the streets. They have no place in school life and so they seek out companionship in street life.

As for the youngest children, the 10 and 11 year old children, who become involved with the criminal justice system, they are the most severely disabled. Healthy 10 year olds enjoy school, they play with their friends and they tolerate schoolwork. It is the children with the most severe learning and behavioural difficulties that are being suspended from school at 10 years old – in Year Five. These are the children who are going to get into trouble along with their older friends and will be incarcerated.

**If the minimum age of criminal responsibility was raised from 10 to 14 years (and I think that should be 16 years), we would be forced to develop programs to manage these 10 to 13 year old children who have become disengaged from school.** Better still, we could try to prevent their migration from school to the streets.

The **Australian Early Development Census** produces information about all Australian five year olds as they start school. Many are found to be developmentally “vulnerable” (or delayed) and these are the children who are at risk. No diagnostic assessments are carried out as a result of this survey, and no interventions are proposed to support these children, who are disproportionately Aboriginal and Torres Strait Islander.

The combination of a less healthy and functional brain (learning difficulties) and a less supportive and functional family (poor, disadvantaged) is a sure recipe for childhood offending behaviour. **Punishment of the child in court will not address any of these issues. In fact, these marginalized children often enjoy the safety and security of the youth detention centres.** Many of them come from unsafe homes or communities, and have been homeless. The warm beds and regular meals, extra attention from teachers, and opportunities for sport and cultural activities make youth detention a reward not a punishment. Some children will tell you that they go out and offend deliberately, so that they can return to detention and their friends.

This works for them in the short term, but as they have no opportunity to learn life skills and no real likelihood of employment with a criminal record, they go on to adult prison and continue to be incarcerated and institutionalized. Although many of them have disabilities, cognitive impairments (and mental illness by the time they are adults), they never have the opportunity to engage with disability services, such as supported employment, and so they continue to offend.



We already know so much about these children. We often hear that 10 to 13 year olds are **not mature enough to understand the consequences of their actions**. This is true, but it is not nearly the whole story. The fact is that the offending children are children who are developmentally much younger than 10 or 13 years old. I have done many adaptive functioning assessments for young people and it is **not uncommon for a child aged 13 years who is before the Children's Court to have a developmental age of 5 or 6 years**. He or she thinks like a 5 year old and behaves like a 5 year old. These are the children who are being incarcerated in Australia, not the typical bright and healthy ones.

In October 2021 a report was released in the United Kingdom on the experiences of black and mixed heritage boys in the youth justice system. The findings are the same as have been noted in Australia. **Children involved with the criminal justice system all over the world tend to be poor, traumatized by neglect or abuse, cognitively disabled, mentally unwell, and involved with child protection.**

The report says:

*"In all services we inspected, staff and managers told us that the large majority of black and mixed heritage boys in the youth justice system had experienced multiple adverse childhood experiences, and had high levels of need, such as special educational needs and mental health difficulties, which had not always been identified or properly addressed until they came into contact with the Youth Offending Service. This raises questions and concerns about the support they received from mainstream services before their involvement with the youth justice system.*

*Reports of high levels of unmet need for black and mixed heritage boys entering the youth justice system was a consistent theme of this inspection. There was a general consensus among Youth Offending Services that, had problems and difficulties been addressed earlier in the children's lives, there could have been a different outcome for them.*

*In the post-court cases we inspected, **60 per cent of the boys were, or had been, excluded from school, the majority permanently.** Almost a third had been victims of child criminal exploitation.*

*In half of the cases inspected there was evidence (where it had been recorded) that the child had experienced racial discrimination.*

*A third of the boys had been subject to Child in Need or Child Protection plans. The majority were not 'heavily convicted' (i.e. they had only one or no previous convictions), and in over a quarter of cases (where information had been recorded) the child had a disability. They were reported to be more likely than other groups of children to have an education, health and care plan, and equally as likely again to have special educational needs that had not been identified or addressed. The boys had **grown up in the poorest areas of their towns and cities** and had often been exposed to the violence and family breakdown associated with poverty".*

*From "The experiences of black and mixed heritage boys in the youth justice system"*

*A thematic inspection by HM Inspectorate of Probation October 2021*

As in the United Kingdom, **Australian education systems are not providing care for children who are suffering from cognitive disabilities** other than mild or moderate intellectual disabilities. It is possible for a child to score within the "average" range on an IQ test and still be suffering from pervasive brain dysfunction.

In 2004, researchers Kristin Powell and Kytja Voeller wrote an article about **"prefrontal executive function syndromes in children"**. Executive functioning is the control centre of the brain, the "captain of the ship", that pulls together information from the external and internal environment (the outside world and the inner state of the body), links the data to memory and experience, and decides on action.

Deficits in executive functioning can be caused by such conditions as prematurity, traumatic brain injury, epilepsy, chromosomal abnormalities, oxygen deprivation at birth, and prenatal exposure to toxins. Executive function disorder is not a separate disorder in the Diagnostic and Statistical Manual or DSM-5 but may be associated with ADHD, autism, or fetal alcohol spectrum disorder.

Powell and Voeller (2004) state that **executive dysfunction has "serious and pervasive consequences for functioning across the lifespan"** and that it is difficult to "treat, ameliorate or remediate". Executive dysfunction shows up in children in defiant oppositional behaviour and difficulties in learning and self-regulation. The result may be a diagnosis of "oppositional defiant disorder" and/or suspension from school.



As there is nothing to be gained by punishing children for behaviour which is caused by impaired functioning of their central nervous systems, once these suspensions start they tend to continue, and the child is eventually excluded from school. I met an 11 year old child who spent his time on the streets and “couch-surfed” with older friends after the local primary school refused to enroll him. He had attended the school as a young child, moved away, and returned to the area at age 9 or 10 years. His siblings returned to the local school but he was rejected due to his behaviour in the past.

It was known that his mother was having difficulties with addictions and domestic violence, and so it was quite possible that the child’s behaviours were due to prenatal toxin exposures and postnatal trauma. This is a powerful mix of physical and psychological factors that produce severe deficits in cognition and mental health, but our education system simply washes its hands of the child victims.

**If the minimum age of criminal responsibility were raised** from 10 years to 14 or 16 years, **children** with a history of Child Protection orders and school exclusion, **who were engaging in antisocial behaviours, would need to be managed in other services** than the criminal justice system. Prevention of future offending rather than punishment for current behaviour would become a necessary reality rather than an optional or long-term goal.

**Here are the alternatives to punishment by the youth justice system ...**

Those **children deemed “vulnerable” on school entry** at age five years should be referred to allied health providers for assessment. Speech therapy and occupational therapy may improve their social skills and learning potential.

All **children taken into care** by Child Protection systems should be assessed for neurocognitive disabilities and trauma-based mental health issues by age five years. They should be referred to the appropriate medical and/or allied health professionals for treatment and care. The fact that they have been removed from their parents’ care, often in the middle of the night in a police car, means that they may have been exposed to alcohol and other drugs in utero and to family and domestic violence after birth.

Any **child who** behaves inappropriately at school, and **is suspended more than once**, should be referred for neuropsychological assessment and referred to the relevant medical and/or allied health providers for treatment.

At present, only parents who can afford private assessment and treatment are able to manage their children's disabilities or difficulties and keep them engaged with school. Those children who have poor parents, or who are in the care of the state, and are behaving in an inappropriate or antisocial manner, are suspended and excluded from school and find themselves sliding down the "school to prison pipeline". This amounts to **discrimination against poor and disadvantaged children**, and in the Australian context, against First Nations children.

**The cost** of the assessment and treatment of children, and their support by the National Disability Insurance Scheme or NDIS, **would be offset by the saved costs in youth justice and adult correctional services over their lifetime**. Nobody wants to be a recidivist offender, going in and out of prison, losing touch with family, friends, and intimate partners, losing their housing, and becoming unemployable. If you ask them, they say "you have no idea how much I would like to live a normal life". But if their feet are set on the pathway at age 10 years, and youth detention is seen as a better option than living on the streets, there is not much hope of a normal life.

**I believe that raising the minimum age of criminal responsibility is a way of forcing the community to take better care of our children.** If it cannot be left up to the police and the courts to incarcerate vulnerable, disabled and disadvantaged children, the education systems and the child protection systems will have to turn to the health systems to manage their behaviour and ensure their wellbeing.

Advances in science have advanced our knowledge of child development and especially of neurodevelopmental disorders such as ADHD, executive function disorders, autism, and fetal alcohol spectrum disorders. Now that we understand that, for a poor child, and especially for a First Nations child, **a neurodevelopmental disorder or brain dysfunction may be a one-way ticket to prison**, we need to raise the age of criminal responsibility.



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