Support for Bill to Raise the Minimum Age of Criminal Responsibility to 14 years

In its Human Rights Review conducted by the United Nations in early 2021, Australia received many recommendations from other countries to raise the age of criminal responsibility in accordance with the Convention of the Rights of Child (CRC).[1] The only state in Australia currently to take action to raise the Minimum Age of Criminal Responsibility to 14 years has been the ACT.

Almost 9,000 children aged 10 to 14 fronted the criminal justice system in 2016-17. Young people aged 10-17 accounted for 13% of the total offender population. The youth offender rate in 2016-17 was 2,330 offenders per 100,000 persons aged 10-17. In comparison, the offender rate for the general offender population was 1949 offenders per 100,000 persons.[2] The majority of all youth offences in 2017-18 were theft related (36 per cent). The second most prevalent offence were acts intended to cause injury (16%), followed by illicit drug offences (11%). Current data shows 74% of children/ young people with proven offences are charged with another offence within 12 months[3]

Studies across Australia revealed that there is a high prevalence of mental health issues for young people in the criminal justice system and, "children who have mental health concerns are more likely to enter the youth justice system and ultimately adult prison."[4]

Often young people have undiagnosed or untreated health issues: between 40% and 70% of young people in the justice system are affected by mental health compared to 13% and 20% of the general community; approximately 64% have drug/alcohol disorders compared to 5.1% in wider Australian community.

Young people before the criminal justice system often come from traumatic family backgrounds, and many have issues that affect their behaviours and decisions. 58% had a mental health or behavioural disorder diagnosed or suspected; more than half used two or more substances; 52% were totally disengaged from education, employment and training. Almost 1 in 5 were homeless or had unsuitable accommodation. 33% of young people in detention have used Ice or other methamphetamines and 17% of young people had a suspected disability.[5]

In recent years Foetal Alcohol Spectrum Disorder (FASD) has been identified as a condition that occurs as a result of pre-natal alcohol exposure. It seriously affects cognitive processes such as memory, language, learning, and attention. The result is the diminishment of the ability to establish a link between cause and effect and therefore how to learn from mistakes. Although limited research exists, the Australian Reform Commission found that children with FASD are 19 times more likely to be incarcerated.[6] Almost 40 per cent of youth in detention have signs of FASD and almost 90 per cent have a neurological impairment.

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[1] *See recommendation 136.178 and 179*
[2] *Australian Bureau of Statistics 2017-18 (Table 18 and Australian Demographic Statistics cat. no. 310)*
[3] *Queensland Government. 2018. "Atkinson Report on Youth" Justice p6*
[4] *Australian Government. 2018. "Youth Justice in Australia Report 2017-18" p39*
[5] *Queensland Government 2018 "Working Together Changing the Story Youth Justice Strategy 2019-23" p6*
[6] *Ibid p3*

The school to prison pipeline report by Dr Pamela Snow indicated that over 70% of young offenders have significant gaps in their oral literacy skills which has significantly impacted on their ability to learn at school and our education system has not been able to provide the support these young people need. If the Government diverted the funds from pursuing 11–13-year old's to ensuring our schools had access to intervention and support programs we could make a difference to the number of youth offenders. A particularly vulnerable group of young people affected are those from Indigenous and culturally and linguistically diverse (CALD) backgrounds who are over-represented in our Flexible Learning Centres, as well as special schools, suspension centres, youth justice and child protection. (AIHW, 2017)

The 2017 Royal Commission into Northern Territory Youth Detentions recommended the MACR be set at 14 years. The Law Council of Australia is also calling for the MACR to be raised to 14 years. "Doli incapax" refers to a legal presumption that a child is "incapable of crime" under legislation or common law. However, this presumption can be rebutted in court. In November 2017, doctors, lawyers and health experts in Australia called for the MACR to be raised to 14 years saying that children lack the mental capacity to understand what they are doing for it to be a crime. Research based evidence on brain development supports a higher age as children are not sufficiently able to reflect before acting or comprehending consequences. Put simply, 10 year children do not have the cognitive awareness to carry out a premeditated crime

The Flexible Learning Centre Network conducted by Edmund Rice Education Australia is a network of schools that works with young people aged 11-20 years who are not catered for by the mainstream system. We have 3 clusters with over 14 sites across Queensland that assist with the education of over 1000 young people. Part of our work is our partnerships with Department of Children, Youth Justice and Multicultural Affairs to assist this group of vulnerable young people to develop their connection to community, through relationships and opportunities to reengage in learning. We focus on young people's strengths and developing their skills and building their confidence to be lifelong learners so they can work on their dreams and aspirations and be the best version of themselves.

A story of young people who have previously been in detention who has had success is attached in Appendix 1 to this letter.

The current minimum age for prosecution being set as 10 years is only creating criminals at a younger age who are then trapped in a no-win cycle of criminal record, limited education, and jobs. They and society are losing from this model of early criminalisation. It is our belief that Raising the Age to 14 will allow young people who have committed destructive acts to be helped by addressing the underlying causes. Using the justice re-investment model, our experience tells us that with the right preventive programs and preventing them from entering the juvenile criminal system at an early age, young people can be assisted to work toward educational outcomes and to lead meaningful lives.

We, the principals and staff, of these Flexible Learning Centres STRONGLY urge the State Government to pass the bill to raise the minimum age of Criminal Responsibility to 14 years.

Please find attached in Appendix 2 signatures from members of our communities imploring you to pass this bill so we can give young people a hopeful future.

Kind Regards

Michelle Kinnane Signature: Tim Young – Signature:

Co- Principals Xavier Network

[redacted]

FLC's @ Ipswich, Inala, The Centre Education Programme, Townsville with campuses at Bowen and Burdekin

Peter Tracy … Signature: 2021.11.16 14:31:49 +10'00'

Principal Wollemi Network

[redacted]

FLC's @ Mt Isa, Albert Park, Southport, Rockhampton

Matt Hawkins Signature

Principal of Marlene Moore Network

[redacted]

FLC's @ Deception Bay, Noosa, Gympie and Hemmant

CASE STUDY — Appendix 1

COD is a 15-year-old man, who was referred to The Centre Education Programme (CEP) in April 2019 by his Child Safety Officer. COD has a highly complex background. He lives in a residential house on his own with 24hr youth worker care, has missed significant amounts of schooling due to placement breakdowns, has spent time in youth detention, can be physically violent and has a range of different stakeholders working with him. He is diagnosed with Reactive Attachment Disorder, Anxiety and PTSD.

COD was first placed into the care of the Department of Communities in December 2005 and has remained in out-of-home-care since this time, excluding a 6 month period between December 2010 and May 2011 when he was reunified to his mother's care. COD is on a Long-Term Guardianship Order to the Chief Executive. He has a history of abuse and neglect within his family of origin and also as a child in care. He has been traumatised by what he has experienced and witnessed and as a result has difficulty trusting adults, often resorting to controlling, defiant, and oppositional behaviours. He continues to care about his family, even those who may have harmed him. COD's disrupted attachment, trauma, and neglect history means he missed the key childhood developmental stages in his early years.

By law there can be no involvement with family while COD attends The Centre Education Programme, but ongoing and close contact with his residential careers and Child Safety has occurred. Initially a number of stakeholder meetings were vital in developing a comprehensive picture of COD and his needs, as well as fostering relationships with key people in COD's life. These relationships have continued throughout COD's engagement and are essential to his support and positive development.

COD's experience with schooling has been significantly challenging for him, his carers, and school staff. He has missed large periods of school due to the instability and stressors within his life. On enrolment [redacted] was identified as having intensive support needs. His learning sessions were initially conducted at his residential house with both school and residential staff present. As COD developed relationships with school staff his emotional and physical safety slowly increased allowing for sessions to be conducted at other locations. COD was severely resistant to the slightest suggestion of learning, but he loves basketball, and this was used as an effective means to integrate numeracy and literacy into his sessions and build his capacity to see himself as a learner again.

It was vital for school staff to gain COD's trust through consistent presence and reliability in relationship building. His primary diagnosis of Reactive Attachment Disorder sees him experience difficulties in social situations where he often resorts to aggression to express and cope with his feelings. Through these trusting relationships COD was able to progress from individual programming to peer and small group engagement during the school year. His interactions with his peers were successful and boosted his confidence to join a larger class group.

With COD's increasing positive connections to peers and staff, and his improved locus of control and agency, he has been open to new experiences and has started attending a weekly gym session and participating in Adventure Based Learning activities. He has again

experienced great success attending his first school camp and signing up for local basketball with the [redacted] Basketball Club.

COD's preparedness for school participation has improved markedly throughout his time with The Centre Education Programme. He is taking responsibility for getting himself up and ready for school each morning. There have been less incidents at his residential care house and agency staff reported he is experiencing better sleeping and eating routines. COD has had no further involvement with Youth Justice and is adamant that he does not want to go down that path again.

COD is a confident reader and who now reads age-appropriate material. His diagnostic assessment shows improvements across the year in his reading comprehension and maths. COD was hesitant to engage with formal learning but was able to concentrate for extended periods working with his hands on activities that integrated literacy and numeracy skills through Lego technics. COD's long history of disengagement, resistance to schoolwork, and his associated anxiety around failure in the classroom setting means that while progress is incremental, he is beginning to find confidence in himself as a learner.

In his time with The Centre Education Programme COD has been supported to establish trusting and secure relationships; improve his conflict resolution skills, take healthy risks, and understand the benefits of healthy living. This has been done in the context of a safe and welcoming environment, with a focus on positive reinforcement and ongoing encouragement. COD feels more capable of being proactive rather than reactive and is able to identify a clear pathway for himself moving forward.

Appendex 2 Townsville Flexible Learning Centre

Signature page for raising the minimum age of Criminal Responsibility from 10 -14 in QLD. If you agree please put your name, email address and signature on this form. We would like this form signed by members of our Qld Flexible Learning Centres.

First Name	Last Name	Email or your residential Address	Signature
Thalia	Carpenter	[redacted]	
Jonathan	Lucas		J. Lucas
Johnathon	de Rooi		J. de Rooi
Judson	[illegible]		
Utiraka-Lee	Palmer		
McCluskey	Timothy		
Manyu	Elphick		
Kylie	Brown		
Connie	Spen		
Randall	Williams		
Catherine	Hodson		
Kane	Walsh		K. W. Sh
Kya	Tring		
Logan-Dean	Wallington		
Emma-Rose	Kennedy		
Kaurina	Blackmon		-au
Sandra	Holmes		S. Holmes

Appendix 1

INALA FLEXIBLE LEARNING CENTRE

Signature page for raising the minimum age of Criminal Responsibility from 10 -14 in QLD. If you agree please put your name, email address and signature on this form. We would like this form signed by members of our Qld Flexible Learning Centres.

First Name	Last Name	Email or your residential Address	Signature
Harmony	Domaille	[redacted]	
Leanne	Smith		
LORRAINE	BROWNE		
TAMARA	MURPHY		
Rachael	Kenward		
Sally	Conn		
Allana	McGovern		
Electra	Sulba		
Amber	Kemble		
Imogen	Morrison		
Rebecca	Stark		
Chloe	Vincent		
Rachael	Clarke		
Jojhan	Elbourne		

CENTRE EDUCATION PROGRAMME

Signature page for raising the minimum age of Criminal Responsibility from 10 -14 in QLD. If you agree please put your name, email address and signature on this form. We would like this form signed by members of our Qld Flexible Learning Centres.

First Name	Last Name	Email or your residential Address	Signature
Kelley	Mether	[redacted]	
Jelle	blingo		J.B
Payne	Hutchinson		P. Hutchinson
Hannah	mitchell		Hannah
Jade	Lyell		
Dam	Richardson-Jone		DJN

CENTRE EDUCATION PROGRAMME

Signature page for raising the minimum age of Criminal Responsibility from 10 -14 in QLD. If you agree please put your name, email address and signature on this form. We would like this form signed by members of our Qld Flexible Learning Centres.

First Name	Last Name	Email or your residential Address	Signature
Jacob	Irvine	[redacted]	Jacob
Antonio	Wilson Wardle		
Jessica	Cronin		
Saphina	Mackay		

CENTRE EDUCATION PROGRAMME

Signature page for raising the minimum age of Criminal Responsibility from 10 -14 in QLD. If you agree please put your name, email address and signature on this form. We would like this form signed by members of our Qld Flexible Learning Centres.

First Name	Last Name	Email or your residential Address	Signature
Lachlan	Patterson	[redacted]	
Jaylan	Williams	[redacted]	
Zenith	Barchet	[redacted]	
TAYLOR	Lasserre	[redacted]	
Tyson	Saunders	[redacted]	
ANDREW	TIPPING.	[redacted]	
Louise	Luscombe	[redacted]	

CENTRE EDUCATION PROGRAMME
FLEXIBLE LEARNING

Signature page for raising the minimum age of Criminal Responsibility from 10 -14 in QLD. If you agree please put your name, email address and signature on this form. We would like this form signed by members of our Qld Flexible Learning Centres.

First Name	Last Name	Email or your residential Address	Signature
Brandon	Wegrzynek	[redacted]	BW
Alyssa	Ryan	[redacted]	ARyan
Sai	Pitras	[redacted]	[illegible]
Blake	Anderson	[redacted]	[illegible]
Kaylen	Carter	[redacted]	[illegible]
Jessy-Lee	Freestone	[redacted]	[illegible]
Megan	Stringer	[redacted]	[illegible]
Grey	hartley	[redacted]	gh
Jackson	Campbell	[redacted]	JC
Ray	Hashmanaus	[redacted]	[illegible]

CENTRE EDUCATION PROGRAMME

Signature page for raising the minimum age of Criminal Responsibility from 10 -14 in QLD. If you agree please put your name, email address and signature on this form. We would like this form signed by members of our Qld Flexible Learning Centres.

First Name	Last Name	Email or your residential Address	Signature
Travie	Pratt	[redacted]	[redacted]
ADRIENNE	GREEN.	[redacted]	[redacted]
Shane	Simmons-Phillips	[redacted]	[redacted]
Toni-Lee	Voysey	[redacted]	[redacted]
Alex	Patten	[redacted]	[redacted]
Marlene	Efferson	[redacted]	[redacted]
CHRIS	PENNINGTON	[redacted]	[redacted]
Ross	Pollard	[redacted]	[redacted]
Caleb	Silvester	[redacted]	[redacted]
Jackie	Thompson	[redacted]	[redacted]
Kurtis	McDonald	[redacted]	[redacted]
Melanie	Smith	[redacted]	[redacted]
RAY	HASTIE-JONES	[redacted]	[redacted]
Melanie	King	[redacted]	[redacted]

CENTRE EDUCATION PROGRAMMES

Signature page for raising the minimum age of Criminal Responsibility from 10 -14 in QLD. If you agree please put your name, email address and signature on this form. We would like this form signed by members of our Qld Flexible Learning Centres.

First Name	Last Name	Email or your residential Address	Signature
Krystal	Trenaman		K. Trenaman
Samara	Wilson-Whittle		Samara
Callum	Robertson	[redacted]	
Lisa	Bakarich		