



QUEENSLAND COUNCIL  
FOR  
CIVIL LIBERTIES

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The Secretary  
Community Support and Services Committee  
Parliament House  
George Street  
Brisbane Qld 4000

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Dear Madam

### **Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021**

Kindly accept this submission in relation to the above Bill

The key provision of the Bill raises the minimum age of criminal responsibility in this state from 10 to 14.

#### **1. Existing law**

Currently the *Criminal Code* provides, relevantly in section 29 that:

1. A person under the age of 10 years is not criminally responsible for any act or omission.
2. A person under the age of 14 years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission the person had capacity to know that the person ought not to do the act or make the omission.

Under Subsection 2 the prosecution can lead evidence to prove that a child under 14 years did have the requisite capacity to know what they did was wrong and are, therefore, criminally responsible.

Former Queensland Police Commissioner Bob Atkinson in his *Report on Youth Justice*<sup>1</sup> said of this section:

We were told that the presumption of *doli incapax* is rarely a barrier to prosecution. In Queensland, the threshold to rebut the presumption of *doli incapax* is perceived by some stakeholders to be too low, with the result that many children who do not have the level of cognitive functioning required to be criminally responsible are receiving criminal outcomes and becoming embedded in the criminal justice system

Speaking of this principle the Australian Law Reform Commission has said

it is often difficult to determine whether a child knew that the relevant act was wrong unless he or she states this during police interview or in court. Therefore, to rebut the presumption, the prosecution has sometimes been permitted to lead highly prejudicial evidence that would ordinarily be inadmissible. In these circumstances, the principle may not protect children but be to their disadvantage<sup>2</sup>.

<sup>1</sup> Prepared for the Minister for Child Safety, Youth and Women and Minister for Prevention of Domestic and Family Violence 8 June 2018 Page 105

<sup>2</sup> Seen and Heard: priority for children in the legal process (ALRC Report 84) para 18.19



## 2. The minds of children

Since the end of the 1800's there has been a shift from the punishment of children to the treatment of children and a clear acknowledgement that their age should be taken into account. This is because children are morally different from adults as a result of the fact that they do not have the same judgment skills, self-control and ability to know right from wrong. Children take more risks, pay less attention to negative consequences, are impulsive and look at short term outcomes and not a long term perspective. They also suffer more from peer pressure.

Because children are impulsive and do not plan for the future, the concept of deterrence has a particularly limited application to them.

These views of the differences between adults and children have recently been profoundly reinforced by modern neuro-scientific research.

## 3. The international Context

As former Commissioner Atkinson noted in his report<sup>3</sup>:

- The United Nations Convention on the Rights of the Child, supplemented by the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), states that a MACR below 12 years is not internationally acceptable
- A study of 90 countries found the median MACR to be 14 years and that 68% of countries had a MACR of 12 years.

## 4. First Nations Children

While first nations children make up 5 per cent of Australians aged between 10 and 17, they comprise 55 per cent of Australia's child prison population and are 24 times more likely to be incarcerated than non-Indigenous children.

These statistics make it clear that this measure is essential for securing justice for First Nations Children.

## 5. Universities of Crime

The adage that prisons and youth detention are the Universities of crime is no less true for it having been around for so long.

In this regard a report of an interview with former Northern Territory Police Commissioner and AFP Commissioner Mick Palmer<sup>4</sup> is worth quoting at some length

he is an advocate for the age to be lifted because the current approach unfairly targets children of lower socio-economic groups.

He said youths committing crimes is a "symptom of deeper underlying causes" such as disadvantaged backgrounds, dysfunctional home lives, or the infliction of a learning or mental disability.

<sup>3</sup> Supra Page 104

<sup>4</sup> NEWS.COM.AU 15 September 2021 "New bill in Queensland parliament to lift the age of criminal responsibility" by James Hall



Mr Palmer also formed his view because he strongly believes “prisons simply don't work”.

“In my experience, all that ever does is pretty well ensure they're going to come back into prison again and probably commit more severe crimes,” he said.

“They learn a lot of bad habits in prison, and I think there were just smarter ways to do business”

The Australian Institute of Health and Welfare reports that the evidence supports the proposition that young people in the 10-14 age group involved in the criminal justice system are, “at risk of becoming chronic, long-term offenders, through exposure to harmful environments and the isolation from family and support networks”<sup>5</sup>.

## 6. The correct approach

We support the Bill as a long overdue reform to the law. We urge, as we have done repeatedly, that our society must move from a punitive approach to young offenders to one having the following characteristics:

- It addresses the underlying causes of their offending, and the needs of those around them
- Accepts that the majority of child offending is a consequence of the failings of the institutions intended to support the child
- Invests heavily in early intervention to prevent offending before it starts
- Addresses the appalling over representation of first nations people in the legal system

On 27 March 2003 the highly regarded criminologist Dr Don Weatherburn gave a speech entitled, “Turning boys into fine men: The role of economic and social policy”. It is a document worth quoting at some length:

“A lot of crime committed by boys is transient and opportunistic. They arrive in adolescence drowning in testosterone, desperate for excitement and lacking the self-restraint that would later come with adulthood. Being caught by their parents, or the school or the police is usually enough to stop the vast majority of them from further offending...Most young boys who find themselves in trouble with the law then are only transiently involved in crime. They commit a few offences; usually of a non-violent kind, and then stop offending by the time they are in their late teens or early twenties.

Sadly, for a small but influential majority of boys this isn't true...they get into trouble at a rate that sometimes beggars comprehension. Almost half of all juvenile court appearances come from the 15% of boys who have more than two court appearances.

Most persistent offenders acquire a criminal record, so one option is to increase the rate at which we imprison recidivist juvenile offenders. Even the most optimistic research to date suggests that incapacitation is not a very cost-effective way of reducing juvenile crime. The money we spend incarcerating juvenile offenders would, in many circumstances, be better spent treating or trying to rehabilitate them. There is good evidence that treatment for drug dependence is an effective way of reducing re-offending. There is also good evidence, despite earlier suggestions to the contrary, that it is possible to rehabilitate re-offenders using methods such as conferencing, cognitive behavioural therapy or training in basic life skills.

<sup>5</sup> Young people aged 10 – 14 in the youth justice system 2011 – 2012, AIHW, Canberra, p. vi. Available at: <http://www.aihw.gov.au/publication-detail/?id=60129543944>

These options though have their limitations...it would clearly be better if we could reduce the rate at which young people become persistent offenders, rather than increase the rate at which we catch them, put them behind bars or put them in treatment.

Early intervention programs offer us one avenue for achieving this, but it's doubtful whether early intervention on its own would ever be enough to deal with the parenting problems that lie behind juvenile crime...this leaves us with just one option: doing more to ameliorate the conditions that foster inadequate parenting in the first place.

We need to reduce long term unemployment, encourage more flexible working arrangements for parents, and ensure that poorer families either get access to quality child care or adequate income support if they elect to stay home during the first year or so of a child's life. We also need to slow down the spatial concentration of poverty and revitalise neighbourhoods where disadvantage and crime have become deeply entrenched.

How might we do this? Well, by dispersing public housing...by making a special effort to improve school performance in crime prone neighbourhoods we can reduce the risk or period of unemployment. By investing in targeted labour market programs we can help break the nexus between chronic unemployment and crime in areas of high unemployment. By strengthening local schools and sporting clubs we can combat the influence of delinquent peers and provide some of the supervision that parents may fail or find themselves unable to provide."

Sadly, it seems to us this agenda still needs to be implemented.

We trust this is of assistance to you in your deliberations

Yours Faithfully



Michael Cope  
President  
For and on behalf of the  
Queensland Council for Civil Liberties  
29 November 2021