

**AMNESTY
INTERNATIONAL**



DEFENDING HUMAN RIGHTS

Submission to the
**Inquiry into the *Criminal Law (Raising the Age of Responsibility)*
*Amendment Bill 2021 (QLD)***

24 November 2021

Submitted by
**The Amnesty International Australia Queensland / Northern New
South Wales Activism Leadership Committee**

Contact: Meg Fitzgerald

Email: [REDACTED]

Phone: [REDACTED]

Table of Contents

About Amnesty International and the QLD / N.NSW Activism Leadership Committee	2
Summary	3
Recommendations	4
Effects of Raising the Age of Responsibility	5
Reducing Over-representation of Indigenous in Custody	6
Reducing the Likelihood of Re-Offending	6
International Legal Human Rights Frameworks	7
Convention on the Rights of the Child	8
Alternatives to Detention	9
Medical evidence	9
Alternative Model	9
Conclusion	10

About Amnesty International and the QLD / N.NSW Activism Leadership Committee

Amnesty International is the world's largest independent human rights organisation, with more than ten million supporters in over 160 countries.

Amnesty International is a worldwide movement to promote and defend all human rights enshrined in the Universal Declaration of Human Rights (UDHR) and other international human rights instruments. Amnesty International undertakes research focused on preventing and ending abuses of these rights.

Amnesty International is impartial and independent of any government, political persuasion or religious belief and does not receive funding from governments or political parties.

Since 1961 Amnesty International has campaigned on behalf of thousands of prisoners of conscience - people who are imprisoned because of their political, religious or other conscientiously held beliefs, ethnic origin, sex, colour, language or sexual orientation, gender identity or intersex status. Amnesty International recognises the right to freedom of thought, conscience and religion as set out in Article 18 of the UDHR.

Amnesty International also campaigns against direct or indirect discrimination on the basis of race, sex, sexual orientation and gender identity, intersex variations, religion or belief, political or other opinion, ethnicity, national or social origin, disability, or other status. Amnesty International calls for states to take measures that prohibit discrimination as well as positive measures to address long-standing or systemic disadvantages, and to prevent discrimination by non-state actors. Our work on non-discrimination is grounded in human rights treaties including the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

This submission is made on behalf of the Queensland / Northern New South Wales Activism Leadership Committee (ALC), a group of nine elected Amnesty volunteer leaders representing the QLD /N.NSW region including from Townsville, Gold Coast, Sunshine Coast, Ipswich, Toowoomba and Brisbane. As an ALC, we help motivate, coordinate and develop local human rights activism. We mentor and support activities and action groups, and participate in consultations on our vision, campaign priorities and policies. We are at the centre of Amnesty International Australia's work promoting human rights and challenging injustice.

1. Summary

- 1.1. The Amnesty International Australia QLD / N.NSW Activism Leadership Committee welcomes the opportunity to provide this submission to the Queensland Parliament Community Support and Services Committee's inquiry into the *Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021* (QLD) ('Bill').
- 1.2. Queensland's current laws, which allow 10 year old children to be imprisoned, are out of line with international jurisdictions, in breach of our human rights obligations, and not even working to keep the community safe.
- 1.3. The Bill's objective is to ensure children under 14 years of age are not incarcerated or otherwise punished under the criminal legal system, an approach consistent with current medical understanding of child development and contemporary human rights standards.
- 1.4. The Bill will aim to achieve this objective by raising the minimum age of criminal responsibility in Queensland from 10 to 14 years old and transferring any children under 14 years old out of custody, thus enabling these children to benefit from community-based interventions, therapeutic and rehabilitative measures.
- 1.5. **The QLD / N. NSW Activism Leadership Committee supports raising the minimum age of criminal responsibility in Queensland to 14 years, in line with recommendations by both Amnesty International and the United Nations.**
- 1.6. In 2016, Amnesty International Australia released *Heads Held High: Keeping Queensland Kids Out of Detention, Strong in Culture and Community* report, which raised serious concerns about the abuse and mistreatment of children in Queensland detention centres and prisons.
- 1.7. In 2018, Amnesty International Australia released *The Sky is the Limit: Keeping Young Children Out of Prison by Raising the Age of Criminal Responsibility* report, which outlined evidence showing that children arrested before the age of 14 were three times more likely than children arrested after 14 years to reoffend as adults. The report already recommended then that the age of criminal responsibility be raised to 14 years old.
- 1.8. In 2020, Amnesty International Australia released the *Raise the Age: Kids Belong in Community* report, which outlined evidence showing raising the age was an important step towards reducing the over-representation of Indigenous children in the Australian prison system.

Recommendations

The Amnesty International Australia QLD / N.NSW Activism Leadership Committee recommends that:

The Queensland Parliament Community Support and Services Committee supports the *Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021* (Qld).

2. Effects of Raising the Age of Responsibility

- 2.1. Under the current Queensland laws, children as young as 10 years old may be arrested by police, locked up in police cells, brought before courts and sent to youth prisons.
- 2.2. In 2019-2020, there were on average 17 children aged 10-13 years old in detention, representing approximately 9% of the Queensland youth detention centre population.¹ More than 90% of children in this age range held in police watch-house for more than three nights were Indigenous.²
- 2.3. Raising the age of criminal responsibility to 14 years old would contribute to decreasing the number of children on remand in detention, the number of children entering detention for the first time and the disproportionate representation of Indigenous children in detention.³

Reducing Over-representation of Indigenous in Custody

- 2.4. Raising the age of criminal responsibility is one part of a better approach to justice, and it will help address the over-representation of Indigenous people in prison.
- 2.5. Overall, Indigenous children aged 10-17 are 29 times more likely than their non-Indigenous counterparts to be sentenced to detention in Queensland. On average, 84% of children aged 10-13 in a Queensland detention centre on any given day identify as Indigenous.⁴ If the Queensland Government is genuinely committed to closing the gap and reducing Indigenous deaths in custody, raising the age is a crucial first step.
- 2.6. Raising the age alone would reduce the number of Indigenous children being incarcerated by 17.8%, which would have an immediate and generational effect on reducing the overrepresentation of our Indigenous children in youth prisons.⁵
- 2.7. Regarding alternatives to detention, Indigenous families and communities know what works for them, so they must be in the driver's seat.

¹ Youth Justice annual summary statistics: 2015-16 to 2019-20, [Detention Centre Data](#).

² Queensland Department of Youth Justice (2020) Answer to Estimates Pre-hearings [Question on Notice No. 16](#).

³ Atkinson, B. (2018) [Report on Youth Justice](#).

⁴ Australian Institute of Health and Welfare (2021) [Youth justice in Australia 2019-20](#).

⁵ Australian Institute of Health and Welfare, [Youth Justice National Minimum Dataset 2019-20](#).

Reducing the Likelihood of Re-Offending

- 2.8. Children arrested before the age of 14 are three times more likely to reoffend as adults than children arrested after they are 14 years old.⁶ There are many reasons for this, including cognitive impairments, stigmatization and trauma.⁷
- 2.9. Increasing the age of criminal responsibility will delay the point at which a child becomes involved with the criminal legal system or spend time in detention, thus reducing the likelihood of reoffending.⁸
- 2.10. Research suggests that diverting children away from the criminal legal system and providing support to address their individual needs will mean these children are less likely to continue to engage in criminal behaviours throughout their lifetime.⁹
- 2.11. Ensuring children under 14 are not placed in detention will also improve their likelihood of finishing school, tertiary education and other training, and their chances of securing a job.¹⁰
- 2.12. While the current age of criminal responsibility may temporarily limit some immediate risks to the community while some children are in detention, diversion, particularly for children under 14, is likely to be far more effective in improving community safety.

⁶ Amnesty International (2018) [*The Sky is the Limit*](#).

⁷ Crofts, T. (2015) [*A Brighter Tomorrow: Raise the Age of Criminal Responsibility*](#).

⁸ Amnesty International (2020) [*Raise the Age: Kids in Community*](#).

⁹ Allard, T. et al. (2010) [*Police diversion of young offenders and Indigenous over-representation*](#).

¹⁰ Qld Family and Child Commission (2017) [*The Age of Criminal Responsibility in Queensland*](#).

3. International Legal Human Rights Frameworks

- 3.1. Queensland's current laws, which allow 10 year old children to be imprisoned, are out of line with international jurisdictions and in breach of our human rights obligations.
- 3.2. The minimum age of criminal responsibility in Queensland, and Australia more broadly, is comparatively low compared with other countries. Although consistent with standards adopted by some other common law countries, such as England, Wales and the USA, the global standard is higher. For example, the minimum age is 14 years in Austria, Spain, Hungary, Italy and Germany; 15 years in Denmark, Finland, Norway and Sweden; 16 years in Portugal, and 18 years in Belgium and Luxembourg.¹¹
- 3.3. An international study of 90 countries revealed that 68 per cent had a minimum criminal responsibility age of 12 years or higher, with the most common minimum age of criminal responsibility being 14 years.¹²
- 3.4. Through ratification of binding international human rights treaties and the adoption of United Nations (UN) declarations, the Australian Government has committed to ensuring that all people enjoy universally recognised rights and freedoms.

Convention on the Rights of the Child

- 3.5. The Convention on the Rights of the Child (CRC) is the primary source of the rights relevant to this inquiry.
- 3.6. Australia is a state party to the CRC, having signed and ratified the Convention in 1990. Relevant obligations under the CRC include responsibilities that the best interests of the child is a fundamental principle to be observed, including in the context of criminal justice.¹³
- 3.7. Australia has been repeatedly criticised by the United Nations, including long-standing criticism from the United Nations Committee on the Rights of the Child,¹⁴ and most recently by the Committee on the Elimination of Racial Discrimination, for failing to reform the current minimum age of criminal responsibility. When the Special Rapporteur on the Rights of Indigenous Peoples

¹¹ Australian Human Rights Commission (2020) [Review of the Age of Criminal Responsibility](#).

¹² Youth Justice Board (2008) [Cross-National Comparison of Youth Justice](#).

¹³ Convention on the Rights of the Child, Art. 3.

¹⁴ United Nations Committee on the Rights of the Child, Sessions of the Committee, 1997: paragraphs 11 and 29, 2005: paragraph 73; 2012: paragraph 82(a).

visited Australia in 2017 she said that the routine detention of 10 and 11 year-old children was the most distressing aspect of her visit.¹⁵

- 3.8. Australia has binding obligations under the Convention on the Rights of the Child. The United Nations Committee on the Rights of the Child recommended Australia raise the minimum age of criminal responsibility 'to an internationally acceptable level' which has been described as 14 years old.¹⁶ The Bill's objective and aims are in line and support these recommendations.

4. Alternatives to Detention

Medical evidence

- 4.1. Neuroscientific evidence indicates that many problematic behaviours displayed by children under 14, whose prefrontal cortex is still developing, reflect their incomplete capacity to plan, foresee consequences or control impulses. While the prefrontal cortex develops gradually from ages 10-17 and is not fully developed until 25, the amygdala, which is responsible for reward seeking, is developed in early adolescence. Consequently, reward or thrill-seeking behaviours taken by children such as theft or trespass should not be characterised as "criminal" in the same way those actions by an adult would be.¹⁷
- 4.2. Medical and criminological evidence shows that a therapeutic and diversionary response is far more effective than a criminal one for young children.

Alternative Model

- 4.3. A new model for children under 14 should include:
- 4.3.1. Prevention and early intervention, including funding social services like healthcare, school-based intervention programs and programs for students while on suspension, free school meals and housing.
 - 4.3.2. A multidisciplinary expert panel or commission outside of Youth Justice and Child Safety to respond to low-level antisocial

¹⁵ United Nations Human Rights Council, Report of the Special Rapporteur on the rights of Indigenous peoples on her visit to Australia, accessed, 2 August 2018.

¹⁶ UN Committee on the Rights of the Child (CRC), *General comment No. 24 (2019): Children's Rights in the child justice system*, CRC/C/GC/24.

¹⁷ Royal Australasian College of Physicians (2019) [Submission to the Council of Attorneys General Working Group Reviewing the Age of Criminal Responsibility](#).

behaviour, working with a child and their family to refer them to services like youth drug rehabilitation treatment, trauma-informed mental healthcare, family therapy, specialised disability support services, cultural strengthening programs and restorative justice

- 4.3.3. Tailored, therapeutic wrap-around services to respond to serious harmful behaviour
- 4.4. We must act now to disrupt cycles of disadvantage and trauma in the criminal legal system. Please support a new, evidence-based approach that treats children like children, not criminals.

5. Conclusion

- 5.1. The Amnesty International Australia QLD / N.NSW Activism Leadership Committee strongly supports the *Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021* (QLD).
- 5.2. The Bill will result in fewer children and young people being sentenced and held in prison. This is in the best interest of children, or the community.
- 5.3. The Amnesty International Australia QLD / N.NSW Activism Leadership Committee recommends that the Community Supports and Services Committee supports the *Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021* (QLD).