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The Committee Secretary
Community Support and Services Committee
Parliament House
George Street, Brisbane, Qld 4000
Via email CSSC@parliament.qld.gov.au

Dear Committee Secretary

We welcome the opportunity to make a submission on the *Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021*. We are researchers based at the Griffith Criminology Institute (GCI) with many decades of collective expertise in youth justice, offending across the life-course, early intervention and prevention, law and policy, and criminology generally (more information about us is available at <https://www.griffith.edu.au/criminology-institute/our-researchers>).

We strongly support the Bill's purpose to raise the minimum age of criminal responsibility (MACR) from 10 to 14 for the following reasons:

1. **International law:** raising the age would bring Queensland into conformity with the United Nations Committee on the Rights of the Child guidance recommending a MACR of 14¹. This has been adopted in most European countries² and other international jurisdictions (e.g., Japan), and has been committed to in the ACT. The 2018 *Atkinson Report* recommended raising the age to 12 in Queensland, but this is contrary to the international consensus that 14 is a more appropriate minimum age.
2. **Cognitive functioning and maturity:** the science clearly shows that children are still developing the capacity to engage in logical and reasoned decision-making as they move into adolescence and early adulthood. Studies show that children over-estimate the benefits of their actions while under-estimating the costs to themselves and others. From middle childhood through adolescence, children are particularly susceptible to peer influence, while also being subject to the biological disturbances of puberty, which can result in increased levels of risk-taking behaviour. The cerebral functioning which allows them to anticipate the consequences of their actions and regulate risk-taking impulses, does not fully develop until around the age of 25.³
3. **Impacts of trauma and deep disadvantage:** the evidence is that many young people who come into contact with the justice system are themselves often victims of multiple disadvantages and trauma, including abuse and neglect, placements in out of home care, domestic violence, social and educational exclusion, homelessness, physical and mental health problems, and for some, impaired cognitive development. Our research has shown the links between child maltreatment, domestic violence, mental health and juvenile offending.⁴ Many children offend not because they are innately criminal and deserving of

¹ See clause 33 <https://www.ohchr.org/Documents/HRBodies/CRC/GC24/GeneralComment24.pdf>

² See https://scholar.google.com.au/citations?view_op=view_citation&hl=en&user=6-9xzC4AAAAJ&sortby=pubdate&citation_for_view=6-9xzC4AAAAJ:QIV2ME_5wuYC_file:///C:/Users/s1428168/Downloads/ahrc_20200226_submission_cag_working_group_macr_2.pdf

³ See Lamb, M. E., & Sim, M. P. (2013) Developmental factors affecting children in legal contexts *Youth justice*, 13(2), 131-144 for an overview of this research; Cauffman, E., Donley, S., & Thomas, A. (2017). Raising the Age. *Criminology & Pub. Pol'y*, 16, 73.

⁴ See A Stewart, M Livingston, S Dennison 2008 Transitions and turning points: Examining the links between child maltreatment and juvenile offending, *Child abuse & neglect* 32 (1), 51-66; A Stewart, JM Ogilvie, C Thompson, S Dennison 2021, Lifetime prevalence of mental illness and incarceration: An analysis by gender and Indigenous status, *Australian Journal of Social Issues* 56 (2), 244-268. Gilbert B, Stewart A, Hurren E, Little S, Allard T. Dual-

punishment, but as a logical reaction to their deprived and abusive circumstances. Addressing those circumstances should be a priority.

4. **Over-incarceration of First Nations young people:** the data establishes that Aboriginal and Torres Strait Islander young people are grossly over-represented in the youth justice system, particularly during the younger ages⁵, which in turn intensifies over-representation in adult prisons. It also shows that most young people who experience contact with the criminal justice system in Queensland who are between the ages of 10 and 14 are Indigenous. The reasons for this are complex, but include increasingly restrictive bail laws which impact unfairly on Indigenous youth, and the socio-economic and cultural disadvantage, systemic racism, trauma and grief, poor health and living conditions which are disproportionately experienced by First Nations people. To this must be added the intergenerational effects of the incarceration of many Indigenous parents.⁶ Around 31% of young people in the justice system have a parent that has been held in adult custody⁷; an experience likely to disproportionately affect First Nations young people. Over-representation cannot be addressed without the MACR being raised to force a more trauma-informed and rehabilitative approach to First Nations children.
5. **The criminal justice system can entrench and worsen offending:** there is clear evidence that the stigmatising effects of criminalisation can worsen the underlying vulnerabilities affecting children and worsen their offending. The effects of the stigma of conviction include reduced opportunities for legitimate employment in early adult life and increased dependence on welfare and on stealing or drug dealing to survive.⁸ The consensus is that diversionary and therapeutic responses are more likely to lead to reduced offending and to more positive and productive lives. The object of community safety is better achieved by reducing criminal justice responses and raising the MACR is a first step to this.⁹
6. **The costs of criminal justice responses:** criminal justice spending is increasing, while crime is decreasing, with the costs of detention particularly high.¹⁰ To these direct costs must be added the indirect and life-long consequences for young people, for whom criminal justice contact often leads to disengagement from school and work, long-term health issues, and entrenched disadvantage.¹¹ Avoiding or reducing these costs should be a priority.

system Involvement: Exploring the Overlap Between Domestic and Family Violence and Child Maltreatment Perpetration. *Journal of Interpersonal Violence*. October 2020.

⁵ See Ogilvie, Allard, Thompson, Dennison, Little, Lockwood, Kisely, Putland & Stewart. (In Press) Psychiatric disorders and offending in an Australian birth cohort: Overrepresentation in the health and criminal justice systems for Indigenous Australians. *Australian & New Zealand Journal of Psychiatry*. Australian Institute of Health and Welfare. 2021. Youth Justice in Australia 2019-20. Canberra: Australian Institute of Health and Welfare. <https://www.aihw.gov.au/getmedia/e593cc05-884c-4a47-bce6-0dcc76fc1a66/aihw-juv-134.pdf.aspx?inline=true>.

⁶ M Roettger, K Lockwood, S Dennison 2019, Indigenous people in Australia and New Zealand and the intergenerational effects of incarceration, Indigenous Justice Clearing House *Research Brief 26*.

⁷ Queensland Government. Youth Justice Strategy 2019-2023. Working Together, Changing the Story. <https://www.cyjma.qld.gov.au/resources/dcsyw/youth-justice/reform/strategy.pdf>

⁸ Western, B., Kling, J.R., & Weiman, D.F. (2001). The labor market consequences of incarceration. *Crime & Delinquency*, 47, 410–427; Rivenbark, J.G., Odgers, C.L., Caspi, A., Harrington, H., Hogan, S., Houts, R.M., Poulton, R., & Moffitt, T.E. (2018). The high societal costs of childhood conduct problems: evidence from administrative records up to age 38 in a longitudinal birth cohort. *Journal of Child Psychology and Psychiatry* 59:6, 703–710.

⁹ See McAra, L., & McVie, S. (2007). Youth Justice?: The Impact of System Contact on Patterns of Desistance from Offending. *European Journal of Criminology*, 4(3), 315–345.

¹⁰ Troy Allard, Molly McCarthy, Anna Stewart, 2020, The costs of Indigenous and non-Indigenous offender trajectories, Trends and Issues in Crime and Criminal Justice, No. 594, Apr 2020: 1-17.

¹¹ Productivity Commission 2021, Australia's Prison Dilemma. <https://www.pc.gov.au/research/completed/prison-dilemma>

7. **Early intervention, diversion and more joined-up services are a better response:** repeated reports, studies and reviews have identified that there are better ways to address young people's problem behaviours than through the justice system. A major inhibitor to this occurring is the siloed and unnavigable nature of government and non-government services. Better multi-agency collaboration in identifying and supporting young people in need is an urgent priority.¹²

Finally, recent research conducted by GCI shows some concerning trends in youth offending in Queensland¹³:

- The overall rate of young people who offend has declined between 2008 and 2017.
- But there has been a growth in the proportion of those offenders who are chronic offenders, involved in 10 or more incidents a year. This grew from 4% of the cohort in 2008 to 7% in 2017, and the chronic cohort responsibility grew from 25% to 43% of all youth offending incidents.
- There was also notably greater relative growth in offending incidents among 10,11 and 12 year-olds from 2008 to 2017, growing by 53.3%, 73.5% and 61.0%, respectively.

This report suggests that fewer young people are offending now compared to 10 years ago, which is consistent with international trends. However, a small proportion are offending earlier and more frequently, and current criminal justice approaches are failing to prevent this. Most concerningly, rates of chronic offending are higher in Queensland than in comparable jurisdictions.

We believe that raising the minimum age of criminal responsibility is an essential first step for addressing this trend. However, this change must be accompanied by a comprehensive suite of evidence-based policies and services that provide a better response for young people to address their (often) complex risks and needs. This assistance needs to be available to not just children aged 10 to 13, but also to even younger children experiencing the disadvantages known to be risk factors for early system involvement.

We call on the Queensland Parliament to pass the current Bill, but also to urgently commission a broad and representative review into improving support systems for vulnerable children.

Thank you for the opportunity to make this submission.

Yours sincerely

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Professor Ross Homel
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Professor Tara McGee
Dr James Ogilvie
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¹² Homel, R. (2021). Developmental Crime Prevention in the Twenty-first Century: Generating Better Evidence Embedded in Large-scale Delivery Systems. *J Dev Life Course Criminology* 7, 112–125.

¹³ McCarthy, M. 2020, Trends in Youth Offending in Queensland <https://blogs.griffith.edu.au/gci-insights/2020/06/22/trends-in-youth-offending-in-queensland-2008-to-2017-2/>