

30 November 2021

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

By email: CSSC@parliament.qld.gov.au

Dear Committee

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

Thank you for the opportunity to make a submission in relation to this important matter. We have had the opportunity to read and consider drafts of submissions being made by our colleagues at the Queensland Council of Social Services (QCOSS) and the Queensland Law Society (QLS). We note that both, and many others, unequivocally support raising the age of criminal responsibility to at least 14 and provide ample legal, developmental, ethical and social justification for their broad support of this Bill. It is essential that laws reflect the evidence about the best way to achieve policy objectives. Criminalising children under the age of 14 is not an effective way of dealing with anti-social behaviour in childhood. We support both submissions and wish to add the following short comments.

Children in watch houses

Criminalisation of children in Queensland overwhelmingly affects Aboriginal and Torres Strait Islander children,¹ particularly those already in the child protection system. These children are the most vulnerable and disadvantaged cohort in the Queensland community. Child correctional facilities are commonly at maximum capacity. The number of children detained in watch houses across Queensland is currently growing. A proportion of these children are aged 13 and under and have been detained in a watch house for five or more consecutive days.

Watch houses are entirely unsuitable for housing children, having been built to hold adults only for short periods.² This is an egregious limitation on the human rights of children including those protected under the *Human Rights Act 2019* (Qld) in sections 26 *Protection of families and children*, section 28 *Cultural rights of Aboriginal and Torres Strait Islander Peoples*, section 17 *Protection from torture and cruel, inhuman or degrading treatment*, section 33 *The rights of children in the criminal process* and section 36 *Right to education*. There is no legitimate justification for the extreme violation of human rights which occur in this context; it is antithetical to a free and democratic society based on human dignity, equality and freedom.³

¹ We also note the submission to this Inquiry of the Queensland African Communities Council highlighting the over-representation of children of African descent in the criminal justice system

² Amnesty Australia *Kids in Watch Houses, Exposing the Truth* <https://www.amnesty.org.au/watch-houses/>

³ *Human Rights Act 2019* (Qld)

Criminalisation causes missed opportunities

Caxton Legal Centre offers a men's bail support program, providing the necessary legal and social supports for men to access and remain on bail while awaiting the finalisation of their criminal charges. In this program we help many adult Aboriginal men who first had contact with the criminal justice system aged 10-13. This first contact, usually occurring at a time of great distress and disruption in the child's life, establishes a pattern of punitive government intervention that persists long term.

It is clear when we meet and work with these men that an alternative path of supportive, culturally safe intervention to address and meet underlying needs in childhood was never considered. The existing child protection, health and education systems could have provided appropriate support for these men as children engaging in problematic behaviours, which could have resulted in better outcomes for the individuals and community more broadly. Better resourcing those holistic support systems remains essential but while the option of criminalisation remains, many children will continue to miss out.

International position

In 2020 and 2021 Caxton Legal Centre, with our colleagues at the Kingsford Legal Centre in NSW and the Human Rights Law Centre in Victoria, led a large national coalition of Australian NGOs to make written and oral submissions to member states participating in the United Nations Universal Periodic Review of Australia's human rights record.⁴ Raising the age of criminal responsibility to at least 14 was a key human rights concern for members of the coalition including those representing the interests of Aboriginal and Torres Strait Islander Peoples and children. Their advocacy, with our support, led to more than 30 countries recommending in early 2021 that all Australian jurisdictions raise the age of criminal responsibility, with most specifying that the age should be no less than 14.⁵

Caxton strongly supports the position that the age of criminal responsibility should be raised to at least 14. We urge the Queensland Government to take this opportunity to join the ACT in leading Australia on this important human rights reform.

This short submission was prepared by our Bridget Burton, Director - Human Rights and Civil Law Practice; and Klaire Coles, Director - Coronial and Custodial Justice Practice.

Yours faithfully
Caxton Legal Centre



Cybele Koning
Chief Executive Officer

⁴ <https://www.glsproctor.com.au/2020/12/2020-21-universal-periodic-review-of-australias-human-rights-record/>;
<https://www.hrlc.org.au/universal-periodic-review>

⁵ <https://www.ohchr.org/EN/HRBodies/UPR/Pages/AUindex.aspx>; <https://www.abc.net.au/news/2021-01-21/un-australia-raise-the-age-of-criminal-responsibility/13078380>