

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

Community Support and Service
Committee

NOVEMBER 2021



AASW

Australian Association
of Social Workers

About the Australian Association of Social Workers

The Australian Association of Social Workers (AASW) is the national professional body representing more than 15,000 social workers throughout Australia. The AASW works to promote the profession of social work including setting the benchmark for professional education and practice in social work, while also advocating on matters of human rights to advance social justice.

Acknowledgements

This submission has been developed in consultation with community organisations in Queensland and the national Raise the Age campaign.

For further information or questions relating to this submission, please contact:

Author(s) of the Submission

Charles Chu

Social Policy & Advocacy Officer

[REDACTED]

Manager, Social Policy and Advocacy

Rachel Reilly

[REDACTED]

Executive Summary

The AASW welcome the opportunity to provide feedback on the *Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021* (Qld). **We support the passage of this bill as it will raise the age of criminal responsibility to at least 14 years old in Queensland.** We ascribe to the belief that a child's best interest should be the first and foremost in all decision-making pertaining to themselves. The submission strongly advocates for a human rights-based approach which acknowledges existing harm and abuse which may have contributed to the harmful behaviours. Rather than criminalising those behaviours, we support the development and implementation of programs which address the underlying causes of offending and promote recovery. In this submission, we will address the following key points:

- there should be no exceptions to the higher age of criminal responsibility
- children and young people who exhibit harmful behaviours have a range of factors, such as their engagement with statutory child protection, that have likely led them to these behaviours

Recommendations

The AASW recommends:

- That the Qld government pass the *Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021* (Qld) to raise the age of criminal responsibility from 10 to 14 in all circumstances with no exception for children and young people who engage in repeated or very serious harmful behaviour
- That the Qld government develop and expand holistic therapeutic support programs for young people who exhibit harmful behaviours to prevent them from entering the criminal justice system
- That the Qld government further invest into youth outreach and crisis services that meet the basic housing and health needs of vulnerable children

Context for this submission

AASW's work is informed by the Convention on the Rights of the child and the core values of Respect for Persons, Social Justice and Professional Excellence. The AASW considers the well-being of children and young people in its broadest social and political context. Social workers address the diversity and complexity of the issues facing children and young people, informed by their understanding of issues such as poverty, domestic violence, drug and alcohol misuse, disability, colonisation and the intergenerational impacts of the Stolen Generation, homelessness, education, health and mental health.

Responses to the Inquiry

The AASW's position is that the age of criminal responsibility should be raised from 10 to 14 in all circumstance and there should be no exception for children and young people who engage in repeated or very serious harmful behaviour. This view is supported by existing medical evidence and our members' professional experience working with children and young people who exhibit harmful behaviours.

The youth justice system and its impact on a young person's developmental milestones

The arguments in favour of an older age derive from updated medical, neurological and developmental evidence which has clear implications in terms of children's cognitive capacity.¹ It is this updated knowledge about a child's developmental trajectory which drives the case for older age of criminal responsibility. The same knowledge about neurological development has led to improved understanding of the harmful effects of stress and deprivation on children's neurological and biological growth, and its implications in terms of cognitive capacity and psychological well-being.² That evidence demonstrates that interaction with the justice system has the potential to cause long term harm to children.

Recommendation(s):

- That the Qld government pass the *Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021* (Qld) to raise the age of criminal responsibility from 10 to 14 in all circumstances with no exception for children and young people who engage in repeated or very serious harmful behaviour

¹ Cunneen, C., 2017. Arguments for raising the minimum age of criminal responsibility. Comparative Youth Penalty Project, University of New South Wales.

² Richards, K., 2011. What makes juvenile offenders different from adult offenders?. Trends and issues in crime and criminal justice, (409), pp.1-8.

Underlying causes of harmful behaviours

Social workers who work with vulnerable children and young people observe that children and young people who exhibit harmful behaviours have a range of factors in their background that have likely led them to these behaviours. For example, many members of the AASW who work with children and young people in Out-of-Home care report that the trauma that these young people have experienced leaves them with attitudes, behaviours and coping mechanisms which make them more likely to end up in the Youth Justice system.³ The AASW submission to the Inquiry of Youth Justice Centre suggests that that in some cases, it is the trauma of their early experiences of neglect or abuse, which generated the involvement of child protection, compounded by the trauma of removal from their home and community which leaves them in this situation. Therefore, criminal justice response is a wholly inadequate framework to respond to children who have exhibited harmful behaviours, which are likely the outcome of trauma and potentially abuse. In many instances, the vulnerabilities within the child's original family were related to family violence, mental illness, disability or alcohol and/or drug related harm, and the young people themselves may be experiencing these vulnerabilities. Further, social workers report that many young people in the youth justice system have an undiagnosed cognitive impairment or mental illness.⁴

In addition to this, children in out-of-home-care are likely to encounter the police for behaviours that would not have this consequence for children who live with their parents.⁵ This means that young people leave out-of-home-care with a record of contact with the police, further stigmatising their challenging behaviours as a problem that needs to be solved by incarceration. A human rights based approach to children exhibiting behaviours that are challenging, dangerous or harmful is a trauma-informed, therapeutic and oriented towards care, rather than the potentially negative and/or detrimental experience of contact with the criminal justice system. The AASW supports that there should be greater service investment for these young people, commencing with therapeutic work to strengthen the functioning of their family and locate extended family or community supports. These should be supplemented by supported housing, and outreach by appropriate health, and drug and alcohol services and supported engagement with education and training.

Recommendation(s):

- That the Qld government develop and expand holistic therapeutic support programs for young people who exhibit harmful behaviours to avoid their engagement with the criminal justice system
- That the Qld government further invest into youth outreach and crisis services that meet the basic housing and health needs of vulnerable children

³ Australian Association of Social Workers, Submission to the Inquiry Into Youth Justice Centres, Victoria, March 2017
<https://www.aasw.asn.au/social-policy-advocacy/by-year/2017>

⁴ ibid

⁵ ibid

Conclusion

The AASW strongly recommends that the Queensland government pass the *Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021* and raise the age of criminal responsibility from 10 to 14. In addition to this, a reimagining of the way in which these intersecting systems respond to and support the needs of children who are exhibiting harmful behaviours needs to be undertaken. This includes an implementation of a de-stigmatising and human rights based approach to children and young people that addresses childhood trauma associated with social vulnerabilities, preventing their engagement with the criminal justice system.



© Australian Association of Social
Workers

Level 7, 14-20 Blackwood Street
NORTH MELBOURNE VIC 3051

PO Box 2008
ROYAL MELBOURNE HOSPITAL VIC
3050

P: 03 9320 1027
E: socialpolicy@aasw.asn.au
www.aasw.asn.au

ACN 008 576 010
ABN 93 008 576 010



AASW
Australian Association
of Social Workers

www.aasw.asn.au

