



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

**Submission to the Queensland Parliament
Community Support and Services Committee**

30 November 2021

At nine years of age, Brandon* – the younger sibling of one of our clients – is already on the radar of the Logan Central Station Police.

Brandon has grown up in a home devoid of familial attention. The youngest of seven children, both of his parents and several of his siblings have spent time in jail, and many of his cousins have been removed and placed into state care. His mother has struggled to hold down a job while looking after her children and her grandchildren. She is at breaking point.

Brandon is no stranger to domestic and family violence, problematic alcohol and other drug use, and serious antisocial behaviour. His 'normal' is a chaotic environment shaped by intergenerational trauma, removal, poverty, and chronic neglect.

Brandon's school was unable to manage his unpredictable behaviours and were able to offer little more than intermittent supervision following periods of suspension. He is now completely disengaged from education and is spending his days associating with an older group of children who are known to the police for shoplifting and other antisocial behaviours.

It is well established that the brain continues to mature until around 25 years of age. Not only is Brandon without positive peer and community influences, at just nine years old he does not have the executive function or capacity to plan, rationalise, and foresee the consequences of his actions.

If the criminal age of responsibility is not raised in Queensland, there is little doubt that Brandon will spend his next birthday in juvenile detention. He needs healthcare, practical and emotional support, and therapeutic treatment; juvenile detention is ill-equipped to deal with complex mental health and trauma morbidities. Placing Brandon in detention will only increase the likelihood of future engagement with the criminal justice system.

If the criminal age of responsibility is raised to 14, community services will have an additional four years to support Brandon and his family, assisting them to build a strong and positive future and break Brandon's cycle of offending.

"All we're asking for is an opportunity to go in and heal our own. If we raise the criminal age, it allows extra time for Aboriginal communities to heal our children so that they can be strong, so that they can dream.

"Instead of spending money on Aboriginal children in the justice system, use that money wisely and allow it to be put back into Aboriginal services, to allow us to go back into our community and repair what broke on that child's journey. Allow us to be the subject matter experts in our own community."

Nicole Laupepa, Youth Off The Streets' Cultural Development Manager

*Name changed to protect the privacy of the child



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

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

Dear Committee Secretary,

Raising the Minimum Age of Criminal Responsibility

Youth Off The Streets (YOTS) welcomes the opportunity to provide feedback on this submission to the Queensland Parliament's Community Support and Services Committee (the Committee) regarding the Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021 (the Bill).

Since being founded by Father Chris Riley in 1991, we have grown to deliver a range of wraparound supports for young people. These include crisis accommodation and housing services, independent high schools, alcohol and other drugs counselling, youth justice support, life skills and employment programs, cultural support, and community engagement, among other services. We are a non-denominational organisation with a focus on early interventions that empower young people and strengthen communities. We are privileged to work with some of the country's most disadvantaged young people, and we have a responsibility to advocate for them.

The inappropriate incarceration of children and young people should be addressed as a matter of priority. YOTS strongly supports mechanisms that divert young people from the criminal justice system and believes that the minimum age of criminal responsibility should be raised to at least 14 years, in accordance with international human rights standards, the recommendations of the United Nations Committee on the Rights of the Child¹ and numerous independent reports². The criminalisation of children at an early age and incarceration during formative developmental periods negatively impacts their health, wellbeing, and future prospects.

1. Summary and recommendations

1. The minimum age of criminal responsibility must be raised to at least 14 years. There should be no exceptions to this legislation, including but not limited to serious sexual offences, serious assault resulting in grievous bodily harm, murder, or manslaughter.
2. The minimum age that a child can be imprisoned in youth detention should be 16 years – children aged 14-16 who are involved with the criminal justice system should be referred to therapeutic interventions, not supervision.
3. Children aged 16–18 must not, under any circumstances, be supervised in adult detention facilities.

4. Increased government investment in early intervention services that support parental capacity to respond to child behavioural challenges and the effects of trauma. This includes maternal and child health services, early childhood services and other family services.
5. Increased government investment in therapeutic diversionary responses that are linked to culturally safe and trauma-responsive structures and provide sustained support for children.
6. The planning, design and implementation of prevention, early intervention and diversionary responses should be community led.

2. Comments

As acknowledged in *Working Together: Changing the Story*³, for the majority of offenders, detention is not an effective way to stop offending behaviour, and children who have been through detention are at an increased risk of committing offences when they return to the community.

2.1. Who are the children in detention?

- Across Australia, on an average day, almost 1 in 3 (29%) children under supervision were aged 10-13⁴.
- Almost half of the children under youth justice supervision were the subject of an investigated notification in the five years prior, and almost 1 in 4 (22%) had been placed in out-of-home care (OOHC)⁵.
- Over 1 in 3 (33%) of all children under supervision in Australia are in Queensland⁴.
- Queensland has the second largest proportion of children aged 10–13 under supervision⁴.
- Queensland has the highest proportion of unsentenced children in detention (88%)⁴.
- The rate of First Nations children under supervision on an average day in Queensland is 191.9 per 10,000. First Nations children are 20.3 times more likely to be under supervision than non-First Nations children³.
- When all the time spent under supervision during 2019-20 is considered (including multiple periods of supervision and periods not yet completed on 20 June 2020), young people in Queensland spent more days under supervision (224 days) than children in any other state³.

“Children at that age [10-13] are so vulnerable – their brains haven’t developed yet, and they don’t have the capacity to tell right from wrong. They’re physically small, so they have to overcompensate to fit in. **All they want is to belong**, and without many good role models, it’s so easy for them to be taken advantage of and pressured into doing things.”

Youth Off The Streets caseworker

2.2. Neurodevelopmental vulnerability

Children aged 10 to 13 years are physically and neurodevelopmentally vulnerable. The current age of criminal responsibility is not consistent with evidence on child and adolescent brain development and cognition – children under the age of 14 have a reduced capacity to understand and regulate

their own behaviours⁶. It is inappropriate for children to be under the supervision of the youth criminal justice system.

“What we’re seeing is that more and more of the young people coming to our refuges through the Bail Assistance Line (BAL) are coming with a **childhood diagnosis of a behavioural disorder or cognitive delay – this year, more than 60% of the young people we supported through BAL had an NDIS plan**. But they’ve often lost all of their documentation, and they often haven’t got an ID when they arrive, let alone a letter from a paediatrician or psychiatrist. These young people are clear examples of the cracks in our system – at some point, their behaviours just became too challenging, and they were denied the care and support that they needed. Maybe if their parents and schools had been better resourced to support their treatment plans, they wouldn’t have found themselves in juvenile detention as a child.”

Youth Off The Streets’ Capacity Building Program Coordinator

Children in the criminal justice system have higher rates of pre-existing psychosocial trauma which demands a specialised therapeutic and rehabilitative approach⁷. The majority of children in custody have come from backgrounds of significant disadvantage, experiences of the child protection system, homelessness, neglect, trauma, and limited education⁸. Children who engage with the criminal justice system are significantly more likely to have neurodevelopmental conditions such as foetal alcohol syndrome disorder (FASD), intellectual disability, delayed language development, autism spectrum disorder (ASD) and attention deficit hyperactive disorder (ADHD)⁹.

The use of the criminal justice system as a ‘catch-all’ for this cohort of children speaks to widespread systemic failure to adequately support children, their families, and communities.

2.3. Impact on First Nations children and communities

This year marks the 30th anniversary of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC), which called for major reforms to welfare, police and justice policies and practices that had historically supported the state’s surveillance of Aboriginal lives.

At the time of the final report in 1991, Aboriginal people were up to eight times more likely to be imprisoned than non-Aboriginal people. In 2001, Aboriginal people were ten times more likely to be imprisoned. By 2010, they were 15 times more likely; and today, Australia’s First Nations peoples are the most imprisoned population in the world, at the alarming rate of 2,440 per 100,000 people¹⁰.

We note that the rate of First Nations peoples imprisoned in Queensland grew by 9.02% over the last 12 months, from 2,164.6 people per 100,000 in June 2020 to 2,359.9 per 100,000 people in June 2021¹¹. On an average day, 70% of the children in detention in Queensland are First Nations peoples¹².



This speaks to social structures that disempower and disadvantage First Nations peoples, and a criminal justice system that is systemically failing them.

Euro-centric justice system mechanisms further exacerbate the cultural stress experienced by First Nations children and communities. First Nations children have the right to grow up connected to their culture and they must be supported to remain with their families and communities.

The current minimum age of criminal responsibility disproportionately impacts First Nations children and is a key driver of their contact with police and the justice system¹³. Raising the age of criminal responsibility to 14 would have an immediate and generational impact on the over-incarceration of First Nations peoples – in particular, target 10 of the National Agreement on Closing the Gap¹⁴. Increased investment and support for place-based solutions will provide greater opportunities to enable and empower First Nations communities, families, and organisations to support children in culturally safe and appropriate ways.

2.4. Preventing involvement with the justice system

A whole-of-community approach is needed to address the root causes of crime. Working with children, their families, and communities to ensure that children have access to appropriate interventions and supports is the best practice approach to ensuring safe communities. Broader policies, including the provision of universal social services, social housing, universal basic income, health and disability services, free meal programs and affordable, expanded public transport can reduce poverty and strengthen communities.

The impact of intergenerational trauma on early childhood development is significant. The Murdoch Children Research Centre Report, *The First Thousand Days*, found that parents who have experienced sustained trauma are more likely to use punitive, aggressive, and physical forms of discipline, resulting in their child experiencing insecure and disorganised attachment¹⁵. Experiences of abuse and neglect in early childhood is a significant predictor of disruptive social relationships and behaviours, criminal behaviour, violent crime, and poor wellbeing outcomes.

Out-of-home-care (OOHC) is a known pathway to involvement with the criminal justice system. Children in OOHC are 19 times more likely to have had contact with the justice system than their peers¹⁶, and more than half of the children in residential care require legal support with criminal charges within a year of their placement in a residential facility¹⁷. Raising the age of criminal responsibility to at least 14 years will allow extra time to put in place the appropriate supports for children that address the issues and behaviours that may result in contact with the criminal justice system.

2.5. Early intervention

Punitive approaches to offending are counterproductive and fail to acknowledge the disadvantage and trauma that are often a feature of the lives of children who have early contact with the justice system. This early contact is associated with subsequent and more significant offending¹⁸.

Not only does a child's experience with the criminal justice process potentially exacerbate their disadvantage, but the failure to address known disadvantage and to identify the causes of antisocial behaviour may increase the likelihood that a child will reappear before the court in coming years¹⁹.

Early, place-based interventions that have been developed by children and community ensure that children at risk of involvement with the criminal justice system can remain connected to their support networks, education, and family. Evidence from the neuroplasticity field confirms that children have a unique capacity for behavioural change through positive experiences. Failure to intervene early is "likely to make intervention much more difficult and less likely to be successful" at a later age²⁰.

Restorative justice and justice reinvestment are two key evidence-based alternatives to criminalisation. Restorative justice provides young people with an opportunity to redress the harm they have caused and to understand the experiences of people harmed by their actions; justice reinvestment diverts funds from prisons to interventions within the community that work directly to address the root causes of crime²¹. Both approaches take a holistic view of children's offending and use restorative, therapeutic and strength-based practices to support children to change their behaviours.

3. Conclusion

Raising the age of criminal responsibility is a matter of the utmost importance and urgency. It has the potential to have an immediate positive impact on changing the trajectory of the lives of many children – and particularly First Nations children, who are disproportionately impacted by the current minimum age of criminal responsibility.

We would value to the opportunity to meet with you to discuss these matters further.

If you have any queries regarding the contents of this submission, please do not hesitate to contact me via [REDACTED] or [REDACTED].

Kind regards,



Lex Nadine Lutherborrow
CEO

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