



Save the Children



CHILD WISE
creating child safe communities

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

Submission to Community Support and Services Committee

30th November 2021

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ACKNOWLEDGEMENT

Save the Children Australia and Child Wise acknowledge Aboriginal and Torres Strait Islander peoples as the traditional owners and custodians of the land on which we work. We pay our respect to their Elders past and present.

FURTHER INFORMATION

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About Save the Children and Child Wise

Save the Children aims to protect, promote and fulfil the rights of all children in Australia, as Australia's leading child rights organisation. We are guided by the United Nations Convention on the Rights of the Child and our extensive experience in translating child rights into practice across policy reform and service delivery.

Save the Children has worked in Australia for over 65 years, advocating for children's rights and delivering services for children and families in every State and Territory, including in many of Australia's most marginalised, disadvantaged and remote communities. Across our policy work, advocacy, research and services, we focus on promoting and realising children's rights and enhancing children's lives, especially those who most need support.

In 2020, our services directly reached over 19,000 children and adults in around 500 locations across Australia.¹ We support children and families in their communities through our integrated, place-based early childhood, family support, school engagement and youth services. This includes specialist intensive family support, domestic and family violence, youth justice, migrant settlement, emergency response and recovery, and child rights programming services.

In many cases, our services and programs are provided through long-standing partnerships with Aboriginal and Torres Strait Islander communities and community-controlled organisations, or working closely with local representatives and leaders within culturally and linguistically diverse communities.

Child Wise became part of the Save the Children Australia group in 2018, to pursue a shared vision where children are safe from harm. Based on the principles of capacity building and prevention, Child Wise collaborates with public, private and not-for-profit organisations across Australia and the world, to create and maintain a culture where child safety is front of mind and organisations are empowered to prevent children ever being abused or harmed. Our work is driven by a foundational commitment to children's rights, and a belief that children must have a voice, participate and contribute to decision-making in all spaces which impact their lives.

Child Wise first introduced child safety standards as a framework for preventing harm to children, and detecting and responding to harm when it does occur.² In 2018 we welcomed the Australian Government's endorsement of the National Principles for Child Safe Organisations,³ which reflect our pioneering work and provide the bedrock of our practice. As a leading child safety organisation for over 30 years, Child Wise has been a part of an ever-evolving safeguarding landscape, and is committed to further advancement in this space. As such, we welcome the opportunity to contribute to this submission on implementing the successor plan to the National Framework for Protecting Australia's Children.

¹ This number was affected by COVID-19 and the restrictions that the pandemic required for face-to-face service delivery for large parts of 2020. For more detail about our Australian services, see: Save the Children, *2020 annual report*, available at <https://www.savethechildren.org.au/getmedia/e8f5d074-b235-4388-93fb-d1dc7045fa81/Annual-Report-2020-print.aspx>.

² Child Wise, *Choose with Care*® – Training Manual & 12 steps to a child safe organisation.

³ Australian Human Rights Commission, 2018, *National Principles for Child Safe Organisations*, available at <https://childsafe.humanrights.gov.au/national-principles>.

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1. Introduction

Save the Children and Child Wise are pleased to make this joint submission on the Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021 (**the Bill**) introduced into the Queensland Parliament by Mr Michael Berkman MP, Member for Maiwar, on 15 September 2021.

Save the Children Australia and Child Wise firmly support the Bill which will amend the *Criminal Code and the Youth Justice Act 1992* (Qld) to ensure children under 14 years of age are not incarcerated or otherwise punished under the criminal legal system in Queensland. We urge members of the Queensland Parliament to pass the Bill and raise the age of criminal responsibility to 14 years.

2. Our work in Queensland

Save the Children makes this submission as a leading international independent child rights organisation, and as an experienced provider of youth justice services in Queensland and in every other Australian State and Territory. Our work includes preventive, early intervention, and diversionary initiatives, as well as bail support and other services for children and young people who have had contact with the criminal justice system.

Save the Children has been working in urban, regional and remote Queensland as a trusted support for children and their families for nearly 70 years. We run early childhood services, intensive family support programs, safe refuges for women and children, as well as healing programs for men perpetrating violence. Our Queensland team members are strongly connected to community and work with a range of partner services to support children involved or at risk of the justice system. Our ***Strong Culture, Strong Tomorrow's*** program in Doomadgee and Mornington Island offers intensive support to young people aged 10-17 years old and their families. Aboriginal partner agencies and local staff build on the strengths of Aboriginal culture as a protective factor to ensure children stay engaged in school and steer clear from anti-social behaviour with great results. Our ***MyJust Bail Support service*** in Mt Isa, Mckay and Brisbane follows a similar strength-based approach and assisting young people with the often extremely challenging return and reintegration after time spent in Cleveland or Brisbane Youth Detention centres.

To ensure the voice and experiences of young people in Queensland detention centres are captured, Save the Children will deliver its flagship child-rights education program, 'Mobilise', in the Cleveland, Townsville and Brisbane youth detention centres in 2022. The program has been successfully employed in New South Wales in different formats since 2018 to help young people become more connected with community and participate in civic life.⁴

Child Wise make this submission as a global organisation, active in Queensland and every State and Territory of Australia. We are the original architects of the Australian Government's [National Principles for Child Safe Organisations](#), and are committed to preventing harm and abuse to children across all settings.

Our Submission seeks to provide additional context and evidence to support the Bill and the effective implementation of its policy objective.

⁴ Noting Covid-19 restrictions and funding paused delivery in 2021.

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3. Policy Objectives

We commend the Bill's policy objective, explained through the Explanatory Notes to ensure Queensland's justice system is "*consistent with current medical understanding of child development and contemporary human rights standards*".⁵ We endorse that the Bill, in its current form, is applicable to all criminal offences and strongly urge that this key aspect remains. There is no principled basis for altering the Bill to distinguish between different types of offence when it comes to minimum age. Doing so will fundamentally undermine the effectiveness and aims of the reform before it even begins.

As the United Nations Committee on the Rights of the Child has said, exceptions to the minimum age "*are usually created to respond to public pressure and are not based on a rational understanding of children's development*".⁵ The Committee 'strongly recommends' that countries with such exceptions abolish their approaches: General Comment No 24, [25].⁶

We support the policy objective based on the following:

1. Raising the age to 14 years enables Queensland to give greater effect to the *Human Rights Act 2019* (QLD) and demonstrates a commitment to the Convention of the Rights of the Child.⁷
2. A rights-based approach means the age of criminality should be determined by a strong neuroscientific evidence-base on child development and behaviour. This will generate the best long-term results in youth justice reform.
3. Youth Justice approaches should be trauma informed and minimise incarceration based on fact that imprisonment damages children's brains. Brain trauma impacts children's overall wellbeing and ability to learn and participate further in society.
4. The under 14 years old cohort most at risk of incarceration are already vulnerable in multiple domains including intergenerational trauma, disability, health, education, child protection and housing.
5. The current approach is a waste of taxpayers' money, as it does not reduce recidivism⁸ and further entrenches disadvantage in the current and future generations of families.
6. Whilst requiring political will and resources, solutions that do not rely on a punitive response can be drawn from existing program examples, evidence and principles. These solutions can be planned, implemented, and improved on; allowing Queensland's children's rights to be realised and their wellbeing, learning and development supported, whilst also keeping communities safe in the short and long term.

⁵ *Explanatory Notes - Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021*. Pg 1.

[https://documents.parliament.qld.gov.au/bills/2021/3073/Criminal-Law-\(Raising-the-Age-of-Responsibility\)-Amendment-Bill-2021---Explanatory-Notes-04df.pdf](https://documents.parliament.qld.gov.au/bills/2021/3073/Criminal-Law-(Raising-the-Age-of-Responsibility)-Amendment-Bill-2021---Explanatory-Notes-04df.pdf)

⁶ United Nations Committee on the Rights of the Child, *General comment: no.24 (2019) on children's rights in the child justice system* [CRC/C/GC/24 - E - CRC/C/GC/24 -Desktop \(undocs.org\)](https://www.unhcr.org/refugees/4d4b4d4d.html) United Nations Committee on the Rights of the Child *General comment No. 24 (2019) on children's rights in the child justice system*,

⁷ *Ibid* pg 25.

⁸ Weatherburn D, Vignaendra S & McGrath A 2009. *The specific deterrent effect of custodial penalties on juvenile reoffending. Technical and background paper series no. 33*. Canberra: Australian Institute of Criminology. <https://www.aic.gov.au/publications/tbp/tbp33>

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4. Response to Specific Changes Proposed

Amendment of Criminal Code Act 1899

Clause 3 Replacement of s 29 (Immature age)

*Section 29—
omit, insert—*

29 Immature age

*A person under the age of 14 years is not
criminally responsible for any act or omission*

This amendment makes clear that persons under the age of 14 are not criminally responsible.

Criminalising acts of children whose brains are still developing and who are still learning right from wrong, regardless of their actions does not make sense and does not prevent crime.

The existing approach to incarcerating children was developed through a very binary, antiquated understanding of offending. It presumed that when children make decisions to act, they choose good and bad based on deterrent value of punishment. More than two decades of neuroscience shows this is not true.

As a child grows, the section that tempers rational behaviour and emotions all sits in the pre-frontal cortex – and the temporal lobe – which acts as the CEO or executive function of the brain. Incarceration of young children assumes children should behave in a way that relies on their temporal lobes being fully developed. Detaining children under 14 presumes children make decisions and act as if their temporal lobes are fully developed. This defies medical evidence. Leading medical associations including the Australian Medical Association, Australian Indigenous Doctors' Association, Public Health Association Australia and the Royal Australasian College of Physicians have repeatedly called for the minimum age of criminalisation to be aged to at least 14 years based on this evidence.

The Queensland Government's Statistician's Office (QGSO) concluded in its report into youth justice that:

*"Children have less mature psychological and cognitive systems when compared with adults. They are more inclined to engage in reward-oriented behaviours, be less socially experienced, and be more reactive to emotional stressors. These factors can reduce their consequential thinking, leading them to engage in risky behaviours which are counter to the laws of society."*⁹

The same report shows that adverse childhood experiences (and lack of appropriate intervention) are more determinative of recidivism. Moreover, experiences of trauma vastly delay the development of the temporal lobes, meaning that usual development is even slower for the majority of the cohort in question. Therefore, a purely punitive model like youth detention fails to address causation and will likely only disrupt good neural development. It is not going to achieve the reduction in youth offending it seeks to address.

⁹ Queensland Treasury, April 2021. *Youth Offending Research Brief*. Queensland Government Statistician's Office. <https://www.qgso.qld.gov.au/issues/10321/youth-offending-april-2021-edn.pdf> Pg 15

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Even when serious or violent behaviour occurs, there is little point in criminalising these acts as a form of punishment or deterrent. The Australian Medical Association posits that children under 14 should always be considered *doli incapax*. That is, they do not have the brain development to be held criminally responsible.¹⁰ The proposed Bill's clause rules out any misinterpretation or inconsistent application of *doli incapax*, bringing Queensland law in line with scientific evidence and international best practice.

Through passing this legislation, the Queensland parliament would also bring into better effect its Human Rights Act 2019 (Qld), and in particular Section 33(3) which states that:

*"A child who has been convicted of an offence must be treated in a way that is appropriate for the child's age."*¹¹

We reiterate again in the strongest terms, there is no age-appropriate way to convict a child under the age of 14 years and therefore the law determining the age of criminal responsibility must be altered.

Recommendation 1: The Queensland Parliament support and pass the Amendment of Criminal Code to raise the minimum age of criminal responsibility in Queensland from 10 to 14 years old.

Amendment of Youth Justice Act 1992

Division 20

Transitional provisions for Criminal Law (Raising the Age of Responsibility) Amendment Act 2021

407 Application of division

- (1) This division applies to a person who, before the commencement, committed an offence when the person was under the age of 14 years.*

408 Ending proceedings and punishment

- (1) A police officer may not— (a) take any alternative action against the person for the offence; or (b) start a proceeding against the person for the offence*

409 Release from watch-house

- (1) This section applies if, on the commencement, the person is being held in custody in a watch-house in relation to the offence.*
- (2) The watch-house manager must arrange for the person to be released from custody as soon reasonably practicable to do so but no later than the sooner of the following— (a) the time the person would have been released from custody if this section had not commenced; (b) 3 days after the commencement.*
- (3) In deciding when it is reasonably practicable to release the person from custody, the watch-house manager must have regard to the welfare of the person, including whether the person will have access to the following things from the day the person is released—*

¹⁰Australian Medical Association. Submission to the Council of Attorneys-General Age of Criminal Responsibility Working group Review 2020 <https://static1.squarespace.com/static/5eed2d72b739c17cb0fd9b2d/t/60a3909581227361c423d773/1621332118103/AMA.pdf>

¹¹ Queensland Human Rights Commission. Rights of children in the criminal process Fact sheet. www.qhrc.qld.gov.au/your-rights/human-rights-law/rights-of-children-in-the-criminal-process

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(a) appropriate accommodation; (b) support from a consistent parent or guardian; (c) any health or other service

410 Ending detention

(1) This section applies if, on the commencement, the person is— (a) serving a period of detention in a detention centre in relation to the offence; or (b) otherwise being held in custody in a detention centre in relation to the offence.

(2) The chief executive must arrange for the person to be released from detention or custody as soon as reasonably practicable to do so but no later than the sooner of the following days— (a) the day the person would have been released from detention or custody if this section had not commenced; (b) the day that is 1 month after the commencement.

(3) In deciding when it is reasonably practicable to release the person from detention or custody, the chief executive must have regard to the welfare of the person, including whether the person will have access to the following things from the day the person is released— (a) appropriate accommodation; (b) support from a consistent parent or guardian; (c) any health or other services the person required while in detention or custody.

Provisions 407-410 are all positive adjustments as they mean that as soon as the Bill comes into effect that legal proceedings will cease, and all forms of detention would finish. We support these provisions on the basis of minimising risk to trauma but acknowledge that to ensure success there needs to be planning undertaken to avoid confusion, build community confidence and minimise risk of children offending or undertaking dangerous behaviour. The Queensland Parliament should follow the Australian Capital Territory's (ACT) lead in establishing clear pathways for children at risk of offending ahead of the legislation enactment.¹²

An abundance of research shows that incarceration only further traumatises a child who has experienced adversity and is likely therefore to in fact increase propensity for offending.¹³ The psychological harm on children who spend time in a watch house or in detention needs to be seen for what it is, a problem that can be eliminated. Ending detention as soon as possible for all children under the age of 14 years so it does not create further harm, is a welcome aspect of the Bill. Ensuring that children on remand are included in these provisions is vitally important. As according to the Australian Institute of Health and Welfare, consistently over 80% of children in detention in Queensland are on remand, in 2019-20 period this was as high as 88%. That means that at least 8, and nearly 9 out of every 10 children behind bars in Queensland have never actually been convicted of an offence.¹⁴

We note and support the Bill's intention to ensure that holistic support is provided to these children by ensuring accommodation, health and caregiving is in place wherever possible for children exiting detention. To adequately transition children, families and communities away from

¹² Emeritus Professor Morag McArthur, Dr Aino Suomi and Belinda Kendall August 2021. *Review of the service system and implementation requirements for raising the minimum age of criminal responsibility in the Australian Capital Territory, Final Report*, <https://justice.act.gov.au/sites/default/files/2021-10/Raising%20the%20Age%20-%20Final%20Report.PDF>

¹³ Payne, Jason 2007. *Research and Public Policy Series No. 80 Recidivism in Australia: findings and future research*. Australian Institute of Criminology. Pg 73. <https://www.aic.gov.au/sites/default/files/2020-05/rpp080.pdf>

¹⁴ Rates of remand of over 80% reported in Australian Institute of Health and Welfare. May 2020 *Youth Justice in Australia 2017/2018* and Australian Institute of Health and Welfare. May 2021 *Youth Justice in Australia 2019-20*. <https://www.aihw.gov.au/reports-data/health-welfare-services/youth-justice/overview>

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a punitive approach these support mechanisms will have to be trauma informed and well coordinated. Ensuring children and their families/carers are engaged in determining what potential risk factors exist before exit, and what wraparound support is required will bring about the best results in the implementation of these provisions. By extension we would call on appropriate support for those facing proceedings is also established to ensure the best chance of addressing any underlying reasons for alleged behaviour leading to contact with the youth justice system in the first place.

We also support transitional provisions 411 and 412 which detail actions pertaining to conviction records and the policy objective provided in the Bill's explanatory notes to "*negate the consequences of prior offending by children while under the age of 14*" so as the long run effect of detention and records of convictions on children are avoided.¹⁵

Recommendation 2: The Queensland Parliament commit to reviewing and actioning the Queensland service system adjustments and implementation requirements needed for raising the minimum age of criminal responsibility to 14 years.

Recommendation 3: The Queensland Parliament support and pass the Amendment of Youth Justice Act 1992 contained in the Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021.

5. Current Context

In every Australian jurisdiction, including Queensland the current age of responsibility of 10 years old is well below international minimum standards. The current minimum age of 10 is below the global median and below – in some cases well below – the minimum age in most European countries and many other countries around the world.¹⁶

That Queensland children who should otherwise be in Grade 4 in primary school can be placed behind bars leads to infringements on their rights, including their right to development and right to access education, among other rights contained in the Convention on the Rights of the Child. Additionally, as Section 26(1) of the *Human Rights Act 2019* (Qld) notes, every child has the right, without discrimination, to the protection that is needed by the child, and is in the child's best interests, because of being a child. It is not in the best interests of a child aged 10 to 13 that they should be in detention.

Numerous independent inquiries over many years have highlighted how widespread and serious these breaches are. The institutional racism, degradation, physical and humiliating punishment and other flagrant breaches of children's rights – in facilities that were found to be unsuitable for children to inhabit, let alone be rehabilitated within¹⁷ – that were highlighted by the Royal Commission into the Protection and Detention of Children in the Northern Territory were, and continue to be, appalling. Yet they are far from an outlier across Australia's youth justice systems.

The United Nations human rights bodies – most recently, the Committee on the Rights of the Child (UNCRC) – have repeatedly called on Australia to raise its minimum age to at least 14.⁷ Earlier

¹⁵ *Explanatory Notes - Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021*. Pg 1.

[https://documents.parliament.qld.gov.au/bills/2021/3073/Criminal-Law-\(Raising-the-Age-of-Responsibility\)-Amendment-Bill-2021---Explanatory-Notes-04df.pdf](https://documents.parliament.qld.gov.au/bills/2021/3073/Criminal-Law-(Raising-the-Age-of-Responsibility)-Amendment-Bill-2021---Explanatory-Notes-04df.pdf)

¹⁶ Nowak, Manfred. 2019. *The United Nations Global Study on Children Deprived of Liberty*. https://childrendeprivedofliberty.info/wp-content/uploads/2020/09/Full-Global-Study_Revised-Version.pdf

¹⁷ *Final Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory*, tabled 17 November 2017, Volume 2A, p 101.

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this year, 30 foreign governments, including Canada, France, Germany, Greece, Italy, Mexico, Spain, Sri Lanka and Sweden called on Australia to raise its minimum age and highlighted that Australia's low minimum age during Australia's Third Cycle Universal Periodic Review before the United Nations Human Rights Council.¹⁸ It was the single most specific issue raised. Disappointingly, Australia rejected all recommendations on raising the age of criminal responsibility.

We note the public outpouring of concern, during the writing of this submission from expert Aboriginal organisations, medical associations, legal and the youth justice service providers around the Meeting of the Attorneys-General Communique from the 12th of November 2021 that indicated indicating an intent of Attorneys-General to create a proposal for raising the age, but only from 10 to 12 years old¹⁹. The message is clear around Australia, all jurisdictions need to raise the age, to a minimum of 14 years old. There is a commitment across sectors to ensure this change is successful and children, families and communities are supported with safe, effective alternatives. Advocates have referred to significant evidence which suggests that raising the age, will be a far-reaching reform. Implemented well, raising the age can interrupt intergenerational cycles of disadvantage, changing the life trajectories for many children, and creating safer and fairer communities across Queensland.

In addition to the direct benefits to Queensland children, the Bill creates an opportunity for Queensland to provide leadership. There is no legal, federal or other impediment to Queensland raising the minimum age of criminal responsibility if other Australian jurisdictions have not yet committed or created legislative change. Criminal law is a matter for individual States and Territories, apart from a limited number of Commonwealth offences. The ACT has committed raising the age and made progress in assessing current service gaps and improvements required to implement an alternative response through a government review.²⁰

We reiterate the message to Queensland that Save the Children provided to the ACT in its the Children's submission to the ACT that:

"Raising the minimum age of criminal responsibility creates the opportunity to re-envision how our society treats children – particularly those most at risk of being harmed by the current system by being criminalised early in life.

Children should meaningfully participate and be involved in developing an alternative to the youth justice system. This should include children with experience of the existing youth justice system. Any alternative to the criminal justice system should be child-centred and grounded in a genuine understanding of children's perspectives and needs. This will not be possible without the involvement of children themselves in designing the alternative. Such participation is essential for the alternative model to be effective and achieve its aims."

¹⁸ Save the Children, *Save the Children feedback on Universal Periodic Review outcomes*, 3 March 2021. Available at:

[https://www.savethechildren.org.au/getmedia/68fde643-1c8f-4b51-bf03-9c3755f3f737/2021-03-03-letter-agd-save-the-children-simon-henderson-\(1\).aspx](https://www.savethechildren.org.au/getmedia/68fde643-1c8f-4b51-bf03-9c3755f3f737/2021-03-03-letter-agd-save-the-children-simon-henderson-(1).aspx).

¹⁹ *Communiqué Meeting of Attorneys-General – 12 November 2021* <https://www.ag.gov.au/about-us/publications/meeting-attorneys-general-mag-communique-november-2021>

²⁰ Save the Children Australia. August 2021. *Submission on Raising the minimum age of criminal responsibility In the Australian Capital Territory*. <https://www.savethechildren.org.au/getmedia/9ce5b233-3290-43d0-9db5-4d020e16cfd2/publication-of-submission-to-act-government-on-raising-the-minimum-age-of-criminal-responsibility.pdf.aspx>

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6. The Bill's positive impact

The cohort affected by the Bill

The children who will benefit from this Bill are those with complex challenges beyond their own making. The current low minimum age disproportionately harms those who are already most disadvantaged, as it is these children who are most likely to have contact with the youth justice system and therefore experience the harmful effects of such contact. Notably it especially harms Aboriginal and Torres Strait Islander children, who comprise a large majority of Australian children sentenced and imprisoned each year.⁵ In Queensland this is nearly 60% of all young people in contact with the youth justice system identifying as Aboriginal and/or Torres Strait Islander.²¹

Most of the children we are talking about are also victims of longstanding abuse and neglect. In Queensland, we know that there is significant crossover between children who have received child protection services.²²

The cohort are also far more likely to have significant mental health disorders or cognitive disabilities (such as Attention Deficit Hyperactivity Disorder, autism spectrum disorders, acquired brain injury and Fetal Alcohol Syndrome Disorder) than other children.²³ Many suffer from cognitive impairment. In Western Australia, 9 out of every 10 children in detention suffer from neurodevelopmental delay on 3 or more domains. There is no reason to believe the statistics are any different to Queensland. These children are more than likely not in receipt of National Disability Insurance Scheme support or other support that they need to recover from trauma and/or address their cognitive impairment. To detain them only makes their lives worse, and their trajectory of offending worse.

Long term and financial benefits of the Bill

Criminalising children's behaviour traps children in a cycle of disadvantage from which many never escape. Early contact with the criminal justice system leads to further, and often escalating, criminal behaviour.³ The younger a child is at their first sentence, the more likely they are to reoffend, including as an adult.⁴ Children who are jailed are not only more likely to reoffend but also less likely to complete their education or find employment. Therefore, a purely punitive model like youth detention fails to address causation and will likely only disrupt good neural development. It is not going to achieve the reduction in youth offending it seeks to address.

7. A child focused alternative model

Save the Children and Child Wise concur that whilst the Bill is an important step, true success rests in Queensland applying a broader youth justice strategy. A commitment to raising the age to 14 years old, offers an impetus for ensuring Queensland is addressing the wellbeing of its children and young people using a strong evidence base and best practice. Whilst broader system reform will require planning and different allocation of financial resources, the commitment does already align closely with the objectives in the Queensland Department of Children, Youth Justice and Multicultural Affairs 2021-2025 Strategic Plan to:

²¹ This figure remains relatively static from 2018-2020, noting that the 2017 youth justice census reported just over half 55.6% identified as Aboriginal and/or Torres Strait Islander, See *Ibid.*, Treasury Research Brief, 2021 page 12.

²² Department of Justice and Attorney-General 2017, *Department of Justice and Attorney-General Annual Report 2016-17*, p 81

²³ <https://www.telethonkids.org.au/news--events/news-and-events-nav/2018/february/young-people-in-detention-neuro-disability/>

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*"...focus on underlying issues that lead to offending behaviour, and deliver evidence-based interventions and programs for young people who are repeat offenders."*²⁴

To move this focus from theory to practice, the Queensland Parliament can also draw on existing mapping and recommendations from within the state. In consult with a range of stakeholders, including young people themselves the 2021 Queensland Family & Child Commission's report 'Changing the Sentence, Overseeing Queensland's youth justice reforms' has identified key areas of improvement. These include a need for further specialist support in remote community, addressing over representation of Aboriginal and Torres Strait Islander people and specialised services for those within the system. Overall conclusions are that:

*"...the youth justice system would be more effective in improving the lives of vulnerable children and keeping the community safe if it viewed at-risk young people through a rights and well-being, rather than just a criminal, lens."*²⁵

Recommendations made by young people were summarised in the report copied here in entirety as they offer building blocks for the Queensland Parliament to commit to youth justice system reform based on a child rights and participation principles.

1. Get to know children and young people as individuals; don't just focus on offending behaviours.
2. If you treat children and young people with respect, they will do the same.
3. Don't target children based on their race, their looks or their history.
4. Try to understand why children and young people might be having difficulties, and respond.
5. Support children and young people for as long as they need the support.
6. Make sure young people understand what is happening and what is expected.
7. Keep the parents and guardians of children and young people informed and involved.
8. The earlier the intervention the better—provide informal, accessible supports wherever young people are.
9. Refer young people to support services the first time they go to court.
10. Help children to go to school so they can learn to read.
11. Don't act without involving the child or young person.
12. Listen and respond to the plans and ideas each child and young person has for themselves.²⁶

²⁴ Department of Children, Youth Justice and Multicultural Affairs. *Strategic Plan 2021-2025 (current from March 2021)*
<https://www.cyjma.qld.gov.au/resources/dcsyw/about-us/publications/corporate/strategic-plan-2021-25.pdf>

²⁵ Queensland Family and Child Commission. March 2021. *Changing the Sentence, Overseeing Queensland's youth justice reforms Executive Summary* pg 7

²⁶ Queensland Family and Child Commission. March 2021. *Changing the Sentence, Overseeing Queensland's youth justice reforms* pg. 27

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Given 14 years is the most common age of criminal responsibility internationally, there is also a volume of material internationally on how to structure an alternative system.²⁷ Many countries with a minimum age of 14 or higher also have low incarceration rates for older children who are subject to criminal law, suggesting a lower rate of children being entrenched in the justice system through earlier offending and punitive contact with police and the justice system and that a cohort of at-risk younger children has successfully been diverted from the youth justice system.⁹

Save the Children's views about children's criminal responsibility, and about what works to prevent, address and change undesirable behaviour, are informed by our experience directly supporting at-risk children, families and communities. We do this through the provision of early intervention services, programs and partnerships, as well as other services such as bail support programs, across Australia. Whilst we believe children and families should be given the right support at any stage, the difference between what is required to generate positive change between pre and post detention is marked.

To ensure children and their families see another pathway, we have experienced first-hand the effectiveness of evidence-based prevention and early intervention in supporting and diverting children in Queensland who are at risk of engaging in criminal behaviour through programs such as *Our Strong Culture, Strong Tomorrow's* program in Queensland and the *Youth Partnership Project* in Western Australia (see next page).

We have also seen first-hand the harm caused by criminalising children as though they were adults, even though they do not have the capacity to understand the consequences of their actions. In such cases the pathway out of recidivism is possible but requires more substantial and costly intervention. Despite the challenging curb, and in partnership with a range of other services, we continue to generate positive results in the *MyJust Bail Support service* in Mt Isa, Mckay and Brisbane for young people who have service sentences in Cleveland or Brisbane Youth Detention centres. The ineffectiveness of detention as a deterrent for future offending and the importance of appropriate interventions to break the cycle is summed up by a participant in our *Our Teach* program (see pg 16 for more details on this program).

"Once I had been to Parky [Parkville Youth Justice Centre] I felt embarrassed. My family were worried that me being a criminal would rub off on my little brother and it made me feel like I didn't want be here anymore. I'd try to do the right thing for a while but because I screwed up so badly, I'd just think, 'stuff it,' and go get into trouble with my mates. The coppers would just target me and made me feel like a criminal, so I just did it anyway. I didn't care. If I'm gonna' just get accused of stuff, I may as well do it.

"Instead of sending me away from my family, there has to be a better way. I learnt tips on how to offend better while locked up, but that was all really. Going to Parky didn't make me a better person and did not help me understand what I did wrong. It was only back in Shepparton that I got workers that understood me, didn't lose it at me when I made mistakes, and really tried to help. Having someone care about me taught me more than prison could." – 18 year old Aboriginal male, first had contact with youth justice at age 10²⁸

The goal should always be to keep children away from detention and why we advocate strongly for non-criminalised early intervention approaches based on the following principles.

²⁷ Committee on the Rights of the Child, *General comment No. 24 (2019) on children's rights in the child justice system*, 18 September 2019, para 20.

²⁸ Current participant in Save the Children youth justice program, Victoria, July 2021.

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Prevention, diversion and early intervention

When children engage in anti-social behaviour, this is an indication that they have needs which are not being met – often associated with cognitive impairment, mental health difficulties, and trauma, abuse and neglect they have themselves experienced. Early intervention approaches which aim to address those needs, direct children (and their families) towards support services and assist children to understand and take responsibility for the consequences of their behaviour, are more effective in changing children's behaviour than criminalising and punishing them for their acts. Such approaches also make our community safer in the long run, as they are more likely to change children's pathways and less likely to lead to reoffending – including as adults – than responding by consigning children to the criminal justice system and the increased rates of reoffending that it produces.²⁹

Partnership Project

Known as the Youth Partnership Project (YPP), this initiative has developed an innovative cross-sector early intervention framework based on early identification of young people with complex needs. This in turn allows partners to provide collaborative, intensive support.

They involve a dedicated 'backbone' support organisation – in this case Save the Children – as part of a set of mutually reinforcing activities with continuous communication and shared measurement across all partners, pursuing a shared goal. All YPP partners share a common goal of getting the right support to the right young people at the right time, aiming to create significant savings in expenditure on tertiary services and enable young people to thrive in their families and communities.

Prevention and diversion from the youth justice system should be priorities, as part of a suite of early intervention supports targeted at children and young people who are at risk. These supports should:

- be directed at supporting the most vulnerable children and young people early;
- directly target the reasons children have entered (or are likely to enter) the justice system in the first place. This includes major childhood trauma, homelessness (where children are committing survival crimes like car theft just to have somewhere safe to sleep), and where children are left unsupported emotionally and physically by the child protection system.
- include supports for children and young people who have not yet had contact with police or the youth justice system, as well as for those who have had already had such contact;
- be targeted, localised and place-based, with intensive individualised support for individual at-risk children and young people built on one-to-one relationships, rather than 'one size fits all' interventions aimed at broad 'cohorts', groups or geographic areas;
- bring a cross-section of partners together to take a collaborative approach with a common goal of reducing demand on the youth justice system;
- include a specific function for coordination and/or leadership across service providers and other partners, with appropriate resourcing for this function; and
- adopt a long-term approach to impact and cost effectiveness.

Supporting those who have previously been or are currently detained

Critics to raising the age, point to rare instances where children engage in very serious anti-social, or violent behaviour. Whilst these scenarios are challenging, it is important to recognise that alternative models for children aged 10-13 years do and can exist. In very limited circumstances,

²⁹ Sentencing Advisory Council, 2016. *Reoffending by children and young people in Victoria*, Victorian Government, pp 25-6 and 30-1 and Australian Institute of Health and Welfare (AIHW), 2019. *Youth justice in Australia 2017-18*, Data table S78b, available from <https://www.aihw.gov.au/reports/youth-justice/youth-justice-australia-2017-18/data>.

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and with appropriate safeguards, it might be appropriate to require a child to undergo various types of assessment (e.g. cognitive and/or psychological), participate in a program or reside in a therapeutic facility. In all cases, the focus should be on meeting the child's needs in an individualised and specialised manner, with the aim of supporting the child's development and addressing the underlying causes of the harmful behaviour (such as mental health disorders or trauma). Importantly, this should include working with children, families, and communities to encourage children's responsibility and accountability for their actions, to divert them from further harmful behaviour. Restorative and therapeutic interventions, operating at intensity levels reflecting the need being met, are more effective than punitive approaches in avoiding future harm.

Done well, these approaches are more appropriate and more effective than a punitive or criminalising response.

Whilst this may appear costly, it is important to recall that children under 14 are incapable of truly understanding the consequences of their actions and a punitive – or criminalised – response would be counterproductive. Long-term cost-savings to government are highly likely as better outcomes are generated through evidence-based throughcare services.

Learning and employment are protective factors against potentially criminal behaviour, however our experience is that, for children at significant risk of contact with police and youth justice, educational engagement requires individualised support, as these children often do not have the groundwork needed to engage effectively in formal learning environment.

Conclusion

We note the Explanatory Notes to the Bill that on any given day in Queensland in 2019-20 there were an average of 17 children aged 10-13 years in detention. Children are not adults, and no ten, 11, 12 or 13 year old child should be dealt with in the criminal justice system as if they were.

The medical evidence about children's brain development is clear: at such young ages, children cannot understand the consequences of their actions, and their decision-making capacity and impulse control are far from fully developed. It is both unjust and ineffective to treat children under 14 as if their brains were sufficiently developed to make comprehensive judgements and to seek to change their behaviour through punitive approaches.

Raising the age of criminal responsibility will ensure the rights of individual children are met, while enhancing the safety of the community over time.

Supporting children and young people to re-engage with education: Out Teach Mobile Education

More than 60 per cent of children and young people in the youth justice system have previously been expelled or suspended from school.¹¹ Save the Children's Out Teach Mobile Education program currently delivered in Tasmania and Victoria provides individualised support for children and young people who are disengaged from learning and who have had contact with the youth justice system. The program takes a trauma informed approach, employs specialist teachers and creates individualised education plans that build on young people's strengths with great results. As explained by John, an Out Teach participant.

"It's heaps easier to meet up with you [Out teach Teacher] instead of going to classes. I can just work on relevant stuff instead of getting worksheet after worksheet that teachers don't explain to me. I hate how I feel judged whenever I turn up, like they decide who I am before they know anything about me. But in the van I don't have to deal with that anxiety. I have done more school work in the last few weeks than I have done in the last four years"