

THE CRIMINAL LAW (RAISING THE AGE OF RESPONSIBILITY) AMENDMENT BILL 2021

Submission to the Queensland Parliament Community Support and Services Committee  
by ANTaR Queensland

**Authored by**

ANTaR Queensland Youth Justice Team

Lucy Lopez

Jan Gillies

Rev Dr Wayne Sanderson

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ANTaR Queensland Youth Justice Team would welcome the opportunity to present its support of the Amendment Bill at a Parliamentary Committee public hearing

## PART 1

### WHO WE ARE

ANTaR Queensland is an affiliate of a national, independent, non-partisan network of state and territory groups. We support the millions of Australians wanting justice, rights and respect for Australia's First Peoples. We are committed to social justice and the full realization of human rights, including those expressed in the United Nations Declaration on the Rights of Indigenous Peoples and the United Nations Convention on the Rights of the Child. We draw attention to the submission put forward by ANTaR National on this matter.

ANTaR Queensland welcomes the invitation to make this submission and thanks the members of the Committee for your care and attention in reading this submission.

### SUMMARY STATEMENT

ANTaR Queensland supports the Amendment Bill for the following critical reasons:

- ✧ Children below the age of 14 must not be held criminally responsible for offensive behaviour and the decisions driving such behaviour given the significant medical and developmental conditions that they present with, conditions that are beyond the control of these children, and that compromise their capacity for sound decision-making.
- ✧ The current legislation fails to accommodate the enduring historical, cultural, social, economic, medical, educational, developmental and situational factors that keep certain children in cycles of chronic distress and disadvantage resulting in their early and repeated contact with the criminal justice system and their entrenchment in it through adulthood.
- ✧ Rather than provide and enhance preventative opportunities and timely intervention, the current legislation reflects a punitive approach towards certain children resulting in pernicious and sometimes irreversible damage to the children, their families and communities; the attendant support services currently available are accessed too late in the process (often only after first contact with the Criminal Justice system) and often administered without the benefit of a cohesive and coordinated independent multi-disciplinary body. Such a body would include, but not be limited to, parents, medical professionals, educators, lawyers, critical disability advocates, child protection advocates, juvenile justice practitioners and Indigenous organizations.
- ✧ The evidence shows that increasing incarceration rates have not reduced criminal behaviour, are more costly than community based intervention, exacerbate the risk to communities as a result of increased recidivism and potentially stigmatize young children for life.
- ✧ Given that Indigenous children are disproportionately represented in the criminal justice system, raising the age would be a most vital step among many in redressing a long history of unjust treatment and disadvantage that continues to hurt this nation's First People, and ultimately all its people. Raising the age will help restore the rights of our most disadvantaged children by providing them with a real chance for a childhood of hope and well being as well as equal opportunities for successful and productive citizenship.

## DUJUAN HOOSAN'S 2019 SPEECH TO THE UN HUMAN RIGHTS COUNCIL

My name is Dujuan, I am 12 years old. I am from Arrernte and Garrwa Country

I came here to speak with you because the Australian Government is not listening. Adults never listen to kids like me. But we have important things to say.

I am the star in a new documentary, In My Blood It Runs.

The film shows that I felt like a failure at school.

I was always worried about being taken away from my family. I was nearly locked up in jail.

I was lucky because my family they know I am smart. They love me. They found a way to keep me safe.

There are some things I want to see changed:

I want my school to be run by Aboriginal people.  
I want adults to stop crueling 10 year old kids in jail.

I want my future to be out on land with strong culture and language.

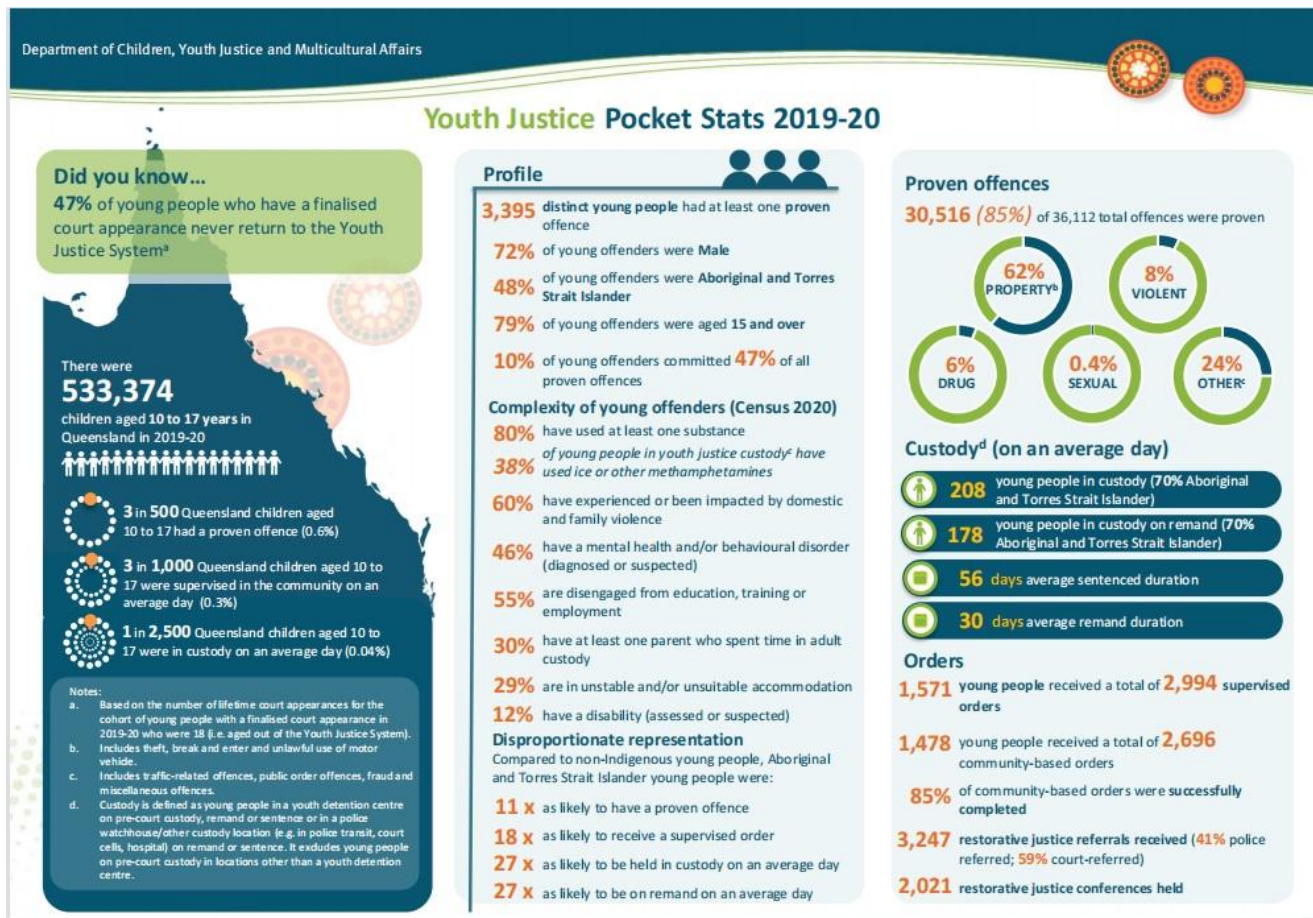
My film is for all Aboriginal kids. It is about our dreams, our hopes and our rights.

I hope you can make things better for us.

Thank you.

**PART 2**

**YOUTH JUSTICE POCKET STATS 2019-2020**



From <https://www.cyjma.qld.gov.au/resources/dcsyw/youth-justice/resources/yj-pocket-stats-2019-20.pdf>

### PART 3

#### **SOME OF THE THINGS WE KNOW (ABOUT)**

It is respectfully assumed that the Committee is adequately informed in the substantive issues and arguments relating to the Amendment Bill and consequently, the following list is provided as a snapshot of those most critical and compelling. A bibliography included in the appendix is provided for your further reference.

1. The human rights of the child
2. The medical evidence
3. The historical context
4. The failure of *doli incapax* to protect children from prosecution
5. The impact of intergenerational trauma and victimization
6. The impact of school exclusion and the increasing rate of exclusion of children as young as 4 years old
7. The impact of out-of-home-care
8. The impact of separation from parents
9. The financial cost of incarceration
10. The social cost of incarceration including risks to community safety
11. The inevitability of recidivism
12. The disproportionate representation of First Nations children in detention
13. The disproportionate representation of non-Indigenous law enforcement officials in detention/prison
14. The position of Australia among other nations with respect to the minimum age of criminal responsibility
15. The exposure to and availability of support services only occurring at first point of contact with the criminal justice system
16. The lack of and/or ineffective provision of therapeutic wrap-around services
17. The lack of an effectively coordinated multi-disciplinary approach to prevention, restoration and reintegration
18. The lack of a cohesive and coordinated multi-disciplinary body that services families and young children before, through and after the event
19. Justice reinvestment policies and restorative justice practices offer a humane and cost-effective approach to our most vulnerable people - children, particularly First Nations children - who offend and the victims of their offenses
20. The essential work of establishing identity through the bonds of belonging within culturally relevant communities is integral to child development and well being
21. The lack of evidence that the current legislation and its enforcement actually work to prevent and heal trauma, to prevent or reduce criminality and recidivism and to reduce the financial and social cost of incarceration
22. ACT has committed to raise the minimum age of criminal responsibility to 14 years old

## PART 4

### ONE VITAL STEP AMONG MANY

**Relying on the Youth Justice Pocket Stats 2019-20**, it is clear that patterns of early offending by age and seriousness of offence change little over time. There is a clear trend towards females being a higher proportion of all offenders when comparison is made across the past 10 years. Considering the inclusion of 17-18 year old youth in the youth justice system since 2017-18, there has been an appreciable decrease of 27% in the number of distinct young offenders in the latest two years of available data. While the unique social and environmental context for this does not afford firm prediction, it indicates that some of the system reforms enacted since 2015 are bearing fruit. In particular, the 14% increase in Restorative Justice referrals (2,857 to 3,247) enacted between 2018-2019 and 2019-2020 is encouraging.

**Young offenders are at least as much victims** as are those impacted by their actions. Through no fault of their own, these children are caught in an inexorable interplay of complex historical, contemporary, structural and situational factors that result in their incarceration. Tragically, First Nations children are most significantly and disproportionately represented in this culture of burgeoning incarceration.

**We have a duty to take care of our children** and punishment instead of care and rehabilitation is a dereliction of our duty. Prisons and detention centers are no places for any child to be spending any part of their childhood. We must honour the United Nations Convention on the Rights of the Child, to which we are signatories, and halt this erosion of our children's right to a good life and to the realization of their full potential. Raising the age of criminal responsibility from 10 to 14 years old is a vital first step in halting and reversing this erosion.

**We now have ample medical evidence** that children's ability to self-regulate and demonstrate appropriate executive and adaptive decision-making is severely compromised by a range of preconditions including FASD (foetal alcohol spectrum disorder), cognitive impairment and trauma and their associated disabilities.

**We also have compelling evidence that imprisonment and detention** do not reduce criminality. On the contrary, they increase the probability of re-offending at a rate that directly correlates with the age that a child first makes contact with the criminal justice system - the younger the child, the more likely it is to reoffend. This pattern is exacerbated by the alarming pattern of increasing out-of-home-care, removal from parents and school exclusions of ever younger children (some as young as 4 years old). In addition, we know that the cost of incarceration far exceeds the cost of community based and culturally responsive approaches to prevention and rehabilitation.

**Queensland can learn from a major example** of achievement in Restorative Justice reform in the Province of Ontario, Canada. It is significantly comparable with Queensland in its major demographic descriptors, urban/rural composition, economic strength and governance/political culture. In 2003, the Canada Youth Criminal Justice Act was passed by the national parliament. Its key features were the increase of the minimum age of criminal responsibility from 10 to 12 – accompanied by a broad range of supporting reforms which had a strong restorative justice intent.

**Longitudinal research to 2017 found** that across these 14 years, there was a 48% decrease in youth crimes committed – accompanied by an 83% decrease in custodial admissions. Law enforcement by provincial and municipal police services was supported by the Royal Canadian Mounted Police in agreed, specified areas. Accompanying legislation provided for new or upgraded resources for funding diversionary measures to divert and address under age 12 offenders. These were predominantly multi-skilled early intervention and support for troubled families; enhanced health and disability assessments and support packages; alternative education services (government and community based); vocational skills training and throughcare pathways into employment. Several Queensland researchers and practitioners relevant to the Ontario experience continue communication with counterparts in that sphere.

**Relevant Support for Victims of Crime** has critical value and priority. It must be ensured through enabling legislation to accompany the MACR14 systemic changes. Realistic levels of budget capacity and clear access pathways for victims must be assured.

**The Queensland Government and Aboriginal and Torres Strait Islander** peoples of Queensland are now formally discussing a Treaty in the state. The Treaty is fundamental to reframing the relationship with First Nations people, a useful component of which might be to refrain from practices and policies which repeatedly generate pointless trauma. The Treaty will also help to broaden the range of available mechanisms for preventing and responding to children who would otherwise be entrenched in the criminal justice system.

**In making this submission, ANTaR Queensland** urges a bipartisan response to healing this most afflictive wound of child incarceration, one that First Nations children, their families and communities continue to be hurt by. We urge that the rights of First Nations people to provide culturally responsive care for their children and their ability to do so are honored and supported comprehensively. We urge that (then) 12 year old Dajuan’s voice, on behalf of children like him and their families and communities, be sincerely heard and acted upon. We urge that the already existing and significant body of knowledge and expertise of key stakeholders be employed without delay. Most critically, we urge that the Amendment Bill to raise the minimum age of criminal responsibility is passed without delay.

#### **ANTaR Qld Youth Justice Team**

Lucy Lopez

Jan Gillies

Rev Dr Wayne Sanderson

#### **CONTACT**

Lucy Lopez

Ph: [REDACTED]

Email: [REDACTED]



## PART 5 APPENDIX

## BIBLIOGRAPHY

- 2019-20 Youth Justice Pocket Stats. (n.d.). 1.
- 2019-20 Youth Justice Pocket Stats.pdf. (n.d.). Retrieved November 29, 2021, from <https://www.cjma.qld.gov.au/resources/dcsyw/youth-justice/resources/yj-pocket-stats-2019-20.pdf>
- 2021\_09\_15\_WEEKLY.pdf. (n.d.). Retrieved November 15, 2021, from [https://documents.parliament.qld.gov.au/events/han/2021/2021\\_09\\_15\\_WEEKLY.pdf#page=41](https://documents.parliament.qld.gov.au/events/han/2021/2021_09_15_WEEKLY.pdf#page=41)
- Abudu, N. G., & Miles, R. E. (2017). Challenging the Status Quo: An Integrated Approach to Dismantling the School-to-Prison Pipeline. *St. Thomas Law Review*, 30(1), 56–67. <https://search.ebscohost.com/login.aspx?direct=true&db=lgs&AN=128773337&site=ehost-live&scope=site>
- ACT Government; PositionTitle=Director; SectionName=Corporate Management; Corporate=Chief Minister, T. and E. D. D. (2021, November 10). *Raising the age report released*. Chief Minister, Treasury and Economic Development Directorate; Chief Minister, Treasury and Economic Development Directorate. [https://www.cmtedd.act.gov.au/open\\_government/inform/act\\_government\\_media\\_releases/rattenbury/2021/raising-the-age-report-released](https://www.cmtedd.act.gov.au/open_government/inform/act_government_media_releases/rattenbury/2021/raising-the-age-report-released)
- Amnesty International Australia. (2021, November 10). *Incarceration Nation: Taking Action*. <https://www.youtube.com/watch?v=Zl2ngNuXlBk>
- Antoine, A., Mason, R., Mason, R., Palahicky, S., & France, C. R. de. (2018). *Indigenous Epistemologies and Pedagogies*. <https://opentextbc.ca/indigenizationcurriculumdevelopers/chapter/topic-indigenous-epistemologies-and-pedagogies/>
- Ashkar, P. J., & Kenny, D. T. (2008). Views From the Inside: Young Offenders' Subjective Experiences of Incarceration. *International Journal of Offender Therapy and Comparative Criminology*, 52(5), 584–597. <https://doi.org/10.1177/0306624X08314181>
- Blagg, H., Tulich, T., Williams, R., Mutch, R., May, S. E., Badry, D., & Stewart, M. (2020). *Decolonising Justice for Aboriginal Youth with Fetal Alcohol Spectrum Disorders*. Routledge. <https://doi.org/10.4324/9780429325526>
- Brown, J., Carter, M. N., Haun, J., Wartnik, J. A., & Zapf, P. A. (2019). Fetal Alcohol Spectrum Disorder (FASD) and Competency to Stand Trial (CST): A Call on Forensic Evaluators to Become Informed. *Journal of Forensic Psychology Research and Practice*, 19(4), 315–340. <https://doi.org/10.1080/24732850.2019.1620798>
- Brown, L. (2019). Indigenous young people, disadvantage and the violence of settler colonial education policy and curriculum. *Journal of Sociology*, 55(1), 54–71. <https://doi.org/10.1177/1440783318794295>
- Carrington, P. K., & Hogg, R. (n.d.). *QPC Inquiry into imprisonment and recidivism Submission*. 24. *Children's Mental Health | Child Development Institute*. (n.d.). Retrieved November 29, 2021, from <https://www.childdevelop.ca/>
- Congress 2017 Resources – CCJA. (n.d.). Retrieved November 29, 2021, from <https://www.ccja-acjp.ca/pub/en/past-events/congress-2017-canadian-youth-justice-presentations/>
- Cunneen, C., & Libesman, T. (2000). Postcolonial Trauma: The Contemporary Removal of Indigenous Children and Young People from Their Families in Australia. *Australian Journal of Social Issues*, 35(2), 99–115. <https://doi.org/10.1002/j.1839-4655.2000.tb01088.x>
- Cunneen, P. C. (n.d.-a). *ARGUMENTS FOR RAISING THE MINIMUM AGE OF CRIMINAL RESPONSIBILITY*. 34.
- Cunneen, P. C. (n.d.-b). *Chief Investigator, Comparative Youth Penalty Project, UNSW*. 7.
- Dawes, G., Davidson, A., Walden, E., & Isaacs, S. (2017). Keeping on Country: Understanding and Responding to Crime and Recidivism in Remote Indigenous Communities. *Australian Psychologist*, 52(4), 306–315. <https://doi.org/10.1111/ap.12296>
- Fatouros, H. (n.d.). *Castan Centre for Human Rights Law Conference on 22 July 2016*. 22.



- Freckelton, I. (2016). Sentencing Offenders with Foetal Alcohol Spectrum Disorder (FASD): The Challenge of Effective Management. *Psychiatry, Psychology and Law*, 23(6), 815–825. <https://doi.org/10.1080/13218719.2016.1258752>
- Gerard, A., McGrath, A., Colvin, E., & McFarlane, K. (2019). ‘I’m not getting out of bed!’ The criminalisation of young people in residential care. *Australian & New Zealand Journal of Criminology*, 52(1), 76–93. <https://doi.org/10.1177/0004865818778739>
- Green, R., Gray, R. M., Bryant, J., Rance, J., & MacLean, S. (2020). Police decision-making with young offenders: Examining barriers to the use of diversion options. *Australian & New Zealand Journal of Criminology*, 53(1), 137–154. <https://doi.org/10.1177/0004865819879736>
- Honorato, B., Caltabiano, N., & Clough, A. R. (2016). From trauma to incarceration: Exploring the trajectory in a qualitative study in male prison inmates from north Queensland, Australia. *Health & Justice*, 4(1), 3. <https://doi.org/10.1186/s40352-016-0034-x>
- Kramer, M. (2016, February 12). Schools like prisons, prisons like schools. *OpenDemocracy*. <https://www.proquest.com/docview/1764752404/abstract/1F7E37DA910343CEPQ/1>
- Minimum-age-criminal-responsibility.pdf*. (n.d.). Retrieved November 18, 2021, from <https://www.qfcc.qld.gov.au/sites/default/files/For%20professionals/policy/minimum-age-criminal-responsibility.pdf>
- NewsGP - Youth detention policy labelled ‘stupid, lazy, outrageous and immoral.’* (n.d.). NewsGP. Retrieved November 28, 2021, from <https://www1.racgp.org.au/newsgp/clinical/youth-detention-policy-labelled-stupid-lazy-outrag>
- OHCHR | *Convention on the Rights of the Child*. (n.d.). Retrieved November 26, 2021, from <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>
- Placing country at the centre: Decolonising justice for indigenous young people with Foetal Alcohol Spectrum Disorders (FASD)*. (n.d.). Retrieved November 28, 2021, from <https://search.informit-org.ezp01.library.qut.edu.au/doi/epdf/10.3316/agispt.20171110>
- Raise the age*. (n.d.). Michael Berkman MP for Maiwar. Retrieved November 18, 2021, from <https://www.michaelberkman.com.au/raisetheage>
- Report - MACR Discussion Paper Submissions - Submissions.pdf*. (n.d.). Retrieved November 18, 2021, from <https://hdp-au-prod-app-act-yoursay-files.s3.ap-southeast-2.amazonaws.com/5816/3589/6985/Report - MACR Discussion Paper Submissions - Submissions.PDF>
- Rudolph, S. (2021). Ngaga-dji, a call to action: Education justice and youth imprisonment. *The Australian Educational Researcher*, 48(3), 433–448. <https://doi.org/10.1007/s13384-020-00408-6>
- Schnepel, K. T. (2016). Economics of Incarceration. *Australian Economic Review*, 49(4), 515–523. <https://doi.org/10.1111/1467-8462.12187>
- The Centre for Addiction and Mental Health*. (n.d.). CAMH. Retrieved November 29, 2021, from <https://www.camh.ca/en/>
- The Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021*. (n.d.). Retrieved November 25, 2021, from <https://documents.parliament.qld.gov.au/com/CSSC-0A12/CLRARAB202-31E4/submissions/000002.pdf>
- The Cross-Over Youth Project: Keeping Youth in Care Out of the Criminal Justice System – Ontario Association of Children’s Aid Societies*. (n.d.). Retrieved November 29, 2021, from <http://www.oacas.org/2015/11/the-cross-over-youth-project-keeping-youth-in-care-out-of-the-criminal-justice-system/>
- The revolving door: Are we sentencing people with FASD to a life trapped in the criminal justice system?* (n.d.). <https://doi.org/10.3316/INFORMIT.068470501810203>
- The shocking truth of Australia’s Indigenous incarcerated*. (n.d.). Independent Australia. Retrieved November 29, 2021, from <https://independentaustralia.net/australia/australia-display/-the-shocking-truth-of-australias-indigenous-incarcerated,11451>
- The speech 12 year old Aboriginal child, Djujan, delivered at the UN Human Rights Council*. (n.d.). Human Rights Law Centre. Retrieved November 26, 2021, from <https://www.hrlc.org.au/news/2019/9/11/the-speech-12-year-old-dujuan-delivered-at-the-un-human-rights-council>

*Trauma changes everything: Examining the relationship between adverse childhood experiences and serious, violent and chronic juvenile offenders—ClinicalKey.* (n.d.). Retrieved November 26, 2021, from

<https://www-clinicalkey-com-au.ezp01.library.qut.edu.au/#!/content/playContent/1-s2.0-S0145213415000356?returnurl=null&referrer=null>

Winn, M. T., & Behizadeh, N. (2011). The Right to Be Literate: Literacy, Education, and the School-to-Prison Pipeline. *Review of Research in Education*, 35(1), 147–173.

<https://doi.org/10.3102/0091732X10387395>