



Queensland Government Raise the Age of Criminal Responsibility Submission



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Introduction

World Vision firmly believes that locking up children is never the answer and we strongly recommend that the Queensland Government raise the age of criminal responsibility to 14 years of age. China, Russia, Germany, Spain, Sierra Leone, Azerbaijan, Cambodia and Rwanda have raised the age of criminal responsibility to at least 14 years old, while Australia has not. This is an indictment on Australia's justice system. Now is the time to act and raise the age to protect current and future generations of Queensland children.

The evidence is clear. Incarcerated children cannot thrive and reach their full potential. (Barnert et al., 2019) Children in Australia's youth justice system have high rates of trauma and mental health issues. Queensland's low age of criminal responsibility disproportionately affects First Nations children. Instead of inflicting further damage at a time of risk and vulnerability, it is time listen to First Nations communities and organisations on how to best support these children to correct their behaviour. At-risk children need intensive support which should be grounded in trauma informed care, education, culture and connection to country and kin. These children need help, protection and the chance for a decent start in life, not to be locked up.

About World Vision Australia

World Vision Australia (WVA) is committed to supporting First Nations children so they can thrive. World Vision is a child-focused international community development organisation and, since 1974, we've been adapting our successful community-led development approach to support First Nations communities to lead their own development. We have partnered with First Nations communities for nearly 50 years to deliver First Nations. While WVA does not directly program on juvenile justice issues, WVA's Young Mob program has operated in juvenile justice centres to support First Nations young people to connect to culture and become strong youth and community leaders. Wherever Young Mob programs are run, they provide a positive pathway for First Nations young people and have the indirect impact of reducing engagement with the justice system. World Vision has also delivered early childhood programs across First Nations communities for decades with a deep understanding of the elements to support First Nations children to thrive. This provides field experience to speak to the issue of raising the age. World Vision Australia is a signatory to the Raise the Age campaign which calls for the age of criminal responsibility be raised to 14.

WVA is a Christian organisation driven by values of fairness, equality, and service. We provide help on the basis of need and serve all people regardless of religion, race, ethnicity or gender. We are committed to standing in solidarity with First Nations people and supporting First Nations children to thrive and experience life in all its fullness.



Background

Child justice for First Nations children is one of the most pressing issues for First Nations communities and it can have inter-generational impacts. It affects those who are most vulnerable and places even more trauma and marginalisation on them at a time when they need the most love and care. The justice system is designed to punish perpetrators, primarily through incarceration. This system is not fit-for-purpose for children. When it is applied to children, it only serves to perpetuate the trauma, disadvantage and anti-social behaviour which contribute to bad behaviour in the first place. In this sense, incarcerating children doesn't address root causes and rather reinforces a negative feedback loop.

The pathways into juvenile incarceration are complex though some are more commonly trod than others. There are predictive factors which should be examined when considering why some children are more likely to be imprisoned than others. These pathways tell a story of colonisation, intergenerational trauma, disadvantage and racism. While this is a tragic story, it also holds the solutions to addressing child justice. Children shouldn't be locked up – they should have trauma informed care which is embedded in culture to heal and build resilience.

First Nations children represent 45% of youth offenders in Queensland. However, First Nations children represent approximately 70% of children in detention. This is despite being only 7% of the 10–17year-old Queensland population, meaning First Nations youth are 10 times more likely to be incarcerated than their non-Indigenous peers. Nationally In 2020, 499 children aged between 10 and 13 were imprisoned and only 43 were under the age of 12. This means the recent announcement from the Meeting of Attorneys General to investigate raising the age to 12 would still not go far enough to protect most children aged 12-14 who are incarcerated. At least 65% of these children are Aboriginal or Torres Strait Islander. (Australian Institute of Health and Welfare, 2021) This makes the child justice issue largely a First Nations justice issue where the system needs to be culturally informed and safe, to care for and treat the nation's most vulnerable children.

Of great concern, 63% of all children in detention nationally were on remand and then released on bail, meaning they were yet to be convicted of any crime. (Australian Institute of Health and Welfare, 2021) The removal of children who have anti-social behaviour only serves to harm them and further entrench them into the justice system and, commonly, on a pathway into adult criminal activity and incarceration. (Honorato, Caltabiano, & Clough, 2016)

This submission will provide a background and antecedents to child incarceration covering risk factors and stages of children development. This is a life-course approach suggesting that without timely and targeted supports for children and their family across their life stages then they are not able to thrive and optimally develop cognitively and socially. The submission then provides an overview of alternative diversionary and therapeutic policy options which should be adopted rather than incarceration.



Risk Factors

Imprisonment of parents and/or caregivers

We know that there is an intergenerational aspect to child incarceration. A NSW study found that 69% of Aboriginal youth in juvenile prisons in NSW have had a parent in prison compared with 53% of all children in juvenile justice having had a parent in prison. We also know that intergenerational trauma has a significant impact on First Nations children, affecting brain development and decision making of children as well as their psychosocial development. This is further compounded by additional trauma.

Experiences of racism

There are various forms of racism which impact First Nations children in the justice system. There is direct racism experienced through interaction with some police, courts and administrators. (O'Brien, 2021) In Queensland, First Nations children (24.1%) are about half as likely to receive a caution or be diverted from the justice system than non-Indigenous children (44.5%). (Wahlquist, 2017) There is also a media bias in justice reporting, where stories that involve First Nations children and young people often specify their racial and cultural heritage, whereas most other stories of juvenile offending do not specify race. This can marginalise First Nations children and strengthen stereotypes and prejudices by the public and justice system. (Sercombe, 1995) Then there is systemic racism which First Nations children endure where policies and practices disproportionately affect First Nations children and, in some cases, policies are developed to specifically target First Nations children. (O'Brien, 2021) The systemic racism, marginalisation and abuse experienced by First Nations people can become the collective experience of all First Nations people as it forms their beliefs and identity.

Lack of education

Education attainment is an extremely important platform for life – it opens doors to so many opportunities and pathways (professional and personal) and, as such, protects against engagement with the justice system. (Shepherd et al., 2020) It is therefore extremely important that education be embraced as a vehicle for addressing child justice. It's a captive system where there is a cohort of vulnerable children who should have supports and resources wrapped around them to shepherd them through a critical stage of their life. Engagement in the education system is a major issue for First Nations children who don't see their culture, history and perspectives reflected in their schools and curriculum. (Rahman, 2013) Improving authentic First Nations content in the curriculum is important to improving school engagement and education attainment.

Out-of-home care and homelessness

The stolen generation has had a profound impact on First Nations communities, families, and children. The institutionalisation of children removes them from kinship relationships which have sustained First Nations people for a millennia. The model for raising children within a close-knit



community was disrupted and damaged, as children who were removed did not get to learn and experience being raised in their culture among family and therefore lack the skills and knowledge to raise First Nations children in a traditional way. In turn, lack of cultural engagement can lead to disenfranchisement and contact with the justice system. This cycle needs to end and removing children from kinship relationships is not the solution. By continuing this model of child protection, it is only ensuring further contact of First Nations children with the justice system. (Cunneen, Russell, & Schwartz, 2021)

First Nations children who end up in out of home care and the justice system have typically come from unsafe homes and communities where family and community violence are commonplace. Many children flee these environments and eventually end up homeless and living on the streets. Children are also removed from these environments for their protection and put into systems which they eventually run away from. The level of homelessness for First Nations children is concerning. Often, these children turn to stealing to merely survive. Drug and alcohol abuse from a very early age is also seen and this disfunction leads to antisocial behaviour. Homelessness is a clear risk factor for contact with the justice system however there is also a major shortage of youth emergency accommodation. Youth accommodation provides not only safety and a roof over a child's head, but also an opportunity to provide care and support for children. (McFarlane, 2021)

Stages of Development

To prevent children coming into contact with the justice system, we must understand the stages of development and associated risk factors which are antecedents to antisocial behaviour. It is a short period of time between when a child is born and when they are mature enough to comprehend the consequences of their actions. The impact of colonisation has been profound and the scars and pain from policies and acts which have spanned hundreds of years and continue today are imbedded in the lives of First Nations children before they are even conceived. Epigenetics describes how behavioural and environmental factors contribute to how genes function. This means that the genes and health of an unborn child is intrinsically linked to their mother and their mother's mother and so on. From the womb there are significant impacts on later life outcomes. Gestational weight is a predictor for educational outcomes as are other factors such as smoking and foetal alcohol spectrum disorder. Prematurity of birth and birth weight as well as infectious diseases during pregnancy also impact on educational outcomes. (Hedges, Corman, Noonan, & Reichman, 2021) These factors are unfortunately prevalent in the Aboriginal community at a higher rate than the wider community, making First Nations children commonly developmentally vulnerable before they are even born. This can also impact on hearing which compromises learning ability. A recent study in the Northern Territory found a link between hearing impairment and First Nations youth offending. (He et al., 2019)

Early attachment occurs mainly over the first 12 months of a child's life. This important phase in life is when a child learns to trust others, interact with their environment and interact with other



people. Studies have demonstrated that poor attachment during the first year of life can lead to longer term socialisation problems which can have a snow-ball effect onto other key developmental phases in a person's life. (Flanagan, 2020) When parents are not present or do not engage regularly, the child does not learn to trust others and may be traumatised when they come in contact with new people. If the child is abused and or removed then this trauma is much greater and it can have terrible lifelong impacts on socialisation and personal development. (Tarren-Sweeney & Hazell, 2005)

Socialisation skills are mainly developed from the second year of life and particularly through early childhood years. So, if a child has not yet learned to trust, then they are often hesitant to develop social interactions with others including other children their age. This also occurs when a child is not given the opportunity to interact with other children and is therefore not able to learn how other children interact. The education and socialisation of First Nations children is also a product of their environment and experiences of their communities who educate and shape how they perceive the world. (Kickett-Tucker, 2009)

If a child has been exposed to violent behaviour, then they may also externalise that towards other children when they interact. (Grusec & Hastings, 2014) These children will be excluded from being involved with other children and it is not a positive experience of interaction. This is why early childhood education plays such a critical role in child and life course development. It provides a structured environment in which children are able to learn how to interact with each other under supervision. Aboriginal children normally attend pre-school learning less often than non-Aboriginal children or start at a later age, meaning they are often left behind when it comes to learning and socialisation. (Biddle, 2007) If a child has learnt the skills of how to socialise with other children then they gain more independence and will be more advanced when it comes to advancing to the next development phase which is increased independence and industry. (Harris, 1995) During this phase children will move away from their parents as being the primary influence in their lives and start to become influenced by the behaviour of their peers. This development phase provides children with the confidence to learn independently while still seeking to gain acknowledgement of their achievement from their parents and others. (Dockett, Mason, & Perry, 2006)

A very important phase in life begins when children typically finish primary school and begin their teenage years. There are various phases to identity development with which a teenager grapples, essentially trying to work out who they are, coming out to display their identity, then going away to think some more and then redefining who they are in relation to the world and other people in it. This is an ongoing process which continues through teenage years but can sometimes continue into early twenties. It's a critical time for contact with the justice system as children act out their uncertainty on identity, which is particularly compounded for First Nations children walking in two worlds. Identity is a lifelong adjustment, but the main struggle of identity attainment occurs during



those teenage years. (Purdie, Tripcony, Boulton-Lewis, Fanshawe, & Gunstone, 2000) If an individual has a very hard time finding who they are and their place in the world, their phase of withdrawal can be extended and more severe. There have been studies in Canada by Chandler and La Londe, for example, which have investigated this very issue for Aboriginal youth and youth suicide. (Chandler, Lalonde, Sokol, Hallett, & Marcia, 2003) Social inclusion is an extremely important factor in an individual's health and wellbeing. If they feel they are on the fringes of society then they are more likely to be engaged in risky lifestyle behaviours such as drugs and alcohol, aggressive behaviour and antisocial activities.

Case Study: Des Rogers

ARRERNTÉ, Manager of Program Development and Effectiveness for the Australia First Nations Program at World Vision Australia

Des Rogers is an Arrernte man who has lived in and around Alice Springs most of his life. As a teenager and young man, he spent four and a half years imprisoned for what many Australians would consider relatively minor crimes including car theft and “break and enter”.

Des was first in trouble with the law and imprisoned at the age of fourteen, before reoffending and returning to jail in his late teens.

His experience is that Aboriginal men and women who prosper after spending time in jail do so despite the prison system, not because of it. “Just locking people up is not the answer,” says Des. “[The justice system’s] ... focus is too weighted towards prison. Putting aside for the moment that Aboriginal and non-Indigenous Australians can be treated differently and receive different punishments for the same crimes, incarceration provides inadequate rehabilitation, reintegration and broader life options for Indigenous Peoples once they get out,” he says.

Des was one of the fortunate ones. Despite being jailed in Alice Springs and spending a further four years in South Australia’s Yatala jail — approximately 1,500km from his family and community — he resolved to turn his life around. This he did, going on to establish his own business, holding senior positions in Bushfires NT, the MacDonnell Shire Council, as well as the position of Chairperson of ATSIC and of the Indigenous Housing Association of the Northern Territory, Deputy CEO, Central Australian Aboriginal Congress, Deputy CEO MacDonnell Shire Council, Senior Advisor to Chief Minister of the Northern Territory Government and Alderman Alice Springs Council .

“Prison tears communities apart, it doesn’t rebuild them. People are generally more violent on leaving the prison system; this includes domestic violence. Offenders come out of prison angry. And I think one of the reasons they are angry, and it sounds like a bizarre statement, is they’re coming from a system that provides on one level a sense of ‘security’ and are being thrown back into a world of hopelessness,” says Des. “One in which they are often seen as worthless ... and so the cycle repeats itself. This ‘revolving-door’ hasn’t changed since I was in jail 50 years ago.”



Des believes governments need to rethink and invest resources away from the prison system. “Aboriginal people will follow the rules. But, like everyone, they need to be presented with options to change their lives. Imprisonment reduces these opportunities.”

“If we don’t provide our people with options, then we’re always going to be behind the eight-ball,” says Des, referring to Indigenous disadvantage and attempts to improve community safety.

He thinks programs developed in genuine consultation with Aboriginal people, and delivered by them, would see some very positive outcomes.

“I’ve seen it all my life, particularly in remote Australia,” says Des. “People come, most with good intentions, but the good intent has negative consequences. [This is because outsiders] ... come with an imposed agenda. They have a predetermined outcome of what they want,” he says.

“We need genuine consultation, but we also need long-term and adequate funding for Aboriginal organisations to deliver diversion programs as an alternative to jail. That’s the crux of it.” (ChangetheRecord., 2015)

Alternatives to Incarceration

World Vision Australia believes incarceration of children is never the solution. Children who come into contact with the justice system are often victims of crime and violence before they become perpetrators. The Queensland Youth Justice Department's 2019-20 annual report stated about 10% of youth offenders make up for about 44% of crime. A 2019 report by the Griffith Criminology Institute found that most of the re-offenders were in regional and remote communities. (McCarthy) Removing children from their communities for extended periods of time doesn’t stop youth crime; it just relocates it to another area which is more often than not urban. Urban areas enable homeless youth to blend in more, have a greater chance of becoming associated with adult criminals and more easily access drugs and alcohol. These vulnerable children also require around the clock access to support services. (Cunneen et al., 2021)

These at-risk children need intensive support which should be grounded in trauma informed care, education, culture and connection to country and kin. First Nations children entering their teenage years, who are often grasping with identity and cultural continuity, should be supported to strongly walk in two worlds of traditional First Nations ways of being, doing and knowing in modern Australia. The Mayi Kuwayu study – consistent with other similar research such as the Canadian research on Aboriginal male youth suicide – demonstrates that culture is the key to First Nations health and wellbeing. (Lovett et al., 2020)



The Just Reinvest model is designed to divert funding which is allocated to the prison system into supporting First Nations youth. It's an evidence-based approach supported with data to confirm the impacts of these reinvestments. The evidence shows a demonstrated effect in reducing crime and recidivism, saving the government and society a significant amount financially and social impacts. This model is operational in some areas around Australia with growing support for this to be adopted in other regions. World Vision supports this evidence based model which is child focused and enables children to thrive rather than be harmed. (Schwartz, Brown, & Cunneen, 2017)

Trauma informed screening, assessment and care must be part of the justice system. This should be an early process which is undertaken to ensure children who have suffered significant trauma over their lives are appropriately engaged. Many First Nations children have been subjected to physical, emotional and sexual abuse and this must be considered at all times when working with these children. Frontline law enforcement should be trained to screen, assess and care for traumatised children and must be aware of the actions which they take against children can result in retraumatising or dealt with poor coping mechanisms. (Naylor, Grant, & Lulham, 2017)

Self Determination

First Nations communities know what's best for their communities. They intimately know the members of their community and the children who live and grow alongside them. Communities understand what is happening in the lives of children who are getting into trouble and they also have a good understanding of the supports needed for these children. Sometimes communities lack the technical expertise to develop and sustain programs or some of the evidence which can enhance and support what they hope for their children. What's not lacking is the will to make change and this will is what creates sustainability in programs and services within communities. Co-design is therefore critical to ensure ownership of how to provide early intervention, prevention and treatment across the life-course of childhood. Alternative therapeutic models embedded in culture and trauma informed care also need to be driven by local communities in partnership and support from experts in the field and stakeholders. (Butcher, Day, Miles, Kidd, & Stanton)

Case Study: Walwaay Project

Dubbo policing initiative Project Walwaay sees charge rate drop by 65 per cent

Key points:

- NSW Police say Project Walwaay has produced "staggering" results in Dubbo, NSW
- Police and Indigenous elders hand-picked 25 young people to better understand crime patterns
- The project has secured funding to continue



Project Walwaay launched six months ago with the aim of engaging 25 young Indigenous people entrenched in the criminal justice system. Project lead, Superintendent Peter McKenna, said charges laid against young Indigenous people had dropped by 65 per cent since the program's inception. "The figures are staggering," Supt McKenna said. "We thought if we reduced charges by 10 per cent it would be a great success. "Friday nights have gone from being our busiest crime night in Dubbo to our second-quietest."

'Worth every minute'

For the past six months, a team of four full-time police officers have engaged with participants three times a week to play sport and carry out cultural activities. Friday nights were the centrepiece. "That's when we run busses and gather everyone at the PCYC for activities," Supt McKenna said. "It's about building trust and understanding the youth and why crime has been happening in Dubbo."

Supt McKenna recognised the project required significant police resources. "It's four officers that aren't doing other types of work, plus an Aboriginal liaison officer," he said. "However, when you talk to the other police and they understand their workload is reducing and crime on the whole is reducing, it's worth every minute and every cent." The project was initially staged as a six-month pilot, but funding had been secured for it to continue.

Role models critical

Project Walwaay has been run in conjunction with a number community organisations, including Rotary and the Dubbo PCYC. PCYC chief executive Dominic Teakle said it was critical police formed strong relationships with disengaged youth. "I think everyone needs someone to look up to," Mr Teakle said. "In some cases, young people often seek out people from outside their family unit to be a role model, and sometimes they look to bad influences. "We feel having police officers that are disciplined — who are used to having a routine and are all about service — gives young people role models that have a positive influence." In recent weeks PCYC clubs in western NSW have limited their activities to comply with social distancing rules introduced to curb the spread of coronavirus. "Even though our clubs can't open we've still been doing that outreach, using our buses to get out in the community to check in on young people who are at risk," Mr Teakle said.

"Sometimes they just need to say hello to someone."

(Jessie Davies, 2020)

Conclusion

The antecedents to imprisonment are complex but there are clear risk factors which lead many children to imprisonment before they reach the age of 14 years. These risk factors are obvious starting points for creating policy solutions. The Queensland Government should focus its efforts



on alternative therapeutic models to support at-risk children rather than imprisoning them. There is a need for both early intervention, prevention, and diversionary programs to address the root causes of child incarceration. A life-course holistic approach is critical to ensure that gaps in support and development are not compounded so they don't become more difficult to redress at a later stage. Children need to be care for as a whole, including the environment in which they grow and the country where they are connected. Diversionary therapeutic models are the alternative solution for children who engage in the justice system when early intervention and prevention fails them. Politicians and political will is a significant problem, despite the justice, health and social services sectors sector being in support of diversion and raising the age.

The world is watching. The Convention of the Rights of the Child Universal Periodic Reviews consistently highlight Australia's appalling approach to caring for First Nations children, particularly removing them from their homes, families and communities and traumatising them as criminals when they are most at need. Most Australians understand that children should be cared for and nurtured, not harmed.

World Vision Australia stands in solidarity with First Nations children, family and communities in the protection and care of their children. World Vision is a proud member of the Raise the Age campaign and aligns with the principals of this initiative. We recommend in the strongest possible terms that the Queensland Government raise the age of criminal responsibility to 14.



Recommendations

The recommendations of World Vision Australia are firstly to raise the age of criminal responsibility to 14 in line with international standards and expert advice. The second recommendation is aimed at life course holistic approaches to child development where children are supported to thrive and be cared for at the most vulnerable times of their lives.

Recommendation 1: Raise the age of criminal responsibility to 14 years of age.

Recommendation 2: Proactively provide at-risk children with the tailored support they need, grounded in trauma informed care, education, culture and connection to country and kin. This should include:

1. **Investing in antenatal and postnatal support:** All children deserve the optimal start to life, and this requires support and care for children and their family.
2. **Investing in early childhood education:** have strong education foundation will enable children to transition into primary
3. **Improve education engagement:** it's critical that children stay connected right through primary school and into high school. A culturally safe and inclusive education system is critically important to engage and sustain First Nations students.
4. **Reduce rates of First Nations children in out of home care:** First Nations children will have the greatest chance of thriving when they're safely connected to their family, community and country. Invest in family support services so that if children are temporarily removed then they have the best possible chance of being reconnected to their family. It's critical to provide intensive Family Based Support Services for parents particularly those who've been removed themselves as children.
5. **Expand 'just reinvest' model for early intervention and prevention:** At a cost of over \$1000 per day to incarcerate a child, this money should be spent on treating and caring for these children rather than creating further harm and trauma.
6. **Investing in youth accommodation and support services:** Child homelessness is a major issue which can often lead these children to contact with the justice system and incarceration.
7. **Funding 24/7 child support services:** ensure kids have access to critical support services all hours of the day. This includes such needs as emergency support, justice support, counselling and emergency accommodation.
8. **Modifying or eliminating laws and practices which target and criminalise First Nations children:** There is an intrinsic racial bias in the justice system
9. **Exploring alternative therapeutic models:** Incarceration of children under the age of 14 should be replaced with diversionary services and programs. These should be co-designed and also embedded in trauma informed care and culture.
10. **Invest more in local community led solutions** through co-design: Self-determination is a protective measure for First Nations communities. For any alternative model to be effective and sustainable then this must be led by local First Nations communities and the children affected.



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