

Submission

Queensland Community Support and Services Committee

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

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Dr Terry Hutchinson

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Dr Terry Hutchinson was appointed an Adjunct Professor at Southern Cross University in November 2017. Prior to this, Dr Hutchinson held the position of Associate Professor in Law at Queensland University of Technology, being a member of Faculty 1987-2016, and a Visiting Fellow 2017. Dr Hutchinson's research revolves around a sound use of the evidence base particularly in relation to children and youth justice, and she recently completed a funded Australian Institute of Criminology project (CRG 19/16-17: Examining Process: Court appearances via video link for young people in detention in Queensland). Dr Hutchinson has published extensively in the area of postgraduate legal research training. Her research manual *Researching and Writing in Law* (Thomson Reuters, 4th ed, 2018) has an international readership.

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Thank you for the opportunity to provide feedback on the Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021. I support the proposed amendments.

1. This Change Targets a Larger Number of Young People than those in Detention Centres

Many children coming into contact with the police and the courts are charged with minor offences including shop lifting and fare evasion. Raising the age of criminal responsibility is not simply about keeping 10–13-year-olds out of detention centres. It is directed to providing alternative options so children, in particular those charged with minor infractions, will not be introduced into the criminal justice context and tagged as ‘trouble’ for the rest of their lives. Recent research confirms the long-term negative results achieved through punitive early treatment in the justice system:

Evidence collected over the last twenty years or more, consistently shows that contact with the criminal justice system normally does children more harm than good; it is criminogenic and actually produces rather than reduces ‘offending behaviour’ (Goldson, 2000; McAra and McVie, 2007; Gatti et al., 2009; Smith, 2017; McAra and McVie, 2015; McAra and McVie, 2019; Goldson et al., 2020). One of the most confronting empirical realities is that the younger a person is at the point of first contact with the criminal justice system, the more likely they are to engage in adult offending behaviour (Weatherburn and Ramsay, 2018; Goldson, 2013; Goldson et al., 2020). In this way, McAra and McVie (2019: 75) have noted that ‘intensive forms of intervention are likely to be damaging, inhibiting the normal processes of desistance from offending’. [Microsoft Word - CCLJ Best Interests Response Report September 2021.docx \(unsw.edu.au\)](#), 17)

This legislative and policy change will assist to keep large numbers of young people away from the courts and criminal processes.

2. Minor Mistakes Changing Lives

As Emma Bastable and Luke McNamara point out, the youth justice system is predicated on dealing with serious anti-social behaviour. In doing so, it catches many children who could be dealt with more successfully outside the system and can destroy the future of those caught in its web. Three examples are ‘care-criminalisation’, breach of bail, and social disruption. ‘Care-criminalisation’ (CCLJ, 39) occurs where police are called to out of home residential care facilities with the result that children who are placed ‘in care’ for their protection, leave state care with criminal records. In other instances, initial minor matters often result in consequential procedural and other charges such as breach of bail because children do not understand or cannot control their own movements and living conditions. ([Australia must raise the age of responsibility to 14 or keep trapping children in a quicksand of criminality | Emma Bastable and Luke McNamara | The Guardian](#)) Being involved in the system may have consequential effects such as school exclusion or interrupted living arrangements leading to increased instability in the early years. The whole YJ process can be a training ground for the criminal justice process. If the child experiences the system at a young age for very minor matters, then it sets the child up for further offending. In this respect it criminalises the child, by bringing them to the attention of the authorities and thus labelling the child as an offender. At the same time, it provides the child with training and knowledge criminal processes. It introduces the child to more serious offenders. It also has the possibility of engendering anger or resentment against the system.

3. Targeting Better Outcomes for the 10-13 Age Group

The incidences of youth crime are decreasing. However, in Queensland Courts in 2018-19, there were 614 defendants 10-13 with a finalised appearance in all the courts in the year. (Childrens Court of Queensland Annual Report 2019-20, 19). The average daily number of young people in custody in Queensland in 2018-19 (pre-COVID) was 252 and in 2019-20 the number was 208. (Childrens Court of Queensland Annual Report 2019-20). Only a small proportion of these would be in the 10-13 age bracket. However, a number of young persons in watchhouses in each month of 2019–20 were under 14. (CCQ Annual Report 2019-20, 43). The police watchhouses have not been built to house children. Raising the age of criminal liability would remove these young people from experiencing trauma in adult facilities. We need to focus on clearer information about the numbers, offence types and circumstances of the younger age group of children involved in the Queensland system in order to improve outcomes.

4. Who are the Children in Detention?

The children in the detention centres are some of the most disadvantaged in Queensland. Is the state not shifting its responsibilities for family services, antenatal, maternal and child health, mental health, special needs education support services, and public housing onto the criminal justice system? In doing so it is criminalising the disadvantaged at a very young age.

- The children are predominantly boys (over 82%),
- Over 70% are Indigenous,
- The majority (84%) are on remand and not yet sentenced,
- Over half had received a child protection service in the 5 years prior to the study, so these were children in the detention centres who had likely experienced some form of trauma, abuse, harm, neglect, parental death, or incapacitation, or had been at risk of harm,
- 53% are disengaged from education,
- 21% are homeless or in unsuitable accommodation,
- 39% had used ice or other methamphetamines; 80% had used drugs of some sort,
- 56% (had either assessed or suspected disabilities eg FASD, language disorders, hearing, sight),
- 63% had experienced or been impacted by domestic violence, and
- 33% had at least one parent who had been in prison.

(Hutchinson, August 2021 [Court appearances via video link for young people in detention in Queensland | Australian Institute of Criminology \(aic.gov.au\)](https://aic.gov.au/crime-research/crime-research-reports/court-appearances-via-video-link-for-young-people-in-detention-in-queensland))

Raising the age of criminal responsibility will enable the transfer of resources and ensure that sufficient government funds are directed to providing targeted assistance for families and children in need rather than in building more detention facilities.

5. Providing Local Community Services before the Crisis

At present there are a plethora of services available for children when they become involved in the youth justice system. However, these services only become available once the child is charged or before the courts. The better option is for the services to be made available before that crisis point. Basic services such as the provision of school breakfasts and lunches, and free travel on public transport may well divert children from minor offending, while encouraging them back into the all-important school environment. The community needs to

address the provision and requisite supports for a safe stable family home environment and accommodation. This needs to be happening well before a child is 10 years old. Current research has also pointed to examples of the many local community-based programs that could be set in place. [Microsoft Word - CCLJ Best Interests Response Report September 2021.docx \(unsw.edu.au\)](#), 25) All communities are different and have their own needs so local involvement is imperative in determining what would best work in various areas and for specific children.

6. Dickens' Fagin and the Parties Provisions in the Code

The 'parties offences' as applied to children need to be reconsidered. Do children always understand the intricacies of being involved in a group offence? To what extent are the 10–13-year-olds coerced or bullied into taking part by adults or older groups? Critics of the change have pointed to the Fagin situations where children are used by older siblings and adults within group offences. The suggestion is made that if the younger children are not prosecuted in these situations, then older criminals will take advantage of the situation and it will lead to more crime being committed. A better option would be to ensure that adults or other older accomplices are as a rule charged with additional counselling offences where younger children are involved in the offence, so that it constitutes a disincentive to including younger children in group offences.

7. Compensating Victims

What about the victims? How will the victims be reimbursed where children are involved in offences leading to damage? What about victims who have lost family members? Surely the existing compensation options for victims can remain in place even where the child responsible may not be placed in the criminal justice system. ([Australia must raise the age of responsibility to 14 or keep trapping children in a quicksand of criminality | Emma Bastable and Luke McNamara | The Guardian](#))

There are other matters needing to be addressed in terms of increasing the age of criminal liability. However, all the mechanics of the change have been dealt with successfully in other jurisdictions. There are precedents for justice models that will fill the gaps in terms of a raised age of criminal responsibility. Raising the Age of Criminal Responsibility is a necessary reform to the Queensland legal system, and providing the requisite wrap around services are available, the change will result in a safer and more productive community.