



Aboriginal & Torres Strait Islander Women's Legal Services NQ Inc

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Your Reference:

Our Reference:

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

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

Dear Committee Secretary

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

Thank you for the opportunity to provide feedback on the Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021 ("the Bill"). Due to time constraints we are able to provide a limited response.

Aboriginal and Torres Strait Islander Women's Legal Services NQ

ATSIWLSNQ is the only community legal service in Queensland designated as an Aboriginal and Torres Strait Islander legal service for women. We are located in Townsville where approximately 8%-9% of the population identify as Aboriginal and Torres Strait Islander.

Our mission includes advocacy in relation to issues that affect First Nations women. We have a particular interest in issues which impinge on the rights of women, the rights of children and the protection of the rights of First Nations families.

ATSIWLSNQ practices predominantly in areas involving First Nations women and their children in North Queensland. We do not undertake criminal law work and we do not represent children in relation to youth justice issues. A significant portion of our work, however, involves child protection matters and domestic / family violence and family law. In this capacity we provide legal representation to parents whose children are subject to proceedings under child protection interventions and youth justice legislation. We therefore have a strong interest in issues that negatively impact children and families.

The Bill

We support the Bill in both its intent to reduce the incarceration of children in Queensland and its proposed reforms, in particular in providing for:

- ❖ An end to the incarceration of 10 – 13 year olds, of whom approximately 75% are Aboriginal or Torres Strait Islander children¹;
- ❖ Termination of criminal actions, procedures and including enforcement actions against children under the age of 14 years;
- ❖ The release of under 14 year olds from watch houses and detention centres, (in consultation with the chief executive of the Department of Child Safety, Youth and Multi-cultural affairs (“the chief executive”) where appropriate). We note that approximately 86% of children on remand are First Nations children²;
- ❖ The destruction of identifying particulars and things collected by forensic procedures in relation to under 14 year olds;
- ❖ The expunging of criminal records in relation to the conviction of children under 14 years old; and
- ❖ The non-disclosure of information in relation to convictions, arrests, non-compliance with directions and failure to comply with court orders, in relation to children under the age of 14 years.

Our reasons for supporting the Bill is based on our experience of working with Aboriginal and Torres Strait Islander women and their children and families.

In this capacity, we have witnessed the often devastating impact on children of their removal from their families under child protection legislation, the negative impacts of family violence on women and their children, the negative impacts on children of parental alienation in family disputes. In all of these cases, children often become alienated from their families, suffer trauma and have grossly inadequate support from services to maintain their personal and family integrity and recover from the effects of trauma.

Removal of children into out of home care is closely linked with the likelihood of incarceration in youth detention, with 54% of children in youth detention having received a child protection service within the 5 years prior to detention and more than one quarter (26%) having been in out of home care.³ This is indicative that children coming into the youth justice system are already experiencing considerable disadvantage and that their underlying issues are not being addressed. Given that 75% of the children in youth detention are First Nations children, the impact falls disproportionately on Aboriginal and Torres

¹ Australian Lawyers Alliance *submission to the Queensland Parliamentary and Community Support and Services Committee*, 8 October 2021, paragraph 4

² Dr Tracey Westerman, <https://indigenoux.com.au/we-must-raise-the-age-of-criminal-responsibility-here-is-why/>, 11 May 21

³ Australian Institute of Health and Welfare, *Young People under Youth Justice Supervision and in child protection 2018-19*, 15 October 2020.

Strait Islander children, and youth detention only serves to exacerbate cycles of grief, disconnection and intergenerational trauma.

Entrenched disadvantage and why youth detention is ineffective

We note that submissions have been made, which we support, outlining the entrenched disadvantage of children who enter youth detention⁴.

First Nations psychologist, Dr Tracey Westerman, has described the locking up of children as not only ineffective but “the strongest predictor of future criminality” through the normalisation of imprisonment.⁵

The point has been made in multiple submissions in relation to this Bill and elsewhere, that children in their early adolescence lack the developmental maturity to fully understand the consequences of behaviours⁶ are affected by impulsivity and their psychosocial immaturity affects their decision making.⁷

Dr Westerman makes the further point that children criminalised at this early stage of their development are at risk of their moral reasoning ability stagnating, resulting in a limited understanding of consequences.⁸

Both Dr Perkins and Dr Westerman address their knowledge of the trauma experienced by children who enter youth detention. Dr Westerman estimates that 80%-93% of children who are incarcerated have untreated trauma, which she links to behaviours such as substances abuse and violence and which tend to lead to impulsivity and reactivity to interpersonal conflict. In placing children with trauma with other children experiencing trauma, this leads to an environment of heightened reactivity to others which becomes normalised.⁹ Clearly, the risk is that imprisoning children results in normalising behaviours likely to lead to criminalisation.

In addition to trauma and developmental immaturity, research has found that children in youth detention have significantly higher rates of mental health issues and cognitive impairment compared with children in the general youth population and that they are also more likely to experience a drug or alcohol

⁴ Perkins Dr Meg, Submission 004 , 24 October 2021, and submission of Professor Sue McGinty to the *Queensland Parliamentary and Community Support and Services Committee*

⁵ Op cit.

⁶ This point is well made in the submission of the Queensland Law Society, 30 November 2021, in relation to the legal concept of *doli incapax*

⁷ Professor Chris Cunneen *Arguments for raising the minimum age of criminal responsibility*, Comparative Youth Penalty Project Research Report cypp.unsw.edu.au, pp6-7

⁸ Op cit

⁹ Op cit

disorder.¹⁰ Professor Cunneen has reported that 83% of children in youth detention have a mental health disorder, with a higher percentage for First Nations children as compared with non-indigenous children¹¹.

The fact that, of the children in youth detention, as many as 64% are unsentenced¹², is further indicative of systemic failure to protect children and to provide them with needed supports. Dr Westerman notes that Australia has the fifth most expensive prison system of OECD countries and that 80% of the corrective services budget is spent on prisons.

It is submitted that youth detention is ineffective as it predominantly affects children with existing impairment and disadvantage and re-traumatises children.

It is submitted that youth detention normalises imprisonment and is strongly implicated in future adult imprisonment.

Disproportionate impact on First Nations children

The proportion of First Nations children is approximately 75%, approximately 80%-93% of whom have suffered childhood trauma, and at least 83% of whom have a mental disorder.

The average number of days that First Nations children spend in detention on remand is significantly higher as compared with non-indigenous children, being an average of 71 days for First Nations children and 50 days for non-indigenous children¹³. (To remove any doubt we do not support children being in detention, particularly children on remand.)

Dr Westerman describes the indifference to the plight of so many First Nations children as the “racial empathy gap” and is of the view that there is a “level of comfort” with criminalising black children, who are victims of trauma.¹⁴

It is submitted that youth detention discriminates against First Nations children and continues cycles of intergenerational trauma due to the disproportionate impact of the low age of criminal responsibility on First Nations children.

¹⁰ Professor Chris Cunneen *Arguments for raising the minimum age of criminal responsibility*, Comparative Youth Penalty Project Research Report cyp.p.unsw.edu.au, pp8-9

¹¹ Ibid.

¹² Liotta, Morgan “Youth detention policy labelled ‘stupid, lazy and immoral’” 20 May 2021, News GP, <https://www1.racgp.org.au/news/gp/clinical/youth-detention-policy-labelled-stupid-lazy-outrag>

¹³ Dr Westerman op cit.

¹⁴ Dr Westerman describes this as a worldwide phenomenon not limited to First Nations children in Australia

Human Rights

The Queensland government has demonstrated its progressive approach to human rights by introducing the *Human Rights Act 2019* (HRA) in January 2020. The problem of children detained in youth detention centres, about 65% of them unsentenced, removed from their families, communities and cultures remains an area of human rights in dire need of being addressed.

The current low minimum age of criminal responsibility impacts on a number of human rights for children under the current HRA including, but not exclusively:

- **Section 32(3) HRA** “A child charged with a criminal offence has the right to a procedure that takes account of the child’s age and the desirability of promoting the child’s rehabilitation.” The current age of criminal responsibility does not take into account the child’s age, incomplete neurobiological development and immature psychosocial development which impacts capacity to make decisions and to understand consequences.
- **Section 33(2) and (3)** “An accused child must be brought to trial as quickly as possible; and (3) A child who has been convicted of an offence must be treated in a way that is appropriate for the child’s age.” There is strong evidence that children who have been convicted are not being treated in a way that is appropriate for their age when they are placed in youth detention.
- **Section 26(2)** “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.” First Nations children are being discriminated against in so far as they are disproportionately and prejudicially impacted by current laws allowing the detention of children in early adolescence. Further, the right to protection as a child is clearly not a right that has been applied to children in the youth detention system.
- The right to education and health services (**ss36 and 37**) are also disrupted when children are placed in youth detention. Given the number of children in youth detention who have mental health disorders and disability, their human rights cannot be protected in a punitive environment with other traumatised children. The numbers of children experiencing these problems is the strongest indicator of the need to provide adequate health services to children and families, rather than imprisoning children who are reacting to trauma or suffering illnesses.

The UN Committee on the Rights of the Child has recommended that member States raise the minimum age of criminal responsibility to 14 years, as a minimum.¹⁵ The reason for its recommendation of increasing the minimum age from 12 to 14 years was “that...there has been

¹⁵ “Raise the Age” Response to the UN Committee on the Rights of the Child draft revised General Comment no.10(2007) on children’s rights in Juvenile Justice.

progression in our knowledge of child and adolescent development which has reinforced the damaging impact of a low age of criminal responsibility".¹⁶ Queensland has the opportunity to address this issue by approving the Bill.

In summary, we strongly support the Bill to raise the age of criminal responsibility, taking into consideration the negative and discriminatory impact on children, particularly but not exclusively, children aged 10-13 years old.

Cathy Pereira
Principal Solicitor, on behalf of
Aboriginal and Torres Strait Islander Women's Legal Service NQ Inc.

¹⁶ Ibid

