

Community Support and Services Committee

From: Bruno van Aaken [REDACTED]
Sent: Friday, 3 December 2021 2:19 PM
To: Community Support and Services Committee
Subject: Submission to the Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021

Committee Secretary

Community Support and Services Committee

Parliament House

George Street

Brisbane Qld 4000

To whom it may concern

Firstly, I am working together with Karl MacKenzie to bring about a more just and comprehensive treatment of Indigenous youth by the justice system here in Townsville. While Karl is a respected Elder and CEO of the Townsville Community Justice Group, and therefore takes the lead role in our endeavours, I am a criminologist with experience in the field of post release experience of offenders. I also have significant experience with youth, both Indigenous and non-Indigenous within the forensic sphere. I also hold a doctoral degree in philosophy with a studied expertise in criminology.

Karl has forwarded his reply to Michael's proposal to me and, while I agree with his reasoning, my only disagreement is with his proposal to leave the minimum age of criminal responsibility at 10yrs. To do so would contravene the researched and theoretical basis of labelling theory which posits that if we as a society call any cohort criminal, the individuals involved will act up to the label and will become criminals. The suggestion here is a new nomenclature for this cohort.

At 10 years of age the law still holds the concept of "doli incapax" or the inability to comprehend the evil in an act. In line with the thrust of Michael's private members bill, this concept also holds until the age of 14 years. The question here begs the question how can they (youth between the ages of 10 and 14) then be called criminals? I understand long standing problem with "doli incapax" but I also see this raising of the minimum legal age of criminal responsibility reinforcing its original intent i.e. children aged 10 to <14 years do not belong in the criminal justice system. There are far better ways to address aberrant behaviour, such as addressing the cause of this behaviour.

In terms of the Indigenous youth, and here in Townsville that is a significant problem judging by the numbers and profiles (88 of 108 residents are of Indigenous descent) in the Cleveland Youth Detention Centre. As indicated in the honourable members Bill, there is strong research evidence that being labelled a criminal at age 10-14 is often seen as a badge of honour and forms part of an initiation process into adulthood. We need to cease calling them criminals!

As the member for Maiwar also indicates, is a much needed interrupt to form the basis of an early intervention strategy. Firstly, we need to cease calling them criminals for the reasons stated above. Secondly, we need to engage these younger children in a safe environment. Yes, they are indeed children. This can be challenging because many come from home environments which are absolutely not safe with drug and alcohol related abuse and criminal activity featuring among the older family members.

It is this aspect, which features in Karl's reasoning where he suggests the continuing incarceration of Indigenous delinquents in this age group, because, for many, this provides a safer alternative than the home. It also then provides an opportunity to put into place education and cultural programs conducted by the elders and qualified

others. How this needs to be structured should be the result of a consultative process between the “White “ justice system and Indigenous justice groups, with the latter being the lead agencies. Research conducted in the Northern Territory involving Indigenous youth brought to the fore the following statement:

“School in detention was described as more interesting and rewarding than the “outside” alternative because of its broadness, its focus upon basic individual literacy and numeracy needs, the sporting opportunities and the increased access to outside information such as documentaries and movies. The work within the detention centre was considered hard but satisfying, because it offered a chance to acquire useful new trade skills that the adolescents saw as potentially leading to a “better” future.” (Australian Institute of Criminology: Trends and Issues in Crime and Criminal Justice 2001)

Appropriate intervention programmes, as Karl mentions, are already available through the Magistrates Bench. A further opportunity here, as also discussed with Karl, is the possibility of early intervention in terms of health screening. Many of this cohort have not had appropriate health interventions, let alone being screened for ill health possibilities, including a presentation of FASD.

My own opinion in this matter is that this pragmatic approach may not serve the intent of the raising of the age to 14 years. The problem of the influence of the older youth may counter, and possibly nullify, any benefit from early interventions carried out in that carceral setting. This is illustrated by a statement in Halsey et al 2017, where in a research interview a young offender cited that he was incarcerated for smoking marihuana and was eventually released knowing how to cook methyl amphetamines and kill people. My own research among Adult Indigenous men and women, using a Life-History approach, has strongly indicated the above points, as well as the concept that the 10-14 age group are used by the older groups as “apprentices in crime”! This, then forms the basis of the interrupt moment in which society can break the continuing cycle of youth crime and perhaps then also bring about a momentum to reduce adult-based crime.

In my opinion these at risk children do need to be insulated from the aberrant and criminal behaviour of the older group but in the case particularly with the Indigenous children, this must not in any way resemble a forced removal from parental care. This is where Indigenous led and culturally appropriate strategies developed with genuine Indigenous consultation need to be designed, developed and implemented.

The issue of parenting skills and responsibilities is, and should be, regarded as a separate yet integrally linked programme area in this endeavour. These broken family structures also should not be criminalised through nomenclature but should be treated as an issue of social ill-health i.e. a social pathology!

It is more than encouraging to see the strong support expressed by such eminent social service and advocacy support organisations as

- Amnesty International
- Human Rights Law Centre
- Change the Record
- Australian Indigenous Doctors’ Association
- National Aboriginal and Torres Strait Islander Legal Services (NATSILS)
- Law Council of Australia
- Australian Medical Association
- Royal Australasian College of Physicians
- Public Health Association of Australia
- Save the Children
- Anglicare Australia
- Australian Council of Social Services (ACOSS) and Qld Council of Social Services (QCOSS)
- Australian Healthcare and Hospitals Association
- Aboriginal Justice Caucus
- Community Legal Centres Australia
- Queensland Indigenous Labor Network
- Jesuit Social Services
- Centre for Multicultural Youth

- Mission Australia
- Youth Advocacy Centre
- Queensland Human Rights Commission
- The Royal Australian College of General Practitioners
- Australian Association of Social Workers
- Australian Red Cross
- UnitingCare Australia
- First Peoples Disability Network –
- ANTaR
- PeakCare Queensland
- World Vision Australia
- Children and Young People with Disability Australia
- Oxfam Australia.

These support agencies, among others. and their collective expertise, certainly add important and significant weight towards the success of the initiative expressed through this Bill i.e. to raise the age of criminal responsibility to 14 years. Yes, Queensland would thereby lead the nation again as a progressive state, as indeed it has through its COVID19 initiatives.

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