



# ***COMMUNITY SUPPORT AND SERVICES COMMITTEE***

**Members present:**

Ms CP McMillan MP—Chair  
Mr SA Bennett MP  
Mr JM Krause MP  
Ms CL Lui MP  
Dr A MacMahon MP  
Mr RCJ Skelton MP

**Staff present:**

Ms L Pretty—Acting Committee Secretary  
Ms A Groth—Assistant Committee Secretary

## **PUBLIC BRIEFING—INQUIRY INTO THE CRIMINAL LAW (RAISING THE AGE OF RESPONSIBILITY) AMENDMENT BILL**

### **TRANSCRIPT OF PROCEEDINGS**

**MONDAY, 15 NOVEMBER 2021**

**Brisbane**

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### **The committee met at 12.00 pm.**

**CHAIR:** Good morning. I declare open this public briefing for the Community Support and Services Committee's inquiry into the Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021. I would like to respectfully acknowledge the traditional custodians of the land on which we meet and pay our respects to elders past, present and emerging. I would like as a committee to acknowledge Cynthia Lui, a First Nations woman and the member for Cook, who is a member of our committee. We acknowledge her involvement and presence here today as a committee member. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander peoples, whose lands, winds and waters we are lucky to all share.

On 15 September 2021 the Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021 was referred to this committee for examination, with a reporting date of 15 March 2022. My name is Corrine McMillan, member for Mansfield and chair of the committee. Mr Stephen Bennett, the member for Burnett, is the deputy chair. The other committee members are Mr John Krause, member for Scenic Rim; Ms Cynthia Lui, member for Cook; and Mr Robert Skelton, member for Nicklin. Dr Amy MacMahon MP, member for South Brisbane, will be a substituting committee member for Mr Michael Berkman, member for Maiwar, who is briefing the committee today. We are just awaiting Dr McMahon's presence.

The committee's proceedings are proceedings of the Queensland parliament and are subject to the standing rules and orders of the parliament. The proceedings are being recorded by Hansard and broadcast live on the parliament's website. Media may be present and will be subject to my direction at all times as the chair of the committee. The media rules endorsed by the committee are available from committee staff if required. All those present today should note that it is possible you might be filmed or photographed during the proceedings by media and images may also appear on the parliament's website or social media pages. I ask everyone present to turn mobile phones off or to silent mode. Only the committee and invited officers may participate in the proceedings. As parliamentary proceedings, under the standing orders any person may be excluded from the hearing at the discretion of the chair or by order of this committee.

The purpose of today is to assist the committee with its examination of the Criminal Law (Raising the Age of Responsibility) Amendment Bill. I ask that any responses to questions taken on notice today are provided to the committee by midday, Monday, 22 November 2021. The program for today has been published on the committee's webpage and there are hard copies available from committee staff. In line with the COVID-safe guidelines issued by our Chief Health Officer, I remind everyone to maintain social distancing. If this is not possible then I encourage a mask be worn.

### **BERKMAN, Mr Michael, Member for Maiwar, Parliament of Queensland**

**CHAIR:** I welcome Michael Berkman MP, member for Maiwar, a member of this committee, but in this instance a private member of the parliament who has introduced the bill before us today. I invite you, Mr Berkman, to make an opening statement, after which time committee members I am sure will have many questions for you. I will hand over to you to make an opening statement.

**Mr Berkman:** Thanks very much, Chair, and thanks to the whole committee for the opportunity to brief you on the bill. I also want to acknowledge that we are on the unceded stolen land of the Jagera and Turrbal people. I pay my respects to elders past and present and acknowledge that the fight for justice and First Nations sovereignty is ongoing.

In discussing issues like those addressed in this bill, we should explicitly recognise that the institutions we work within and alongside—the parliament, the courts and the executive—are the same institutions responsible for the dispossession and genocide inflicted on First Nations people. The ongoing overrepresentation of First Nations people in our prisons, in the so-called justice system and in our child protection organisations demonstrates that these are not just legacy issues. We must be honest in acknowledging that dispossession and state violence against Aboriginal and Torres Strait Islander peoples continues today.

The central proposition of this bill is incredibly simple: children under 14 years of age should not be incarcerated or otherwise punished under the criminal legal system. As I have detailed in the explanatory notes and in my introductory speech, this proposition is consistent with current medical

understanding of child development and contemporary human rights standards. Allowing kids as young as 10 years old to be incarcerated on the other hand flies in the face of our human rights obligations under the UN Convention on the Rights of the Child and increases the likelihood of more serious reoffending, ultimately leaving our communities less safe.

The bill amends the Criminal Code to raise the minimum age at which a person is criminally responsible for any act or omission from 10 to 14 years old. It also includes important transitional provisions for any child who has committed an offence before they were 14. For these children it sets out the following requirements: if they are being held in detention for the offence, they are to be released as soon as possible and no later than one month from commencement; if they are being held in the watch house for the offence, they are to be released as soon as possible and within no more than three days; the offence is to be expunged from their criminal history; any identifying particulars taken in relation to the offence, such as fingerprints or DNA samples, are to be destroyed; no proceedings or orders can be commenced or continued against them for that offence; and, additionally, when transitioning a child from detention or a watch house, efforts must be made to ensure they have access to things like accommodation, parental or guardianship support, and health and other support services.

I would expect it is uncontentious that kids do not belong in prisons. It is worth considering in concrete terms what is going on for the average 10-year-old kid. I mentioned when introducing the bill that my eldest daughter turned 10 just a couple of months ago. She still has a couple of years left in primary school, she is still losing her baby teeth, and I think I mentioned before that gymnastics, dance classes and getting ice-cream after dinner are just about the most important things in her world. Currently in Queensland there are about 17 children aged 10 to 13 years old in detention on any given day, which is about nine per cent of the detention centre population. There are also on average about four children under 14 held in a police watch house on any given day.

By raising the age we would end up diverting around 130 children between 10 and 13 years old from prison and about 316 from the watch house each year in Queensland. The fact that this is a relatively small number of children at any point in time means it is entirely feasible to move these kids out of prisons and watch houses and into safe housing. I do want to take this opportunity to note an error in the explanatory notes to the bill at the bottom of page 4 where it says the number of children under 14 who are held in a watch house each day on average is 17. The correct number is four. As I mentioned just a moment ago and in the paragraph above that, 17 is the average number of 10- to 13-year-olds in youth detention.

The UN committee that oversees the Convention on the Rights of the Child has explicitly recommended that signatory states, including Australia, adopt a minimum age of no less than 14. The bill removes existing unreasonable and unjustified limitations on the human rights of 10- to 13-year-old children under our current law and would enhance their rights in respect of a number of human rights enshrined under our Queensland Human Rights Act, specifically the protection of families and children under section 26, the cultural rights of Aboriginal and Torres Strait Islander people under section 28, children's rights in criminal proceedings under section 32(3) and children in the criminal process under section 33.

The basis of the UN's position on this is not just the growing human rights discourse and jurisprudence; it is actually the medical evidence. For children under 14, their brain, particularly their prefrontal cortex, which helps us plan, foresee consequences and control impulses, is not yet developed, but the amygdala, which is responsible for reward-seeking behaviours, is developed. This is why criminalising children like adults just does not work. These kids are not making and cannot make decisions in the same way that adults do. The Royal Australasian College of Physicians supports raising the age to 14 and I would like to quote a recent statement from them on this issue. They say—

A range of problematic behaviours in 10 to 13 year old age children that are currently criminal under existing Australian law are better understood as behaviours within the expected range in the typical neurodevelopment of 10 to 13 year olds (typically actions that reflect poor impulse control, poorly developed capacity to plan and foresee consequences such as minor shoplifting or accepting transport in a stolen vehicle)

This bill obviously is not just about First Nations children, but the statistics make clear that these are the kids suffering most as a result of the current law. Queensland has the greatest proportion of First Nations children under 14 held in detention of any Australian state. The most recent data we have in relation to kids in watch houses, from November 2020 to August 2021, is pretty damning. In this period there were eight 10-year-old children held in a watch house. Only one of these kids did not identify as Indigenous. Of the 558 10- to 13-year-old children held in watch houses, 84 per

cent were First Nations kids, 46 10- to 13-year-old children were held for more than two nights and only one of these 46 kids was not Indigenous. Although figures are not available for children aged 12 and 13 years old, First Nations children account for around 60 per cent of all children aged 10 and 11 in contact with the Queensland Police Service and the overrepresentation increases with each escalation of statutory intervention.

This bill acknowledges that the current system is not working. The intention of the bill, rather than ignoring problematic behaviour by children under 14, is to shift the response from a criminal to a rehabilitative one which addresses the underlying needs of the child and their family. This reflects the disproportionate disadvantage experienced by young people who display the kinds of problematic behaviour that may cause them to come to the attention of police. Research suggests that diverting more children away from the criminal legal system and providing support to address their individual needs will mean these children are less likely to continue to engage in criminal behaviours throughout their lifetime. As Amnesty International pointed out in its report on raising the age, children arrested before the age of 14 are three times more likely to reoffend as adults than children first arrested after they are 14 years old. While the current age of criminal responsibility may temporarily limit some immediate risks to the community while some children are in detention, diversion, particularly for children under 14, is likely to be far more effective in improving community safety.

Raising the age of responsibility is one crucial part of a better approach to justice. A key problem with Queensland's current system, as was identified in the Atkinson report, is that the path to services is often through the criminal legal system. By raising the age of criminal responsibility, the mechanism for referral to support services is decoupled from offending or involvement with the criminal legal system and referrals should be offered at the earliest possible point of identifying concern. The government should take a justice reinvestment approach, moving investment from prisons into community programs and therapeutic services. Not only are these programs proven to be more effective than criminalisation; but they are cheaper. It costs more than \$1,600 to keep one young person in detention for one day and that does not even include the government's enormous capital spend building and expanding youth prisons—more than \$30 million in this financial year alone.

I have gone into some detail in the explanatory notes about what an alternative model for children under 14 would look like once removed from the criminal system, but a crucial first step for the government would be commissioning an independent review of service availability gaps in Queensland like the ACT has just done. I have provided the committee with copies of that report and I seek leave to table that at whatever point the committee sees fit.

**CHAIR:** Is leave granted? There being no objection, leave is granted.

**Mr Berkman:** The development of an alternative model should include three to four key levels: firstly, prevention and early intervention in the first instance; secondly, therapeutic and community based responses to low-level problematic behaviour supported by a multidisciplinary expert panel working with families; and, thirdly, any kids engaged in serious or violent behaviour should be provided intensive case management with wraparound services. The medical evidence, human rights advice and statistics are crystal clear: we must act now to ensure children under 14 years of age are not incarcerated or otherwise punished under the criminal legal system. Thank you very much. I look forward to your questions.

**CHAIR:** Thank you, member for Maiwar. I will turn to the deputy chair for his first question.

**Mr BENNETT:** Thank you for a comprehensive overview of your private member's bill. You have talked a lot about support services for that cohort of young people. Would it be fair to put to you that perhaps the current bill is premature inasmuch as those issues should be resolved before we move to raising the age—getting those support services right at the front end in those communities, particularly First Nations communities?

**Mr Berkman:** The precise order of operations is open to debate, but I suggest that the bill has been introduced and, in terms of the time frames available to us to sort out that alternative approach, it could happen far more quickly than what your question suggests I think. The review that the ACT has done is a really comprehensive piece of work, but it also lays the groundwork beautifully for the Queensland government to follow in its footsteps to do that really comprehensive service analysis, the gaps analysis, of what is missing and to better understand on the ground what the lack of services means for service provision in Queensland. I should note as well that we are not really talking about reinventing the wheel with these kinds of services. We do need to reassess how they are made available and how they can be accessed by these children and their families.

The ACT review makes a really important observation about the means of accessing. I might just read a quick passage. In section 7, page 50, where they are looking at possible responses to support the implementation, they state—

The stakeholders agreed, throughout the consultation, that there was a need for more collaborative, integrated and joined-up service delivery to overcome the current fragmentation in the system for children and families with complex needs. Advocates of more collaborative interventions emphasise the similarities in the characteristics of children and families who access mental health, family support, child protection and juvenile justice systems—

and this is the important part—

and they argue that the door through which children or families enter the service delivery system should not limit their access to holistic assessment and comprehensive, needs-based responses.

Whether the children or their families present initially with particular health needs, mental health needs, require disability services, child protection needs or housing needs, the suggestion is that accessing any one of those supports should be able to divert kids and their families into the more holistic, therapeutically based responses that are actually going to help address the sorts of behaviours that get kids into trouble at that young age.

**Mr BENNETT:** Even on our travels up north, we did see those issues around skills. In Mount Isa we wanted to do an audit of the services to try to pinpoint where they are. Is the argument that most children are connected to some of those support services as opposed to incarceration? I am asking for a statistic—and I apologise if that is not fair—but I would have thought that we would have the mechanisms in place to try to capture those children and families.

**Mr Berkman:** I certainly do not have a figure on hand. The dilemma is that, as I suggested in the opening statement, it is only when kids are actually being charged for their behaviours that they will get access to those services when what we need to do is ensure that they are accessing them earlier. The statement I have just read perhaps glosses over the fact that we do need much more investment in all of those services, because you are right. We heard from folks who are doing really great work on the ground, whether in Mount Isa or Townsville. I think you would find some statistics somewhere in government documentation that lay bare just how oversubscribed these services are and how desperately the people doing the good work with kids need additional resources to ensure that they have the staff they need, the facilities and the other resources that would meet the broader needs and to spend the time that is required with each and every kid.

**Ms LUI:** In terms of the services, can you expand a little more about the kinds of services or support that the state could offer to children at risk of offending or already on the pathway to offending? I know that programs are already available in community. With the list that you have outlined, how would that be any different to what is already offered?

**Mr Berkman:** Part of that is wrapped up in the answer I just gave to the member for Burnett. If we take it right back to the fundamental, early intervention type work, it really does take the shape of ensuring that social housing is more broadly available, that health and disability services are all broadly available and fully funded. I have talked about this quite a bit, but it is about ensuring that there are free meals programs at schools because it is precisely that kind of disadvantaged cohort that will be enticed to engage more with education if they are actually getting a good meal when they show up. There are really basic things like that.

Early intervention programs could also include greater investment in Indigenous-led cultural strengthening programs and trauma-informed training for school staff and out-of-home care staff. There are examples that I have pointed to specifically in the explanatory notes. Yes, you are right. As I said before, these services do exist on the ground, but it is a question of whether there is enough coverage and whether they are properly integrated so that the multifaceted needs of any particular child can be met when they access any one of those services.

Finally, there should be an appropriate body that exists to do that coordination work. We talk a lot about 'wraparound services'. When we get to the emergency point in any particular person's life we talk about needing wraparound services but, especially when it comes to this cohort of kids, we do not necessarily have the coordination of those services to really provide what we would consider a wraparound service.

**Dr MacMAHON:** My apologies for being late.

**CHAIR:** No problem. Thank you.

**Dr MacMAHON:** Could you elaborate on how raising the age of criminal responsibility would help vulnerable communities and how it would help First Nations children?

**Mr Berkman:** The statistics around overrepresentation of First Nations kids in the criminal legal system are pretty damning. Maybe the member arrived slightly after I had read through those, but it is quite shocking. I think it is 84 per cent of kids in the 10-to-13 age bracket in youth detention and more like 90 per cent in watch houses. It is easy to overlook just how significantly that is contributing to overrepresentation of First Nations people in the entire criminal legal system. The link between early detention and early exposure to the criminogenic environment of detention centres and watch houses—that is how the experts describe it—dramatically increases your likelihood of reoffending later in life and reoffending more seriously.

I am touching on one aspect of the question. It is particularly relevant for First Nations communities both in terms of the disproportionate number of children and adults who wind up in the criminal legal system. Again, it winds back and touches on both the member for Cook's and the member for Burnett's questions in that addressing the unmet needs that sit in the background for kids who are displaying problematic behaviour necessarily involves a greater investment in their families and in the community more generally so that the sorts of disadvantage that drive this behaviour are being met.

**CHAIR:** During my 13 years as a school principal, the provision of food and other daily support provisions were generally available to those students who needed it. However, student absenteeism and school refusal we know is a major warning sign and risk factor for young people engaging in the justice system. I absolutely agree with you that the time of engagement in the justice system is often the time for intervention, but it is too late. Can you help the committee understand the opportunities that may present for intervention prior to that? If we have young people who are not engaged in schooling, who are school refusals and who are not necessarily engaged in the criminal justice system, can you talk the committee through the opportunities for that intervention with our young people?

**Mr Berkman:** It is a really important observation about school disengagement as being a key indicator of kids going off the rails, for want of a better description, but that is far from being the only intervention point available. That list of services that I touched on from here—in the health system, the mental health system, folks who require disability support or housing support—all of those key indicators of disadvantage present an opportunity for the state to step in and provide more holistic support and services. What exactly that looks like will depend very much on the child, their family circumstances and the whole context that sits around them, but the universal support of early intervention suggests that that is the time to actually meet those needs.

The other point that we need to keep in sharp focus is that, particularly for kids displaying really problematic behaviours, violent offending is very rare amongst these younger kids. Where that is the case, it is almost invariably tied to some very real trauma in this kid's background. Having trauma-informed frontline staff, whether that is teachers, education providers, healthcare providers or folks in any of those other service areas—that sort of training is imperative to ensure that the kids and their families can be referred on to the services that are going to help them out most. Obviously those services need to be funded to the extent that they are available to see everyone as they walk through the door.

We talk about the kind of narrow window of opportunity for intervention in all sorts of spaces, whether it is substance use and abuse. If you cannot get the counselling you need when you are ready to go and seek help for that sort of thing, you can very easily miss that opportunity. We need to treat this kind of service provision with the same sort of urgency. As these kinds of patterns of behaviour in kids get more deeply entrenched, if we have missed the opportunity early, you never know quite what that will mean further down the line.

**CHAIR:** Schools are the perfect opportunity for that intervention and have a range of services to provide that intervention. My interest is at what other inflection points do we have available to us when young people are not attending school? School is the obvious place of intervention, but it is when the children are not going to school that those opportunities for intervention become more problematic or become more difficult to achieve.

**Mr KRAUSE:** Member for Maiwar, you mentioned that there are, on average, 17 people aged between the ages of 10 and 13 in detention every day in Queensland. Do you have a breakdown of them by age or would you be able to find that?

**Mr Berkman:** I believe we do. I would have to look into it. We have had so many different sets of figures that have come back from both Corrections and from Youth Justice through questions on notice over some years now.

**Mr KRAUSE:** I am happy for you to take it on notice if you need to.

**Mr Berkman:** I will take it on notice. Whether or not there is a breakdown available I will have to check, but maybe it is easiest if I send through to the committee each of those questions and the responses that give us the breakdowns to the extent that they are available.

**Mr KRAUSE:** Did you consult with the QPS?

**Mr Berkman:** One of the most difficult things that sits alongside introducing a private member's bill is that, despite whatever requests we might make for briefings, they are not always forthcoming and not necessarily in a timely way. We have been working for some time to get a briefing from the youth justice minister and a department. I cast no aspersions on her for the fact we have not managed to make that work yet, but we have certainly done all we can to engage with those folks who are working with kids and around the youth justice sector. Additionally, we got some really helpful feedback from a former commissioner of corrections and a former AFP commissioner who are very interested in these issues and very willing to engage with us.

**Mr KRAUSE:** Have you asked the QPS for their view?

**Mr Berkman:** I do not know that the QPS is going to necessarily have a view on a policy question like this, as each and every public service—

**Mr KRAUSE:** That is not my question, member for Maiwar. Have you asked them for their view?

**Mr Berkman:** No, I have not asked the Police Commissioner for her personal view on whether the age should be raised.

**Mr KRAUSE:** Have you consulted with any victims of crime groups around Queensland?

**Mr Berkman:** No, I have not.

**Mr KRAUSE:** If you come back with some of that information that would be good. Do you hold any concerns that it might make it easier for organised crime groups or other gangs in the community to recruit people in the 10 to 13 age group into a life of crime if the age of responsibility is lifted?

**Mr Berkman:** There are existing provisions in the Criminal Code that address this. Under section 7 of the Criminal Code there is what is described as the doctrine of innocent agent. I can read an excerpt from a judgement if you are interested in hearing how the courts have applied it previously. Essentially, it provides that, when a person with intent uses another innocent person as an instrument in the commission of an offence, it is the person providing that direction who falls foul of the law.

If I take a step back a little bit from that particular case and provision, what is implicit in the question is that, if a young person is being used by criminal syndicates, gangs or other criminals to commit offences, they should then be held criminally responsible for their actions despite the influence of those outside actors. I would disagree that that is the position we should take or that it is very rarely justifiable.

**Mr KRAUSE:** I note that you have given us a final report from the ACT.

**Mr Berkman:** That is right.

**Mr KRAUSE:** The government down there at the moment is a coalition of Labor and the Greens. Is this the type of policy we could expect from a future Labor-Greens government here in Queensland?

**Mr Berkman:** I do not think there is any value in me engaging in crystal ball gazing at this juncture. I would suggest it is excellent policy that is based in evidence, and I would think this is the kind of reform that every jurisdiction around Australia should be taking. The fact that it is a Labor and Greens coalition in the ACT that is delivering it I think is telling of just what kind of excellent evidence based policy and law reform you might see coming from that kind of coalition.

**CHAIR:** I might leave it there, member for Scenic Rim. That question was floating very close—

**Mr KRAUSE:** I have a couple more.

**CHAIR:** In fact, it was making a statement or trying to predict the future, which none of us—not even you, member for Scenic Rim—has the ability to do.

**Mr SKELTON:** My question was touched on earlier and I think this will be one of the hardest things to address. In terms of restorative justice for victims of crime committed by children under 14 years of age, can you advise how victims of crime would be adequately supported and protected?

**Mr Berkman:** I believe this was touched on in the explanatory notes. The short answer is that I do not think—and we do not propose—that victims of crime should be deprived of any of the avenues that are currently available to them. Obviously, restorative justice is a really important part of putting

victims and offenders together. It is a really constructive way of kids, in this instance, seeing the impacts of their behaviour. I do not imagine any change in the way that victims of crime are able to access those kinds of outcomes.

**Mr SKELTON:** I note that when we did some of the earlier hearings restorative justice was addressed by individual communities. I wanted to ensure that victims of crime are still supported.

**Mr BENNETT:** In your explanatory notes you talk about a multidisciplinary panel, so that puts some meat on the bones of your presentation. I think that would probably exist in some form now, especially with those specialist stakeholders. Can you explain to the committee your thoughts around how you would see that working and maybe the make-up of that panel?

**Mr Berkman:** There is a reference in this report to the youth complex needs assessment panels.

**Mr BENNETT:** What page is that?

**Mr Berkman:** That is on page 51. Looking at that though, if you google them, I could see one through the PHN on the Gold Coast. You would probably be aware that PHNs are a federally funded initiative. There was not really a great deal of additional information that we could find about the make-up of the panel. The composition of the panels really does need to address all of the needs of the children. Effectively, we are looking at people who have expertise and can drill down into the trauma-informed mental health or other psychological supports that are required and look at any of the cognitive impairment or other disability issues that need to be addressed.

I do not think it was in the most recent hearings, but certainly in the inquiry into youth justice reform earlier this year there was a really clear thread that came through in those hearings that cognitive impairment, particularly foetal alcohol spectrum disorder, is far more prevalent amongst this cohort of young offenders than what we might understand to be the case initially. So we are looking at those kinds of health and psychology experts. We cannot really conceive of a panel like this that does not have really solid First Nations representation to understand the community context and background, but again it comes down to those unmet needs—education specialists, folks who are dealing with kids through the lens of child protection and housing needs.

**Mr BENNETT:** I agree. I note that they do quote the youth complex needs assessment panel here in Queensland. I am not aware of that. I have not heard of that before, but it may be interesting to see what they say. That was on page 51 as well.

**Mr Berkman:** That is right. Yes, that is the one I was referring to.

**Mr BENNETT:** I could not agree more that it needs First Nations representation at a high level.

**Ms LUI:** Member for Maiwar, you mentioned in your opening statement about services engaging with kids after they enter the justice system. Given that most of the services that provide intervention support will often only work with families if they volunteer to engage with services, I am wondering what your thoughts are around that voluntary approach to engage with services.

**Mr Berkman:** It is a really good question and it is not an easy question to answer. Again, I do not want to put all of my stock into this report coming out of the ACT, but they quite directly address this question of whether there is scope for mandatory participation, whether it is with the expert panels or any other avenue of support provision. The tension, as I understand it, is that mandating participation in a program like that has the perverse outcome of deterring people. It is the old dilemma of, if you tell someone they have to do something, they may be less inclined to do it.

**Mr SKELTON:** We are going through a bit of that now, funnily enough.

**Mr Berkman:** It is a very real policy dilemma. I do not think it is necessarily one that can be perfectly resolved on the evidence or experience at this point. I think the point they landed at was essentially that voluntary engagement with these programs is going to drive the best outcomes. It is going to drive the highest level of buy-in from the folks who are most likely to need the service provision. If there were going to be any suggestion of mandatory involvement then that would only be much more as a last resort, so much further down the line of problematic behaviours or disengagement from the programs available on a voluntary level.

**Ms LUI:** In your opening statement you mentioned that First Nations children have higher representation in the justice system. Would this then create another level of issue with families being overrepresented in a model that is meant to do good?

**Mr Berkman:** Do you mean if there was any kind of mandatory participation requirement?



**Ms LUI:** It is a known fact that children from First Nations backgrounds have a much higher representation in the justice system. Creating this multidisciplinary panel and mandating services to engage with vulnerable families would create another level of issues for those families because then it will be working with First Nations people, not only a high representation of First Nations families but also the children.

**Mr Berkman:** I take your point. I totally agree. I think this is part of the reluctance to mandate any particular mode of engagement with multidisciplinary panels or any other element of service provision. I should add as well that there is a lot of work that has gone behind this report, and a lot of it is broader research in the literature as opposed to the investigation of actual service delivery on the ground in the ACT. Queensland will have a very different context. We have a larger cohort of kids in this 10 to 13 age group who are involved in the criminal legal system. We obviously cannot directly transpose these findings into our mechanics of government, but I would refer to it again as just a very useful resource in terms of that broader literature background.

If there is one most urgent thing we need to do, I do think that raising the age is in some ways a necessary first step. It comes right back to the member for Burnett's first question. It is an important first step in that it requires government to engage in a different framework with these kids and their families. Beyond that, doing this kind of really broad based analysis of service requirements to make that function is something that is very urgently needed and it is going to go a long way to answering the sorts of questions about what is required, what is available already as voluntary service provision, and where that needs to be augmented. I think I will leave it there if that answers the question.

**Dr MacMAHON:** Can you detail the organisations that support raising the age, and what are some of the arguments that some of these various stakeholders have put forward?

**Mr Berkman:** It is rather a long list in the explanatory notes. It goes from page 2 over to page 3. I do not know that there is much value in my reading each of those out. It is a very diverse group of stakeholders. They are obviously the advocates that we are all familiar with, like Amnesty International, the Human Rights Law Centre and Change the Record. There is an alliance that sits around the 'Raise the Age' campaign as well. Other groups, like the Aboriginal and Torres Strait Islander Legal Service, are very supportive of this. CLCs Australia and the Human Rights Commission, unsurprisingly, support a position that is consistent with our international human rights obligations. As I mentioned before, there are the Royal Australasian College of Physicians and the Public Health Association of Australia.

Yes, there are rights focused organisations, but there are plenty of folks who are bringing the medical evidence into the frame here. The arguments that they are making are largely similar to the sorts of things I raised in the opening statement. The fundamental point is that kids in this age bracket cannot be expected to understand the consequences of their behaviour in a way that older kids do, that kind of mismatch between development of the prefrontal cortex and the amygdala. The analogy that I have heard people use, which I think sums it up most simply, is that you have a fully developed, fully functional accelerator, but your brakes do not work properly.

In my experience, the main arguments in favour of raising the age are that medical evidence which goes to the difficulty in understanding consequences and controlling impulses in kids at this stage. The important parallel evidence, which is very clear in all of the statistics, is that the younger a child is detained or incarcerated or encounters the criminal legal system the more likely they are to reoffend and to reoffend more seriously. Even if you put the human rights arguments out of the frame, which I am not suggesting for a second we should, even by the measures of success that the criminal legal system applies, it is doing a bad job because it just makes better criminals, for want of a better description.

I touched very briefly before on the criminogenic nature of prisons and detention centres. When you put kids in an environment where they are being detained, they spend potentially years of their life living with other kids who have struggled with these same sorts of circumstances, it clearly, on the evidence, does not help them move away from that sort of problematic behaviour and get the supports they need to really make the most of what life has to offer them.

**Dr MacMAHON:** You talked a little bit about brain development and young people not having that impulse control. Can you detail what are some of the kinds of key crimes that young people in between the ages of 10 to 14 are committing?

**Mr Berkman:** I touched on this before, but they are very rarely violent crimes being committed by kids in this younger age group. It is far more likely to be thrillseeking, risk-taking crimes like theft or burglary—whether it is stealing or jumping in a stolen car and going for a ride. They are ill-considered behaviours that do not match the consideration of consequences with the immediate thrill—reward-seeking behaviour, as they describe it.

For what it is worth—I do not know that it is particularly relevant—I have my own experience. The weekend immediately after we had passed the youth justice reforms my wife and I had our house broken into. A young kid pinched the car key and tried to make off with the car. I cannot emphasise enough just how petrified this little guy was. I stumbled outside half asleep, opened the car door—probably should not have; you should not follow behind someone when they break into your house. He was really freaked out. It laid bare for me just how little understanding there was of the context of what he was doing and what the consequences could be. He just repeated over and over, 'I'm sorry. I'm sorry', and then wriggled out the passenger door and ran away. It was a young kid, a small kid. I cannot imagine anything less productive for this kid than being locked up.

**Ms LUI:** You mentioned in your opening statement cultural awareness and training. With Queensland being so vast and First Nations people scattered right throughout the state, what are your thoughts around how you would capture that cultural component in engaging kids in all different parts of Queensland?

**Mr Berkman:** That is a big question and one I suspect you could almost answer as well as I could. We obviously have plenty of barriers—and we encountered this in the last round of travel—for getting the right people with that cultural awareness and experience in community in the workforce. I think we have plenty of unresolved issues around the accessibility of blue cards so that we can actually capture the firsthand experience in any given community. Obviously a great diversity of cultural practice and cultural awareness is going to be needed to provide this kind of support. The difficulty in making that happen will present its challenges, but it should not be a barrier to making this most fundamental change to at least open up that opportunity for kids rather than going into youth detention, to at least be in a position to seek the cultural supports and the other practical supports that we have discussed in their communities or wherever it is they might be living.

**CHAIR:** Before I defer to the member for Scenic Rim, I just counsel the member to deter from asking a hypothetical under standing order 115(b)(v). Over to you, member for Scenic Rim.

**Mr KRAUSE:** I am appropriately scolded, chair. There has been plenty of that in my life. I want to ask a question about the restorative justice and victims of crime issue which was touched on earlier. You mentioned that you would hope that those avenues for people to be part of that program would still continue. If the age of responsibility is lifted, won't that take a whole section of offending, which is offending right now, out of the context of the criminal justice system so people who are now victims of crime will not be treated as such? They will not be committing crimes.

**Mr Berkman:** I am not sure that that is necessarily the way it works. I cannot give you an expert view on that particular question, but let us just take as a hypothetical—I know that we are not dealing in hypotheticals anymore in this session. Assuming someone has their property damaged by a child who is under the age of 10 now, they will still have avenues to pursue that, whether it is through civil avenues or through police even though there may not be criminal charges laid against that kid. I am sorry. I cannot help you any further than that.

**Mr KRAUSE:** I do have another question.

**CHAIR:** Thank you, member. That was a great question, by the way.

**Mr KRAUSE:** In terms of children who may commit more serious offences than a break and enter such as murder or manslaughter, how would the state deal with those issues? If your proposal was adopted, how would those offenders, under today's laws, be dealt with?

**Mr Berkman:** I would make two observations to start with. First of all, violent offending by kids under the age of 14 is exceedingly rare.

**Mr KRAUSE:** I take that point.

**Mr Berkman:** Beyond that, let us again use a hypothetical. It is probably even more rare for kids under the age of 10. Within our system at the moment have made, I would say, a fairly arbitrary decision that 10 is where we draw the line. With any kids, as I mentioned before, who are engaged in any kind of violent offending like that, there is something really traumatic, really bad in their background. The implicit assertion in your question is that we need to lock them up to make communities safer or to avoid that happening again, but I would disagree.

**Mr KRAUSE:** I was just asking a question. I am happy with that, thank you. You say there are only 17 young people in detention between 10 and 13, on average, every day in Queensland. Admittedly, that is not a huge number of people. It was indicated I think that 90 per cent are Indigenous. Is this not a family problem or a community problem and that this bill of yours is not going to address those community or family problems? It just shifts the goal posts. When you get to 14 years

of age, unless there is a fix to the family or community issue, the same issues are going to exist. What then? Do you shift the goal posts again? I know that is a hypothetical question. Isn't this failing to address the underlying family and community issues?

**Mr Berkman:** No. It is bringing Queensland law in line with what international understanding, international best practice and international human rights law says should be the case. I am not sure if you have introduced a private member's bill yourself, but one of the limitations that I have to deal with as a non-government member is that I cannot propose anything that requires appropriations. If I had capacity to do so, I would put forward a bill that dealt in much more detail with the funding for all of those services that are going to actually address the issues for the individual children, for their families, for their communities. I am necessarily constrained by the standing orders, the rules of parliament more generally, to just deal with this more mechanical change to raise the age. That is what I am left with. I think there is plenty of scope for us to have a further conversation. I have no doubt that the human rights discussions and jurisprudence will continue to evolve and consider whether a 14- or 15-year-old child is of an age where they can properly understand the consequences of their actions, but that is not what we are dealing with here.

**Mr KRAUSE:** I look forward to that discussion too.

**CHAIR:** Thank you, member for Scenic Rim. Member for Maiwar, I take you back to the scenario that you painted in terms of what happened in your home recently. I appreciate the evidence that you have provided around children's brain development and around reward-seeking behaviours and ill-considered consequential understandings. We have communities right across Queensland where young people have stolen a car and sadly innocent people have been hurt. What do we say to those families, to those community members? How do we respond to that context when, from a young person's perspective, they were engaged in thrillseeking, risk-taking and reward-seeking behaviours, ill-considered consequential understandings but, for the recipient of those behaviours, they have lost a loved one? What are your thoughts around managing that context?

**Mr Berkman:** No-one wants to be the victim of crime. It is especially tragic to consider those circumstances where people's lives are lost. What I would say though is that whether or not those behaviours are criminal does not affect that they are taking place. Whether the age of criminal responsibility was 10 or 14 is not necessarily going to stop any of that happening. By raising the age of criminal responsibility, we necessarily provide an opportunity, a better opportunity, to deal with children in their family and in their community and in their personal context.

As I have said a few times already, holding kids criminally responsible for their behaviours, putting them before courts, putting them in detention centres, only worsens that behaviour down the line. We cannot look at any one instance of crime, no matter how tragic, and say, 'Well, if only there were harsher penalties available for that particular crime it would not have happened,' because that is not the way it works. Arresting kids and locking them up is not even a bandaid. It does nothing to prevent the crime happening. It is a response to behaviours that we are seeing because kids' immediate needs in their lives are not met and because the communities that surround them have unmet needs themselves and because they have trauma in their background and because of layer upon layer upon layer of difficulty.

I cannot express strongly enough just how sad I feel for those families who have lost loved ones, but I would suggest that we as legislators, but also more broadly as a community, need to resist the temptation to, as a knee-jerk response, say that the consequences for the kids involved in that behaviour have to be tougher, because we know it does not work.

**CHAIR:** Thank you very much. The time being just after 1 pm, that concludes our briefing. There was one question taken on notice. Member, are you familiar with that question?

**Mr Berkman:** Indeed I am, yes.

**CHAIR:** If we could ask for that response by Monday, 22 November 2021. Member, on behalf of the committee, I thank you for your attendance today. Thank you for your work, which has been substantial. The committee would also like to thank Hansard for their efforts today. A transcript of these proceedings will be available on the committee's parliamentary webpage in due course. I now declare this public briefing closed.

**The committee adjourned at 1.01 pm.**