



Speech By  
**Michael Berkman**


**MEMBER FOR MAIWAR**

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## **CRIMINAL LAW (RAISING THE AGE OF RESPONSIBILITY) AMENDMENT BILL**

### **Second Reading**

 **Mr BERKMAN** (Maiwar—Grn) (5.34 pm): I move—

That the bill be now read a second time.

I am proud today to rise to move the second reading of this bill, but I am equally saddened that it is still, in 2022, necessary for me to do so. It is a bill with a very simple objective: to get 10- to 13-year-old children out of prisons and the criminal legal system by raising the minimum age for criminal responsibility to 14 years old. It is a bill that I urge every member here to support.

The bill amends section 29 of the Criminal Code to raise the minimum age at which a person is criminally responsible for any act or omission from 10 years old to 14 years old. It also includes transitional amendments to the Youth Justice Act to: transition children who committed an offence before they were 14 out of prisons and watch houses within no more than one month and three days respectively; expunge those offences from their record; and destroy identifying particulars collected as a result of their criminalisation at such an unacceptably young age.

Since I introduced this bill last year, thousands of children aged 10 to 13 have had formal contact with the police. Around 130 have ended up in prison. Dozens of children under the age of 14 have been held in a police watch house. While those children were sitting in police stations, taken from their families and locked up alongside much older offenders, politicians were debating their fate.

Maybe those kids would have felt hopeful knowing how many Queenslanders agree that they do not belong in prison and that they deserve a real chance to learn and grow. Not a single one of the 300-plus written submissions on this bill oppose raising the age to at least 14. This includes lawyers, doctors, social workers, academics, carers, First Nations leaders, human rights experts, organisations from the Red Cross Australia to the Uniting Church, the Australian Association of Social Workers, the Public Health Association of Australia, QCROSS, the Queensland Bar Association and AFL Queensland.

It was apparently too embarrassing for the government to have no stakeholders opposed to the bill so the committee went out of its way to invite the police to give their two cents worth. We should not be surprised that the only opposition to raising the age to 14 years came from the police union and a former police commissioner—those whose work and careers depend on the breadth of criminal sanctions created by the government. That is not necessarily an attack on individual police officers at all, but I have never seen a more appropriate context for the old saying ‘when the only tool you have is a hammer, everything looks like a nail’.

If any members here have not yet made up their minds on how they will vote on this bill—and I will allow myself that flight of fancy until we hear from others—I ask them to start by exercising a little common sense. Does it make sense to give a 12-year-old child the same criminal legal responsibility as a 32-year-old? Does it make sense that in the same year a child might still be losing baby teeth or receiving a symbolic pen licence from their teacher for reliably legible handwriting that they can receive a jail sentence?

Our laws recognise the vulnerability of children and their reduced decision-making capacity in a variety of ways. We have laws prohibiting child exploitation material that includes children up to the age of 15. Aggravating circumstances provisions apply where a child is under 12. It is a criminal offence for a parent or guardian to leave a child under the age of 12 years unsupervised for an unreasonable time. Yet in our Criminal Code, these vulnerable children suddenly become wilful criminals.

The fact is that it does not make sense to assign criminal responsibility to 10- to 13-year-old children when we consider the basic medical evidence. At this age a child's brain is not fully developed. The submission from Life Without Barriers included Harvard research that helpfully spells out exactly what we mean by that. Adolescents are more reactive in emotionally charged situations, they are more impulsive, they make relatively poor assessments of the trade-off between risk and anticipated reward, they undervalue delayed gratification, they are unlikely to have a fully developed capacity for empathy, they have a stronger drive towards sensation seeking. This is all relevant when we consider whether a child should be held criminally responsible like an adult.

The Office of the Public Guardian said in its submission that in its experience—

Beyond offending itself ... young children lack the capacity to properly engage with the criminal justice system, resulting in a propensity to accept a plea bargain, give false confessions, fail to keep track of court proceedings, or to properly comprehend criminal proceedings.

Frontline workers like Adam from Anglicare spoke about 12-year-olds arriving at court 'wide eyed and scared', experiencing the system with little more nuance than a place where they were 'told they were "bad" with little opportunity to participate'. This is why *doli incapax* is inadequate. The Queensland Law Society points out that it does not protect 10 and 11-year-old children from the criminal process, including being kept on remand in a detention centre. *Doli incapax* engages with the capacity to tell right from wrong but has no regard for whether a child can understand the legal process, the court system or sentencing principles.

We also need to consider the medical evidence about what happens when you put a child through the criminal legal system. Neuroscientist Zoltan Sarnai explained at the hearings that the years between 10 and 17 are crucial for a neurodevelopment process call 'synaptic pruning'. Anything that affects the brain during this period—including, as he puts it, the trauma of incarceration—will have a particularly significant effect. If children do not have a secure environment in which to learn behaviour and emotional regulation, they may never fully develop those capacities. Simply put, locking up a child at 10, 12 or 13 can ruin their lives.

There are plenty of children younger than 14 who are facing that possibility right now in Queensland. The vast majority of them are First Nations children. Many of them have neurocognitive disorders and other disabilities. Many of them have been in the child protection system. They are in adult police watch houses. They are in overcrowded prisons. They are locked down in their rooms without access to fresh air or education for days on end. They can, under our current laws, have a 'spit hood' tied over their head or be strapped to a restraint chair.

The government's new bail laws, as they proudly proclaim, led to more children being held in custody on remand. The Queensland Human Rights Commissioner raised concerns about this happening even where they are unlikely to get a custodial sentence and so they are just serving 'dead time'. This is an untenable situation. I join the calls in a number of submissions, particularly from the Cooee Indigenous Family and Community Education Centre, for the state government to seriously consider the duty-of-care implications arising from its current approach.

Amnesty International recommends that additional legislation be introduced to prohibit holding a child in a watch house overnight. Although it is outside the scope of this bill, I completely agree that a watch house is no place for a child. Raising the age of criminal responsibility would be one step towards a better approach to youth justice, starting with the youngest and most vulnerable in the system. Our current laws are out of line with international jurisdictions. They breach our human rights obligations and, despite what we will no doubt hear from members who are obsessed with punishment and want to lock up all the naughty kids, our current laws make our community less safe.

The medical evidence is clear that 10- to 13-year-olds' brains are not fully developed. The criminological evidence is clear that early contact with the criminal legal system increases a child's likelihood of reoffending, so our current law directly undermines any efforts to close the shameful gap in First Nations incarceration rates. Our laws disproportionately impact the most vulnerable children in our state and set them up for a lifetime of offending and incarceration.

From all the evidence offered by submissions on the bill, it is clear that the best way to keep the community safe is to invest in prevention, early intervention and diversion. It works and it is far cheaper than the \$1,600 a day it costs to keep one child in prison. I am well aware that the committee recommended that the bill not be passed but, if the committee and particularly the government members

treated the inquiry process as anything more than a political fig leaf, to obscure or justify the government's ineffective, politicised and harmful pre-existing policy position, it would have unequivocally supported raising the age to at least 14.

The experts who work with these kids know what the solutions are: they are trauma informed, child centred and place based, but programs like that must be fully funded by the state, and the communities most affected by discrimination, marginalisation and overpolicing must be involved in planning, designing and implementing this alternative model.

Politicians who choose to vote against this bill should know that they are among the last ones left clinging to an outdated and ineffective system that locks primary school children in prison. At some point in the future when this reform is many years behind us we will reflect on how inconceivable it is that children as young as 10 were once held criminally responsible for their actions and locked up as a result. We can only hope that this government has the common sense and compassion to take these steps now before any more young children are unnecessarily harmed. As World Vision said in its submission on the bill, the world is watching.