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) (6.47 pm), in reply: None of us who care about this reform and who have worked on it for a long time is surprised that the government will continue to do the wrong thing and lock up small children. We are just disgusted that they can continue to ignore the evidence and take the coward's path. We are disgusted that they will continue to politicise the lives and wellbeing of small children, predominantly First Nations children.

Just today I spoke to a lifelong Labor member, one with a history in corrections and an awarded lawyer. Out on the Speaker's Green, at the event recognising the government's progress on the treaty agenda, he told me just how disgusted he is with the Queensland Labor Party's position on this. How can we hope to make progress in righting historical wrongs committed against First Nations people here in Queensland while the government refuses to make a change like this, while we persist with laws that criminalise kids, the vast majority of whom are First Nations kids. This person told me of his disgust that his party continues to show no leadership on this issue and will instead trade off vulnerable children's lives as collateral for their political cowardice.

Even if the government does not listen to the experts and support my bill now, they cannot run away from it forever, though they have certainly tried. We heard the Attorney-General referring to the federal process and suggesting this pre-empts decisions coming out of the meeting of attorneys-general. For years they have hidden behind the COAG process. All the while, from what we know about what has gone on behind closed doors, this government has been blocking progress on raising the age. It has been almost four years since the meeting of attorneys-general established its age of criminal responsibility working group and it has achieved little more than burying a report that recommended all governments raise the age of criminal responsibility to 14. That was a recommendation made and buried.

The last we heard from the working group was a noncommittal statement of support for developing a proposal to raise the age to 12. Meanwhile, in the ACT, Labor and the Greens, working together in government, have been getting on with raising the age to 14. Other jurisdictions are raising the age to 14. How can the Attorney-General continue to hide behind this notion of national consistency when other states are leading the way with a change to 14?

Let us be really clear: raising the age to 12 is not good enough. It is another delay tactic. It achieves almost nothing in practical terms. In fact, I fear it could almost be worse than nothing if this government uses it to push the issue of real reform off its agenda indefinitely. A minimum age of 12 is not consistent with our national human rights obligations. It would have no impact on more than 90 per cent of the 10- to 13-year-old children in custody or under supervision in Queensland. To put it really simply, there is no medical or other evidentiary basis to raise the age to 12 rather than 14. It is pure politics.

A lot of the submissions on the bill specifically oppose raising the age to 12 instead of 14 including submissions from ANTaR, Change the Record, the Create Foundation and the Queensland Human Rights Commission. They labelled it as 'disappointing', 'inadequate', 'unacceptable' and a 'political stunt'. The government's response is so disappointing but so predictable. You could almost play bingo with some of the lines that were trotted out: putting the cart before the horse; before we raise the age more work has to be done. Whose job is it to do that work? The member for Clayfield raised this. We cannot put forward processes for the executive to implement this alternative. That is something that the government has to do. It is obscene that he claims there is no alternative model and goes on to list all of the alternatives that already exist. You cannot wax lyrical about the early intervention programs that you have and that are working so well whilst simultaneously pretending that the alternatives do not exist. The truth is that they are underfunded because in Queensland the vast majority of money is going towards building and expanding youth prisons.

We heard from Ian Leavers who, in the whole committee process, was the only opponent of raising the age at all. He said that it would be preferable to divert the vast majority of young people from the criminal system but that most of the time the police are the only service that is open and available around the clock. The member for Burdekin makes the same point: the police do the diversion work. If the diversion services are not available and it falls to police, to me that sounds like a problem and the police agree.

People such as Professor Boni Robertson, an Indigenous Elder, are already doing the work that they can in their communities. Aunty Boni illustrated the problem perfectly at the committee hearing when she said—

> ... I have said this ad nauseam: we cannot do it by ourselves. We know the answers, we have the solutions and we have faith that we can make a difference; we ask that you have faith in us that we do have the solutions. We just have to be funded appropriately to do that ...

She spoke a lot about waiting. She spoke a lot about decades of waiting. The advocates in this space are tired. Dr Terry Hutchinson said—

> I think you need to make a stand and the rest will follow. There are services there, but we need to get them into position. Until we make a stand and make a change, nothing will happen.

The Queensland Human Rights Commissioner, Scott McDougall, also rejected the argument that this would be jumping ahead unwisely. In his words—

> This reform must happen now to prevent the ongoing harm done while we continue to criminalise children under the age of 14 ... The answers are there. We know the science. What is lacking is the execution.

Contrary to what others have said in the debate, from the moment I introduced this bill I have been crystal clear that it must be accompanied by an alternative model and that must be the work of the government. The comprehensive service mapping that has been done recently by the ACT government, again where the Greens share power with Labor, is a good example of where to start. It was put to me: what does it cost? Sure, no-one is saying it is cheap, but neither is detaining children. It costs $1,600 a day for one child, which is north of half a million dollars a year for a single child. Anyone who claims you cannot fund decent services with that kind of money frankly is not looking hard enough at the alternatives.

Prevention services are the foundation. Prevention acknowledges that the real drivers of offending are things such as poverty and trauma, undiagnosed and untreated disability and mental ill health. The Youth Affairs Network Queensland points out that any response from the state is useless unless it acknowledges class. When prison is the only place that some kids can get three square meals a day, a medical check-up, steady education and a door that locks behind them at night then, as the network says, that is a really sad indictment on our society. We need universal basic services and programs that lift Queensland families out of poverty. This year's budget provides for more capital spending on prisons than on social housing yet we know that secure affordable housing is one of the fundamental things missing from so many of those children's lives.

Beyond prevention, a number of submissions stress the importance of identifying opportunities for additional intervention as early as possible. Amnesty International recommended funding for psychologists to run neurocognitive testing for children displaying risk factors, particularly around FASD or fetal alcohol syndrome disorder, at school, at the GP or when coming into contact with police. The fact that many services are only made available once a child is charged or before the court represents an extraordinary policy failure. This was acknowledged by the Queensland Mental Health Commissioner, among others, in his submission on the bill. The communities most affected by discrimination, marginalisation and over policing must be involved in planning, designing and implementing these models. I have said this before. The concept of having community-led alternative responses is not new. Those responses have to be led by the community and they must be trauma informed, child centred and place based.

Alternatives will not work if they are not culturally appropriate. In a state where First Nations people have disproportionate levels of poverty and targeting from law enforcement, we need to fund Indigenous-led programs for young people. In their submission the Queensland Aboriginal and Torres Strait Islander Child Protection Peak spoke about how non-Indigenous responses can make things worse because they miss the crucial cultural context and wisdom.

In this debate much has been said about community safety and yet everyone forgets the blindingly clear evidence that criminalising children and putting them in prisons makes them—I hate this term—better criminals, if that is the way that we want to frame the debate. Countless submissions on the bill agree that the earlier a child has contact with the criminal legal system the more likely they are to offend or reoffend.

In their joint submission, Save the Children Australia and Childwise quoted a 19-year-old Aboriginal man who first had contact with the youth justice system at age 10. He said that in youth detention he learned 'tips on how to offend better ... but that was all really.' On finally getting more support from their research team he said, 'Having someone care about me taught me more than prison could.' That is the reality: kids need care and they need support, not cages and punishment.

Damian Bartholomew from the Law Society said something in the hearings that stuck with me. He said—

> ... we give the community a placebo by saying to them that we can take these young people to court and we will address the behaviour, but we do not.

The Queensland Family and Child Commissioner, Natalie Lewis, pointed out that a criminal response to children's behaviour 'gives the illusion of accountability'. Because of the delay between the event and the resolution after being dragged through the criminal system, for a 10- to 14-year-old the consequence means practically nothing of use to them. Punitive criminal responses do nothing to teach kids a lesson, as we hear some in the debate tell us they would.

I think what we are seeing here is both Labor and the LNP continuing to deny reality. They would like to frame this debate as one between community safety and raising the age but it is simply not. I have a personal experience of youth crime. We had a kid who could not have been any older than 12 break into our house at 3 am on the morning before the dawn service. He pinched the car keys and drove the car out. I saw him face to face as I tried to open the door to see what was going on. Maybe that was not a wise move at 3 am, but he was not a criminal. He was a terrified kid. All he could repeat was, 'I'm sorry, I'm sorry, I'm sorry.' He was petrified as he ran away. I do not know why that kid was in Bardon at 3 am but I know he should not have been. I also know that if he had a safe place to sleep and a stable, caring environment then he probably would not have been. This bill is not about turning a blind eye; it is about age-appropriate, evidence based solutions to problematic behaviour. This reform will happen at some point.

In closing, I want to echo the member for South Brisbane's sentiment and express my sadness for all those children who will be locked up and whose lives will be ruined between now and when we actually make that change.