




Speech By
Hon. Shannon Fentiman

MEMBER FOR WATERFORD

Record of Proceedings, 16 August 2022

CRIMINAL LAW (RAISING THE AGE OF RESPONSIBILITY) AMENDMENT BILL

 **Hon. SM FENTIMAN** (Waterford—ALP) (Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence) (5.44 pm): I rise to speak against the Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021. Simply changing the criminal law does not reflect the complexity underlying youth offending and why children as young as 10 years old commit these offences. This bill seeks to put the cart before the horse both in the sense that it lacks the necessary alternative framework to respond to children aged between 10 and 14 years who exhibit harmful behaviour and in that it pre-empts a national approach to a fundamental criminal justice issue.

In its consideration of the bill, the Community Support and Services Committee made five recommendations. The first recommendation was that the bill not be passed. There were also four recommendations directed at government for action. I now table the government response to those four recommendations and will speak to them shortly.

Tabled paper: Community Support and Services Committee: Report No. 16, 57th Parliament—Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021, government response [1149](#).

I thank the Community Support and Services Committee for its consideration of the bill. I would also like to take this opportunity to thank the stakeholders who made submissions and appeared before the committee.

The safety of Queenslanders is the government's No. 1 priority. We know that 46 per cent of youth crime is committed by a small group of recidivist offenders. Last year we amended the Youth Justice Act to strengthen our youth justice bail laws. In our recent budget we increased funding by \$78.8 million over four years to be invested in reforms under the Youth Justice Strategy to continue to support these young people in breaking the cycle of offending and keep our communities safe.

Any increase in the minimum age of criminal responsibility must be underpinned by an alternative response to those children who exhibit harmful behaviour, particularly those who pose an immediate risk to the community, to ensure the safety of the community. Developing such an appropriate alternative is complex, particularly given Queensland's decentralised geography. For example, there would need to be arrangements in place to ensure that children who are currently subject to supervision continue to receive the support they need to facilitate their rehabilitation and therefore reduce the risk of any reoffending; first responders would need to be able to safely and appropriately respond to children exhibiting harmful behaviour; and supports and services would need to be in place to adequately address a child's harmful behaviour thereby reducing the likelihood of repeat behaviour and enhancing community safety. These complexities were acknowledged by the committee in their report when they stated—

Considering all evidence before the committee and noting the importance of appropriately balancing the welfare of children with community safety, as well as the need to address the complex problems that give rise to children entering the justice system, the committee considers there is more work to be done before the minimum age of criminal responsibility is raised in Queensland.

The government is currently undertaking this work to contribute to national discussions on the issue. I note that the member for Maiwar has been unable to say what support systems would be in place if this bill were to become law.

As noted by the committee in its report, the minimum age of criminal responsibility has been on the national agenda at the Meeting of Attorneys-General. This is because criminal liability is a fundamental criminal justice issue and there is strong interest in a nationally consistent approach.

The importance of national consistency was recognised in 1997 when the Australian Law Reform Commission considered that a child should not be criminally liable, and therefore exposed to criminal sanction, for an offence in one jurisdiction but not another simply because of the child's age. The unfairness was also illustrated by former police commissioner Bob Atkinson during the committee's public hearing when he stated—

It would seem very unfair that a 10-year-old might do something in Tweed Heads that is not an offence but if they stepped over the border into Coolangatta it would be. I think that is a quite unfair. I think that is why it is so important to have a national approach.

In line with this recommendation, in November 2021 at the Meeting of Attorneys-General, state attorneys-general supported the development of a proposal to increase the minimum age of criminal responsibility from 10 to 12 including with regard to carve-outs, timing and discussion of implementation.

Under the guidance of a new Commonwealth Government, at the meeting of Attorneys-General last Friday, attorneys-general agreed to the Age of Criminal Responsibility Working Group continuing its review to continue to bring forward a proposal to increase the minimum age, paying particular attention to eliminating the over-representation of First Nations children in the criminal justice system.

This national working group is the appropriate forum to consider complex policy considerations relating to the minimum age of criminal responsibility such as an appropriate alternative service system, possible carve-outs and timing for implementation. This also closely aligns with the work the Palaszczuk government is doing to continue to address our Closing the Gap targets. The recent budget announcement of funding of bodies like the Criminal Justice Innovation Office and a First Nations justice office within my department will continue to enhance the work we are doing to address the over-representation of First Nations people within custodial settings.

The government supports the four recommendations for government action made by the committee. Ensuring that the training provided to our workers in residential care settings is current and reflects contemporary approaches and interventions is an important recommendation.

In relation to recommendation 2, the Department of Children, Youth Justice and Multicultural Affairs will continue to review the mandatory training given to residential workers in trauma-informed therapeutic practice to maintain currency and reflect contemporary approaches in interventions. This includes ensuring sufficient training in diversionary tactics, de-escalation techniques and other available supports. In relation to recommendations 3 and 5, Queensland will continue to participate in the ongoing work of the national Age of Criminal Responsibility Working Group in its review of the minimum age of criminal responsibility, with further national discussions to continue next year.

Any consideration of an alternative response under a raised minimum age as part of this work will include consideration of the principles identified by the committee; namely, that there would be adequate and effective diversion programs and services, including place-based and culturally appropriate practices, to support young people and their families to address factors which led to the offending behaviour. This government acknowledges the over-representation of Aboriginal and Torres Strait Islander children in the youth justice system and appreciates the need to work with local communities to ensure children and their families are supported in culturally appropriate ways.

In relation to recommendation 4, following the tabling of the committee's report earlier this year my department has consulted with stakeholders on targeted training accreditation processes and a clear practice direction. My department is considering the results of this consultation and will continue to work with stakeholders to further consider the practical operation of *doli incapax*.

It is clear there is significant work which needs to be done before the minimum age of criminal responsibility could be raised in Queensland. Proceeding to raise the minimum age of criminal responsibility without the necessary framework for responding to children who exhibit harmful behaviour is irresponsible. National discussions should be allowed to take their course to facilitate consistency and fairness. These discussions will also ensure that any reform in this area is done with consideration of the welfare of children and community safety in mind. Community safety is key.