

Community Support and Services Committee

Inquiry

Criminal Law (Raising the Age of Responsibility)
Amendment Bill 2021



#MeAt10: A collage of Anglicare staff members

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This submission may be quoted in public documents.

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*#MeAt10, so proud of my Scouts uniform
Anglicare staff member, Adam (Practice Facilitator -
Wellbeing Portfolio)*



*#MeAt10, posing for a photo on a plane. I thought 10 was
so old because it was double digits!
Anglicare staff member, Angela (Foster & Kinship Care
Practitioner)*

Introduction

Anglicare Southern Queensland (Anglicare SQ) welcomes the opportunity to make a submission to the Community Support and Services Committee Inquiry into the *Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021*.

We strongly support the policy objectives of the Bill, being that:

- *The objective of the Bill is to ensure children under 14 years of age are not incarcerated or otherwise punished under the criminal legal system, consistent with current medical understanding of child development and contemporary human rights standards.*

Our stance, and the comments below, reflect the expertise and experience of Anglicare Southern Queensland in working directly with many thousands of vulnerable children, young people and their families for more than a century. We offer a range of programs in this area of our service delivery: Foster and Kinship Care; Residential Care; Family Intervention Services (FIS); Intensive Family Support (IFS); Secondary Family Support (SFS), Supported Independent Living Services (SILS), Assessment Support Connect (ASC), as well as youth justice services, and counselling and accommodation to young people aged 12–25 years who were homeless or are at risk of homelessness.

In the financial year 2019–20, Anglicare provided 360,465 nights of care for children and young people through foster and kinship care and supported accommodation, providing care to around 1,000 young people on any one night.¹ Approximately one quarter (25–27%) of our young people are from Aboriginal and/or Torres Strait Islander backgrounds, and we take very seriously our responsibility to provide opportunities for these young people to remain connected to family and community, and to enhance their knowledge of their culture.

Given the depth of our experience with vulnerable young people, Anglicare SQ offers the following comments in relation to the proposed Bill.

About Anglicare SQ

Anglicare SQ is a not-for-profit Anglican Church organisation that provides care and support services to more than 1 in 30 Queenslanders. Our first priority is a commitment to high quality, client-centred care, support and counselling, enabling those we work with to reach their own goals and to live a flourishing life.

Our 3000 professional staff and volunteers support Queenslanders across a geographic area double the size of the United Kingdom, stretching from Townsville to Coolangatta and across the southwest of the state. We work towards the promotion of wellness, social inclusion and social justice through our diverse and extensive range of support services. These include foster and kinship care; children and family services, including intensive family support and family intervention services; as well as targeted family support programs; mental health and family wellbeing; homelessness services; disability services; residential aged and community care; and spiritual and pastoral care.

The national context

The Committee will be aware of current activity around the issue of 'raising the age' at a national level. Attorneys-General from every state and territory, including Queensland, have proposed to develop a plan to raise the minimum age of criminal responsibility (MACR) to 12 years old.

More than 100 organisations Australia-wide, independently and through the national #RaisetheAge and #ChangetheRecord campaigns, have criticised this 'plan for a plan'. As a member of the #RaisetheAge coalition, Anglicare supports the view that the Attorneys'-General proposal is an empty commitment, and does nothing to give children the help they need to lead healthy and happy lives in their homes, schools and communities.

After three years of consideration and a deluge of expert opinion and evidence from medical, legal, First Nations and human services organisations saying that 14 should be the minimum age, the Attorneys'-General proposal flies in the face of international evidence and public opinion.

Both the evidence and public support for raising the age are incontrovertible, and are outlined in the sections below. We offer this same evidence to the Committee in your consideration of the current proposal for raising the age in Queensland.

The evidence for raising the age is undisputable

The medical evidence is clear

There is extensive medical evidence that children under the age of 14 years have not yet developed sufficient capacity to fully assess risk, predict consequences or control their impulses.

The Australian Medical Association, in a joint policy statement with the Law Council of Australia, notes that an MACR of 10 years is both:

- out of step with medical consensus regarding child brain development, and
- inconsistent with other laws and policies that consider the time taken for the child brain to mature.²

Scientific advances show that the immaturity of the child brain has impact on several key areas of cognitive functioning, including impulsivity, reasoning and consequential thinking.³

The life experience of children in the justice system

- 31% have a parent who has been held in adult custody
- 58% have a mental health or behavioural disorder diagnosed or suspected
- More than half have used two or more substances
- 52% are totally disengaged from education, employment and training
- Almost 1 in 5 have been homeless or had unsuitable accommodation
- 51% have also had involvement with Child Protection
- 3% of children and young people in detention have used ice or other methamphetamines
- 17% of children and young people have a disability diagnosed or suspected.

Queensland Government 2019.
Youth Justice Strategy 2019–2023.

This is particularly relevant to children in contact with the youth justice system, given stark and well-known statistics that show that most children in the justice system have individual, family and/or social factors that contribute to their offending (see text box, previous page). As the Queensland Family and Child Commission has pointed out:

There are marked differences in the brain development of young offenders compared with other children. Children who have experienced abuse or neglect have a diminished ability to develop social, emotional and cognitive skills. The brain's neural pathways are shaped by experiences. Brain development is disrupted and delayed in children who have adverse psychosocial experiences.⁴

Similarly, the Queensland Government's own *Youth Justice Strategy 2019–2023* acknowledges that:

The children and young people who come into the Youth Justice system generally come from tough and often traumatic family backgrounds, and many have issues and problems that affect their behaviours, lifestyles and decisions.⁵

Most other laws and policies acknowledge the immaturity of children's brains, and act to protect children. For example:

A child under 13 years cannot sign up for a Facebook account.

A child under 12 years is considered an unaccompanied minor if flying alone.

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 in Queensland.

PG-rated content is not recommended for viewing by people under the age of 15 without guidance from parents, teachers or guardians.

The current age of criminal responsibility at 10 years of age is therefore totally inconsistent not only with medical advice, but also with social norms and expectations about protecting children.

Neither children nor communities are safer if young children are imprisoned

Because the brains of young children are still developing, there is a higher likelihood of deep and long-term trauma and developmental damage caused by the criminal justice system. Detention can increase children's risk of depression, suicide and self-harm; lead to poor emotional development; result in poor education outcomes and further fracture family relationships. Given many children in detention have been victims of abuse, there is also significant potential for re-traumatisation.⁶

This is particularly relevant to young Aboriginal or Torres Strait Islander Queenslanders aged 10–17 years, who are 20 times more likely to be in detention than non-Indigenous children (see figure 1 below).⁷ Cycles of poverty, intergenerational trauma and grief, and experiences of systemic injustice contribute to this statistic, as well as youth justice policies and practices where children are isolated from community, that are inappropriate to Indigenous young people.⁸



Figure 1: Rate per 10,000 young people (aged 10 to 17 years) in youth detention in 2019–20 in Queensland, by Aboriginal and Torres Strait Islander status.⁹

Instead of helping children, detention increases their vulnerability and disadvantage, and therefore the likelihood that they will return to the prison system over and over, both as youth and as adults. As a report from the Sentencing Council of Victoria points out:

*The younger children were at their first sentence, the more likely they were to reoffend generally, reoffend violently, continue offending into the adult criminal jurisdiction, and be sentenced to an adult sentence of imprisonment before their 22nd birthday.*¹⁰

Existing social disadvantage is then likely to be further intensified by the prison experience as an adult, and significantly increase long term costs to the community:

*... [S]table accommodation can become hard to obtain because on release, ex-prisoners do not have the financial means to secure private housing, or may be ineligible for priority public housing... Prisoners tend [also] to possess low levels of workplace skill and education, and the addition of a custodial term to an ex-offender's personal history further diminishes employability.*¹¹

It is therefore hard to argue convincingly that imprisoning children makes Queensland safer.

The Queensland Government's *Youth Justice Strategy 2019–2023* acknowledges as much, in pointing out that children and young people who have been through detention are at more risk of committing offences when they return to the community.¹² In Victoria, the Sentencing Council points out that, after accounting for the effect of other factors, *each additional year in age at entry into the criminal courts was associated with an 18% decline in the likelihood of reoffending.*¹³

International research concurs: in countries where the MACR is 14 years or higher, research has shown that there is no evidence of adverse effects on crime rates.¹⁴

International standards

While we recognise that International comparisons by themselves do not provide an argument for increasing the minimum age in Australia, they do emphatically demonstrate that raising the age is feasible without negative impact on youth crime rates.¹⁵ They are also evident in the increasing pressure Australia is facing in the international human rights arena on this issue.

As part of Australia's UN Universal Periodic Review earlier this year, a meeting that takes place once every five years to review the human rights records of all UN member states, 31 countries including Canada, France, Germany and Norway called on Australia to raise the age to a minimum of 14 years (as recommended by the UN Committee on the Rights of the Child¹⁶ and consistent with 14 years as the most common age of criminal responsibility across 90 countries).¹⁷

This international pressure and the UN recommendation is not to imply that children should be exempt from the consequences of their actions. In countries such as Sweden, France, Norway and others, the anti-social and offending behaviour of very young children is dealt with through the child welfare system rather than the justice system.¹⁸ In a thoughtful policy paper, the Child Rights International Network (CRIN) notes the need for a more holistic approach that separates 'responsibility' from 'criminalisation':

We need to separate the need to identify, appropriately assess and respond constructively to children's responsibility for crimes from the quite distinct urge to criminalise them ... Children are responsible for many actions defined by criminal law as crimes — in so far as they did it. And many are also responsible in the sense that they did know what they were doing was wrong, in one way or another, when they did it ... But we must also recognise, as the Convention does, that their developmental status requires a special approach, for all our sakes ...

Keeping [children] out of the criminal justice system does not mean that young people who commit offences avoid 'justice' or that nothing is done about their offending ... Stopping criminalising children does not mean giving up on or giving in to children who are causing trouble and harm.¹⁹

Such an approach also addresses the issue of adults potentially 'grooming' children who are under the minimum age of responsibility to commit crimes. We need to consider where the criminal responsibility should lie in this kind of situation, where children are exploited to act through fear, a need to belong or have somewhere to live, lack of understanding or other 'levers' that adults might use to influence the behaviour of children.

The responsibility for the crime belongs with the *adults*: our response in dealing with the *children* in these circumstances should be through the welfare system rather than the criminal justice system.

I've worked alongside 12 year olds in the criminal justice setting in my role as a youth worker, providing court support. The children I met mostly just wanted to play games and hang out with their friends and older siblings. Sometimes this led to their being charged with an offence and brought before the court. The thinking was usually that they needed to be 'taught a lesson' so that they wouldn't come before the court again.

Often they arrived at the court wide eyed and scared. Court was an experience of having things done to them, of being told they were 'bad' with little opportunity to participate. Developmentally this was difficult for many of them, and the process didn't facilitate their engagement. Sadly, sometimes the process engaged them in the identity of 'being an offender' and this was hard for them to let go of.

I learned by getting to know these children and their parents that court was the worst place for them at 12 years old, that they very rarely understood the process but they experienced the ramifications of it, and sometimes this stayed with them far longer than it should have.

Adam, Anglicare staff member

Early intervention and support services for children and families are more effective than detention

Involvement in the criminal justice system for children under 14 years fails every test of good policy.

It cannot be said to be the most 'appropriate means' given the probability of harm to the young people involved and the cost involved (approximately \$1500 per child, per day),²⁰ and it rarely meets the 'desired ends' of reducing crime.

As the Queensland *Youth Justice Strategy* points out, a combination of other comprehensive strategies, even delivered intensively, will be significantly more cost effective.²¹

It is clear from the discussion above that the children most 'at risk of offending' are also those most in need, and that the lines between the two are blurred at best. To avoid stigmatisation and criminalisation, interventions need to be holistic, and to address the underlying factors that lead to involvement in the justice system.

Therapeutic and integrative approaches and environments that aim to address the effects of trauma, and enable connection of children to family and community, are much more likely to reduce recidivism in children. At the same time, universal supports that extend across mainstream education, health, housing, youth and the community sectors provide a critical role in prevention and early intervention — normalising parenting skill development and experiences, enabling early support for those who might benefit from it, and building positive connection as well as capacity.

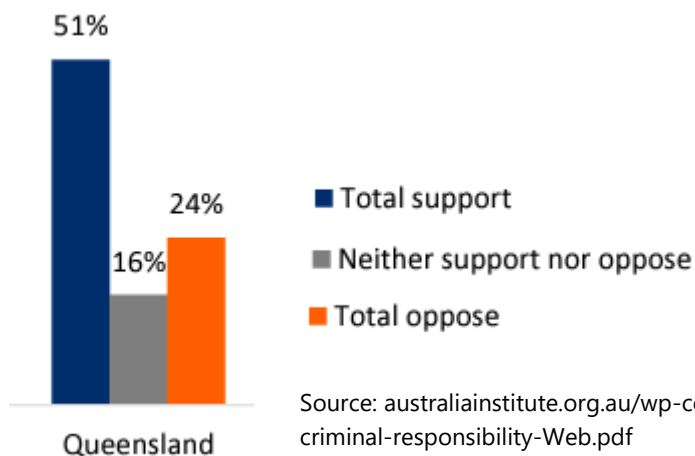
Aboriginal and Torres Strait Islander communities and community-controlled organisations are at the very core of such responses for Indigenous children and families. The Queensland Family and Child Commission, in their recent report, *Changing the sentence: overseeing Queensland's youth justice reforms*, reiterates the strong connection between culture and wellbeing; and the central role of Aboriginal and Torres Strait Islander communities and community-controlled organisations in decision-making about services and support for Aboriginal and Torres Strait Islander children.²² This is also consistent with Queensland's obligations under Closing the Gap.²³

The public agrees: the age should be raised

Polling by The Australia Institute in 2020 showed that twice as many Queenslanders support raising the age to 14 (51%) as those who oppose it (24%) (see figure 2); and nearly 6 in 10 Queenslanders agreed that public money currently spent on locking up children would be better spent instead on social services like family support, trauma and mental health support and public housing.²⁴

This trend was also supported by Labor voters Australia-wide. Fifty-five percent of Labor voters supported raising the age, and another 16% were non-committal, neither opposing nor supporting. Nearly 7 in 10 Labor voters (68%) agreed that directing funds into social services was a better use of public money, as above, than detaining children.²⁵

Figure 2: Support for raising the age to 14: Queensland



Any public pushback to raising the age from a minority of Queenslanders is therefore not reflected in the majority view.

In fact, most Australians already think that the MACR is 14 or above. An Essential Research poll of 1092 people in January 2021 found that only one in 10 Australians knew the correct age of 10 years, with 68% believing it was 14 or above.

Nearly half (48%) of the Queenslanders polled thought the minimum age was already 14 or older, and nearly one fifth (17%) didn't know or were unsure. Raising the age in Queensland would clearly not defy public expectations.

Conclusion

Anglicare's previous communication to the Premier, The Hon. Anastacia Palaszczuk (dated 31 August 2020), on the issue of raising the age²⁶ noted Queensland's opportunity to build on existing evidence and the four priority areas recommended by Bob Atkinson, AO, that influence Queensland's *Youth Justice Strategy*: intervene early, keep children out of court, keep children out of custody, and reduce re-offending.

The Premier's response to our correspondence referenced the progress of the (then) Council of Attorneys-General national working group, and noted the Queensland Government's intention to "continue to monitor the ongoing national work and any further developments on this issue".

This 'wait and see' strategy has however been severely undermined by the inaction of the (now) Meeting of Attorneys-General group over the past three years and its recent lacklustre decision to ignore medical and other expert opinion and develop a 'plan for a plan' to raise the age to 12 years. Raising the age to only 12 years old would see 131 out of the 145 children under 14 in detention in Queensland last year remain imprisoned.²⁷

Queensland has the opportunity now to forge our own path, as the ACT Government has chosen to do.

The recent move from the ACT Labor Government to 'go it alone' and raise the age to 14 years is a commendable response to the need to address the underlying causes of crime for young people. As ACT Attorney-General Shane Rattenbury explained:

"This will not be a 'get out of jail free' card" ...

"It will still hold young people accountable, but will do so in a therapeutic way that addresses their underlying traumas.

"This will help them put their lives back on track rather than simply having them in custody and getting them involved in that life-long cycle of crime."²⁸

It is evident from the discussion above that Anglicare SQ has grave concerns about the Queensland Government's failure to raise the age — a stance that appears in many ways to contradict the Government's stated commitment to evidence-based youth justice reform and attention to restorative justice, early intervention and rehabilitative approaches to reducing youth offending.

If we want to keep society safe and reduce the chances that children involved in the justice system will offend again, we should be dealing with the causes of their offending, rather than setting them up for a life of recidivism.



*#MeAt10, posing for a photo in the park.
I thought 10 was such a milestone.
Anglicare staff member, Leanne
(Research and Advocacy Advisor)*

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