

**YOUTH ADVOCACY CENTRE INC**



**Submission to the  
Community Support and Services Committee  
regarding  
*Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021*  
November 2021**

*Criminal Law (Raising the age of criminal responsibility) Bill 2021*

Submission by the YOUTH ADVOCACY CENTRE INC

*When a flower doesn't bloom –  
you fix the environment in which it grows, not the flower.*

Alexander Den Heijer

*News stories and young people have rarely made happy reading since the advent of print media ... mass media, from their inception, have been closely associated with mass anxiety about young people.*

Sheila Brown, *Understanding Youth and Crime: Listening to Youth?*  
(Oxford University Press, 2005),

*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration*

United Nations Convention on the Rights of the Child, Article 3(1)

*Criminal Law (Raising the age of criminal responsibility) Bill 2021*

Submission by the YOUTH ADVOCACY CENTRE INC

## CONTENTS

### SUMMARY

### INTRODUCTION

### CONTEXT FOR RAISING THE AGE AND THE BILL

Queensland's Youth Justice System

### IN SUPPORT OF RAISING THE AGE AND THE INTENT OF THE BILL

United Nations Convention on the Rights of the Child and related international instruments

Doli incapax

Inappropriate use of the criminal law

Overrepresentation of Aboriginal and/or Torres Strait Islander children

Child and youth development

*Key influences on child and youth development*

Parents and family

Domestic and family violence

Engagement with education

Homelessness

Cognitive impairment, mental health and substance use

Detention

### ALTERNATIVE RESPONSES

Investment in the early years and prevention

Diversion

Trauma informed practice

A truly child centric approach

### CHALLENGES TO RAISING THE AGE

The Court of Public Opinion

Politicisation of Youth Justice

### CONCLUSION

*The Youth Advocacy Centre acknowledges the Turrbal and Jagera peoples as the traditional custodians of the area now referred to as Brisbane, and that the land has never been ceded.*

*Criminal Law (Raising the age of criminal responsibility) Bill 2021*

Submission by the YOUTH ADVOCACY CENTRE INC

**SUMMARY**

The Youth Advocacy Centre Inc (“YAC”) supports the purpose of the Bill to raise the age of criminal responsibility to 14 years without any “carve-outs” for particular types of offence or offender, as proposed in the *Criminal Law (Raising the Age) Amendment Bill 2021*.

The age of criminal responsibility is currently being discussed across all Australian jurisdictions. We note the most recent meeting of Attorneys-General and the resulting Communiqué which *supported development of a proposal to increase the minimum age of criminal responsibility from 10 to 12, including with regard to any carve outs, timing and discussion of implementation requirements*.

While it is heartening that the Attorneys are prepared to continue to consider the issue of raising the age, 12 years is not sufficient, as will be discussed in this submission, and Australia and Queensland will remain out of step with international standards and failing some of our most vulnerable children.

The youth justice system is only a slightly modified form of the criminal justice system. While providing children with some protections, such as a trusted adult being present in formal police interactions with children, the system and court processes are essentially the same as for adults. In theory, the legal concept of *doli incapax* should mean that a child under 14 should not be prosecuted except for the most minor of matters. However, in Queensland it tends to enable the prosecution of younger children for more serious offences.

There is no general youth offending crisis. Less than one per cent of all 10-17 year olds in Queensland are prosecuted in court for offending behaviour in a given year, and the number continues to fall despite the population of 10-17 year olds rising. This has been the case for some years. There are “hot spots” of offending or offenders (for adults and children) but knowing this should provide an opportunity to investigate the causes and develop relevant localised and targeted responses which address the underlying issues at a community and individual level.

The small group who will continue to offend (in a year, around 500 of 535,000 10-17-year-olds in Queensland) comprise those whose lives are the most challenging. Data over many years have consistently shown that children in this group are exposed to family violence, have a parent in the adult justice system, have substance abuse or mental health issues, or are homeless. They are also more likely to be Aboriginal and/or Torres Strait Islander children whose communities continue to carry the trauma of past interventions and injustices. Often there is a combination of these issues.

The Atkinson Report noted that 83.1% of children in the Queensland youth justice system were known to the child protection system at 30 June 2014<sup>1</sup>. In 2015-16, 32% of children in youth detention in Queensland had had a child protection order<sup>2</sup>.

Data indicate that children under 14 who enter the justice system are more likely to be experiencing underlying trauma, have an undiagnosed disability, and come from a low socio-economic background<sup>3</sup>. It is estimated that over 90 per cent of children and young people in the youth justice system are survivors of complex and ongoing trauma<sup>4</sup>.

The numbers of children involved in the youth justice system increase with age. In 2019-20, about 14% of distinct offenders were in the 10-13 year age group. Most concerning, there were 18 10-13-year-olds in Queensland Youth Detention Centres on an average day<sup>5</sup>.

Ten- and 11-year-olds are still in primary school. Twelve- and 13-year-olds are transitioning into high school at a time when they are starting to develop physically, hormonally, mentally, socially and emotionally. This is particularly challenging for those children facing environmental issues (such as family violence) and personal challenges (such as cognitive impairment). At the same time as 10-13-

---

<sup>1</sup> Bob Atkinson AO, APM (2018) *Report on Youth Justice*

<sup>2</sup> Queensland Parliament, Question on Notice, June 2017

<sup>3</sup> Australian Institute of Health and Welfare (2018) *National data on the health of justice-involved young people: a feasibility study*. Cat. no. JUV 125. Canberra: AIHW.

<sup>4</sup> Bob Atkinson AO, APM (2018) *Report on Youth Justice*

<sup>5</sup> Queensland Government Statistician’s Office (2020) *Justice report, Queensland, 2019–20 Criminal Justice statistics*

**Criminal Law (Raising the age of criminal responsibility) Bill 2021****Submission by the YOUTH ADVOCACY CENTRE INC**

year-olds are held fully accountable for their actions, they are prevented from engaging in a number of activities because of their immaturity, while offences *against* them are considered to be “aggravated” because of their age and vulnerability, with the perpetrator liable to a greater penalty.

The evidence indicates that the younger a child commences in the youth justice system, the more likely they are to remain in it, the more often they are in detention, and the more likely they are to return. In contrast, those who commence offending in mid- to late adolescence are more likely to offend once or twice, and then move out of the system: they simply “grow” up and have the resources and supports for this.

Simply punishing and locking children up does not achieve the aim of preventing re-offending and is costly to the community personally and financially (it costs around \$1,500 per day per child held in detention<sup>6</sup>). To reduce recidivism, it is necessary to address the negative life circumstances, challenges and influences affecting the child, and often also their family, particularly for younger children.

It therefore makes sense to continue to follow the evidence of what is more likely to be effective. The current Queensland Government Strategy for Youth Justice is based on four objectives or pillars: Intervene early – keep children out of court – keep children out of custody – reduce re-offending.

Raising the age of criminal responsibility to 14 years and putting in place the necessary services and supports for children and their families to address behavioural concerns, or situations which are known to present risks for such behaviours, would achieve these goals for the 10-13 year old cohort. These should be provided at the earliest available opportunity – opportunities we are currently missing. Services must be more developmentally appropriate, be human rights compliant, address those matters which are placing the individual child at risk of ongoing behavioural issues, and set them on a better life path – and thereby address the concerns of the community.

Children should be at home, in school and participating in family and community activities. They do not belong in police stations, courts, and detention centres.

**INTRODUCTION**

The Youth Advocacy Centre Inc (“YAC”) is a well-respected, Brisbane-based specialist community legal and social welfare agency for young people who:

- are involved in, or at risk of involvement in, the youth justice and/or child protection systems (10-18 years old); and/or
- are homeless or at risk of homelessness (15-25 years old)

These young people who are among the most marginalised and excluded by our community and often the most harshly judged.

YAC has operated a multidisciplinary model comprising lawyers and social welfare workers since its establishment in 1981. Children who become entrenched in the criminal justice system have significant social, welfare and/or relationship problems<sup>7</sup>. While it is important that they are well-represented by specialist lawyers, it is likely the young people will be back in court before too long unless the underlying issues are addressed. This requires skilled social welfare staff to work with these young people co-located with lawyers, obviating the need to go to another agency and tell their story again. Appropriate information sharing between these professionals, with the consent of the child, enables a client-centred, coordinated approach to addressing the issues which are contributing to offending behaviour.

<sup>6</sup> <https://www.youthjustice.qld.gov.au/resources/youthjustice/reform/strategy.pdf>

<sup>7</sup> A small study by Legal Aid NSW, which analysed the 50 most frequent users of its legal aid services between July 2005 and June 2010, found that 80% of high users of its services were children and young people who were under 19 years of age and had complex needs because of their environment and a range of welfare issues. It concluded that *it can be difficult to meet the needs of these clients through the traditional legal service delivery model where legal and non-legal services are not joined up.*

**Criminal Law (Raising the age of criminal responsibility) Bill 2021****Submission by the YOUTH ADVOCACY CENTRE INC**

YAC welcomes the opportunity to participate in an informed and evidence-based discussion in relation to the age of criminal responsibility. It is a critical discussion as it relates to the wellbeing of our children and our society's ability to support their positive growth and development to a meaningful life. This has benefits for the broader community as well as the individual child.

While Queensland's Criminal Code provides for a child aged 10 to be subject to the criminal law, it also provides that:

- for a number of offences, the fact that the victim of the offence is under 12 years of age is a circumstance of "aggravation", thus attracting a higher maximum sentence;
- it is an offence for a person who has care or charge of a child under 12 years to leave them unsupervised for an "unreasonable time";
- "indecent treatment of a child" relates to a person up to and including the age of 15;
- "child exploitation material" relates to images of a person up to and including the age of 15;
- it is an offence for a person who has care or charge of a child under 16 years to abandon the child or fail to provide them with adequate food, clothing, medical support;
- it is an offence for person to tattoo a child under 18 irrespective of parental consent.

The classifications for films and computer games (regulated under Commonwealth Law) take the age of 15 as the threshold for classification purposes:

- G – General (suitable for all)
- PG – Parental Guidance (potentially only "mild impact" but not recommended for viewing by people under the age of 15 without guidance from parents, teachers or guardians)
- M – Mature (not recommended for children under the age of 15).

These examples indicate a degree of confusion and ambivalence in the way our society views its children: are they vulnerable, potentially at risk, and in need of some form of protection or assistance – or does the community need protection from them? Is the reality so black and white?

**CONTEXT FOR RAISING THE AGE AND THE BILL**

If the purpose of the criminal law is to keep our community safe (noting that Queensland would be considered very safe by world standards), it is important to understand what responses would ensure that outcome. We know, for example, that imprisoning people will only keep the community safe for the time they are in prison and that, without other interventions, the likelihood of re-offending is high. Imprisonment itself can be criminogenic. Simply punishing people, particularly children who have limited opportunity to change what is happening in their lives, is unlikely to lead to increased "community safety". Prison is also very expensive, particularly when it does not prevent offending behaviour.

If the purpose of the criminal law is to hold people to account for the harm they have caused, there must be some recognition that there are varying degrees of culpability. The law acknowledges this in specific situations by providing particular defences which can be applied on a case-by-case basis: self-defence, mistake of fact, provocation and so on. It is also relevant to sentencing on a finding of guilt.

However, the criminal justice system still fails to take proper account of capacity and culpability: for example, *the over-representation of people with a cognitive impairment as offenders in the criminal justice system has been discussed extensively in the literature and is reflected in available statistics*<sup>8</sup>.

With respect to children, their immaturity as developing human beings has been recognised to a limited extent. In keeping with the accepted societal norms of eighteenth-century England, the law in Australia initially treated child offenders no differently to adults. They went to the same courts and received the same sentences, including hard labour, and corporal and capital punishment. Children as young as nine were transported to Australia as convicts and 20% of the transported convicts were under 20 years old<sup>9</sup>. Childhood was not recognised as a concept or a life stage. The only concessions

<sup>8</sup> Justice Issues Paper 10 March 2009, Law and Justice Foundation of New South Wales

<sup>9</sup> <https://libraries.tas.gov.au/convict-portal/pages/before-transportation.aspx>

**Criminal Law (Raising the age of criminal responsibility) Bill 2021****Submission by the YOUTH ADVOCACY CENTRE INC**

were that children under the age of 7 were considered incapable of breaking the law and that from 7-13, *doli incapax* would apply, providing an additional test for the prosecution.

The establishment of a separate and specialist children's court first occurred in South Australia in 1890 and 1907 in Queensland:

*We have to endeavour to distinguish between a legal function and a fatherly correction. The offences of nearly all children do not call for legal punishment but for correction administered in a fatherly manner and it is a grave mistake when we confound one of these with the other<sup>10</sup>.*

In the early 1900s there was a paradigm shift from punishment to prevention and guidance. During this time until the 1960s there was a commitment to the welfare model with a focus on the individual child as influenced by the experiences and circumstances in their lives. However, this also tended to occur without recognition of children's rights and due process.

In more recent times, there has been a call for more punitive "law and order" responses to child offenders, even though their numbers have been decreasing in all Australian jurisdictions and overseas<sup>11</sup>. Information regarding youth offending is publicly available yet the misinformation about the level of youth offending is rife.

The data show that there is no general youth offending crisis. Less than one per cent of all 10-17 year olds in Queensland are prosecuted in court for offending behaviour in a given year, and the number continues to fall. This has been the case for many years. There are "hot spots" of offending or offenders (for adults and children) but knowing this should provide an opportunity to investigate the causes and develop relevant localised and targeted responses which address the underlying issues at a community and individual level.

It should be remembered that adults are offenders too. Those aged 20–29 years consistently comprised the largest proportion of offenders (about a third) in Queensland from 2008/9 to 2017/18, followed by persons aged 30-39 years<sup>12</sup>. The third group was those aged 10-19 years (noting that children's courts are only 10-17 so this group includes adults). Since 2014/15, 40-49-year-olds became the third most represented group, relegating 10-19-year-olds fourth. This has remained consistent in 2019-20. A clear majority of offenders is therefore adult.

For those children who grow up with limited challenges or barriers in their lives, the maturation process will still put them at risk of inappropriate behaviours. Any offending will usually have a later onset, be short-lived and be part of normal physical, hormonal, mental, social, and emotional development. This group will tend to have people around them to get them "back on track" and they are generally still connected to key institutions such as school. They will just "grow up".

The small group who will continue to offend (in a year, around 500 of 535,000 10- to 17-year-olds in Queensland) comprise those whose lives are the most challenging. They are experiencing their period of development in the context of being in the care and protection system, being exposed to family violence, having a parent in the adult justice system, having substance abuse or mental health issues, being homeless, or being Aboriginal and/or Torres Strait Islander children whose communities continue to carry the trauma of past interventions and injustices – and often a combination of these issues.

**Queensland's Youth Justice System**

The criminal law in Queensland, mostly contained in Queensland's Criminal Code 1899 ("the Criminal Code"), applies to children as it does for adults. There are no "child" or "adult" offences.

<sup>10</sup> A Queensland member of Parliament when the Children's Bill was debated on the introduction of the court.

<sup>11</sup> *Over a period of 10 years the rate of young people proceeded against by police declined by 36 percent* Clancey, Wang and Lin (2020) Trends & issues in crime and criminal justice no. 605. Australian Institute of Criminology. This mirrors significant falls in Canada, the UK and USA.

<sup>12</sup> Queensland Government Statistician's Office (2018) *Justice report, Queensland, 2017–18 Criminal justice statistics*

**Criminal Law (Raising the age of criminal responsibility) Bill 2021****Submission by the YOUTH ADVOCACY CENTRE INC**

Children are considered incapable of breaking the law if under the age of 10 (an “irrebuttable presumption”: section 29(1) Criminal Code)<sup>13</sup>. Once they turn 10 years of age, they are subject to the criminal law in the same way as people many times their age. The only real protection is the *doli incapax* provision (section 29(2)) which provides for a rebuttable presumption for those aged 10-13 years.

Children alleged to have broken the law in Queensland face an only slightly modified form of the adult criminal justice system. It is set out in the *Youth Justice Act 1992*, *Childrens Court Act 1992* and *Police Powers and Responsibilities Act 2000*. Police must generally ensure that there is a person the child has some confidence in present at any interviews or searches. Whilst courts at the Magistrate level are closed to the public and there is a prohibition on publishing any identifying information about a child offender in all courts, the general court process and personnel are essentially the same as for adults. The list of sentence options is very similar to those in the adult system, the main difference being the length of sentences, which reflects a child’s experience and perception of time.

It is possible for a child to be sentenced to lengthy periods in detention, including life imprisonment where the offence involves the commission of violence against a person and the court considers the offence to be particularly heinous in nature. *Life* in Queensland means the person’s entire life, not a set number of years. If the child turns 18 when in youth detention, they will be moved to an adult prison unless they have only a short time left to serve.

Around 85% of children held in Queensland’s Youth Detention Centres are on remand, that is, their cases have not yet been finalised. Many may not be sentenced to a period in detention. This includes 10-13 year olds. The fact that a child of this age is being held in custody should of itself be a red flag of some significant problem.

Youth Justice Services staff have a similar role to Corrections in the adult system. They attend the Childrens Courts, supervise youth justice sentence orders such as probation orders, and manage the youth detention centres.

It is therefore incorrect to state that the youth justice system is no more than a “slap on the wrist”.

**IN SUPPORT OF RAISING THE AGE AND THE INTENT OF THE BILL**

YAC supports raising the age of criminal responsibility to the age of 14 years without any “carve-outs” for particular types of offence or offender. The question of the age of criminal responsibility is currently being discussed across all Australian jurisdictions and has been discussed at national meetings of the Attorneys-General. We note the recent meeting of Attorneys-General and the resultant Communiqué which includes:

*State Attorneys-General supported development of a proposal to increase the minimum age of criminal responsibility from 10 to 12, including with regard to any carve outs, timing and discussion of implementation requirements. The Northern Territory has committed to raising the age to 12, and will continue to work on reforms including adequate and effective diversion programs and services. The Australian Capital Territory has also committed to raising the age, and is working on its own reforms.*

While it is heartening that the Attorneys are prepared to continue to consider the issue of raising the age, 12 years is not sufficient, as will be discussed in this submission, and Australia and Queensland will remain out of step with international standards.

Ten-year-olds are in Grade 5. Thirteen-year-olds are in Grade 8. Their life experience is limited simply because of their short lifespan. Children make their way in a world dominated and run by the adults around them. Some children’s lives are compromised as a result and this leads to challenges and potentially their involvement in the criminal justice system. Yet, as noted above, children are held to account in much the same way as adults many years older than them and are demonised disproportionately to adults.

---

<sup>13</sup> This was raised from seven years in 1976 – when the upper limit was amended so that 17-year-olds were considered to be adults. The operation of *doli incapax* was raised to 15. It was reduced to 14 again in 1997.



**Criminal Law (Raising the age of criminal responsibility) Bill 2021****Submission by the YOUTH ADVOCACY CENTRE INC**

The evidence indicates that the younger a child commences in the youth justice system, the more likely they are to remain in it, the more often they are in detention, and the more likely they are to return.

*The younger a person was at the start of their first supervised sentence, the more likely they were to return to sentenced supervision at some time before the age of 18. The return rate for young people who received an initial community-based supervised sentence declined with each successive age group. In the 10–12 age group, 9 in 10 (90%) young people were returned to sentenced supervision compared with about 1 in 24 (4.2%) aged 17. [AIHW noted that the younger the age group, the more time there is for them to return to the youth justice system.]*

*About two-thirds (65%) of young people aged 10–13 years when released from sentenced community-based supervision were returned to sentenced supervision within 12 months, compared with almost half (49%) of young people aged 16 at release (a rate ratio of 1.3).*

*For young people released from sentenced detention, the rate of return to sentenced supervision within 12 months was high for all age groups. Young people aged 10–13 at release were 1.2 times as likely as young people aged 16 at release to be returned within 12 months (89% compared with 77%). The number of young people released from sentenced detention aged 10–13 is small so results should be interpreted with caution<sup>14</sup>.*

Clearly the current system is not working in terms of effective diversion from offending and the justice system, particularly for the younger children. This submission will discuss the influences on youth offending which potentially explain why this is so.

**United Nations Convention on the Rights of the Child and related international instruments**

In 1990, the United Nations finalised the Convention on the Rights of the Child (CROC) with basic legal rights for children. The *Standard Minimum Rules for the Administration of Juvenile Justice* (the ‘Beijing Rules’) stress the importance of nations establishing a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed to meet the varying needs of juvenile offenders, while protecting their basic rights<sup>15</sup>.

Article 40, CROC states:

*States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.*

CROC requires States Parties (which includes Australia) to set a minimum age “below which children shall be presumed not to have the capacity to infringe penal law”. The UN Committee on the Rights of the Child (the CROC Committee) has criticised Australia’s low age of ten years. While CROC does not specify what age level is appropriate, General Comment No. 10 (2007) concluded “that a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable”. Further, the more recent General Comment No 24 (2019) states:

*22. Documented evidence in the fields of child development and neuroscience indicates that maturity and the capacity for abstract reasoning is still evolving in children aged 12 to 13 years due to the fact that their frontal cortex is still developing. Therefore, they are unlikely to understand the impact of their actions or to comprehend criminal proceedings. .... States parties are encouraged to take note of recent scientific findings, and to increase their minimum age accordingly, to at least 14 years of age. Moreover, the developmental and neuroscience evidence indicates that adolescent brains continue to mature even beyond the teenage years, affecting certain kinds of decision-making. Therefore, the Committee commends States parties that have a higher minimum age, for instance 15 or 16 years of age, and urges States parties not to reduce the minimum age of criminal responsibility under any circumstances, in accordance with article 41 of the Convention. (Our emphasis)*

<sup>14</sup> Australian Institute of Health and Welfare (2020) *Young people returning to sentenced youth justice supervision 2018–19*. Juvenile justice series no. 24. Cat. no. JUV 133

<sup>15</sup> Richards K (2011) *What makes juvenile offenders different from adult offenders?* Trends & Issues in Crime and Criminal Justice no. 409.

**Criminal Law (Raising the age of criminal responsibility) Bill 2021****Submission by the YOUTH ADVOCACY CENTRE INC**

A review of ages of criminal responsibility across the world indicates that 14 is the most common minimum with many countries having a higher requirement.

Queensland has made a commitment to Human Rights through the re-naming of the Anti-Discrimination Commission as the Human Rights Commission, with a Human Rights Commissioner overseeing a Human Rights Act. Queensland should also take note of the CROC Committee's comments and strong recommendation on this issue.

***Doli incapax***

*Doli incapax* is provided for in section 29 of the Queensland Criminal Code. The wording of the section, drafted in 1899, has meant that this protection for children aged 10-13 has generally proven to be ineffective. In theory, *doli incapax* should mean that a child under 14 should not be prosecuted except for the most minor of matters. However, it tends to enable the prosecution of younger children for more serious offences.

Example One

YAC lawyers represented a child in the care of Child Safety who was charged with 14 offences. All offending was alleged to have occurred in or adjacent to their residential setting or school, or as a result of consequent police intervention. All offending was alleged to have occurred prior to the child attaining the age of 14 years.

Medical reports indicated the child had "an IQ of 70, which lies in the borderline range of cognitive ability with speech and language process difficulties in the severe range".

Representations were made to the Prosecution referring to evidence of the child's alleged physical (including sexual) assault, intellectual and educational deficits, multiple diagnoses, a history of trauma and neglect, and repeated observations of immaturity submitting that the presumption contained in Section 29 of the Criminal Code [*doli incapax*] could not be rebutted beyond reasonable doubt.

The Prosecution refused to withdraw the charges. Ultimately, as result of a finding that the young woman was temporarily unfit for trial, the Magistrate dismissed the charges without needing to determine the issue of *doli incapax*.

It is arguable that raising the age to 14 would, in fact, align with *doli incapax* by simply replacing the rebuttable presumption for those under 14 to an irrebuttable presumption. It has been understood for over a century that children are not as culpable as adults. Our highly improved understanding of child development now indicates that 14 without any exception should be the lower limit.

***Inappropriate use of the criminal law***

The Charter of Youth Justice Principles in Queensland's *Youth Justice Act 1992* commendably reinforces compliance with the human rights aspects of children in the criminal justice system. In particular, Principle 8 states:

*A child who commits an offence should be—*

- (a) held accountable and encouraged to accept responsibility for the offending behaviour; and*
- (b) dealt with in a way that will give the child the opportunity to develop in responsible, beneficial and socially acceptable ways; and*
- (c) dealt with in a way that strengthens the child's family.*

However, the police and the criminal law are not infrequently used as a behaviour management tool for unruly or troubled children, including by agencies which have the care of children in the child protection system. This generally relates to behavioural issues and results in property damage or physical interaction with a worker. Children are placed in out of home care because they cannot live in a family situation. It is to be expected that they have behavioural problems which staff should have the skills to manage and be able to work with the child to address. The problem is sufficiently serious that the Department of Child Safety, the Queensland Police Service and non-government

**Criminal Law (Raising the age of criminal responsibility) Bill 2021****Submission by the YOUTH ADVOCACY CENTRE INC**

partners in the out-of-home care system have entered into a Joint Protocol<sup>16</sup> aimed at reducing the criminalisation of young people as a response to those situations.

The following are examples of how the law is currently utilised against children in spite of their circumstances (as also the example quoted under *doli incapax* above):

**Example Two**

A 13-year-old in the care of Child Safety was charged with creating and distributing child exploitation material and indecent treatment of a minor. Her phone was handed in to Police for investigation by those responsible for her care in an out-of-home care placement. These charges all related to images she took of herself on her mobile phone and then forwarded to her boyfriend (who was of a similar age). With respect to the first charge, she was effectively the victim of her own act; and with respect to the second, there was no evidence that her boyfriend was unhappy with, or distressed by, receiving the images on his phone. The client was charged and sent to court rather than her actions being dealt with in an informative or educational manner as a parent might be expected to do.

**Example Three**

In 2018 YAC represented a 13-year-old who was with their family in a shop whilst their mother had a manicure. The father removed money from an unattended cash register. During this time the child was looking around the shop, checking in on their mother. It was alleged that this child had assisted his father by keeping "a lookout".

YAC lawyers submitted that a 13-year-old would not understand that such behaviour should be avoided, as they themselves have not participated in any serious wrongdoing or had the capacity to understand that they could get in trouble for their father's wrongdoing. This observation was supported by the fact that the boy returned to the shop to re-join his mother after the theft had taken place.

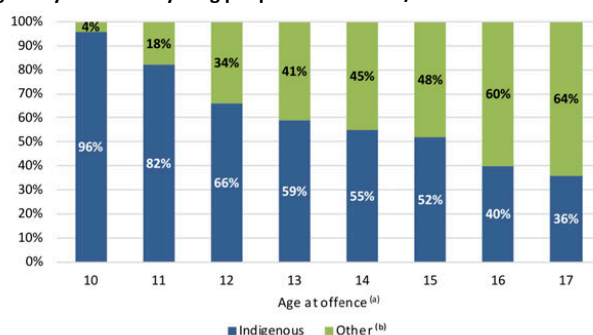
Submissions requesting the charges be withdrawn were rejected and the matter was listed for trial. It was only after YAC obtained evidence indicating that the young person suffered from an intellectual impairment that the police were prepared to withdraw the charge shortly before trial.

These scenarios raise a number of questions: what public interest is served in putting these children into the criminal justice system? If the child has "done the wrong thing", is prosecution really the most appropriate and useful way to address this? Is this the best use of taxpayers' money?

**Over-representation of Aboriginal and/or Torres Strait Islander children**

The 2019-20 Annual Report of the Childrens Court of Queensland notes (again) the ongoing high level of overrepresentation of Aboriginal and/or Torres Strait Islander children. In 2019-20 these children accounted for 46% of all child defendants. That number is significantly higher in the younger group of juveniles.

**Figure 9 Average daily number of young people in detention / court-ordered custody, by Indigenous status<sup>17</sup>**



(a) Includes all distinct defendants with a charge disposed who were aged 10–17 years at date of offence. Age at offence is determined by the earliest offence associated with a defendant's first finalised appearance date in the financial year.

(b) "Other" includes non-Indigenous defendants and those whose Indigenous status is unknown or not stated.

Source: Department of Youth Justice. Data current as at July 2020.

<sup>16</sup>[https://www.qfcc.qld.gov.au/sites/default/files/joint\\_agency\\_protocol\\_to\\_reduce\\_preventable\\_police\\_calls\\_outs\\_to\\_residential\\_care\\_services.pdf](https://www.qfcc.qld.gov.au/sites/default/files/joint_agency_protocol_to_reduce_preventable_police_calls_outs_to_residential_care_services.pdf)

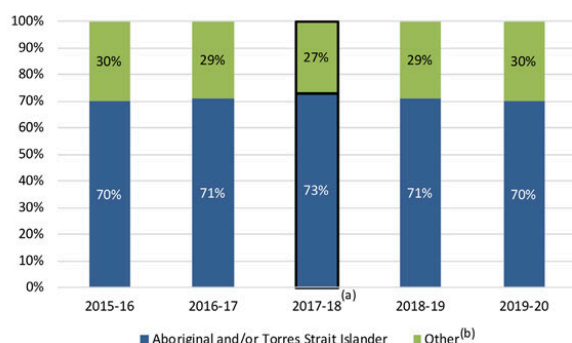
<sup>17</sup> Childrens Court of Queensland, Annual Report 2019-20

**Criminal Law (Raising the age of criminal responsibility) Bill 2021****Submission by the YOUTH ADVOCACY CENTRE INC**

Overall, Aboriginal and/or Torres Strait Islander young people are 9 times more likely than other young people to have had a charge finalised through a Queensland court. It has been found that nearly 100% of First Nations children in detention have been impacted by trauma<sup>18</sup>.

In terms of detention centres, Aboriginal and/or Torres Strait Islander young were 27 times more likely to have been in youth detention than other young people in 2019-20.

**Figure 16 Average daily number of young people in detention / court-ordered custody, by Indigenous status<sup>19</sup>**



(a) Break in time series due to the inclusion of 17-year-old offenders in the youth justice system from February 2018.

(b) "Other" includes non-Indigenous young people and those whose Indigenous status is unknown or not stated.

Source: Department of Youth Justice. Data current as at July 2020.

Cunneen notes that:

*The concentration of Indigenous children is even greater when we look at those aged 12 years or younger. Nationally, some 76 per cent of children placed in detention and 74 per cent of children placed on community-based supervision in the 10-12 year old age bracket (inclusive) were Indigenous children during the period 2015-16 (AIHW 2019: Tables S78b and S40b)<sup>20</sup>.*

The Justice Report 2017-18<sup>21</sup> indicated that the average daily rate of 10- to 12-year-olds in detention was eight, all of whom were Aboriginal and/or Torres Strait Islander children and ten of thirteen 13-year-olds were Indigenous. Regrettably this is a longstanding and persistent problem. In 2019-20, the average daily rate was six 10- to 12-year-olds, five of whom were Aboriginal and/or Torres Strait Islander and 11 of 13 thirteen 13-year-olds were Indigenous<sup>22</sup>.

The fact that Aboriginal and/or Torres Strait Islander children predominate in the younger age groups should be particularly troubling to policy- and law-makers (indeed, the whole community) – and one which should inspire positive and swift action, including raising the age of criminal responsibility.

Together with the Commonwealth, all States and Territories are parties to the National Agreement on Closing the Gap on Indigenous Disadvantage:

*The National Agreement commits all parties to action. Its success depends on all parties committing the right resources and efforts to deliver on these actions in practice<sup>23</sup>.*

This includes addressing overrepresentation of Indigenous children in the criminal justice system with a specific target of reducing the rate of Aboriginal and Torres Strait Islander young people (10-17 years) in detention by 30 per cent by 2031.

The Committee on the Rights of Persons with Disabilities has also noted its concern about:

<sup>18</sup> Reported by Tony Jamieson (2020) *Trauma of young people in youth detention centres*, GCI insights, Griffith Criminology Institute

<sup>19</sup> Childrens Court of Queensland, Annual Report 2019-20

<sup>20</sup> Cunneen, C. (2017) *Arguments for Raising the Minimum Age of Criminal Responsibility*, Research Report, Comparative Youth Penalty Project, University of New South Wales

<sup>21</sup> Queensland Government Statistician's Office (2018) *Justice report, Queensland, 2017-18 Criminal justice statistics*

<sup>22</sup> Queensland Government Statistician's Office (2020) *Justice report, Queensland, 2019-20 Criminal justice statistics*

<sup>23</sup> <https://www.niaa.gov.au/indigenous-affairs/closing-gap>

**Criminal Law (Raising the age of criminal responsibility) Bill 2021****Submission by the YOUTH ADVOCACY CENTRE INC**

*overrepresentation of convicted young persons with disabilities in the youth justice system, especially male youth from Aboriginal and Torres Strait Islander communities<sup>24</sup>.*

If governments are serious about achieving the justice targets, then raising the age to 14 is a key action. As noted previously, the younger the child in the system, the more likely they are to be Aboriginal and/or Torres Strait Islander. Governments must work with relevant Indigenous peoples, communities and organisations to develop the responses needed to support their families and children in culturally appropriate ways.

**Child and youth development**

There is now an extensive body of research, literature, and data across a range of domains (justice, psychology, sociology, health, education) which relates to child and youth development and behaviour and its significance in terms of youth offending and youth offenders. In particular, the field of neuroscience has progressed significantly and has provided highly relevant insights into brain development in the young child and the adolescent. This body of literature paints a highly consistent picture of the impact of a child's developmental needs and life experiences throughout the period of their development to a mature adult – now said to extend to the age of 25 years. Academics in Australia have contributed to this body of literature, bringing an Australian experience and perspective to the discussion, but overall finding consistency with the overseas experience.

All children are subject to the normal maturation processes, physically, hormonally, mentally, socially and emotionally. We now know so much more than Victorian England which began to see that young children were not “mini-adults” and set a minimum age of seven for involvement in the criminal justice system. The neuroscientific research indicates how critical the early years and then the period of adolescence are in a person's life, and an understanding of this is fundamental<sup>25</sup>.

Children who enter the legal system and have ongoing contact are known to have life experiences which have contributed to the behaviours they exhibit – the earlier the child comes into the system, the greater should be the concern. In early adolescence, those parts of the brain that deal with reward processing are more easily aroused but those that deal with harm avoidance and self-regulation are still comparatively immature<sup>26</sup>. At age 16 the adolescent brain, and therefore the capacity for judgement-making and impulse control, is still evolving<sup>27</sup>. Children aged 10 to 13 have not yet reached this point.

It is argued by some that the modern education system and access to television and the internet means that children know more and mature earlier. The Australian Association of Child Welfare Agencies (AACWA) has commented that:

*While many children may have access to a greater amount of information (and even this assertion is questionable for highly disadvantaged groups) than in previous centuries when the laws were conceived, information does not necessarily imply a greater maturity or discernment when it comes to matters of right and wrong.[44]*

*In fact, despite compulsory education research shows that a significant number of offending children do not regularly attend school, because of truancy or school exclusion.[45] As such while school may generally contribute to educating children in what is socially acceptable behaviour it may fail to do so with regard to those children most at risk of committing crime. It should also be noted that not all children will have been born and brought up in Australia and so it may not be appropriate to expect that they have experienced a similar standard of education.[46]*

.....

<sup>24</sup> Concluding observations on the combined second and third periodic reports of Australia

<sup>25</sup> YAC notes *Better Systems, Better Chances: A Review of Research and Practice for Prevention and Early Intervention*. Canberra: prepared for the Australian Research Alliance for Children and Youth (ARACY) by Fox, S., Southwell, A., Stafford, N., Goodhue, R., Jackson, D. and Smith, C. (2015) as an excellent resource on child and youth development and related issues.

<sup>26</sup> Australian Institute of Family Studies 2011 Family Matters No 88

<sup>27</sup> Levin MA 2012 [NB: Mr Levin is Director Center for Effective Justice, Texas Public Policy Foundation, Senior Policy Advisor, Right on Crime

**Criminal Law (Raising the age of criminal responsibility) Bill 2021****Submission by the YOUTH ADVOCACY CENTRE INC**

*It cannot be denied that children today make much greater use of modern technology than in earlier years. However, this does not simply equate with a better ability to understand the wrongfulness of actions. The revolution in the electronic media has not only had a positive influence on the development and maturation of children. Computer games, Internet, television, etc, have led to a reduction in social contact and, as one German author claims, such media have led to a "gradual disappearance of reality".[49] Thus, instead of interacting with others, personally experiencing situations and learning how to behave in them, children learn now increasingly through watching television and playing computer games. As such the young may not fully appreciate the full effects of their actions and how others may be affected or react in real situations<sup>28</sup>. (References in original text)*

Where a child commits one of the most serious of offences such as rape or murder, that does not make the child an adult.

*...children may well be "shocked and distressed to discover that real people do not get up and walk away as they do after lethal attacks in cartoon films".[50] Such thought processes have indeed been noted in the Bulger case where, "[o]utside the trial, one [of the accused boys] spoke of James Bulger as a character in a chocolate factory and imagined that, as in some Disneyesque scenario, he might be brought back to life<sup>29</sup>.*

We note that some jurisdictions outside Australia have a higher age of criminal responsibility but that if the offence is a very serious one, then the child can be prosecuted. This is counter-intuitive. The seriousness of a child's behaviour does not equate to increased capacity. If a younger child has committed a very serious offence then the alarm bells should be sounding even more loudly because what they are doing is not normal for a child of that age. The seriousness of the offence is not a reason to be more punitive – but will be a reason for a significant investigation into the child's circumstances and developing relevant responses.

*Key influences on child and youth development*

Government statistics provide an insight into the circumstances of children who find themselves in the youth detention system. Essentially, these issues compromise their ability successfully to navigate adolescence and the maturation process in a positive manner. The following data relate to children in youth detention on one day in 2019<sup>30</sup>:

- 30% had at least one parent who spent time in adult custody
- 60% had experienced or been impacted by domestic and family violence
- 55% were disengaged from education, training or employment
- 29% were in unstable and/or unsuitable accommodation
- 46% had a mental health and/or behavioural disorder (diagnosed or suspected)<sup>31</sup>
- 12% had a disability (assessed or suspected)
- 38% had used ice or other methamphetamines

This is supported by a 2008 study led by psychiatrist and Medical Director with Queensland Health, Dr Stephen Stathis, of 164 children at the Brisbane Youth Detention Centre, showed high levels of mental health challenges that were indicative of trauma (75% of boys and 90% of girls)<sup>32</sup>. These were described as being among the most disadvantaged youth in Queensland and vulnerable for several reasons, including ... *chronic social, family or educational adversity, and a history of traumatic life*

<sup>28</sup> Association of Child Welfare Agencies, Newsletter 2000.

<http://www.acwa.asn.au/acwa/publications/newsletter/2000/feb2000.html>

<sup>29</sup> Ibid

<sup>30</sup> Dept of Children, Youth Justice and Multicultural Affairs *Youth Justice Pocket Stats 2019-20* <https://www.cyjma.qld.gov.au/resources/dcsyw/youth-justice/resources/yj-pocket-stats-2019-20.pdf>

<sup>31</sup> *The broad range of psychiatric diagnoses over-represented in this cohort include attention-deficit/hyperactivity disorder, autism, mood and anxiety disorders, and post traumatic stress disorder. There is also significant co-morbidity with substance misuse and drug-induced psychosis.* The Royal Australasian College of Physicians (2011) *The Health and Well-being of Incarcerated Adolescents*

<sup>32</sup> Stathis, S., Letters, P., Doolan, I., Fleming, R., Heath, K., Arnett, A., & Cory, S. (2008). Use of the Massachusetts Youth Screening Instrument to assess mental health problems in young people within an Australian youth detention centre. *Journal of Paediatrics and Child Health*, 44, 438-443

**Criminal Law (Raising the age of criminal responsibility) Bill 2021****Submission by the YOUTH ADVOCACY CENTRE INC**

events<sup>33</sup>. A follow up study in 2012 with 47 Indigenous young people using a more culturally appropriate tool. Even higher levels of trauma were found: 94% of boys and 100% of girls<sup>34</sup>.

The broad range of psychiatric diagnoses over-represented in this cohort include attention-deficit/hyperactivity disorder, autism, mood and anxiety disorders, and post-traumatic stress disorder. There is also significant co-morbidity with substance misuse and drug-induced psychosis.

Data indicate that children under 14 who enter the justice system are more likely to be experiencing underlying trauma, have an undiagnosed disability, and come from a low socio-economic background<sup>35</sup>. As discussed later, there are also high levels of crossover with the child protection system by children who are in the youth justice system.

- Parents and family

Research has demonstrated a clear relationship between the health and wellbeing of young people and the environment they grow up in<sup>36</sup>.

*Parents, play and home environments are critical to child development and health and wellbeing outcomes. Parenting is so influential that it can moderate the impact of social and economic disadvantage<sup>37</sup>.*

*Because of their developmental needs, children are a vulnerable group. The family exists as one of the most effective means of protecting them.<sup>38</sup>*

*Family environments were very strongly associated with children's social and emotional wellbeing. children in families indicating disengagement [below-average levels of parental warmth and parent-child shared activities, and above-average levels of hostile parenting] had significantly lower levels of prosocial behaviour and higher levels of problem behaviour<sup>39</sup>.*

The parental role is also important in the development of language skills, particularly in the early years. The extent of oral communication between child and parent, and the quality of that conversation is important. Research indicates:

- a link between offending patterns/severity and oral language impairment;
- that poor language ability in the early years increases the risk of anti-social behaviour at 14 years of age.<sup>40</sup>

Parental health and disability can also have an impact on children and young people and their behaviour as parents struggle to support them. A child living with a parent with mental health problems may also be at increased risk of social, psychological and physical health problems, and may experience violence and abuse<sup>41</sup>.

A recent Queensland discussion paper noted:

*Key Point: Evidence shows that a youth justice response is not the reason that children and young people who offend for the first time do not return to the youth justice system. Instead it is family and community supports and the child and young person's natural and developing understanding and acceptance of their behaviour and personal responsibility that contributes to this change.<sup>42</sup>*

<sup>33</sup> Reported by Tony Jamieson (2020) *Trauma of young people in youth detention centres - GCI insights* Griffith Criminology Institute

<sup>34</sup> Ibid

<sup>35</sup> Australian Institute of Health and Welfare (2018) *National data on the health of justice-involved young people: a feasibility study*. Cat. no. JUV 125.

<sup>36</sup> Australian Institute of Health and Welfare (2011) *Young Australians: their health and wellbeing 2011*. Cat. no. PHE 140

<sup>37</sup> Fox, S., Southwell, A., Stafford, N., Goodhue, R., Jackson, D. and Smith, C. (2015) *Better Systems, Better Chances: A Review of Research and Practice for Prevention and Early Intervention*. Australian Research Alliance for Children and Youth (ARACY).

<sup>38</sup> Mullan and Higgins (2014) *A safe and supportive family environment for children: key components and links to child outcomes*, Australian Institute of Family Studies, Occasional Paper No 52

<sup>39</sup> Ibid

<sup>40</sup> Snow P, Powell M (2012) *Youth (in)justice: Oral language competence in early life and risk for engagement in antisocial behaviour in adolescence* Trends & Issues in Crime and Justice No. 435

<sup>41</sup> Australian Institute of Health and Welfare (2011) *Young Australians: their health and wellbeing 2011*. Cat. no. PHE 140

<sup>42</sup> Queensland Department of Justice and Attorney-General (2016) *Youth Justice Reform Discussion Paper*



**Criminal Law (Raising the age of criminal responsibility) Bill 2021****Submission by the YOUTH ADVOCACY CENTRE INC**

Parents' capability, capacity, parenting and parenting styles are therefore critical to the healthy development of a child from birth to adulthood, giving the child the best opportunity to develop to their full potential.

Children should not be criminalised because of challenges experienced by their parents. Rather, where parents are experiencing capacity and parenting issues, greater assistance should be available to parents to address these and support them in supporting their children.

- Family and domestic violence

AIHW found that 22% of children whose mothers reported abuse by their partner in the first year after giving birth had emotional and/or behavioural difficulties at age 4. More than half (62%) of the mothers reporting intimate partner abuse in the first year after giving birth also reported that they had experienced violence again, 4 years after giving birth<sup>43</sup>.

*Children with a history of violence exposure follow certain developmental trajectories, often withdrawing socially or behaviourally regressing, which can cause problems with peer relationships, especially in demanding social settings, such as in school. At the level of the brain, children exposed to violence may exhibit neurological changes that lead to problems of cognition in memory, executive functioning (the ability to organize and synthesize information), self-regulation, language causing learning delays or disabilities<sup>44</sup>.*

*Integrating research from a number of fields, we review the confluence between violence exposure, mental health problems, language learning, neurocognitive development and disabilities<sup>45</sup>.*

In 2017–18, the Specialist Homelessness Services in Australia assisted 121,000 clients due to family violence. Twenty-two percent were aged 0-9 (26,600) and 13% (15,200) were aged 10-18. It is reasonably anticipated that this would only be a small proportion of children affected by family and domestic violence.

- Child abuse and neglect, and the care system

The Australian Institute of Health and Welfare (AIHW) has linked data from child protection services and youth justice services in six Australian jurisdictions (not including NSW or the NT) to examine the experiences of children aged 10-17 who accessed both systems between July 2013 and June 2017<sup>46</sup>.

AIHW reported that young people who received child protection services were 9 times as likely as the general population of the same age to enter the youth justice system. Those in out-of-home care were 16 times as likely to do so. Of the young people who accessed both child protection and youth justice, more than 4 in 5 (82%, or 3,000) accessed child protection first.

Young people who have been abused or neglected often exhibit reduced social skills, poor school performance, impaired language ability, and mental health issues<sup>47</sup>.

*Abuse has particular repercussions for the development of school skills such as language learning, cognitive processing and self-regulation. Interpersonal violence and community violence experienced in childhood are related to myriad psychosocial problems including, attachment problems, speech, language and social interactions, delays in emotion processing, and intellectual and behavior problems (Azar & Wolfe, 2006).<sup>48</sup>*

<sup>43</sup> Australian Institute of Health and Welfare (2019) *Family, domestic and sexual violence in Australia: continuing the national story* Cat. no. FDV 3. (Referencing Gartland et al. 2014)

<sup>44</sup> Citing De Bellis, Hooper, Spratt, & Woolley, 2009; De Bellis, Hooper, Woolley, & Shenk, 2009; DePrince, Weinzierl, & Combs, 2009; El-Hage, Gaillard, Isingrini, & Belzung, 2006; Seckfort et al., 2008; Watts-English, Fortson, Gibler, Hooper, & DeBellis, 2006

<sup>45</sup> Perkins S, Graham-Bermann S, <https://www.sciencedirect.com/science/article/pii/S135917891100108X>

<sup>46</sup> Australian Institute of Health and Welfare (2019) *Young people in child protection and under youth justice supervision: 1 July 2014 to 30 June 2018*. Data linkage series no. 25. Cat. no. CSI 27.

<sup>47</sup> Australian Institute of Family Studies (2011) *Family Matters* No 89

<sup>48</sup> Perkins S, Graham-Bermann S, <https://www.sciencedirect.com/science/article/pii/S135917891100108X>



**Criminal Law (Raising the age of criminal responsibility) Bill 2021****Submission by the YOUTH ADVOCACY CENTRE INC**

Neglect can have serious short-term and long-term effects for children in relation to their brain development, emotional and social development, and potential for mental health problems and risky behaviours<sup>49</sup>.

Research has identified that family stressors such as financial difficulties; social isolation; domestic violence; mental health problems; disability; alcohol and substance abuse; and a lack of safe and affordable housing<sup>50</sup> put young people at risk of abuse and neglect.

Abused, neglected or traumatised children who are 'acting out' are less likely to be viewed sympathetically by the community and are more likely to run away, become homeless, and engage in illegal and survival activities which bring them to the attention of the police rather than child protection services. These young people have been described as moving from being 'troubled' to 'troublesome'<sup>51</sup>. This may lead to interventions which criminalise rather than assist them.

In particular, it has been found that:

- placement in out-of-home care doubles the risk of post-placement offending, particularly if this occurs during adolescence and involves a group home;
- multiple placements or placement instability, together with changes of school (particularly if that involves exclusion) are linked to an increased risk of 'difficult' behaviour and later offending;
- for females, any placement, irrespective of instability, increases their risk of offending<sup>52</sup>.

As noted previously, young people in care may be at greater risk of criminalisation as a result of the system which is supposed to provide them with protection.

It is useful to consider the prevalence of child abuse and neglect, and instances of family and domestic violence, in light of their connection to offending by young people. The Atkinson Report<sup>53</sup> noted that 83% of children in the youth justice system were known to Child Safety Services in June 2014. In 2016-17:

- 55,441 children were subject to one or more child concern report;
- 20,076 children were subject to one or more notification;
- 6,242 children were found to have experienced significant harm and/or to be at risk of significant harm;
- 26,706 Family and Domestic Violence Protection orders were made in Queensland;
- 13,518 defendants were convicted of breaching a Protection order.

The Atkinson Report also noted:

*It is estimated that over 90 per cent of children and young people in the youth justice system are survivors of complex and ongoing trauma. To respond accordingly, DJAG is moving towards adopting a trauma informed practice framework<sup>54</sup>.*

Children are, in fact, far more at risk from adults than adults are at risk of harm from children.

- Engagement with education

Engagement in education is an important factor in relation to youth offending.

*Evidence of an association between school suspension and a range of negative behavioural outcomes has grown during the past decade. As well as contributing to academic failure and dropout, school suspension is a key element of what is known as the 'school-to-prison' pipeline, which sees*

<sup>49</sup> Information taken from NSPCC (UK) website at:

[https://www.nspcc.org.uk/inform/resourcesforprofessionals/neglect/effects\\_wda91912.html](https://www.nspcc.org.uk/inform/resourcesforprofessionals/neglect/effects_wda91912.html)

<sup>50</sup> Ibid

<sup>51</sup> Australian Institute of Family Studies 2011 Family Matters No 89

<sup>52</sup> Ibid

<sup>53</sup> Bob Atkinson AO, APM (2018) *Report on Youth Justice*

<sup>54</sup> Queensland Department of Justice and Attorney-General (2016) *Youth Justice Reform Discussion Paper*

**Criminal Law (Raising the age of criminal responsibility) Bill 2021****Submission by the YOUTH ADVOCACY CENTRE INC**

*marginalised and excluded young people at an increased risk of juvenile and eventually, adult incarceration<sup>55</sup>.*

*A significant finding was that although the school experience does not cause a young person to commit crimes, the cumulative effect of negative school experiences can result in a student's alienation from the education system, aggravating pre-existing risk factors that lead a vulnerable person towards chronic criminal offending. What also emerged was the unique opportunity that schools provide to interrupt the pathway to youth offending through a process of early identification and timely intervention<sup>56</sup>.*

The total number of very young children at prep level being suspended or in Queensland has increased by 80% since 2013. Education Queensland data indicate that, in 2018, 1,188 **prep students** were suspended for 1-10 days, 9 for 11-20 days and one child was actually excluded. This should be a key early signal that something is wrong and that there is a need to engage with the family and/or child, and identify what supports or services are needed.

We note the provisions included in Queensland's *Education (General Provisions) Act 2006* in 2013 which enable a child to be suspended where charged with an offence, or to be excluded if convicted (irrespective of whether the behaviour was during school hours, on school property, or otherwise involved the school). These undermine the work of those involved in trying to divert children from the justice system in accordance with the Government's own Youth Justice Strategy. Courts, in recognition of the importance of school in providing stability and support for young people, regularly seek to impose bail conditions on young people to the effect that they attend school.

*Transition to High School*

Ten- to 13-year-olds are in the last two years of primary school and the first two years of high school. The move from primary school to high school is a key point in a child's life.

*Children's experiences of the transition from primary to secondary school may have long-term influences on their wellbeing, educational attainment and career choices (Speering & Rennie, 1996; West et al., 2010).*

The longitudinal study *Growing Up in Australia Study*<sup>57</sup> described this more fully:

*The transition from primary to secondary school marks a time of significant change for many children (Hanewald, 2013). It is a time of adjustment to a new school with new classmates and teachers, and to being one of the youngest in the school rather than the oldest. For the first time for many, children usually have multiple classes with different teachers and different groups of peers. They are also required to adapt to an increased workload at school, and increased responsibilities that come with having more homework and self-directed learning. Many children also have new travel arrangements for getting to and from school and may need to travel further. They are also exposed to broader experiences in studying a range of new subjects (Hanewald, 2013; Lester, Waters, & Cross, 2013). As well as all these school-related changes, children are at the same time negotiating the developmental and socio-emotional changes associated with becoming adolescents (Hanewald, 2013; Towns, 2011). ..... How well children navigate the transition to secondary school has important implications for their ongoing psychosocial, emotional and academic development (Zeedyk et al., 2003). The first year of secondary school [age 12 in Queensland] is critical for setting children up for the following years (West, Sweeting, & Young, 2010), and poor adjustment to secondary school has been associated with disengagement and non-completion, which leads to a raft of other poor outcomes, such as limited employment opportunities (Hanewald, 2013).* (References in original text)

The Study notes a range of factors which influence the move from primary to high school, including:

*... children's emotional and behavioural problems appeared to have the most important influence on children's difficulties transitioning to secondary school. Peer problems, hyperactivity and emotional problems appeared to be particularly important among the variables of socio-emotional wellbeing*

...

<sup>55</sup> Hemphill SA, Broderick DJ, Heerde JA, (2017) Trends & Issues in crime and criminal justice, No 531, Australian Institute of Criminology

<sup>56</sup> Sutherland, Alison. (2011) *The Relationship between School and Youth Offending*, Social Policy Journal of New Zealand.

<sup>57</sup> <https://growingupinaustralia.gov.au/publications/transition-secondary-school>. A partnership between the Commonwealth Department of Social Services, the ABS and AIFS

**Criminal Law (Raising the age of criminal responsibility) Bill 2021****Submission by the YOUTH ADVOCACY CENTRE INC**

*Children who enjoy primary school are more likely to have a more successful transition to secondary school. School connectedness is an important aspect of students' school enjoyment, and captures how much a student feels they are cared for as part of the school community. It has important psychological benefits and is associated with a range of positive behaviours (Lester et al., 2013). Lester et al. found that feelings of primary school connectedness were a strong predictor of mental health over the transition from primary to secondary school (as well as feelings of connectedness in secondary school).*

Disciplinary absences in Queensland for Years 6 and 7 students have increased since 2013, by 74% and 144% respectively. These data suggest that the transitional years from primary school to high school are also key points of possible intervention<sup>58</sup>. The total suspensions and exclusions from Grades 1 to 5 inclusive were nearly 21,000 in 2018 which would indicate a potential lack of school connectedness relevant to the transition to high school.

- Homelessness

Access to safe, stable and appropriate accommodation underpins a child's health and wellbeing. In 2016, around 19,400 children (0.4%) aged 0-14 years were homeless on Census night. Children under 16 may be part of a family experiencing homelessness, but some will be on their own<sup>59</sup>.

The Australian Institute of Family Studies has noted:

*Homeless young people typically come from disadvantaged and dysfunctional families, and maltreatment is often the impetus for a young person to leave home.*

*...Young people who leave home to escape traumatic situations (domestic violence and multiple victimisation) are likely to suffer from trauma-related mental health issues. Furthermore, homeless children are at greater risk of victimisation with an estimated 83% of homeless youth experiencing physical and/or sexual assault after leaving home, increasing their risk of further mental health issues.*

*Homeless young people are at a higher risk of becoming involved in the criminal justice system than their housed counterparts.*

*Young homeless people are often unable to support themselves, ineligible for benefits, and unlikely to find employment. Consequently, they may engage in survival behaviours—begging, theft, drug dealing and prostitution—to earn income for food and shelter. Not only are some of these behaviours illegal, they are also more visible to police due to the lack of privacy experienced by homeless people.*

*Trauma adds to the risk of offending behaviour, contributing to the link between child maltreatment, homelessness and offending. Experiences of trauma—both prior to leaving home and a result of being homeless—lead to poor self-regulation and coping skills (exacerbated by substance abuse), placing the young person at high risk for serious illegal behaviour<sup>60</sup>.*

- Cognitive impairment, mental health and substance use

People with a cognitive impairment, mental health issue or substance misuse problem are at greater risk of involvement in the criminal justice system.

*Having a cognitive impairment predisposes persons who also experience other disadvantageous social circumstances to a greater enmeshment with the CJS [criminal justice system] early in life and persons with cognitive impairment and other disability such as mental health and AOD [alcohol and other drug] disorders (complex needs) are significantly more likely to have earlier, ongoing and more intense police, juvenile justice, court and corrections episodes and events. The cognitive and complex needs groups in the study have experienced low rates of disability support as children, young people and adults with Indigenous members of the cohort having the lowest levels of service and support. It is evident that those who are afforded [disability services] support do better, with less involvement in the*

<sup>58</sup> Bob Atkinson (2018) *Report on Youth Justice* AO, APM, Special Advisor to Di Farmer MP, Minister for Child Safety, Youth and Women and Minister for Prevention of Domestic and Family Violence

<sup>59</sup> AIHW (2020) *Australia's Children*

<sup>60</sup> AIFS (2017) *Child maltreatment, homelessness and youth offending*, <https://aifs.gov.au/cfca/2017/10/04/child-maltreatment-homelessness-and-youth-offending> Footnotes in article can be found on the website

**Criminal Law (Raising the age of criminal responsibility) Bill 2021****Submission by the YOUTH ADVOCACY CENTRE INC**

*CJS after they become clients compared with those with cognitive disability who do not receive [disability] services<sup>61</sup>.*

Children and Young People with Disability Australia (CYDA) recommended to the Disability Royal Commission that it specifically examine:

- *the issues faced by children and young people with disability in youth justice systems, including coordination with other government systems*
- *the structural issues that contribute to the over-representation of children and young people with disability in these systems*
- *the impact of the current 'age of criminal responsibility' legislation on children and young people with disability.*

The NSW Department of Communities and Justice is developing a Youth Justice Disability Action Plan. It describes “the challenge”:

*Young people with disabilities are considerably over-represented and have earlier and more frequent contact with the criminal justice system.*

*Often these disabilities have been previously undetected, undiagnosed or inconsistently reported. Processes required to gain a diagnosis and refer to appropriate supports are complex and difficult to navigate.*

*Young people with disabilities have more complex criminogenic needs, with behaviours often interpreted and responded to through a criminogenic rather than functional framework.*

An area of increasing investigation and concern is Foetal Alcohol Spectrum Disorder (FASD), a neurodevelopmental disability caused by prenatal alcohol exposure. FASD is a “lifelong and often invisible disability that may affect growth, coordination, behaviour, attention span, memory, learning, speech, IQ, reasoning and judgment”<sup>62</sup>. (Some describe it equivalent to an acquired brain injury as the impact is permanent and irreversible).

*The Banksia Hill Youth Detention Centre Study in Western Australia found that 36% of young people detained had FASD, while 89% were found to have at least one form of severe neurodevelopmental impairment ii*

*International research has reported a high prevalence FASD in young people and adults in prison and correctional facilities – 60% of youth with FASD become involved with the justice system iii and people with FASD are 19 times more likely to be jailed compared to those without FASD iv<sup>63</sup>*

(References in original text)

A child with FASD may have cognitive and adaptive skills developmentally younger than their stated age. They may exhibit a range of behaviours, such as non-compliance due to an inability to understand or remember what they have to do; repeatedly making the same mistake; lying; appearing self-centred owing to an inability to link cause and effect; stealing, because of not understanding the concept of ownership; poor social judgement; and volatility, owing to an inability to verbalise feelings.

The presence of impairments such as FASD are a further complication to the development of children who still find themselves in the youth justice system.

Mental health issues are often associated with traumatic experiences in earlier childhood which may or may not be ongoing and may also lead to the use of alcohol and other substances by way of self-medicating. It is YAC’s experience that current services are also not willing or able to assist those with moderate to high needs in this regard.

*There is significant crossover between young people who engage in, or who are at risk of, offending behaviour and young people with mental ill-health. Orygen’s Policy Think Tank has highlighted the*

<sup>61</sup> Simpson (2012) *Participants or Policed: Guide to the Role of DisabilityCare Australia with People with Intellectual Disability who have Contact with the Criminal Justice System* (Practical Design Fund Project, NSW Council for Intellectual Disability, May 2013) 6 citing E Baldry, L Dowse and M Clarence *People with Intellectual and Other Cognitive Disability in the Criminal Justice System* University of New South Wales

<sup>62</sup> [https://www.fasdhub.org.au/siteassets/pdfs/fasd-justice-system-summary\\_information-sheet.pdf](https://www.fasdhub.org.au/siteassets/pdfs/fasd-justice-system-summary_information-sheet.pdf) Telethon Kids

Institute, Newcastle LDAT, Mercy Services

<sup>63</sup> Ibid

**Criminal Law (Raising the age of criminal responsibility) Bill 2021****Submission by the YOUTH ADVOCACY CENTRE INC**

*pressing need for preventive forensic, early intervention and community-based and residential mental health services for potential young offenders, as well as continued dedicated mental health care to rehabilitate young people in detention or on remand, in order to improve their life prospects as members of the community.*<sup>64</sup>

More and greater supports are needed for children and young people in relation to their mental health.

Some young people turn to alcohol and other drugs as a means of escape from the issues in their lives – again, both a cause and effect of offending behaviour.

*Young people who received an alcohol and other drug treatment service were 30 times as likely as the Australian population [of the same age] to be under youth justice supervision.*

*Young people who received an alcohol and other drug treatment service for volatile solvents or amphetamines were the most likely to also have youth justice supervision*<sup>65</sup>.

There is very limited opportunity in Queensland for detox or alcohol and drug rehabilitation for children, particularly those under 16.

Where younger children are identified as having mental health, cognitive impairment or substance use issues, these must be addressed with a therapeutic rather than a legal response. Criminalising children for behaviours reflecting their developmental challenges masks the needs to intervene and effectively address these issues.

**Detention**

Children may be sentenced to a period in detention if found to have committed the alleged offence. They may also be detained in custody if they are arrested and charged. In this situation, consideration has to be given as to whether the child can be given bail (stay in the community pending their case being dealt with) or remanded (kept in custody). A place of remand can be a police watchhouse or a youth detention centre. However, Queensland has a particularly high level of remand:

*On an average day in 2019–20, of all young people in detention aged 10 and over, about 2 out of 3 were unsentenced (68% or 586 young people) (Figure 5.1). In all states and territories, a substantial proportion of those in detention on an average day were unsentenced—ranging from 57% in Victoria and New South Wales to 88% in Queensland*<sup>66</sup>.

Queensland has three youth detention centres (YDCs) with a total of 306 beds. There are two at Wacol (Brisbane and West Moreton) and one in Townsville (Cleveland). Despite the mythology, there is nothing luxurious – or even particularly comfortable – about a YDC. They are prisons for 10- to 17-year-olds. Within each YDC compound is a series of units, each of which have a number of individual rooms which open on to a common area. Common areas are sparsely and poorly furnished and resourced. In each unit is a glass-walled station where workers can monitor the children. Females and males are segregated.

Each child has a small room (sometimes two children may share) with a bed, desk and chair, and a toilet. Children are locked in their rooms overnight and whenever there is a “lockdown” (a not infrequent occurrence). Lockdowns can happen when there is a shortage of staff (therefore nothing to do with the children), with the children locked in their cells for 23 out of 24 hours – clearly not in their best interests. Wherever they are, they are under constant CCTV surveillance.

Children cannot move outside of their unit unless under escort. Activities and education are scheduled but are regularly compromised through lockdowns. Clearly the school cannot deliver a curriculum in the same way as a typical State School in a YDC environment in any event due to the range of children, ages and the issues they present with.

<sup>64</sup> <https://www.orygen.org.au/Policy/Policy-Areas/Youth-justice>

<sup>65</sup> <https://www.aihw.gov.au/reports/youth-justice/overlap-youth-justice-supervision-and-aodts/contents/summary>

<sup>66</sup> Australian Institute of Health and Welfare (2021) *Youth Justice in Australia 2019–20*. Cat. no. JUV 134

**Criminal Law (Raising the age of criminal responsibility) Bill 2021****Submission by the YOUTH ADVOCACY CENTRE INC**

All visitors (including family and friends) must be approved prior to a visit. Visitors have to sign in and provide photo ID and allow a search of anything they have with them. They cannot bring anything for the child beyond letters, photos, money (such as for the vending machines), and clothes for occasions such as court or Sorry Business. Visits are supervised in person and by CCTV in a specific area at the YDC for visits. All visits take place in the one room so a number of family visits may be happening at the same time. This is a very challenging way for children to have contact with their family. Visits will be suspended when there is a lockdown.

It is hard to see how anyone could consider it a YDC as a suitable environment for 10- to 13-year-olds, or how detention could be expected to address in any meaningful way the reasons that bring them into the justice system or prevent their return.

As we have discussed previously, children in detention face a range of challenges.

*The youth detention centre environment has the potential to reinforce trauma. Pickens (2016) says that when a traumatised young people [sic] enters a youth detention centre for the first time s/he often experiences a strong sense of hyper-vigilance. This is due to their usual sense of danger being further heightened by finding him/herself in an unfamiliar environment, coupled with their ongoing struggles to minimise any trauma reminders. Both factors can create an agitated atmosphere for the young person, which may result in him/her feeling that there is danger in the environment, and responding with either physical aggression, or conversely with physical and emotional distance from others, in an attempt to feel safe. Should the environment actually be unsafe, as is sometimes the case, the young person's concerns will be validated (Barron & Tracey, 2018; Fasulo et al., 2015; Pickens, 2016).*

*Further complicating this picture is that some young people enter youth detention with a long-term exposure to violence, which has seen them become psychologically numb when violence occurs. This response has the unfortunate outcome of increasing their likelihood of behaving violently themselves, while shielding them from any emotional response, such as remorse (Abram et al., 2004; Ford & Blaustein, 2013; Quinn et al., 2017).*

(Reference in original article)

Detention can exacerbate rather than address the issue of re-offending:

*Our study suggests that 3 months of imprisonment in an impoverished environment may lead to reduced self-control, measured as increased risk taking and reduced attentional performance. This is a significant and societally relevant finding, as released prisoners may be less capable of living a lawful life than they were prior to their imprisonment, and may be more prone to impulsive risk-taking behavior. In other words, the impoverished environment may contribute to an enhanced risk of reoffending<sup>67</sup>.*

The situation is more problematic when children are kept in police watchhouses for any length of time, such as when the YDCs are at capacity or there are staffing issues. Police watchhouses are not designed to accommodate children and certainly not for more than an overnight stay. Police are not trained to manage children in a detention environment and age-appropriate activities and education are almost impossible. The changes to bail laws earlier in 2021 have placed more children at risk of remand and increased the risk of them being held in police watchhouses. It is YAC's view that these changes were misguided (see YAC's submission to the Legal Affairs and Safety Committee at <https://documents.parliament.qld.gov.au/com/LASC-C96E/RN757PYJOL-951C/submissions/00000064.pdf> ) and have resulted in more children in detention, adding to the remand problem, and will not address the concerns of the community in the longer term.

Additionally, it is questionable whether detention centre staff have the relevant training and expertise to work with this vulnerable and complex cohort of children. As an organisation whose purpose is to work with the children involved in the youth justice system, YAC is well aware of the skills and training required to work effectively with these children. A high level of cultural capability is critical in light of the overrepresentation of Aboriginal and/or Torres Strait Islander children in

<sup>67</sup> Meijers J, Harte JM, Meynen G, Cuijpers P and Scherder EJA (2018) *Reduced Self-Control after 3 Months of Imprisonment; A Pilot Study*. Front. Psychol. 9:69. doi: 10.3389/fpsyg.2018.00069.

**Criminal Law (Raising the age of criminal responsibility) Bill 2021****Submission by the YOUTH ADVOCACY CENTRE INC**

detention and particularly among 10-13 year olds. Similarly, trauma informed practice is a key competency.

Ten- to 13-year-olds need an environment and supports which are conducive to their positive and age-appropriate development. YAC's view is that YDCs, by their nature, are unable to adequately provide these. Indeed, YDCs may well put these children at greater risk of poor outcomes which will compromise their life opportunities as well as failing to address community concerns.

**A MORE JUST AND EFFECTIVE YOUTH JUSTICE SYSTEM**

The research indicates that the younger offending behaviour commences, the more likely it is the young person will become a recidivist. Further, this would be a good indicator that there are one or more underlying issues which are putting the child at risk of this behaviour. These issues have been discussed in detail in this submission and must be addressed if we want to respond meaningfully to the behaviour, get children on a different trajectory and therefore achieve the wish of the community in an effective and defensible manner:

*...irrespective of the vexed question of capacity – there are strong grounds for raising the minimum age of criminal responsibility if the 'goals' of the youth justice system are taken to include: complying with the provisions of the international human rights standards that have been formally ratified by the government;... ensuring that criminal law coheres with civil law; minimizing social harm and obtaining the best outcomes for children in conflict with the law, the wider community and the general public, in accordance with the imperatives of crime prevention and community safety and; responding to society's most disadvantaged, damaged and distressed children without undue recourse to criminalization.<sup>68</sup>*

A legal response is not useful in addressing the causes of offending behaviour, which are essentially social welfare issues, particularly in relation to younger children. The justice system is not well-equipped to address offending and prevent future offending because it cannot address the causes. Addressing the causes of offending needs the involvement of a range of disciplines:

*It must not fall to criminologists, psychologists, and legal representatives alone, to tackle issues of crime. Instead, a true interdisciplinary approach ought to include disciplines such as sociology; education; philosophy; economics; politics; history; and the arts. It must combine the work of academics and practitioners but also it must not ignore the voices of people interwoven within the criminal justice system, such as those convicted of a crime, victims of a crime and their social networks. Indeed, the development of an interdisciplinary and integrated rehabilitation theory that examines not only the causes of crime but explores strengths based approaches through the psychological, social, moral and judicial elements of reintegration, is needed. With an integrated and interdisciplinary rehabilitation theory, practitioners and researchers can begin to explore and test alternative approaches to rehabilitation, providing policy makers with evidenced based knowledge to guide policy<sup>69</sup>.*

**ALTERNATIVE RESPONSES*****Investment in the early years and prevention***

The key question is what response(s) are required to address problem behaviours for the 10- to 13-year-old age group instead of use of the youth justice system? As stated above, the answer should involve more than justice agencies.

*...the overriding theme of international conventions and guidelines is a two-pronged approach of decriminalisation and diversion<sup>70</sup> and the key to reducing [harm and] offending lies in minimal intervention and maximum diversion<sup>71</sup>*

<sup>68</sup> Goldson B (2013) *Unsafe, Unjust and Harmful to Wider Society*: Grounds for Raising the Minimum Age of Criminal Responsibility in England and Wales 13(2) Youth Justice

<sup>69</sup> Kewley S Strength based approaches and protective factors from a criminological perspective, Aggression and Violent Behavior 32 (2017)

<sup>70</sup> John Gillen (2006) *The Age of Criminal Responsibility: "The Frontier between Care and Justice"* 12(2) Child Care in Practice

<sup>71</sup> Leslie McAra and Susan McVie (2007) *Youth Justice?: The Impact of System Contact on Patterns of Desistance from Offending* 4(3) European Journal of Criminology



**Criminal Law (Raising the age of criminal responsibility) Bill 2021****Submission by the YOUTH ADVOCACY CENTRE INC**

This means raising the age of criminal responsibility to 14 and putting in place early intervention and prevention responses. This is hardly a new concept: it is axiomatic that “prevention is better than cure”. However, clearly we are not currently doing this effectively as we might. If a child is being suspended in prep, then that must be a red flag for problems at home, a family which is struggling, or some undiagnosed challenge, such as ADD or ADHD.

In 2018, the Queensland Government released *Our Future State: Advancing Queensland’s Priorities* with a vision for *all Queensland children to have a great start in life, supported by their family, service providers and the wider community to improve their life chances and reach their full potential.*

*Research shows that a great start to life is the best way to ensure children are able to reach their full potential as happy, healthy and productive citizens. It also shows that achieving a great start requires a holistic view of the child, parents, carers, grandparents, other family members and the communities in which they live, learn and grow.*

*A Great Start for All Queensland Children is a whole-of-government early years plan for Queensland, setting out the state’s vision for children in their early years and placing children at the centre of our community responses. No matter what challenges the world brings for our children, this plan supports families and communities to unite and recover. It brings together the health, housing, education, child safety and communities portfolios to all play a role in ensuring children get a great start in life and make sure services work together seamlessly to support children and families. It also provides parents, carers, families and communities with information about the key influences on children’s development in the early years, and how they can play a role in the early learning, health and wellbeing of children.*

This is highly relevant to preventing children being at risk of entry to the youth justice system. If children are happy, healthy, have somewhere safe to live, are going to school and their families are being supported, the likelihood of children becoming entrenched in anti-social or offending behaviour is greatly reduced. It is preferable to take a “child wellbeing” perspective as described above rather than treating children as a “risk” to be managed.

Essentially, we need to expand and further develop what is already government policy.

Any measure that succeeds in reducing child offending will probably have benefits that go far beyond this and therefore the cost effectiveness of this approach is magnified.

*Early prevention that reduces offending would probably also reduce drinking, drunk driving, drug use, sexual promiscuity and family violence, and perhaps also school failure, unemployment and marital disharmony<sup>72</sup>.*

Taking up the concept of justice reinvestment, we need to review how we invest public monies to best effect. Instead of building more detention centres at the “end of the line”, a focus on child wellbeing and the “best start in life” for all children is to be preferred.

*Better systems, better chances: a review of research and practice for prevention and early intervention* by the respected Australian Research Alliance on Children and Youth provides a wealth of information in relation to:

- Child development pathways and processes;
- The social and economic benefits of prevention and early intervention;
- Risk and protective factors for positive child development;
- Key pathways for intervention at key developmental stages (from antenatal through to adolescence); and
- System design elements that facilitate prevention and early intervention<sup>73</sup>.

We note two Queensland based initiatives which would also help to inform what is needed and how it can be achieved - the *Pathways to Prevention* project, which was led by Professor Ross Homel, and the *Logan Together* project.

<sup>72</sup> Farrington (1997) *The Cambridge Study in Delinquent Development - a prospective longitudinal survey which commenced in 1961 of the development of offending and antisocial behaviour in 411 South London boys, mostly born in 1953.*

<sup>73</sup> ARACY (2015)



**Criminal Law (Raising the age of criminal responsibility) Bill 2021****Submission by the YOUTH ADVOCACY CENTRE INC**

*Pathways to Prevention* operated in the third most disadvantaged Statistical Local Area (SLA) in Queensland between 2002 and 2011 (for 10 years) as a partnership between a national community agency, seven primary schools (children aged 4-12), and Griffith University Pathways as a multi-component service delivered through schools and the community. It employed a mixture of professional staff and community workers from the First Nations, Pacific Island and Vietnamese communities, and:

*Within its universal focus, the Pathways model emphasises comprehensive and integrated practice that supports development in a holistic way. Its overriding goal is to create a pathway to wellbeing for all local children as they transit through successive life phases, from conception to youth.*

It identified an absence of a positive attachment to school at age seven as the greatest predictor of later offending, along with positive family support making a difference for younger children at pre-school age.

Projects with pre-schoolers and their families were a significant part of the Queensland *Pathways to Prevention* project<sup>74</sup>. It combined the Preschool Intervention Program (PIP), focused on children and delivered through state preschools with services for families (the Family Independence Program, or FIP). The preschool intervention was found to be effective in improving children's communication skills and reducing their difficult behaviour, over and above the effect of the regular preschool curriculum, with better outcomes when the two programs were combined than when either was delivered on its own<sup>75</sup>.

A Jesuit Services report also notes the importance of family, school and community:

*Particular attention is given to the need for a wider focus on the environments in which children develop and this brings in factors such as family, school, community and society. Evidence gathered in the present project shows that children who come into the system at an earlier age are associated with higher rates of offending and longer criminal careers.<sup>76</sup>*

*Logan Together* is supported by Griffith University, with "Dozens and dozens of organisations, big and small, ... working to help Logan kids reach their potential". Their vision is that:

*In 2025 Logan kids will be as healthy and full of potential as any other group of Queensland kids. If all of us can assist 5,000 more Logan kids to arrive at 8 years old in great shape, we will have achieved our goals [and have] aligned our actions according to the life stages – from before birth and through each age and stage of childhood. We know that child, family and community characteristics all influence how our children are now, and in future years.<sup>77</sup>*

Assisting and investing in communities to mobilise in the way which Logan is doing would arguably be a much better use of the taxpayer dollar than paying for a child to be in a detention centre (calculated to be cost approximately \$237,980 per year for one young person in 2010<sup>78</sup>).

Findings of the Safe and Supportive Family Environment for Children Paper suggests that policy may be more effective if it:

- *is attuned or sensitive to different family environments*
- *targets behaviours rather than groups of people*
- *recognises that families can both change for the better, and draw on their own prior (positive) experiences<sup>79</sup>.*

<sup>74</sup>Key Centre for Ethics, Law, Justice and Governance at Griffith University (led by Professor Ross Homel) and Mission Australia <http://www.griffith.edu.au/criminology-law/key-centre-ethics-law-justice-governance/research/prevention-developmental-pathways/the-pathways-to-prevention-project>

<sup>75</sup> Homel R, Freiberg K, Branch S, Le H (2015) *Preventing the onset of youth offending: The impact of the Pathways to Prevention Project on child behaviour and wellbeing* Trends & Issues Paper No 481 Australian Institute of Criminology

<sup>76</sup> Richmond Jesuit Social Services (2013) *Thinking Outside: Alternatives to remand for children: Profiles of children in the youth justice system*

<sup>77</sup> <https://logantogether.org.au/>

<sup>78</sup> Cohen, Mark., Alex, Piquero and Wesley Jennings (2010) *Studying the Costs of Crime across Offender Trajectories*, Criminology and Public Policy. 9(2):279-305.

<sup>79</sup> Mullan and Higgins (2014) *A safe and supportive family environment for children: key components and links to child outcomes*, Australian Institute of Family Studies, Occasional Paper No 52

**Criminal Law (Raising the age of criminal responsibility) Bill 2021****Submission by the YOUTH ADVOCACY CENTRE INC**

There needs to be a greater understanding of behavioural issues such as ADD, ADHD, Autism and Asperger syndrome, and recognition of FASD-related behaviours and specialist responses. Children with behavioural issues are often at risk of suspension and exclusion because their behaviour is simply regarded as “naughty”. There should be better service provision for those with particularly challenging behaviours, such as young sex offenders, like that provided by the Griffith Youth Forensic Service.

**Diversion**

If a well-constructed and delivered prevention and early intervention system works appropriately, there should be reduced need for diversion in due course. For the immediate future, however, we will be faced with 10- to 13-year-olds whose behaviour may be a cause for concern. Where a child’s behaviour is having an impact on others that must, of course be addressed.

However:

*[I] nstead of asking, ‘does this child have the capacity to be exposed to the youth justice system?’, one should rather ask ‘is it preferable to decriminalise the act and deal with the behaviour without prosecution, sentencing, and YJ intervention?’*

*This approach suggests that children under the MACR are immune from prosecution not because they are not responsible for an act, but because their position and status as a child means prosecution in a youth justice system is:*

- a. Not effective in achieving the goals of youth justice;*
- b. Not in the best interests of the child; and,*
- c. Unlikely to address the core issues underlying their offending behaviour<sup>80</sup>*

A child whose life circumstances have played a significant role in their “offending” behaviour cannot, YAC would argue, be held solely responsible for their actions. Whilst they may be held accountable – that is, there must be some consequence for their action – there also needs to be a group of people who take responsibility, and are accountable, for supporting the child and their family to access the interventions and services which would address identified problems and prevent further behavioural issues.

There must be a flexible service and support system which encompasses the types of service responses, therapeutic but also broader, which have been proven to make a difference to children’s lives and provided them with a positive way forward. Focus should be given to those children who have been identified as at significant risk. This requires the input of a range of human service agencies. For example, Health should invest in universal regular home visiting of mothers from just before birth to at least 12 months after birth. However, where mothers and families are identified as struggling, this should be extended in terms of time but also which other services should be engaged.

Additionally, schools, from prep through to completion of high school, should be better resourced to support children and families through the provision of qualified social workers – not Guidance Counsellors with a focus on academic matters or unqualified school chaplains. Children and families should be able to seek help from the school social worker as well as teachers being able to make referrals. This should commence from prep.

**Trauma informed practice**

To adequately respond to children who have been traumatised by their life experiences to date, adults working with them require a trauma-informed approach to addressing the resulting behaviours. This means workers must see each child as an individual: there can be no “one size fits all” approach. Workers need to:

*Understand there is an ongoing risk that many of the current Youth Justice practices will trigger them. For instance, physical or mechanical restraints used in youth detention centres can be trigger a reaction of panic and flashbacks (Pickens, 2016; Rapp, 2016).*

<sup>80</sup> Goldson B, “Unsafe, Unjust and Harmful to Wider Society”: Grounds for Raising the Minimum Age of Criminal Responsibility in England and Wales’ (2013) 13(2) Youth Justice

**Criminal Law (Raising the age of criminal responsibility) Bill 2021****Submission by the YOUTH ADVOCACY CENTRE INC**

*Ask a different question of young people upon entering the youth justice system. Currently young people are asked, 'what's wrong with you?', or 'what have you done?'. However a trauma-informed system asks, 'what happened to you?', which usually sets up a different relationship with the young person (Flocks et al., 2017; Yoder et al., 2019)<sup>81</sup>.* (References in original text)

**A truly child-centric approach**

We note a recent submission by yourtown to a survey in Tasmania and support its comments:

*To effectively address the underlying needs of children below the minimum age of criminal responsibility, a problem-solving approach is needed that puts these at-risk children at the heart of the process...[and]...place the stories and voices of children who offend at the centre of understanding what the problem is, and therefore what the solution should address<sup>82</sup>.*

If the result we are seeking is to get children's lives on a positive track and address community concerns, the responses above should be provided within a justice reinvestment framework and:

- be focussed on the wellbeing and best interests of the child, not simply on managing "risk";
- assess and diagnose issues such as FASD as early as possible when there are signs of emerging problems;
- involve families, parents and carers where appropriate and provide them with better and earlier supports which are non-judgemental;
- be child-centred and trauma-informed: ask *'what happened to you?'*<sup>83</sup>;
- be age-appropriate and strength-based;
- be holistic, providing an individualised, wraparound, integrated, therapeutic response to identified need and challenges;
- be locally-based and community-focused;
- provide mechanisms to ensure that all stakeholders are held accountable for the support they are to provide;
- address the overrepresentation of Aboriginal and Torres Strait Islander children, children in the child protection system, and children with cognitive impairment.

**CHALLENGES TO RAISING THE AGE*****The Court of Public Opinion***

Despair of the younger generation and its behaviour has been around as long as humankind. There are references to it throughout history. For example:

*Young people today are unbearable, without moderation... Our world is reaching a critical stage. Children no longer listen to their parents. More and more children are committing crimes and if urgent steps are not taken, the end of the world as we know it, is fast approaching.*

Hesiod, Greek poet 8th Century BCE

Despite knowing the drivers of why children get caught up in the youth justice system and the reality of the levels and types of offending, our response to children and young people with ongoing behavioural issues remains driven by misinformation or the continuation of narratives which do not reflect the truth of either the extent of, or the reasons for, offending behaviour. Regrettably, we live in an age where people do not necessarily accept thorough research or the facts as told by people with relevant expertise.

It would be fair to say that: *media reporting and politicians' statements often emphasise 'a fear of children's rights as challenging adult authority and, ultimately, adult power.'*<sup>84</sup>

<sup>81</sup> Tony Jamieson (2020) *Trauma of young people in youth detention centres* GCI insights Griffith Criminology Institute

<sup>82</sup> Yourtown (2021) *Age of Innocence: Children and Criminal Responsibility* A response to the Tasmanian Commissioner for Children and Young People Survey

<sup>83</sup> Tony Jamieson (2020) *Trauma of young people in youth detention centres - GCI insights* Griffith Criminology Institute

<sup>84</sup> Deena Haydon and Phil Scraton, (2000) *Condemn a Little More, Understand a Little Less: The Political Context and Rights Implications of the Domestic and European Rulings in the Venables - Thompson Case*, 27(3) *Journal of Law and Society*, 416, 448.

**Criminal Law (Raising the age of criminal responsibility) Bill 2021****Submission by the YOUTH ADVOCACY CENTRE INC**

Parts of the media drive an aggressive focus on “law and order” – generally with children in their sights rather than adults because this makes a better story from their perspective. A study of Canadian print media coverage over the twentieth century, looking at 1,937 articles, was undertaken in Canada to “assess the claims often found in contemporary print media accounts that youth crime is out of control are that youth today are worse than ever”<sup>85</sup>. The outcome supported the suggestion that each generation believes its own youth problem is worse than it has ever been:

*the sensationalised narrative of fear is dominant throughout the sample...The description of youth crime as “epidemic” or “crime wave” or other alarmist terms in 1931, 1943, 1955, 1959, 1963, 1967, 1971, 1975, 1983, 1991, 1995 and 1999 at the very least challenges the credibility of such accounts.*

In 1995, the Courier Mail ran an article titled *Delinquents “a war time worry”* and stated that

*Images of the “predatory delinquent” have formed a historical dialect in Australia for most of the century.*

The notion that the legislation and system for youth justice constitute “a slap on the wrist” also appears to be a perennial one. Again, in surveys carried out in Canada, one found that *the public believes [youth justice legislation] to be more lenient than it actually is* and another that 71% of respondents believed the legislation needed to be toughened.

A review of the literature relating to young people, crime, and public perceptions was undertaken by the National Foundation for Educational Research in the United Kingdom. It revealed that this is a relatively under-researched area but:

*From the few studies completed, it can be said that there is a tendency for the public to overestimate the scale of youth crime (however, this is also true for crime generally).*

The paper also noted that making the public aware of action which government may be taking to address antisocial behaviour and youth offending may actually instil fear or concern rather than provide reassurance and paint a negative picture of young people generally.

Research illustrates that news reporting about juvenile crime is often *highly selective, distorted and routinely exaggerated*<sup>86</sup>. An analysis of 2,456 news items sampled over six months found the media exhibited a *clear general hostility towards young people*<sup>87</sup>. Such news stories often seek to orientate *the reader to process the text in a predetermined direction*<sup>88</sup>, with the aim of blaming youth for a *range of social problems*<sup>89</sup>. Analysis of words and phrases in print media demonstrated that the media often deployed language to label and categorise youth as criminal and deviant.

The use of emotive words and phrases such as ‘crisis’, ‘epidemic’ and ‘urgent action’ in reporting on young people fundamentally dehumanises them. In YAC’s experience, it is difficult for alternative viewpoints to be heard, with reporters only interested in the sensational. As a result, the media discourse around youth crime is generally not balanced.

*This choice of vocabulary contributes to the development of the fear theme. Youth crime is presented as increasing in frequency, affecting more and more people (as offenders and as victims) and becoming more serious. Even those who have no direct or indirect experience with youth crime can easily arrive at the conclusion that “it could happen to them”<sup>90</sup>.*

Research in Sydney found that police held more negative views of young people than other groups, such as seniors and teachers<sup>91</sup>, and evidence exists to support the view that the police and the media maintain a relationship that can be mutually beneficial. The public has an appetite for “crime news”, and the media rely on the police for the information for this. In return, this also shapes the way the public views police and their role in juxtaposition to those alleged to have offended.

<sup>85</sup> Faucher C (2007) *Bad boys and girls, yesterday and today: a century of print media perspectives on youthful offending*

<sup>86</sup> Judith Bessant and Richard Hill (eds) (1997) *Youth, Crime and the Media: Media representation of and reaction to young people in relation to law and order* National Clearinghouse for Youth Studies

<sup>87</sup> Faith Gordon (2018) *Children, Young People and the Press in a Transitioning Society* Palgrave Socio-Legal Studies

<sup>88</sup> Karmen Erjavec (2001) *Media Representation of the Discrimination Against the Roma in Eastern Europe: The Case of Slovenia* 12 (6) *Discourse and Society*, 699, 708

<sup>89</sup> Faith Gordon (2018) *Children, Young People and the Press in a Transitioning Society* Palgrave Socio-Legal Studies.]

<sup>90</sup> Faucher C (2007) *Bad boys and girls, yesterday and today: a century of print media perspectives on youthful offending*

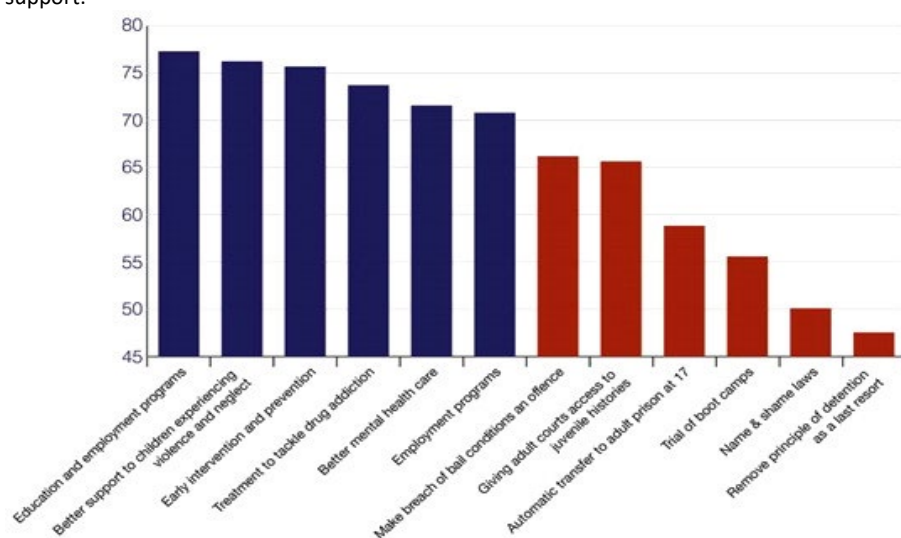
<sup>91</sup> Natalie Bolzan (2003) *Kids are like that! Community attitudes to young people*. National Youth Affairs Research Scheme.

**Criminal Law (Raising the age of criminal responsibility) Bill 2021****Submission by the YOUTH ADVOCACY CENTRE INC**

However, there is reason to believe that if people are given accurate and balanced information, then at least some may take less punitive stance. A 2016 paper on perceptions in New Zealand noted that:

*There is a growing body of literature that suggests that a large number of variables are implicated in the development of attitudes to offenders, both at the group and individual levels. Members of the public adopted a more lenient approach to offenders when they were given more contextual information about the crime and the offender ... Even in cases where there is pervasive support for more punitive approaches, the public still show an interest in addressing underlying social and individual circumstances that lead to offending and are targeted in offender rehabilitation ...*

In 2013, the Queensland Newman government undertook a public survey to ascertain views on youth offending and responses they proposed. The outcomes indicated, contrary to the way the information was relayed afterwards, that the community was supportive of addressing the causes of crime and the proposed amendments (which were pursued in any event) did not receive majority support:



2013 Survey Monkey responses to Newman Government's Safer Streets Crime Action Plan — Youth Justice: Have Your Say [indication of levels of support to various options: those in red were the responses proposed (and implemented) by the government.

A study on the concept of Citizen Juries showed that:

*... when given the opportunity to deliberate with others and critically engage in wider knowledge on offenders and responses to offending, jury members preferred non-punitive approaches. Overall, policy recommendations by jurors contained strategies to address the social determinants of health and offending in order to prevent people coming into contact with the criminal justice system in the first place and non-incarceration options for those who do<sup>92</sup>.*

This should provide some confidence among policymakers that, if the public is properly informed and engaged around the question of youth offending, there will be support for taking the action which the literature and evidence show is likely to be most effective in addressing offending by children.

***The politicisation of youth offending and youth offenders***

Closely connected to media portrayal and public opinion is the response by politicians. It is entirely appropriate that the elected leaders in our community are listening to those who vote for them but democracy can only “work” if information on which policy and law is based is evidence based and supportable and that information is disseminated to everyone so that informed decisions can be made by the public as well as politicians.

<sup>92</sup> Simpson, P., Guthrie, J., Lovell, M., Walsh, C. & Butler, A. (2014) *Views on Alternatives to Imprisonment: A Citizens Jury approach*, The Lowitja Institute, Melbourne.

**Criminal Law (Raising the age of criminal responsibility) Bill 2021****Submission by the YOUTH ADVOCACY CENTRE INC**

*In many respects, the intellectual argument for raising the minimum age of criminal responsibility [in England and Wales] has been won. Resistance, however, derives ultimately from political imperative rather than criminological rationality. ...The corrosive politicization of juvenile crime not only socially constructs child 'offenders' in ways that render them 'undeserving' but it also fatally obstructs the application of knowledge and evidence to the processes of legislative reform, policy formation and practice development. For as long as this remains the case, children in trouble will be denied justice and the public interest – with regard to crime prevention and community safety – will continue to be failed.<sup>93</sup>*

Clearly, the community needs to be brought on board with any proposal to raise the age of criminal responsibility. This requires all politicians to be “singing from the same hymn sheet” with an agreed, evidence based and balanced approach to youth justice and actively distributing accurate data and reasoned information to the public.

**IN CONCLUSION**

In the view of the Youth Advocacy Centre, the case for raising the age of criminal responsibility to 14 years is objectively well-evidenced. It is, accordingly, supported by a wide range of professional organisations and expert bodies, such as the Australian Medical Association and the Law Council of Australia<sup>94</sup>.

The youth justice system and youth detention centres are not appropriate spaces for 10- to 13-year-olds. Youth offending is a developmental or social welfare issue at heart. It is best addressed by relying on evidence and research, so that effective responses, addressing the causes of children's behaviours, can be put in place for the benefit of both the community and the individual child.

Children should be at home, in school and participating in family and community activities. They do not belong in police stations, courts, and detention centres.

---

<sup>93</sup> Goldson B, “Unsafe, Unjust and Harmful to Wider Society”: Grounds for Raising the Minimum Age of Criminal Responsibility in England and Wales (2013) 13(2) Youth Justice

<sup>94</sup><https://www.lawcouncil.asn.au/docs/7b6b5121-5220-ea11-9403-005056be13b5/AMA%20and%20LCA%20Policy%20Statement%20on%20Minimum%20Age%20of%20Criminal%20Responsibility.pdf>



YOUTH  
ADVOCACY  
CENTRE INC

# ORANGE PAPER 3

## **Raising the Minimum Age of Criminal Responsibility (MACR)**

20

22

# Executive Summary

**Youth Advocacy Centre (YAC) supports raising the minimum age of criminal responsibility (MACR) in Queensland from 10 to 14 years without any carve-outs for types of offenders or offending. The case for raising the age is well supported by research and literature and across a range of professions.**

Ten year olds are in Grade 5 and still in primary school. Thirteen year olds are in Grade 8 and commencing the move to adolescence. Children should be at home, in school, and participating in family and community activities. They do not belong in police stations, courts, and detention centres.

A legal response is not useful in addressing the causes of offending behaviour, which are essentially developmental and social welfare issues, particularly in relation to younger children. Addressing the causes of offending needs a multidisciplinary response – hence YAC’s operational model, which includes legal, bail, court, youth, homelessness and family support services.

## **Key points in support of raising the age include:**

- Contrary to media reports, there is no youth offending crisis.
- Children’s brains are not the same as adults’ brains. Brains are not fully mature until around 25 years of age.
- There is a range of environmental factors which affect the maturing process of the brain over which children have no control. Some of these factors put children at greater risk of offending behaviour.
- Children are also dealing with physical and emotional changes as they enter adolescence.
- The criminal law applies to children in substantially the same way as it applies to adults. The legal processes in the criminal justice system have only been slightly modified for children – the ‘youth justice system’.
- The civil law provides protections to children on the basis of their immaturity and vulnerability, while at the same age the criminal law prosecutes children.
- The legal concept of 'doli incapax' should protect the 10–13 year old age group, but it has failed to do so in Queensland.
- The UN Committee for the Convention on the Rights of the Child has set the age of 14 years as the MACR and has criticised Australian jurisdictions for the use of 10 years.
- The younger a child enters the justice system, the more likely it is that they will remain in it.
- Aboriginal and/or Torres Strait Islander children are significantly over represented in the justice system and the younger the child, the greater the over representation. All Australian jurisdictions have agreed a Closing the Gap target to reduce this.



- Children in the care system, particularly those in out of home care, are over represented in the youth justice system, often for offences which are related to their care situation.
- Youth detention centres (YDCs) are prisons for 10–17 year olds. Like all prisons, they may exacerbate rather than address offending behaviour.
- Over 85% of children in Queensland YDCs are on remand, that is, their court matter is yet to be finalised. They may not receive a sentence of detention.

Providing more beds in YDCs and remanding more children in custody is not a solution to addressing the factors putting children at risk of behavioural problems or supporting children's positive development. A more effective response for addressing offending behaviour in children, underpinned by a set of key principles, would be:

- Prevention and early intervention: the best response would be an approach which prevents development of problem behaviours, or enables them to be addressed very quickly, through a range of universal and targeted services and supports for children and their families. This links with the Government's stated aim of a 'great start for all Queensland's children'.
- Diversion: provide supports and services to children and their families to assist in diverting children to a more positive life path where their behaviour is causing concern and was not identified early enough for prevention and early intervention.
- A justice reinvestment approach would support prevention, early intervention and diversionary services and supports for 10–13 year olds and their families. This community led approach has been used successfully in Bourke, NSW.

**YAC calls for an evidence-based response, supported across the Parliament, which does not continue to politicise youth justice and our children.**

**When a flower doesn't bloom –  
you fix the environment in which it grows, not  
the flower**

Alexander den Heijer

# Background

Queensland's Criminal Code contains most of the offences which make up the criminal law in Queensland. It also provides that the criminal law applies to any person who has reached the minimum age of criminal responsibility (MACR). The MACR in Queensland and across Australia is 10 years of age.

If a child aged 10 or older is alleged to have broken the law, they are dealt with in the criminal justice system. Overall, child offenders (those aged 10–17 years) are not dealt with very differently to adult offenders.

Children have a small number of protections additional to adults in relation to police processes, such as the presence of a support person at a formal police questioning or search. Where a child is aged 10 but under 14 years of age, the police must not only prove the child committed the offence but also meet a test on the culpability of the child – generally known as the 'doli incapax' rule.

If the police decide to take the matter to court, children will go to a magistrates' court sitting as a Children's Court. The court process is generally the same as that for adults except that:

- Youth Justice Services also attend court
- parents must attend court with their child
- the court is closed to the general public and, although the media may attend, it is an offence to publish any information which would identify the child.

For the more serious offences, the child will go on to a court presided over by a judge. These courts are open to the public, but again, no one can publish information identifying the child.

The range of sentence options available for children is very similar to that for adults except that the length of sentences is shorter due to children's experience of time being different to that of adults. For the most serious of offences, a child can still be given a life sentence, which means for 'the term of their natural life' in Queensland. If a child turns 18 while in youth detention, they will be sent to an adult prison unless they only have a short time left to serve.

## Youth offending

There is no youth offending crisis. Children's offending is predominantly property related and opportunistic. In 2019–20, 8% of offences proven to have been committed by children were violence related, 6% drug related, and 0.4% involved sexual offences.

The number of youth offenders has been decreasing for some years in Queensland, in Australia and in countries such as the UK and Canada. There are around 535,000 10–17-year-olds in Queensland, only 0.9% of whom appear in court in a given year. Around 10% of child offenders (about 500 a year) commit around 45% of the offences committed by all youth offenders.

## Youth offenders

The small group of those who continue to offend share a number of challenges. On a given day in 2019, of children in detention:<sup>ii</sup>

<b>60%</b>	had experienced or been impacted by domestic and family violence
<b>55%</b>	were disengaged from education, training, or employment
<b>46%</b>	had a mental health and/or behavioural disorder (diagnosed or suspected)
<b>38%</b>	had used ice or other methamphetamines
<b>30%</b>	had at least one parent who spent time in adult custody
<b>29%</b>	were in unstable and/or unsuitable accommodation
<b>12%</b>	had a disability (assessed or suspected)

Children under 14 in the justice system are more likely to be experiencing underlying trauma, have an undiagnosed disability, and come from a low socioeconomic background.<sup>iii</sup> The younger a child commences in the youth justice system, the more likely they are to remain in it, the more often they are in detention, and the more likely they are to return.<sup>iv</sup>

Some cohorts of children are overrepresented in the justice system, particularly Aboriginal and/or Torres Strait Islander children, but also other disadvantaged groups such as children in contact with the child protection system.

# Support Raising MACR

**YAC supports raising MACR to 14 years without any carve-outs for types of offenders or offending.**

## **United Nations Convention on the Rights of the Child (UNCROC)**

The Convention on the Rights of the Child confirms that the universal economic, social, cultural, civil and political rights apply equally to children, but it also includes additional protections for children because of their immaturity and vulnerability.<sup>v</sup> The Standard Minimum Rules for the Administration of Juvenile Justice (the 'Beijing Rules') stress the importance of establishing a set of laws, rules and provisions specifically applicable to juvenile offenders to meet their varying needs, while protecting their basic legal rights.<sup>vi</sup>

The UN Committee on the Rights of the Child has criticised Australia's low age of 10 years as the MACR and has encouraged all countries ... "to take note of recent scientific findings, and to increase their minimum age accordingly, to at least 14 years of age. It recommends a higher age of 15 or 16, since scientific evidence indicates that brains are continuing to mature even then."<sup>vii</sup>

A review of ages of criminal responsibility across the world indicates that 14 is the most common minimum age, with many countries having a higher requirement.

## **Inconsistency of the law**

While children of primary school age are considered old enough to go through the rigours of the criminal justice system, there is a concurrent divergent view that children need to be protected because of their age and consequent vulnerability due to lack of life experience and knowledge. For example:

- it is an offence for a person who has care or charge of a child under 12 years to leave them unsupervised for an 'unreasonable time'
- for a number of offences, the fact that the victim of the offence is under 12 years of age is a circumstance of 'aggravation', thus attracting a higher maximum sentence
- 'indecent treatment of a child' relates to a person up to and including the age of 15
- 'child exploitation material' relates to images of a person up to and including the age of 15
- film, television and computer game classification take the age of 15 as the threshold: for example, PG Parental Guidance (potentially only 'mild impact' but not recommended for viewing by people under the age of 15 without adult guidance)
- it is an offence for a person who has care or charge of a child under 16 years to abandon the child or fail to provide them with adequate food, clothing, and medical support
- a child under 18 cannot have a tattoo irrespective of parental permission.

## **Doli incapax**

In theory, the legal concept of ‘doli incapax’ should be a protection for younger children and mean that those under 14 should not be prosecuted except for the most minor of matters. However, it tends to enable the prosecution of younger children for more serious offences in Queensland. This is due to the way the section was drafted in 1899.

## **Inappropriate use of the criminal law**

The police and the criminal law are not infrequently used as a behaviour management tool for unruly or troubled children, particularly those children in the child protection system who are in out of home care. This generally relates to situations where there has been property damage or physical interaction with a worker. Children are placed in out of home care because they have complex needs following substantiated abuse or neglect allegations<sup>viii</sup> and cannot live in a family situation. It is to be expected that they have behavioural problems. Staff should have the skills to manage and be able to work with the child to address these problems. YAC lawyers have represented children whose criminal history comprises only offences committed in their placement.

The problem is sufficiently serious that Child Safety, the Queensland Police Service, and non government partners in the out of home care system have entered into a Joint Protocol<sup>ix</sup> aimed at reducing the criminalisation of young people as a response to those situations. However, YAC’s view is that this does not sufficiently address the situation.

## **Overrepresentation of Aboriginal and/or Torres Strait Islander children**

The Commonwealth, States and Territories are all parties to the National Agreement on Closing the Gap on Indigenous Disadvantage. This includes addressing overrepresentation of Indigenous children in the criminal justice system with a specific target of reducing the rate of Aboriginal and Torres Strait Islander young people (10–17 years) in detention by 30% by 2031.

Aboriginal and/or Torres Strait Islander children accounted for 46% of all child defendants in 2019–20 while comprising only around 7% of all 10–17-year-olds in Queensland. The number was significantly higher in the younger ages (93% of 10-year-olds, 82% of 11-year-olds, 66% of 12-year-olds and 59% of 13-year-olds). The fact that Aboriginal and/or Torres Strait Islander children predominate in the younger age groups should be an important factor in MACR.

## **Detention**

Queensland has three youth detention centres (YDCs) with a total of 306 beds: two at Wacol (Brisbane and West Moreton) and one in Townsville (Cleveland). Detention is costly – about \$1500 per day per child. Children may be sentenced to a period in detention if found to have committed the alleged offence. They may also be detained in custody if they are arrested and charged and not granted bail (remanded) pending the court dealing with their matter. Queensland has a particularly high level of remand – 85% of those held on any given day. Children should only be held in police watchhouses for short periods as they are

particularly unsuitable for children.

Despite the mythology, there is nothing luxurious or even particularly comfortable about a YDC. They are prisons for 10–17 year olds. They can exacerbate rather than address the issue of reoffending, sometimes being referred to as ‘schools of crime’. Children aged 10–13 need an environment and supports which are conducive to their positive and age appropriate development. YAC’s view is that YDCs, by their nature, are unable to adequately provide these.

### **Child and youth development**

There is an extensive body of research, literature, and data across a range of domains (justice, psychology, sociology, health, education) which relates to child and youth development and behaviour and its significance in terms of youth offending and youth offenders. There is well documented evidence that at the age of 12 and 13 years, the frontal cortex of the brain is still developing and maturity and capacity for abstract reasoning is continuing to evolve. As such, children are unlikely to understand the impact of their actions or to comprehend criminal proceedings.

In early adolescence, those parts of the brain that deal with reward processing are more easily aroused but those that deal with harm avoidance and self regulation are still comparatively immature. Even at age 16 the capacity for judgement making and impulse control is still evolving.

Some argue that today’s children are more sophisticated and so are better able to understand their actions than previously, particularly due to technological advances.

Brain development is not ‘sped up’ as a result of access to technology. In any event, not all children have access to technology and technology has negative as well as positive impacts. Computer games, internet, and television mean children are not experiencing situations and the impacts or consequences of actions in person or learning how to behave appropriately in response. As such, a child may not fully appreciate the impacts of their actions and how others may be affected or react in real situations.

Children are also dealing with the onset of puberty. Children start puberty at different ages. Girls range from 8–13 years (average 10–11) and boys from 9–14 years (average 11–13). It can last between one and a half and five years and brings additional challenges.

Ten year olds are in Grade 5. Thirteen year olds are in Grade 8. Their life experience is limited simply because of their short lifespan. Children make their way in a world dominated and run by the adults around them. The child’s environment is a critical factor in their development, positively and negatively. Some children’s lives are compromised as a result, and this leads to challenges and potentially their involvement in the criminal justice system.

A legal response is not useful in addressing the causes of offending behaviour, which are essentially developmental and social welfare issues, particularly in relation to younger children. Addressing the causes of offending needs a multidisciplinary response hence YAC’s operational model, which includes legal, bail, court, youth, homelessness and family support services.

# Alternative Responses

**YAC supports raising the MACR without carve-outs for offenders or offences. Children should be at home, in school, and participating in family and community activities. They do not belong in police stations, courts, and detention centres. We need to look for alternative responses to addressing the causes of offending behaviour.**

## **Prevention and early intervention**

The best response would be a prevention and early intervention approach so that children do not develop the problem behaviours, or they are addressed very quickly. This links well with the Government's stated vision of all "Queensland children to have a great start in life, supported by their family, service providers and the wider community to improve their life chances and reach their full potential"<sup>iii</sup> and its early years plan, 'A Great Start for All Queensland Children'.


A number of sectors have a role to play in supporting families and children, particularly housing, education, and health. Schools, for example, are uniquely placed to interrupt the pathway to youth offending through early identification and support. Actions include:

- universal home visits by nursing staff pre birth, for the first year and thereafter as needed
- prioritisation of health and disability screening for children at key developmental points
- focus on oral language competency from an early age
- qualified social workers attached to schools as a resource for parents and a referral point for teachers
- prohibition on suspension and exclusion in prep and primary school
- incentives to schools not to suspend or exclude children and supports to address problems
- prioritisation of affordable housing for families
- family support centres that are located in neighbourhood centres or other appropriate hubs and are not funded by, or connected with, Child Safety Services.

There is a wealth of information available to support early intervention and prevention service delivery, including work by the Australian Research Alliance on Children and Youth and, more locally, 'Pathways to Prevention' (a longitudinal project based around Inala) and 'Logan Together'.

## **Diversion**

If a well constructed and delivered prevention and early intervention system works appropriately, there should be reduced need for diversion in due course. For the immediate future, however, there will be 10 13 year olds whose behaviour may be a cause for concern. Where a child's behaviour is having an impact on others, it will need to be addressed.



Again, a multidisciplinary response is needed. There can be no ‘one size fits all’ approach. Each child and their family must be considered in the context of their individual needs and circumstances. Potentially there will be one case plan for the child and one for the family which run in parallel. They will include ensuring relevant assessments have been undertaken, therapeutic responses put in place as required, parenting issues or challenges addressed (including consequences for the child which are developmentally and age appropriate in relation to behaviours), linking with community activities which respond to the child’s interests and provide positive mentors and relationships, and support for improving family relationships as appropriate.

### **Some key principles for services and supports**

Irrespective of when supports or services are delivered, they should:

- be focused on the wellbeing and best interests of the child, not simply on managing ‘risk’
- involve families, parents, and carers where appropriate and provide them with better and earlier supports which are non judgemental
- be age appropriate and strength based
- assess and diagnose cognitive impairments, mental health, and other issues and identify services and supports as early as possible
- be trauma informed – ask questions such as, ‘What happened to you?’ not ‘What’s wrong with you?’ or ‘What have you done?’<sup>xiv</sup>
- be locally based and have a whole of community focus and participation, particularly where there are ‘hot spots’ of offenders or offending
- as a priority, address the overrepresentation of Aboriginal and Torres Strait Islander children and children in the child protection system
- provide a mechanism which ensures that every adult or agency which is supporting a child or their family takes responsibility for what they have committed to do and is held accountable for it.

### **Justice reinvestment approach**

This response can be set within a justice reinvestment approach, whereby money is not spent on detention centre beds but rather on the responses identified above – preventing the problem arising in the first place rather than waiting for the inevitable to occur. The Maranguka Justice Reinvestment project in Bourke, NSW, shows how this can be done successfully. Most importantly, it is a community led justice reinvestment approach. A community strategy for change was developed: ‘Growing Our Kids Up – Safe, Smart, Strong’. The project is directed and guided by the Bourke Tribal Council and a team works with existing services to work collectively to develop and implement local solutions.<sup>xv</sup>



# Challenges to Raising the Age

A significant challenge is the mythology which surrounds youth justice ‘youth offending is out of control’ and ‘they only get a slap on the wrist’ being two of the most common statements.

We have noted previously that the number of youth offenders has been declining and that there is only a very small group of ongoing offenders. We also know what puts them at greater risk of getting into trouble. We know where the ‘hot spots’ are for offenders and offending and, therefore, where to focus the most effective responses.

However, youth justice has become highly politicised. The lack of general understanding of the facts of youth offending and the youth justice system feeds a punitive response, which pressures politicians and policy makers.

There is evidence that the community is supportive of initiatives such as early intervention and diversion, education/employment programs, better support to children who have been abused or neglected, and treatment for drug addiction in order to turn children’s lives around.

Clearly, the community needs to be brought on board with any proposal to raise MACR. YAC believes that it can be if the public is properly informed about child offenders, child offending and effective responses.

**YAC calls for an evidence-based response, supported across the Parliament, which does not continue to politicise youth justice and our children.**

## References

- i Department of Children, Youth Justice and Multicultural Affairs (202 ) Youth Justice Pocket Stats 20 9–20. <https://www.cyjma.qld.gov.au/resources/dcsyw/youth-justice/resources/yj-pocket-stats-20-9-20.pdf>
- ii *ibid.*
- iii Australian Institute of Health and Welfare (20 8) National data on the health of justice-involved young people: a feasibility study. Cat. no. JUV 25. Canberra: AIHW.
- iv Australian Institute of Health and Welfare (2020) Young people returning to sentenced youth justice supervision 20 8– 9. Juvenile Justice Series no. 24. Cat. no. JUV 33. Canberra: AIHW.
- v United Nations Human Rights Office of the High Commissioner ( 989) Convention on the Rights of the Child, Assembly Resolution 44/25. <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>
- vi United Nations Human Rights Office of the High Commissioner ( 985) United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), Assembly Resolution 40/33. <https://www.ohchr.org/documents/professionalinterest/beijingrules.pdf>
- vii United Nations Human Rights Office of the High Commissioner (20 9) General Comment No. 24 (20 x): Children’s rights in juvenile justice. <https://www.ohchr.org/Documents/HRBodies/CRC/GC24/GeneralComment24.pdf>
- viii Australian Institute of Health and Welfare (202 ). Child protection Australia 20 9–20. Child welfare series no. 74. Cat. no. CWS 78. Canberra: AIHW.
- ix [https://www.qfcc.qld.gov.au/sites/default/files/joint\\_agency\\_protocol\\_to\\_reduce\\_preventable\\_police\\_calls\\_to\\_residential\\_care\\_services.pdf](https://www.qfcc.qld.gov.au/sites/default/files/joint_agency_protocol_to_reduce_preventable_police_calls_to_residential_care_services.pdf)
- x United Nations Human Rights Office of the High Commissioner (20 9) General Comment No. 24 (20 x): Children’s rights in juvenile justice. <https://www.ohchr.org/Documents/HRBodies/CRC/GC24/GeneralComment24.pdf>
- xi Levin, MA (20 2) [Director Center for Effective Justice, Texas Public Policy Foundation, Senior Policy Advisor, Right on Crime
- xii Association of Child Welfare Agencies, Newsletter 2000. <http://www.acwa.asn.au/acwa/publications/newsletter/2000/feb2000.html>
- xiii Queensland Government (20 8) Our Future State: Advancing Queensland’s Priorities.
- xiv Tony Jamieson (2020) Trauma of young people in youth detention centres. GCI Insights, Griffith: Griffith Criminology Institute. <https://blogs.griffith.edu.au/gci-insights/2020/04/02/trauma-of-young-people-in-youth-detention-centres/>
- xv Just Reinvest NSW (20 8) New Evidence from Bourke, Just Reinvest. <https://www.justreinvest.org.au/new-evidence-from-bourke>

# Acknowledgements

YAC affirms that the Aboriginal and Torres Strait Islander peoples are the Indigenous inhabitants of Australia and acknowledges their unique relationship with their ancestral country. In particular, we acknowledge the Turrbal and Jagera peoples, the Traditional Custodians of the land in and around Brisbane, and pay our respects to their Elders, past, present and emerging. We acknowledge our Aboriginal and/or Torres Strait Islander staff and the insight they bring to YAC and their support for it to continue to develop as a culturally competent organisation. YAC is proud to support its Indigenous clients and staff, its LGBTIQ+ clients and staff and welcomes diversity in all its forms.



**YOUTH  
ADVOCACY  
CENTRE INC**

YAC provides legal services, youth support and family support services to young people aged 10 to 25 years in South East Queensland and Cairns.

---

## Contact

Youth Advocacy Centre  
Level 4, 16 Peel Street,  
South Brisbane QLD 4101  
(07) 3356 1002

[www.yac.net.au](http://www.yac.net.au)  
[admin@yac.net.au](mailto:admin@yac.net.au)  
[@youthadvocacycentre](https://www.instagram.com/youthadvocacycentre)