

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

Submission to the Queensland Parliament Community
Support and Services Committee

8 October 2021

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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal of the Eora Nation.

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to provide this submission to the Queensland Parliament's Community Support and Services Committee ('the Committee'), regarding the Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021 ('the Bill').
2. The ALA considers that raising the age of criminal responsibility is a key measure in reducing the rate of incarceration of young people, who should be detained only as a last resort. Currently, the minimum age (10 years of age) is the same for all Australian States and Territories, except in the ACT.² The low age across Australia's states and territories is in breach of human rights standards and puts Australia out of step with much of the rest of the world – the worldwide median age of criminal responsibility is 14 years of age.³
3. The ALA submits that the age of criminal responsibility should be raised to 14 years of age, in accordance with the recommendations of the United Nations (UN) Committee on the Rights of the Child.

Young people in detention

4. According to the Australian Institute of Health and Welfare (AIHW), in 2017–18 on any given day, 7 per cent of the total number of young people under youth justice supervision were aged between 10 and 13 years of age. This equates to approximately 385 young people. Of these, the overwhelming majority – approximately 75 per cent – were Aboriginal and Torres Strait Islander young people.⁴
5. According to a recently released Productivity Commission report on Government Services, there were on average 4,790 young people under youth justice supervision in 2018. The

² Commonwealth – *Crimes Act 1914* (Cth) s 4M, *Criminal Code Act 1995* (Cth) s 7.1; Australian Capital Territory – *Criminal Code 2002* (ACT) s 25; Northern Territory – *Criminal Code* (NT) ss38(1), 42AP; New South Wales – *Children (Criminal Proceedings) Act 1987* (NSW) s 5; Victoria – *Children, Youth and Families Act 2005* (Vic) s 344; South Australia – *Young Offenders Act 1993* (SA) s 5; Western Australia – *Criminal Code Act Compilation Act 1913* (WA) s 29; Queensland – *Criminal Code Act 1899* (Qld) s 29(1); Tasmania – *Criminal Code 1924* (Tas) s 18(1).

³ National Children's Commissioner, Australian Human Rights Commission, *Children's Rights Report 2016* (Report, October 2016) 187 <<https://humanrights.gov.au/our-work/childrens-rights/publications/childrens-rights-report-2016>>.

⁴ Australian Institute of Health and Welfare, *Youth Justice in Australia 2017-18* (Report, 10 May 2019) 8–9 <<https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2019-20/contents/summary>>.

average daily detention rate for Aboriginal and Torres Strait Islander young people between the ages of 10 and 17 years of age was more than 30 per 10,000, compared to 1.4 per 10,000 for non-Indigenous young people. This means that Aboriginal and Torres Strait Islander young people are being detained at a rate of 23 times that of non-Indigenous young people.⁵

6. According to the First Assistant Secretary of the Commonwealth Attorney-General's Department, Andrew Walter, while Aboriginal and Torres Strait Islander young people comprised only 6 per cent of young people aged between 10 and 17 years of age, they made up approximately 57 per cent of those in youth detention. This proportion rises to 78 per cent for young people between the ages of 10 and 13 years of age.⁶
7. The ALA notes that currently Aboriginal and Torres Strait Islander young people are disproportionately represented in the total number of young people in detention in Queensland. According to statistics from the Queensland Youth Justice annual survey, over 70 per cent of young people in detention in Queensland are Aboriginal or Torres Strait Islander.⁷ An Aboriginal or Torres Strait Islander young person was 32 times more likely to be in detention than a non-Aboriginal or Torres Strait Islander young person.⁸
8. It is often the most vulnerable and disadvantaged children who come to the attention of the justice system at a young age, according to the AIHW.⁹ The ALA submits that it is not appropriate for children aged between 10 and 14 years of age to be under the supervision of the youth criminal justice system.

⁵ Australian Government Productivity Commission, *Report on Government Services 2020* (Report, 23 January 2020) Part F, Section 17: Youth Justice Services <<https://www.pc.gov.au/research/ongoing/report-on-government-services/2020/community-services/youth-justice>>.

⁶ Oliver Gordon, 'Australia urged by 31 countries at UN meeting to raise age of criminal responsibility', *ABC News* (online, 21 January 2021) <<https://www.abc.net.au/news/2021-01-21/un-australia-raise-the-age-of-criminal-responsibility/13078380>>.

⁷ <https://www.youthjustice.qld.gov.au/resources/youthjustice/resources/yj-annual-summary-stats-detention.pdf>

⁸ Australian Institute of Health and Welfare, *Youth justice in Queensland 2017-18* (Report, 2019) <https://www.aihw.gov.au/getmedia/29525c16-7dbd-458f-8458-6baf491305ad/Factsheet-YJ_2017-18_Qld.pdf.aspx#:~:text=88%25%20were%20supervised%20in%20the,rest%20were%20serving%20a%20sentence>.

⁹ Australian Institute of Health and Welfare, *Youth Justice in Australia 2015-16* (Report, 31 March 2017) supplementary data table S78b <<https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2015-16/contents/table-of-contents>>.

The capacity of children to comprehend the nature of their conduct

9. The ALA notes that there is a significant quantity of contemporary research indicating that many children aged between 10 and 14 years of age are not at a cognitive stage of development where they are able to appropriately appreciate the nature and significance of criminal conduct and the lifelong consequences of undertaking such conduct. This creates significant doubt on the capacity for children of these ages to appropriately reflect before embarking on a course of action involving criminal behaviour.¹⁰

10. According to the UN Committee on the Rights of the Child:

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. They are also affected by their entry into adolescence.¹¹

11. The ALA is also concerned that by criminalising the behaviour of children who may not be aware of the consequences and nature of their conduct, a dangerous cycle of disadvantage is initiated, causing children to become entrenched in the criminal justice system. Several studies confirm that when children are drawn into the criminal justice system at a young age, there is a significantly higher likelihood of subsequent reoffending, and a lower likelihood of that child completing their education or securing employment.¹²

¹⁰ Kelly Richards, 'What makes juvenile offenders different from adult offenders?', *Trends & issues in crime and criminal justice* (Paper No. 409, 18 February 2011) 4; Laurence Steinberg, 'Risk taking in adolescence: new perspectives from brain and behavioural science' (2007) 16(2) *Current Directions in Psychological Science* 55, 56.

¹¹ United Nations Committee on the Rights of the Child, *General comment No. 24: Children's rights in the child justice system*, CRC/C/GC/24 (18 September 2019) para 22.

¹² Australian Institute of Health and Welfare, *Young people returning to sentenced youth justice supervision 2014–15* (Report, Juvenile justice series no. 20, 22 July 2016) <<https://www.aihw.gov.au/reports/youth-justice/young-people-returning-to-sentenced-youth-justice-supervision-2014-15/contents/table-of-contents>>; Australian Institute of Health and Welfare, *Young people aged 10–14 in the youth justice system 2011–12*, (Report 25 July 2013) <<https://www.aihw.gov.au/reports/youth-justice/young-people-aged-10-14-in-the-youth-justice-syste/contents/publication>>.

12. The ALA also notes that the Australian Medical Association stated in December 2019 that raising the age of criminal responsibility was an important measure to prevent the unnecessary criminalisation of vulnerable children.¹³

International human rights law and the age of criminal responsibility

13. Under article 40(3) of the UN *Convention on the Rights of the Child* (signed and ratified by Australia in 1990), State Parties are required to establish a minimum age of criminal responsibility. However, the article does not specify the age. Over 50 State Parties have raised the minimum age following ratification of this Convention and the most common minimum age of criminal responsibility internationally is 14 years of age.
14. The UN Committee on the Rights of the Child has consistently said that countries should be working towards a minimum age of 14 years of age or older.¹⁴
15. In 2017, both the UN Human Rights Committee and the UN Committee on the Elimination of Racial Discrimination (CERD) recommended that Australia take active steps to raise the age of criminal responsibility.¹⁵ The CERD specifically expressed concern regarding the over-representation of young Aboriginal and Torres Strait Islander children who come into contact with the criminal justice system:

The Committee is deeply concerned about the high proportion of indigenous children in contact with the criminal justice system, some of them at a very young age. It is also

¹³ Paul Karp, 'Peak legal and medical groups push to limit minimum age of criminal responsibility to 14', *The Guardian* (online, 17 December 2019) <<https://www.theguardian.com/law/2019/dec/17/peak-legal-and-medical-groups-push-to-lift-minimum-age-of-criminal-responsibility-to-14>>.

¹⁴ United Nations Committee on the Rights of the Child, *General Comment No. 10: Children's rights in juvenile justice*, 44th session, UN Doc CRC/C/ GC/10 (25 April 2007) paras 32–33; see also n 11 above, para 22.

¹⁵ Human Rights Committee, *Concluding observations on the sixth periodic report of Australia*, CCPR/C/AUS/CO/6 (1 December 2017) para 44; Committee on the Elimination of Racial Discrimination, *Concluding observations on the eighteenth to twentieth periodic reports of Australia*, CERD/C/AUS/CO/18-20 (26 December 2017) para 26.

concerned about the ill-treatment suffered by juveniles, especially indigenous children, and the conditions in which they are held.¹⁶

16. In January 2021, as part of Australia's Universal Periodic Review before the UN Human Rights Committee, 31 UN Member States called on Australia to raise the age of criminal responsibility to 14 years of age.¹⁷

Conclusion

17. The Australian Lawyers Alliance (ALA) welcomes the opportunity to provide this submission to the Community Support and Services Committee regarding the Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021. The ALA is available to provide further assistance to the Committee on the issues raised in this submission, should the Committee consider that to be useful.



Sarah Grace
Queensland President
Australian Lawyers Alliance

¹⁶ Committee on the Elimination of Racial Discrimination, *Concluding observations on the eighteenth to twentieth periodic reports of Australia*, CERD/C/AUS/CO/18-20, 26 December 2017, paragraph 25.

¹⁷ <https://www.abc.net.au/news/2021-01-21/un-australia-raise-the-age-of-criminal-responsibility/13078380>