ChildProtectionPeak

30 November 2021

Committee Secretary
Community Support and Services Committee
Parliament House
George Street
Brisbane Qld, 4001

Via email CSSC@parliament.qld.gov.au

Dear Chairperson & Members,

Thank you for the opportunity to present to you our submission in response to the Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021 that was introduced into the Queensland Parliament by Mr Michael Berkman MP on 15 September 2021.

We are encouraged by your commitment to engage with the community on this very important legislative reform. We support raising the minimum age of criminal responsibility to 14 years of age as this would fundamentally shift the focus from addressing children's behaviour through judicial processes, supervision and detention to instead meeting the needs underlying their behaviour through community led care, support and healing. Further, this significant change provides an opportunity to introduce a new way of approaching and addressing trauma-based behaviours that is more flexible and sustainable and can halt the impact of intergenerational distress.

I would like to emphasise that there needs to be further development of and sufficient investment in culturally sound, community-based responses to intergenerational trauma impacts to better understand the root causes of offending in Aboriginal and Torres Strait Islander children and young people and to facilitate positive outcomes for their future.

I would welcome the opportunity to discuss this submission with you in further detail. Please do not hesitate to contact my office on 07 3153 7787.

Yours sincerely,

GARTH MORGAN
Chief Executive Officer

Queensland Aboriginal and Torres Strait Islander
Child Protection Peak Limited
PO Box 8084, Woolloongabba, Qld, 4102

P: 07 3102 4119
E: administration@qatsicpp.com.au
W: qatsicpp.com.au

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Queensland Aboriginal and Torres Strait Islander Child Protection Peak Limited

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

Submission – November 2021

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Who we are?

The Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP) welcomes the opportunity to provide a response to the Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021 (the Bill) on behalf of our members.

The Queensland Aboriginal and Torres Strait Islander Child Protection Peak is the peak body representing, advocating and supporting the Aboriginal and Torres Strait Islander child protection and family support sector in Queensland.

The principal purpose of the Queensland Aboriginal and Torres Strait Islander Child Protection Peak is to, above all, promote and advocate the rights, safety and wellbeing of Aboriginal and Torres Strait Islander children, young people and their families, through effective partnerships and strategic collaborations.

QATSICPP provides leadership in advocacy and the development of policies, strategies and programs to resource, support and strengthen the capacity and capability of Aboriginal and Torres Strait Islander community controlled child protection agencies in the interests of our children, families and communities.

Our Commitment

We welcome working with Queensland Government and other respected Aboriginal and Torres Strait Islander leaders and experts on youth justice and child wellbeing to strengthen responses that address underlying causes of offending and embed evidence-based, trauma-aware and culturally-informed responses.

Context

Overwhelmingly the evidence shows that the current Minimum Age of Criminal Responsibility (MACR) is disproportionately impacting on Aboriginal and Torres Strait Islander children, resulting in statutory youth justice responses[1]. Alternative responses are required to stop over-representation of first nations young people in criminal justice systems [2].

Understanding why Aboriginal and Torres Strait Islander children and young people are disproportionately involved with and impacted on by the youth justice system is crucial to addressing this issue, which is an ongoing source of significant concern for the state of Queensland. There is extensive research detailing the devastating impacts of colonisation that have resulted in intergenerational trauma, felt most acutely by our young people.

One of the key findings of the landmark 1991 Royal Commission into Aboriginal Deaths in Custody (Vol. 1, p. 1.7.1) was that:

> The more fundamental causes of over-representation of Aboriginal people in custody are not to be found in the criminal justice system but those factors which bring Aboriginal people into conflict with the criminal justice system in the first place ... [and] the most significant contributing factor is the **disadvantaged and unequal position** in which Aboriginal people find themselves in society - **socially, economically and culturally.**

Twenty years on from this report, the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs published the report *Doing Time – Time for Doing* in 2011, in which they presented an overview of Indigenous youth in the criminal justice system and found their disproportionate involvement was

[1] AIHW, 2021
[2] Amnesty International, 2016; House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 2011; Atkinson, 2018

rooted in the broader social and economic disadvantage faced by many First Nations people. They outlined how this disadvantage has led to inadequate housing, poor health and school attendance, problems of domestic violence, alcohol and drug abuse, a lack of job skills and employment opportunities, and a loss of cultural knowledge, which has disrupted traditional values and norms of appropriate social behaviour from being transferred from one generation to the next.[3]

Aboriginal and Torres Strait Islander evidence and leadership has repeatedly outlined the need for funding of Aboriginal-led solutions that address the range of underlying social and economic issues impacting on our young people and key drivers of their offending behaviour.

The characteristics of Aboriginal and Torres Strait Islander young people involved with the youth justice system include:

- being impacted by intergenerational trauma, which has been proven to affect their neurological, psychological and even physical development. [4]
- high rates of exposure to domestic violence, sexual abuse and neglect. [5]
- high rates of intellectual disability and cognitive impairment, which research links to being more likely to have police contact, be charged, be imprisoned and receive longer sentences. [6]
- frequent out-of-home care placements which disrupts or prevents access to treatment and support, resulting in placement breakdown and sometimes homelessness (and consequently extended periods of time in youth detention).[7]
- a high prevalence of diagnosable trauma related mental illness. [8]
- high rates of substance misuse with research suggesting drug use and crime can both develop in response to a range of other factors such as poverty, trauma, mental health issues and a lack of engagement with education and employment. [9]

Evidence demonstrates that these issues are best responded to through early intervention responses. It is critical that such responses are based on insights from our Aboriginal and Torres Strait Islander leadership about the most appropriate ways to address the underlying issues leading to criminal behaviour for young offenders.

Supporting positive pathways that support building strong cultural identities for our children that are grounded in connection to family, community, and culture is seen as critical. Yet in Queensland the development of Aboriginal and Torres Strait Islander led and delivered support for young people offending or at risk of offending is still in its early stages. Whilst funding levels to community-controlled organisations have increased since 2017 to $10.2 million out of a total of $30 million in funding provided to all non-government organisations, they still represent a tiny proportion of the total of $283.6 million ($125.2 million on detention alone) spent on the Queensland youth justice system.[10]. Given the evidence is clear about the need for community developed and delivered solutions, it is concerning that funds are so unevenly distributed to favour tertiary responses and highlight the need for reform in this area.

[3] House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 2011
[4] van der Kolk, 2007
[5] Atkinson, 2018
[6] Victorian Legal Aid 2011 in Baldry et al, 2015
[7] AIHW, 2020; Sentencing Advisory Council, 2020
[8] Royal Commission into the Protection and Detention of Children in the Northern Territory, 2017, Healing Foundation, 2013; NSW Law Reform Commission, 2010
[9] Goldstein 1985 in Forsythe and Adams, 2009
[10] Productivity Commission, 2021

Our response to the Bill

> *"It scares me having a 10 year old in a detention – it is too young to be exposed to the system – it is like tattooing them.' (Youth Justice Service Provider/QATSICPP Member)*

QATSICPP supports raising the age of MACR. We know that raising the age would help to ensure more children and young people avoided their behaviour being criminalised. We support raising the age of MARC to 14 years (as opposed to 12 years) for the following reasons:

- It allows for a broader range of young people to be provided with support and responses that meet their needs more effectively than a statutory youth justice system response.
- Current evidence nationally identifies that diverting young people from the justice system early has life-long benefits including preventing entry to justice systems later in life.
- 14 years is the minimum age of criminal responsibility recommended by the United Nations Committee on the Rights of the Child after reviewing evidence from around the world.[11]

A range of inquiries and literature support raising the age of criminal responsibility.

The Queensland Family and Child Commission (QFCC) found that while there is no definitive recommendation from neuroscience or behavioural science regarding what a minimum age of responsibility should be, there is broad agreement that 10 years is too low, concluding that:

> *"Given the profound impact contact with the youth justice system has on a child's long-term prospects, it makes sense to keep children under 13 years out of the youth justice system."*[12]

The Royal Australasian College of Physicians (RACP) supports this conclusion, observing that many problematic behaviours in children aged 10 to 13 years that currently are considered 'crimes' under current Australian law are better understood to be within the range of behaviours one would expect, in context of the normal neurodevelopmental profile of 10 to 13 year old's (poor impulse control, poorly developed capacity to plan and foresee consequences) coupled with behaviours in young children with significant neurodevelopmental impairment and/or who have experienced significant past trauma[13]. For many First Nations children and young people we know that there are very few services to support them healing from trauma experiences, including the impact of intergenerational trauma.

The QFCC's *Changing the Sentence* report released this year highlighted gaps in the range of services being delivered to prevent entry or re-entry into the youth justice system, including the lack of dedicated case management or specialised therapy responses designed for children and young people with highly complex behaviours and the need for early intervention approaches, including specialised, intensive intervention, to be available when children are in primary school.[14]

Similarly the *Our Youth, Our Way* the report on over-representation in youth justice of Aboriginal young people in Victoria also recommended a move away from children aged 10 to 13 receiving a youth justice system response to a focus on other parts of the social service system, including education and health, collaborating to provide coordinated early intervention and prevention responses to this age group.[15]

[11] United Nations Committee on the Rights of the Child, 2019
[12] QFCC, 2017: 41
[13] Royal Australasian College of Physicians, 2019.
[14] QFCC, 2021.
[15] Victorian Commission for Children and Young People, 2021

Changing the MACR is not enough - Additional Responses Required

QATSICPP is aware that raising the age is only one part of a bigger and broader issue. We know from our experience that the leading causes for children and young people aged 11 to 13 to become involved with the youth justice system are: an absence of good role modelling, disconnection from country and involvement in the child safety system.

There is risk of the Bill not meeting its stated aims due to a number of issues that include:

- Aboriginal and Torres Strait Islander people and services currently do not play a central role driving the design and delivery of alternative responses to problematic behaviour in children under 14. There are a relatively small number of Aboriginal and Torres Strait Islander community-controlled organisations currently delivering services to young people involved with, or at risk of entering the youth justice system and any raising of the age needs to be accompanied by a period of significant investment in and development of community based responses. This includes further workforce development for the Aboriginal and Torres Strait Islander community controlled sector.
- The need for a transition of power from Youth Justice Services to community controlled organisations as it relates decision making and case management, including the requirement for all responses to problematic behaviour by children and young people to be managed through a Family Led Decision Making process.
- The urgent need for more alternative, community led approaches in education services provided to Aboriginal and Torres Strait Islander children and young people, as educational experience has a significant impact on likelihood of youth justice contact.

Three critical areas of urgent attention in order to ensure the Bill could be implemented effectively are:

- Effective holistic responses to emerging trauma related and problematic behaviour in younger children that are designed by Aboriginal and Torres Strait Islander services
- Increased respect for Aboriginal and Torres Strait Islander cultural wisdom, evidenced in Aboriginal and Torres Strait Islander communities and organisations being trusted to make decisions about responses to problematic behaviour in children and young people and resourced to provide this
- +Effective mental health and wellbeing services that are culturally attuned and culturally safe

Below is an example of how poor practice in this area is creating tension.

> *"We were working with a 16 year old who started having mental health episodes. CYHMS (sic -Child and Youth Mental Health Service) got involved and started getting him heavily medicated because he had voices in his head– we had our workers yarn with him and worked out the voice in his head was grandmother –so we reconnected him with her and it helped to improve things for him. There is an issue of mainstream 'professionals' not accepting young people having cultural experiences that are real to them – they need to take this seriously and respond appropriately…. Why isn't cultural knowledge recognised through the RPL when we are trying to get qualifications? Our worker, he is doing what a psychologist does, but he doesn't have the piece of a paper, instead he has cultural knowledge." (Youth Justice Service Provider/QATSICPP Member)*

There is no doubt that for many young people being able to be held to account within a strong cultural framework would enable them to live well without interaction with justice systems. However, there is a need to invest in developing and supporting the establishment of a systemic response of this nature. As one service provider told QATSICPP:

> *'Culturally we nurtured, we educated to meet the needs of our children and young people – we also disciplined – we need to bring that back under our control– it is all about meeting needs: families and young people come into contact with the system because their needs aren't being met. These things need to come back to the ways that worked for us for thousands of years. We need to bring it back to*

our way but there needs to be a transition, so we can set up the structures we need to take that power back and manage that responsibility." (Youth Justice Service Provider/QATSICPP Member)

These responses are consistent with current evidence. A number of government inquires at a state and national level over the past decade have concluded that effective solutions to preventing or reducing the recidivism of First Nations children and young people in the youth justice system need to be developed and delivered locally, preferably by, or at least in conjunction with, the local Aboriginal and Torres Strait Islander community.[16]

On a broader level, evidence suggests that youth justice services better suited to the needs of Aboriginal and Torres Strait Islander people can be shaped through ensuring Indigenous communities, leaders and young people are given sufficient decision-making input on the development of legislation, policies and services for this cohort.[17]

In his review of the Queensland juvenile justice system, Atkinson found sound evidence to support cultural healing approaches from both Australia and Canada[18]. The Atkinson report recommended cultural healing approaches to be explored in conjunction with *On Country* service models as alternative justice programs for Aboriginal and Torres Strait Islander children at a variety of points in the system, including for children sentenced to detention, those transitioning out of detention and those on community supervision orders.

Given the above, QATSICPP calls for either amendments to the bill or a stated policy commitment to ensure:

- Trauma informed responses to children and young people and to youth offending.

- A mandatory role for the Aboriginal and Torres Strait Islander elders and community in the administration of youth justice in Queensland.

There are also a range of measures that QATSICPP recommends be introduced to create a positive impact for Aboriginal and Torres Strait Islander children and young people:

- **Implementation of the currently trialled Youth Justice Family Led Decision Making pilot**.

The Youth Family Led Decision Making trial is a culturally appropriate approach to working with young Aboriginal and Torres Strait Islander people invovled in youth justice and is delivered by Aboriginal and Torres Strait Islander organisations. Family Led Decision Making is an independent process to prevent young Aboriginal and Torres Strait Islander people from reoffending, through active participation in decisions that affect them.

- Implementation of the program to date is showing positive results, empowering young people and families to be more involved in the youth justice process. Through their engagement, young people and families are able to develop plans that reflect their goals and aspirations, have access to additional supports to help them achieve success, and have stronger connections to culture, family, and community.

Furthermore, models such as NZ's Iwi Panels should be examined for their applicability to the Queensland setting; An iwi panel is a youth justice process at which a panel of community members, an offender, the offender's family, victim and victim's family discuss the offence committed, address harm caused and develop a plan that addresses factors related to the offending and help get the young person on a more positive life trajectory. Evaluations of the program shown they are effective in meeting their objectives.[19]

[16] ALRC, 2018; Royal Commission into the Protection and Detention of Children in the Northern Territory,2017; Atkinson, 2019
[17] Atkinson 2019; ALRC, 2018; Higgins & Davis, 2014
[18] Atkinson, 2018
[19] Akroyd et al, 2016

- **Implement a range of preventative initiatives that address the core factors for youth offending and increase safety for the whole community.**

  This includes increasing investment in Aboriginal and Torres Strait Islander healing, family wellbeing, youth leadership, and youth services. The Lighthouse model operated by the Townsville Aboriginal and Islander Health Service (TAIHS) is an example of an innovative, community led approach to youth offending that has been successful in engaging children and young people.[20] Expanding and improving the current restorative justice processes offered to children and young people is another opportunity in terms of replacing current statutory youth justice responses.

  Whilst recent research suggests the current delivery of restorative justice services may not improve recidivism rates, it should be noted that this study was based on the current of restorative youth justice being delivered via government as opposed to the community sector.[21] In New Zealand, where restorative justice processes have been used with young people for over 20 years and often deal with Maori offenders through Maori customs, evidence reveals it has been effective response for all children in reducing reoffending.[22]

  In 2005, Daniel Van Ness (Director of the Centre for Justice and Reconciliation at Prison Fellowship International) described the evolution of restorative justice in the following way:

  > *"Restorative justice is both a new and an old concept. While the modern articulation (including the name) has emerged in the past 30 years, the underlying philosophy and ethos resonate with those of ancient processes of conflict resolution. The recent rediscovery of those processes in different parts of the world has stimulated, informed and enriched the development of restorative practices."*[23]

- **Investigate the implementation of a Justice Reinvestment approach to juvenile justice issues in Queensland**.

  Key features of the Justice reinvestment model include its focus on early intervention and community-led, place-based approaches, which has been identified as particular relevant in terms of reducing the over-imprisonment of Aboriginal and Torres Strait Islander peoples[24]
  A KPMG impact assessment on the Maranguka Justice Reinvestment project in Bourke found that the project had resulted in significant improvements in community safety, including a 38 percent reduction across the top five juvenile offence categories[25].

  KPMG estimates that the Maranguka Justice Reinvestment project's operation in 2017 had a financial impact of around $3.1 million in savings to the justice system and benefits to the broader local economy; this amount was five times the amount of money invested in the program in the same year.[26]

  In QLD communities, a project initiated in Cherbourg in April 2017 by the Department of Justice and Attorney General (DJAG) (Youth Justice) represents the first time there has been an attempt to implement all stages of JR model in QLD. A community consultation report found that nearly three quarters of community members indicated support for introduction of justice reinvestment in Cherbourg; key to the model's appeal was its focus on improving the lives of younger community

[20] O'Reilly et al, 2019
[21] Little et al, 2018
[22] New Zealand Government. 2016; Carruthers, 2012
[23] As quoted in Carruthers, 2012 (2)
[24] ALRC, 2018; Dodson, 1996.
[25] KPMG, 2018
[26] KPMG, 2018

members and the benefit it would bring to the community as a whole. Unfortunately, after a promising start this project seems to have stalled at implementation.[27]

Conclusion

It is unjust that the devastating outcomes of colonisation and the resulting disconnection, trauma and disadvantage for Aboriginal and Torres Strait Islander peoples which include high levels of contact with police and justice systems, continue to have profoundly negative impacts on our children and young people. This has led to Aboriginal and Torres Strait Islander people experiencing significant levels of ongoing trauma that has a cumulative effect across generations. Forced removal of children from their families, culture and country continues to be a significant driver of this.

QATSICPP supports raising the MACR to 14 years of age because this would fundamentally shift the focus from addressing children's behaviour through judicial processes, supervision and detention to instead meeting the needs underlying their behaviour through community led care, support and healing.

Continued early contact with the youth justice system is significantly disadvantaging many Aboriginal and Torres Strait young people, consigning them at young ages to a criminal identity, detaining them in youth detention facilities from 10 upwards for petty crimes and damaging their family and community ties.[28] This is contributing to the cycle of trauma and disadvantage for future generations. A significant change such as raising the MACR gives us an opportunity to introduce a new way of approaching and addressing trauma based behaviours that is more flexible and sustainable and can halt the impact of intergenerational distress.

The significant systemic change as outlined in the Bill also represents a crucial step forward for the kind of change that would better enable Queensland meeting its youth justice commitments in the Closing the Gap agreement. However, QATSICPP believes that without further development of and sufficient investment in culturally sound, community-based responses to intergenerational trauma impacts, raising the criminal age will have minimal long-term benefit for Aboriginal and Torres Strait Islander children and young people, as the root causes of their offending will not be attended to in an effective way.

Contact Details

Please contact Mr Garth Morgan, CEO, about this submission on 07 3153 7787 or via email garthmorgan@qatsicpp.com.au

[27] Allison, 2018
[28] House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 2011: QFCC, 2021

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Child Protection Peak Limited

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