



PeakCare
Queensland Inc.

Submission to the

Community Support and Services Committee

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

30 November 2021

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INTRODUCTION

PeakCare Queensland Incorporated (PeakCare) welcomes the opportunity to provide information in response to the *Queensland Parliament's Community Support and Services Committee's* invitation calling for submissions in response to the Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021.

ABOUT PEAKCARE

PeakCare is a not-for-profit peak body for child and family services in Queensland, providing an independent and impartial voice representing and promoting matters of interest to the non-government sector.

Across Queensland, PeakCare has more than 50 member organisations which include small, medium and large, local and state-wide non-government organisations which provide prevention and early intervention, generic, targeted, and intensive family support to children, young people, adults and families. Member organisations also provide child protection services, foster and kinship care and residential care services for children and young people and their families who are at risk of entry to, or who are in the statutory child protection system.

A network of registered supporters also subscribes to PeakCare. Supporters include individuals with an interest in child protection and related services, and who are supportive of PeakCare's policy platform around the rights and entitlements of children, young people and their families to safety, wellbeing and equitable access to life opportunities.

ABOUT PEAKCARE'S SUBMISSION

Given the overlap of children and young people at risk of entry to, or in the youth justice system, with those engaged with the child protection system, PeakCare has a strong interest in matters that intersect with youth justice and the treatment of children and young people who interact with the criminal justice system.

Central to PeakCare's submission is our strongly held support for raising the age of criminal responsibility in Queensland to 14 years of age. We further contend there is a critical need to shift the model for children who offend from the current reactive and punitive criminal justice approach to an alternative model based on early identification of problematic behaviours and proactive therapeutic intervention and supports involving the child, their family, and community. It is PeakCare's view that the current minimum age of 10 does not effectively support the needs of existing or potential future victims of youth offending and placing young children in detention increases their risk of being harmed, intimidated, and/or influenced by older young people who may have more entrenched and seriously problematic behaviours, thereby deleteriously impacting objectives of promoting community safety from crime.

There is overwhelming evidence affirming the individual, economic, social and community benefits of raising the age of criminal responsibility to 14 years of age. This includes:

- upholding the human rights and entitlements of children in Queensland supported by a position from the United Nations Committee overseeing implementation of the Convention on the Rights of the Child that States should set a minimum age of criminal responsibility that is no lower than 14 years of age
- comprehensive medical and neuroscientific evidence demonstrating children under the age of 14 are still undergoing significant growth and neurocognitive development which limits their ability to plan and control their behaviours and foresee the consequences of their actions. It also increases their risk of impulsive and thrill-seeking behaviours evidenced by the predominating opportunistic nature of their offending which is often committed in company with, or influenced by peers and/or older siblings
- recommendations from the 2018 *Report on Youth Justice* prepared by Bob Atkinson AO, APM (Atkinson Report) and *Royal Commission into the Protection and Detention of Children in the Northern Territory* (NT Royal Commission) supporting the minimum age of criminal responsibility being raised¹
- evidence supporting the link between early contact with the criminal justice system and the increased likelihood of poorer outcomes and future recidivist offending for children who are already significantly more likely to have experienced child abuse and neglect, mental illness, alcohol and drug abuse, homelessness, disengagement from education, and themselves having been the victim of violence and criminal offences often far greater in seriousness than the offences they have allegedly committed
- the views and needs of victims of child offending which are focused on ensuring it does not happen again, either to themselves or their community, with evidence demonstrating more positive outcomes in reducing reoffending behaviours through participative initiatives such as restorative justice programs
- ongoing significant overrepresentation of Aboriginal and Torres Strait Islander children in youth detention with the Australian Institute of Health and Welfare (AIHW) recently reporting Queensland as having the highest proportion of Aboriginal and Torres Strait Islander children aged 10-13 in detention of all Australian States and Territories (an average of 84 percent of children aged 10-13 per day in 2019-20 identified as indigenous)
- limited capacity for children under 14 years of age to be able to effectively participate and show cause for their release from detention in response to recent legislative changes which created a presumption against bail for children charged with a prescribed indictable offence
- progress by other Australian States and Territories to raise the age of criminal responsibility to 14 years of age including the Australian Capital Territory and Victoria.

PeakCare wishes to acknowledge the positive steps taken by the Queensland Government through the *Working Together Changing the Story: Youth Justice Strategy 2019-23* and the dedication and commitment of youth justice staff and service partners in reducing the number of children who are coming to police attention. We consider the proposal to raise the minimum age of criminal responsibility an important element of this broader reform work which can tangibly deliver on priority youth justice strategy outcomes

¹ It should be noted that while both reports recommended raising the minimum age of criminal responsibility to 12 years of age, the recommendations were based on the United Nations Convention on the Rights of the Child, supplemented by the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) which (at the time of both reports) recommended 12 as the minimum age. The UN has since revised the recommended minimum age to at least 14 years of age (UN General Comment No. 24 (2019) which replaced General Comment No. 10 (2007): Children's rights in juvenile justice).

including reducing the number of children in detention, reducing the number of children entering detention for the first time, and reducing the overrepresentation of Aboriginal and Torres Strait Islander children in detention.

In support of the proposal to raise the age of criminal responsibility to 14 years of age, we have summarised our consideration of the key elements of the Bill below for the Committee's attention.

PEAKCARE'S RESPONSE TO THE PROPOSED BILL

Raising the age of criminal responsibility to 14 years of age

PeakCare strongly supports the proposed amendment to the Criminal Code and *Youth Justice Act 1992* (Qld) to raise the age of criminal responsibility to 14 years of age. We acknowledge and support the concerns highlighted in the Bill's explanatory notes on the inconsistent application and limited barrier to prosecution of children provided by *doli incapax* and believe a clear minimum age of criminal responsibility set at 14 years of age reflects a State which is committed to upholding the human rights and entitlements of children in an evidence-informed manner.

Transitional arrangements for children on orders, in custody or detention

While PeakCare supports the timely transition of children who are either on orders, in custody or in detention for offences committed (or alleged to have been committed) where they were under 14 years of age at the time of the offence, there is a need to ensure appropriate services and supports are in place for these children. This includes ensuring the participation of their families and communities in planning for and facilitating transition arrangements and the provision of therapeutic supports to children who are at risk of re-engagement with the youth justice system. PeakCare recommends any transition arrangements are developed in consultation and partnership with relevant peak bodies, service organisations and importantly include and reflect the voices of children and young people with lived experience of the youth justice system. Without appropriate and effective transition planning, there is a risk of further traumatising children who already face significant disadvantage and/or recidivist offending by children who are not appropriately supported with community-based diversionary and therapeutic interventions to address their problematic behaviours.

Expungement of criminal history

PeakCare supports the proposed retrospective expungement of criminal history records where any child had a finding of guilt made against them relating to an offence committed while they were under 14 years of age.

Concluding remarks

PeakCare is mindful the recent media discourse on youth offending may give rise to concerns that raising the age of criminal responsibility is seen as being soft on crime. As a supporter of the National Raising the Age Campaign, PeakCare has experienced firsthand the extreme and vitriolic views that a small minority hold in relation to raising the age of criminal responsibility. In July 2021, we wrote to all Australian State and Territory Attorneys-General sharing our concerns with the profoundly disturbing reactions from very small pockets of the community in relation to the treatment of children who have offended.² We now appeal to this Committee to ensure that whatever the outcome of the inquiry into this proposed Bill, a clear stance is made that the Committee's recommendations are not driven by or intended to appease the views of the radical minority who espouse these views.

It is PeakCare's belief that Queenslanders want appropriately considered laws that are informed by evidence and strive to uphold the human rights and entitlement of all members of the community, including importantly the future of our communities – our children. PeakCare strongly encourages the Committee when considering the proposed Bill to look at the overwhelming evidence which supports the age being raised to 14 and the paucity of credible evidence supporting it being retained at 10. If the Committee does recommend the age of criminal responsibility be retained at its current level, we respectfully ask that the Committee in its report to Parliament details the contemporary peer-reviewed evidence used to inform this position as we have not been able to find any.

Thank you for the opportunity to provide a submission on aspects of the Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021.

Yours sincerely,



Lindsay Wegener
Executive Director
PeakCare Queensland Incorporated

² Extract of profoundly disturbing comments from pockets of the community in response to a Facebook post on 'Raising the Age' provided to Attorneys-General in a letter sent by PeakCare on 21 July 2021:

- Before political correctness was a thing (another marxist agenda), we had punishment. If you were 10 and giving lip in the street, or disrespecting somebody, or committing a crime, random strangers would step in to pull you up, and if need be smack you one
- They understand when they get smacked in the face
- Leave the age as it is, or lower it, or bring in Singapore's rattan cane. Then you'd see crime plummet
- Bring back DEATH PENALTY regardless of age
- Since the indigenous youth make up a disproportionate amount of criminal youth perhaps we should be removing them from their parents at birth, what people could object to in that idea?
- Maybe we need another rescued generation?
- I agree but we would need several new jails in every state and a heap in Alice
- Children are like puppies, the only thing they really understand is pain