
THE JUSTICE REFORM INITIATIVE

The Justice Reform Initiative (JRI) is a new national justice advocacy organisation working to reduce over-incarceration in Australia and promote a community in which disadvantage is no longer met with a default criminal justice system response. We are an alliance of people who share long standing professional experience, lived experience and/or expert knowledge of the justice system, who are further supported by a movement of Australians of good-will from across the country who all believe jailing is failing. We currently have a network of over 100 eminent Australians as our patrons, including two former Governors-General, a number of former High Court judges, current and former public prosecutors, and multiple former parliamentarians from all sides of politics. A full list of our Queensland patrons is noted below and more about our patrons and work can be viewed on our website www.justicereforminitiative.org.au

Contact: Mindy Sotiri, Executive Director, Justice Reform Initiative
mindy@justicereforminitiative.org.au, 0401940340

THE NEED TO RAISE THE MINIMUM AGE OF CRIMINAL RESPONSIBILITY TO 14

The Justice Reform Initiative recognises the need for multiple legislative and policy, social, health, and human service reforms to be enacted, so that historically over-incarcerated and disadvantaged populations have opportunities to thrive in the community. Raising the minimum age of criminal responsibility (MACR) to 14 is one of the key priority reform areas for the Justice Reform Initiative and we welcome the opportunity to make a submission to the Community Support and Services Committee in response to the 'Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021 (Bill)' introduced into Queensland Parliament in September.

The evidence is clear that 14 is the **minimum** age, developmentally and neurologically, that children could or should be held criminally responsible (see Farmer, 2011; Cunneen, 2017; Australian Medical Association, 2019). There are in fact compelling developmental arguments to suggest this age should be higher. The United Nations Committee on the Rights of the Child has pointed to developments and neuroscientific evidence that shows adolescent brains continue to mature beyond teenage years and has therefore 'commend[ed] States Parties to have an even higher minimum age, for instance 15 or 16 years' (2019: [22]).

The consequences of imprisoning young children extend well beyond the futility of this in terms of what we know about children's developmental capacity. The younger the age of a child when they come into the justice system, the greater the likelihood they will go on to re-offend. The experience of youth detention is one of the key predictors of longer term justice system involvement. The AIHW (2021) notes that over the course of a year in Queensland there are approximately 145 children under the age of 14 incarcerated. More than half of all children in detention are Aboriginal and Torres Strait Islander. The Justice Reform Initiative believes there is an urgent need to change the way in which children are 'criminalised' and managed in justice system settings, and instead build communities, supports and service

systems in which all children can receive the support, care, love, and access to education and opportunity that all children require in order to thrive.

JRI is of the view that there should **not** be any exceptions on the MACR, on the basis of the 'type' or severity of the offence or behaviours. The frame around which decision-making should be made, with regard to the minimum age should be medical and developmental – not political. If a child is not able to be held criminally responsible for offences that might be considered 'less serious' (for instance, shoplifting), then there is no reason why they could be held criminally responsible for more serious offences. This is especially the case for offences that require specific intent, for example, the requirement for murder that the person intended to cause the person's death or cause serious harm to the person.

FOCUSING ON THE EVIDENCE: WHY THE OPERATIONAL AND POLITICAL CHALLENGES OF RAISING THE AGE TO 14 SHOULD NOT GET IN THE WAY OF COMMITTING TO THE PRINCIPLE

We are keen to promote a decision-making environment in QLD in which the framework for this important policy and legislative decision is driven by medical evidence, rather than any political challenges associated with legislative reform. To this end we encourage the committee to use the clearly available evidentiary framework for decision making around the principle of raising the age to 14, so that this is the starting point for the development of the necessary service framework.

There is a need in Queensland to develop an alternative service delivery and support framework for children and young people who have historically been dealt with in the youth justice system. Although there are certainly challenges with regard to making this change, and gaps in service delivery that need to be responded to, we believe (and have observed in other jurisdictions internationally, and more recently locally in the ACT) that these issues are resolvable. As no doubt you would be aware, the report in relation to implementation in the ACT can be found at:

https://hdp-au-prod-app-act-yoursay-files.s3.ap-southeast-2.amazonaws.com/2716/3428/0940/Independent_Review_-_Final_Report.PDF

We believe that once the principled decision to raise the age to 14 has been made, then the QLD government will have the opportunity to draw on a wealth of experts (including First Nations led organisations, medical experts, community sector service delivery experts, researchers and advocates) to assist in the thoughtful development of an alternative multi-agency response to children between the ages of 10 and 13.

To this end, we suggest that committee recommend that the Queensland Government:

1. Make a public commitment to raising the age of criminal responsibility to 14 (based on the available medical evidence)
2. Make a concurrent commitment to oversee a comprehensive review process of the youth service and youth justice systems with the view of ensuring a gaps and needs analysis is carried out, prior to the development of a road-map for implementation and subsequent legislation.

This approach replicates the model used by the ACT government. It is clear that lack of confidence in the existing service system to cope with the changes required if the minimum age of criminal responsibility is raised to 14 is a legitimate concern. However, the implementation and operational challenges should – and can - be addressed separately from the overarching principle of the need to raise the age of criminal responsibility to 14, based on well documented medical evidence.

QUEENSLAND PATRONS

Our current Queensland Patrons are set out below:

In alphabetical order:

- The Honourable Mike Ahern AO, former Premier of Queensland, businessman and founder of the Queensland Community Foundation.
- Sallyanne Atkinson AO, former Lord Mayor of Brisbane, businesswoman and Trade Commissioner
- Professor Kerry Carrington, Head of the School of Justice, Queensland University of Technology
- Mick Gooda, former Aboriginal and Torres Strait Islander Social Justice Commissioner and former Royal Commissioner into the Detention of Children in the Northern Territory
- Keith Hamburger AM, former Director-General, Queensland Corrective Services Commission
- Professor Emeritus Ross Homel, AO, Foundation Professor of Criminology and Criminal Justice, Griffith University
- Professor Elena Marchetti, Griffith Law School, Griffith University
- The Honourable Margaret McMurdo AC, former President Court of Appeal Supreme Court of Queensland and Commissioner of the Victorian Royal Commission into the Management of Police Informants
- Dr Mark Rallings, former Commissioner, Queensland Corrective Services
- Greg Vickery AO, Former President Queensland Law Society and former Chair of the Standing Commission of the International Red Cross and Red Crescent Movement
- The Honourable Deane Wells, former Attorney General of Queensland
- The Honourable Margaret White AO, former Judge of the Queensland Supreme Court and Queensland Court of Appeal, former Royal Commissioner into the Detention of Children in the Northern Territory, and Adjunct Professor TC Berne School of Law UQ.

REFERENCES

Australian Institute of Health and Welfare (2021). *Youth Justice in Australia, 2019-20*. Canberra.

Australian Medical Association (2019). *AMA submission to the Council of Attorneys-General – Age of Criminal Responsibility Working Group Review*.

Cunneen C (2017). *Arguments for Raising the Minimum Age of Criminal Responsibility*. Comparative Youth Penalty Project. Sydney: University of New South Wales. <http://cypp.unsw.edu.au/node/146>.

Cunneen C, Russell S & Schwartz M (2021). Principles in diversion of Aboriginal and Torres Strait Islander young people from the criminal jurisdiction, *Current Issues in Criminal Justice*, 33: 170-190.

Farmer E (2011). The age of criminal responsibility: Developmental science and human rights perspectives, *Journal of Children's Services*, 6: 86-95.

JRI (2021). *Jailing is Failing*. <https://www.justicereforminitiative.org.au>.

United Nation Convention on the Rights of the Child (2019). *General Comment No. 24 (2019) on Children's Rights in the Child Justice System*.