

Children in Care Collective

Submission



The Children in Care Collective (the Collective) welcomes the opportunity to make a submission to the Community Support and Services Committee of the Queensland Parliament in its consideration of the Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021 (the Bill).

INTRODUCTION

The Children in Care Collective was formed in 2016 by a group of out-of-home care service providers and leading experts in working with children with complex needs in out-of-home care.

The aim of the Collective is to share experience, discuss best practice informed by research, provide advocacy and learn from policy and practitioner experts in out-of-home care. The Collective seeks to address solutions to difficult systemic practice issues faced by the sector and to improve outcomes for children and young people with complex needs living in out-of-home care. The Collective's website is at <http://childrenincarecollective.com.au/>.

The Collective is making this submission because its work focuses on children with complex needs in out-of-home care and all too often these children and young people are over-represented in the juvenile justice systems of all states and territories in Australia. The Collective wishes to contribute to the discussion about the importance of raising the age of criminal responsibility as one way in which we can prevent children moving from the care system into the criminal justice system.

This submission does not seek to replicate individual agency submissions, but rather to draw on the experience of the Collective to address some of the broad issues relevant to determining the minimum age of criminal responsibility in Australia, and in particular the Bill before the committee in Queensland.

COMMENTS

The Collective supports raising the minimum age of criminal responsibility in Queensland to 14 years, without exceptions or carve outs.

The change would bring Queensland into line with the recommendation of the United Nations Committee on the Rights of the Child in its 2019 General Comment 24. The Committee, having considered extensive evidence and submissions, called on all States to raise the minimum age of criminal responsibility to at least 14 years.¹

The recent decision of the Meeting of Attorneys General 'to support developing 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 supports' is in the view of the Collective an inadequate response to the issue, it not being based on contemporary understandings of children's development or on international standards.

¹ Committee on the Rights of the Child. General Comment No. 24 (2019), replacing General Comment No. 10 (2007): Children's rights in juvenile justice. 2019. <https://www.ohchr.org/Documents/HRBodies/CRC/GC24/GeneralComment24.pdf>.

It is worth noting that the median minimum age of criminal responsibility in some 86 countries in the world is 14 years. As Professor Cunneen argues:

International comparisons by themselves do not provide an argument for increasing the minimum age in Australia. However, they do clearly demonstrate the feasibility of raising the age, and doing so without adverse effects on crime rates. Indeed, many of the countries identified above also have low incarceration rates for older juveniles who are subject to criminal law, for example Germany and Norway (see Jesuit Social Services 2017), suggesting the absence of a younger cohort of children who would otherwise have become entrenched in the system through re-offending and the accumulation of a prior offending history, and less punitive approaches to juvenile justice generally.²

WHAT WE KNOW ABOUT JUVENILE CRIME AND CHILDREN IN CARE IN AUSTRALIA

The most recent national statistics about juvenile crime and its nexus with children known to child protection services were collated and published by the Australian Institute for Health and Welfare (AIHW). Its report '*Young people under youth justice supervision and in child protection 2018-2019*' is based on the seven jurisdictions with data included in both the youth justice and child protection national minimum data sets (NMDS).³ New South Wales was excluded from the analysis because it does not provide AIHW with standard child protection NMDS data.⁴

AIHW notes that as years of data accumulate, it will be possible to expand on the current set of analyses and areas of interest, including health and welfare.

AIHW Data

AIHW reported that children and young people who have been abused or neglected are at greater risk of engaging in criminal activity and of entering the youth justice system, confirming what is well known and researched. Of particular relevance to the cross over between out-of-home care and juvenile justice, in its 2020 report AIHW reported that:

- more than 1 in 2 children (54%) under youth justice supervision had also received child protection services in the five years from 1 June 2014 – 30 July 2019. Sixty-one per cent of Indigenous children and 71 per cent of females had received child protection services
- about one-third of youth justice-involved young people were the subject of a substantiated notification for abuse or neglect
- approximately a quarter of those children in detention in 2018-2019 had been in out-of-home care in the five years from 1 June 2014 – 30 July 2019. Of these, 84 per cent (more than 4 in 5) had been in residential care
- of those in detention who had been in out-of-home care, 44 per cent had unstable care experiences of five or more placements

² Cunneen, C. (2017) *Arguments for Raising the Minimum Age of Criminal Responsibility*, Research Report, Comparative Youth Penalty Project, University of New South Wales, Sydney. Available at <http://cyp.unsw.edu.au/node/146>

³ Australian Institute of Health and Welfare 2020, *Young people under youth justice supervision and in child protection 2018–19*. Data linkage series no. 26. Cat. no. CSI 28. Canberra: AIHW (available online at <https://www.aihw.gov.au/getmedia/8442b61a-f3b9-4741-a5d7-75023cb0cd19/aihw-csi-28.pdf.aspx?inline=true>) p1

⁴ New South Wales provides aggregated child protection data rather than unit record child protection NMDS

- the younger a person was when they entered youth justice, the more likely they were to have also received child protection services. Over 7 in 10 (71%) young people aged 10 to 13 at their first contact with youth justice supervision had received child protection services in the 5-year period.

The standout messages are that those involved in the youth justice system at a very young age (10-13 years) are very likely to have had child protection involvement. For those children with out-of-home care experiences, residential care and/or placement instability are closely correlated, rather than causally linked, with youth justice involvement. There is a further close correlation between those children with less desirable experiences of out-of-home care and children with complex needs and significant trauma histories. These overlapping experiences are confirmed in the *'2015 Young People in Custody Health Survey: Full Report'* by the Justice Health & Forensic Mental Health Network and Juvenile Justice NSW⁵

2015 Young People in Custody Health Survey

The *Young People in Custody Health Survey* was conducted between September and December 2015 across seven Juvenile Justice Centres in New South Wales, within the time frame of the child protection data used by AIHW in the report referred to above. A total of 227 young people participated in the survey. The survey confirms that:

young people in custody come from highly disadvantaged backgrounds, with family disruption and experiences of trauma, neglect and abuse commonplace and levels of education low.⁶

In commenting on the very high levels of childhood abuse and the impact of trauma, the report concludes that:

The experience of abuse, trauma or neglect during childhood may disrupt a child's developmental pathway, resulting in pervasive and long-lasting outcomes which may adversely affect various aspects of functioning. The evidence suggests a relationship between childhood trauma and poor emotional and mental health, and the development of antisocial behavioural problems such as aggression, juvenile delinquency, adult criminality, abusive or violent behaviour.⁷

Since research confirms that the younger a child is when they first have contact with juvenile justice the more likely they will become entrenched in the system (see Cunneen 2017 for citations), there is a strong argument for considering how best to respond to the needs of these young people in the community, rather than in the justice system.

It is worth highlighting here that the most common first offence type committed by young people in this study was graffiti, at 11.8 years of age.

Offending among young people in contact with the out-of-home care system

'Offending Among Young People in Contact with the Out-of-Home Care System' is a report from the Pathways of Care Longitudinal Study of children and young people aged 0-17 years in out-of-home care

⁵ Justice Health & Forensic Mental Health Network and Juvenile Justice NSW 2017, *2015 Young People in Custody Health Survey: Full Report*. Justice Health NSW

⁶ Justice Health & Forensic Mental Health Network and Juvenile Justice NSW 2017, *2015 Young People in Custody Health Survey: Full Report*. Justice Health NSW. pxvii

⁷ Justice Health & Forensic Mental Health Network and Juvenile Justice NSW 2017, *2015 Young People in Custody Health Survey: Full Report*. Justice Health NSW. P95

in New South Wales.⁸ The analyses in this study are based on Department of Communities and Justice administrative data and linked offending data as at January 2018.

A history of neglect or risk behaviour (e.g., drug and alcohol misuse) was found to be the most significant predictor of first-time offending. The study also found that a longer stay in out-of-home care was significantly related to a decreased risk of offending, indicating the importance of stability and safety for vulnerable young people.

THE BEST INTERESTS OF THE CHILD

Article 3, paragraph 1, of the Convention on the Rights of the Child gives the child ‘the right to have his or her best interests assessed and taken into account as a primary consideration in all actions or decisions that concern him or her, both in the public and private sphere’.⁹

There is significant medical evidence confirming the limited reasoning abilities, impulse control and ability to understand the consequences of their actions of children and young adolescents.¹⁰ For this reason, taking into account their best interests, children under the age of 14 years in Australia are not considered competent to consent to health care or drive a car and even have to wait until 13 years before they can legally operate a social media account.

Children in the child protections system, particularly out-of-home care, have the same risk factors as those involved in the criminal justice system. The need of these children for care and protection rather than criminalisation is ironically shown by the positive effect of being taken into care into stable and safe family environments. This is not to argue for increased rates of children being placed in out-of-home care, but a recognition that the best interests of vulnerable children up to the age of 14 years, who do not have the capacity to otherwise respond, are not served by criminalising them for behaviours that are commonly responses to prior trauma.

The Collective understands that the Bill does not reflect current Queensland Government policy. However, the raising the minimum age of criminal responsibility to 14 years, would be entirely consistent with the best interests of children as expressed in the four Pillars of the current Youth Justice Strategy Action Plan 2019-2021:

- Intervene early
- Keep children out of court
- Keep children out of custody
- Reduce re-offending.

Raising the minimum age would provide an opportunity to consider more effective responses to meeting children’s needs in the community, including addressing the overrepresentation of Aboriginal and Torres Strait Islander children in the justice system, both juvenile and adult.

⁸ Zhou, A. (2020). *Offending Among Young People in Contact with the Out-of-Home Care System*. Pathways of Care Longitudinal Study: Outcomes of Children and Young People in Out-of-Home Care. Research Report Number 18. Sydney. NSW Department of Communities and Justice.

⁹ Committee on the Rights of the Children General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration

¹⁰ Romer D. Adolescent risk taking, impulsivity, and brain development: Implications for prevention. *Developmental Psychobiology: The Journal of the International Society for Developmental Psychobiology* 2010; 52: 263–76.

The Children in Care Collective commends the work done by the ACT Government in planning to implement its commitment to raising the minimum age. Of particular relevance to the work of the Community Support and Services Committee is the service system review by Emeritus Professor Morag McArthur commissioned by the ACT Government. The Children in Care Collective endorses the clearly stated societal and individual benefits set out in the report.

Raising the age of criminal responsibility provides a real opportunity to build the capacity of the formal and informal systems (of family and community) to focus on ‘promoting secure, safe, and stable human relations, education, and housing, as well as offering appropriate and timely individual, family, and systemic support across an integrated policy and service framework’ (Dowse et al., 2014, p. 182). Intervening early can not only change the trajectories away from the criminal justice system but can improve the key domains of a child’s life, leading to individual and community benefits. The ultimate outcome of raising the age of criminal responsibility is to identify and respond to the individual context of children with complex needs, to reduce and avoid harmful behaviour and to support them on positive pathways.¹¹

While the service specific elements of the report relate only to the ACT, the Collective believes that most of the key themes are entirely relevant to the Queensland context, being:

- Children who offend or who are at risk of offending have complex needs
- Implementing a strong narrative to communicate the changes
- A therapeutic response to meet children’s complex needs
- The need for strong systems for early help and support
- Improved integration of service responses to need
- A self-determined Aboriginal and Torres Strait Islander response.

FURTHER QUERIES

If there are any further queries about this submission, please direct them to me at Rob.Ryan@lwb.org.au or on 0407 626 625.

Yours sincerely



Rob Ryan
Chair
Children in Care Collective
29 November 2021

On behalf of the Children in Care Collective:

Allambi Care; Anglicare NSW South | NSW West | ACT; Anglicare Sydney; CareSouth; Key Assets; Life Without Barriers; Mackillop Family Services; Marist180; Settlement Services International; Institute of Child Protection Studies (ICPS) - Australian Catholic University; Australian Centre for Child Protection (ACCP) - University of South Australia.

¹¹ McArthur M, Suomi A, Kendall B. (2021) *Review of the service system and implementation requirements for raising the minimum age of criminal responsibility in the Australian Capital Territory Final Report*, Curijo and ANU [available online at https://hdp-au-prod-app-act-yoursay-files.s3.ap-southeast-2.amazonaws.com/2716/3428/0940/Independent_Review_-_Final_Report.PDF]