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29 November 2021

Community Support and Services Committee
Parliament House
George Street
Brisbane Qld 4000

By email: CSSC@parliament.qld.gov.au

Dear Community Support and Services Committee,

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

We thank the Community Support and Services Committee for the opportunity to make a submission on the Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021 ("the Bill").

We have no concerns about our submission being published.

About knowmore

knowmore is a national, free and independent community legal centre providing legal information, advice, representation and referrals, education and systemic advocacy for victims and survivors of child abuse, including institutional child sexual abuse.

Our service was established in 2013 as to assist people who were engaging with or considering engaging with the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission). Since 1 July 2018, knowmore has been funded by the

Australian Government¹ to deliver legal support services to assist survivors of institutional child sexual abuse to access their redress options, including under the National Redress Scheme.

Our clients in Queensland

knowmore has a significant client base in Queensland— 30% per cent of our current clients reside in the state.² Many of these clients were sexually abused as children while in care settings, including detention. We therefore have a strong interest in reforms to Queensland's child protection and youth justice systems and its youth detention practices.

knowmore's overall position

knowmore strongly supports the objectives of the Bill to raise the minimum age of criminal responsibility in Queensland from 10 to 14 years old and to transfer any children under 14 years old out of custody.

The Royal Commission found that youth detention continues to be a high-risk setting for child sexual abuse and that child sexual abuse in a youth detention environment can have significant, life-long impacts for survivors.³ Additionally, children in youth detention frequently have complex needs and histories of abuse, neglect and other trauma that increase their vulnerability to sexual and other abuse while in detention.⁴ knowmore therefore welcomes any reforms that will help to keep children out of detention wherever possible. Additionally, knowmore is of the view that the proposed reforms are necessary to redress the over-representation of Aboriginal and/or Torres Strait Islander children in Queensland's detention environments, as well as to bring Australia in line with international human rights standards.

In considering the proposed reforms, knowmore has reflected closely on key findings and recommendations from the Royal Commission, in addition to its own work with survivors of child sexual abuse, many of whom were abused in detention. knowmore previously made a submission to the Working Group of the Council of Attorneys-General on the importance of keeping children out of detention, and raising the minimum age of criminal responsibility to

¹ Represented by the Attorney-General's Department and the Department of Social Services, knowmore also receives funding to deliver financial counselling services to people participating in the NRS, and to work with other services in the NRS support network to support and build their capability.

² As at 31 October 2021. See knowmore, [National infographic October 2021](#).

³ Royal Commission, Final Report: Volume 15, Contemporary detention environments.

⁴ Ibid.

14 years.⁵ We reiterate some of the key points from that submission below and expand on the relevance of this issue to Queensland.

We encourage the Committee to make a recommendation that this Bill be passed. In the alternative, knowmore recommends that the Committee make a recommendation encouraging the Queensland Government to introduce a minimum age of detention of 14 years. In passing this Bill, Queensland would lead Australia in this critical area of reform to improve the youth justice system, benefiting both the community and Australia's children.

The Minimum Age of Criminal Responsibility

Recent developments and the Queensland context

As the Committee will know, the raising of the minimum age for criminal responsibility has been an issue of significant consideration and debate in recent times. The communiqué from the Meeting of the Australian Attorneys-General held on 12 November 2021 stated the following with regard to the age of criminal responsibility:

*State Attorneys-General supported development of 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 requirements. The Northern Territory has committed to raising the age to 12, and will continue to work on reforms including adequate and effective diversion programs and services. The Australian Capital Territory has also committed to raising the age, and is working on its own reforms.*⁶

This statement has since been widely criticised by human rights groups, legal bodies and other stakeholders who represent children's interests, who maintain the view that this proposal does not go far enough to protect children and meet Australia's human rights obligations.⁷ While knowmore acknowledges that the development of such a proposal would be an improvement from the current position nationally and in Queensland, the evidence demonstrates that raising the minimum age of criminal responsibility to 12 would be inadequate and ineffectual.

The Australian Institute of Health and Welfare in its *Youth justice in Australia 2019-20* report released figures on young people in detention in Australia during 2019–20, because of their

⁵ knowmore, [Review of the age of criminal responsibility](#), Submission to the Working Group of the Council of Attorneys-General, 28 February 2020.

⁶ 12 November 2021, [Meeting of Attorneys-General \(MAG\) communiqué](#), published 15 November 2021.

⁷ See for example: Australian Human Rights Commission [Media Release: Proposal to raise the age does not go far enough](#).

involvement or alleged involvement in crime. An analysis of this data provides that across Australia 43 children aged between 10- 11 were in youth detention, whereas 456 children aged 12 and 13 were in youth detention.⁸ Specific to Queensland, there were 14 children aged between 10- 11 in youth detention, whereas 131 children aged 12 and 13 were in youth detention.⁹

Accordingly, while raising the minimum age of criminal responsibility to 12 would be a welcome improvement, the data evidences that for meaningful change to be achieved, the minimum age of criminal responsibility must be raised above 12 years of age. Additionally, a jurisdictional comparison of this data provides that:

- Queensland had the largest number of young people in detention aged 10-11.¹⁰
- Queensland had the largest number of young people in detention aged 12.¹¹
- Queensland had the second largest number of young people in detention aged 13.¹²
- Queensland had the largest number of Indigenous children aged between 10–13 years old in detention.¹³
- Queensland had the largest number of Aboriginal and/or Torres Strait Islander children aged between 14–17 years old in detention.¹⁴
- In Queensland, 63.54% of young people aged 10–17 in detention identified as Aboriginal and/or Torres Strait Islander, despite the 2016 Census reporting that only 4.0% of Queensland residents identified as being Aboriginal and/or Torres Strait Islander.¹⁵ On this point, the March 2021 report by the Queensland Family and Child Commission found that the data on over-representation of Aboriginal and Torres Strait Islander children in the youth justice system *“continues to show there is an insufficient response to the needs of Aboriginal and Torres Strait Islander children*

⁸ Australian Institute of Health and Welfare, Youth justice in Australia 2019-20 (28 May 2021), table S74b: *young people in detention during the year by age, states and territories, 2019–20*. Note: This figure does not include data from Tasmania or the ACT for the ages of 13 and 14 years old due to either small numbers, confidentiality, and/or reliability concerns.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid. Western Australia had the largest number of young people in detention aged 13, surpassing Queensland by 6 children.

¹³ Ibid table S76b: Young people aged 10–17 in detention during the year by sex and Indigenous status, states and territories, 2019–20.

¹⁴ Ibid.

¹⁵ Ibid. 35.76% identified as non-Indigenous and 0.7% were ‘not stated’; Queensland Government Statistician’s Office, [Aboriginal and Torres Strait Islander peoples in Queensland, Census 2016](#).

and their families” and that “there has been no improvement to the statistics on over-representation.”¹⁶

These figures demonstrate that a significant and urgent reset of the youth justice system in Queensland is required to redress the high incarceration rates of children and the over-representation of Aboriginal and/or Torres Strait Islander children in Queensland youth detention environments.

The decision by the Attorneys-General to support the development of a proposal to increase the minimum age of criminal responsibility from 10 to 12 indicates the Queensland Government’s commitment to progress positive reform in this area.¹⁷ Additionally, target 11 of the National Agreement on Closing the Gap provides that: *By 2031, reduce the rate of Aboriginal and/or Torres Strait Islander young people (10-17 years) in detention by at least 30%.*¹⁸

Queensland's 2021 Closing the Gap Implementation Plan outlined the Queensland Government’s response to this target and outlined the key priorities to be:

- To intervene early by actively supporting families, children and communities to stem the flow of Aboriginal and Torres Strait Islander children into the Youth Justice system.
- To work in partnership with communities to address the broad economic and social factors leading to offending including poverty and unemployment, and problematic drug and alcohol use.
- To work with community-controlled organisations to deliver services and supports to Aboriginal and Torres Strait Islander young people and their families.
- To ensure criminal justice system interventions address the causes of offending, and support successful reintegration with their families, culture and communities.

¹⁶ [Changing the sentence: Overseeing Queensland’s youth justice reforms](#), Queensland Family and Child Commission, March 2021; The United Nations Special Rapporteur on the rights of Indigenous peoples following her visit to Australia in 2017 stated that, “Aboriginal and Torres Strait Islander children are essentially being punished for being poor and, in most cases, prison will only perpetuate the cycle of violence, intergenerational trauma, poverty and crime.” Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Australia, 8 August 2017, A/HRC/36/46/Add.2, para 76.

¹⁷ The Atkinson, [Report on Youth Justice](#) in Queensland, 2018, also made this recommendation. Recommendation 68 provided: the Government support in principle raising the minimum age of criminal responsibility to 12 years subject to: national agreement and implementation by State and Territory governments, comprehensive impact analysis, establishment of needs based programs and diversions for 8-11 year old children engaged in offending behaviour.

¹⁸ The National Agreement on Closing the Gap, [Closing the Gap Targets and Outcomes](#), target 11.

- To build a culturally responsive justice system which is fair, equitable and accessible for Aboriginal and Torres Strait Islander young people in Queensland.¹⁹

While knowmore supports the implementation of the above measures, in light of the startling data outlined above and by virtue of this Bill being introduced to Parliament and presently before the Committee, knowmore is of the view that the opportunity to achieve meaningful change and deliver on these targets through raising the minimum age of criminal responsibility to 14 is now. We urge the Committee to make a recommendation that this Bill be passed.

Youth detention environments are a high-risk setting for child sexual abuse

The Royal Commission identified youth detention as a common setting for institutional child sexual abuse. Of the 6,875 survivors the Royal Commission heard from in private sessions, 551 (8%) had been sexually abused in youth detention.²⁰ Experiencing child sexual abuse in youth detention was particularly common among Aboriginal and/or Torres Strait Islander survivors (15%),²¹ and survivors who were in adult prisons at the time of participating in their private sessions (33%).²²

Although the Royal Commission heard from relatively fewer survivors who had been abused in contemporary youth detention institutions since 1990 (91 in total),²³ it emphasised and explained why youth detention remains a high-risk setting for institutional child sexual abuse including:

- Key features of youth detention environments — including the significant power imbalance between staff and detained young people, the lack of privacy, and the separation of young people from their family, friends and community — tend to increase the risk of child sexual abuse. The Royal Commission commented that *“youth detention facilities tend to resemble ‘total institutions’. Commissioned research describes total institutions as isolated and enclosed, with their primary purpose to exert near total control over the life of residents.”*²⁴

¹⁹ Queensland's 2021 Closing the Gap Implementation Plan, p 35.

²⁰ Royal Commission, Final Report: Volume 2, Nature and Cause, 2017, Tables 2.12 and A.7.

²¹ This trend is also represented in knowmore's client data. 59.4% of knowmore's clients who experienced child sexual abuse in Queensland detention environments identify as Aboriginal and/or Torres Strait Islander.

²² Royal Commission, Final Report: Volume 5, Private Sessions, 2017, Tables P.13 and S.14.

²³ The Royal Commission stated this was “unsurprising”, given that survivors take 23.9 years on average to disclose child sexual abuse (Final Report: Volume 15, Contemporary Detention Environments, 2017, p. 26, 77).

²⁴ Royal Commission, Final Report: Volume 6, Making institutions child safe, p. 154.

- The characteristics of youth detention facilities “jeopardise the proper identification, prevention and response to child sexual abuse”.²⁵
- Children in youth detention frequently have complex needs and histories of abuse, neglect and other trauma that increase their vulnerability to sexual and other abuse while in detention.²⁶ The Royal Commission noted that “risk is also influenced by the vulnerabilities of the detained children, many of whom are particularly vulnerable to child sexual abuse due to experiences of trauma, family violence, abuse and/or neglect before entering youth detention.” In this regard, the Royal Commission stated “[i]t is often the most vulnerable children who are deprived of their liberty in detention environments, including many children with prior trauma and multiple needs, and some with behaviours that may cause harm to themselves or others.”²⁷
- Compared to other institutions, there is a heightened risk of young people in youth detention being sexually abused by other children. This reflects the fact that, as the Royal Commission noted, “children who have harmful sexual behaviours or have engaged in criminal or antisocial behaviour are disproportionately clustered in youth detention institutions”.²⁸

In addition to the above features that make youth detention environments high risk environments for child sexual abuse, the Royal Commission found the following:

*Commissioned research suggests that the nature of youth detention environments means they are high-risk institutional settings. The level of risk of child sexual abuse to which children in youth detention are exposed is influenced by factors such as placement decisions (for example, placing older and younger children together), the institutional culture, the level of access children have to trusted adults, and the extent to which operational procedures and the physical environment provide opportunities for abuse.*²⁹

The ongoing and significant risks of child sexual abuse in youth detention environments support the Bill’s objective to raise the minimum age of criminal responsibility to 14 years to ensure that children under the age of 14 years are kept out of detention.

²⁵ Ibid.

²⁶ Royal Commission, Final Report: Volume 15, Contemporary detention environments, p 11.

²⁷ Ibid p. 34.

²⁸ Royal Commission, Final Report: Volume 15, p. 82.

²⁹ Royal Commission, Final Report: Contemporary detention environments, p. 11.

Child sexual abuse in youth detention can have significant, life-long impacts for survivors

When a young person does experience child sexual abuse in detention, the impacts can be significant and life-long. This is particularly so in terms of the experience of abuse contributing to a young person's further and continued involvement in the criminal justice system. This is another key reason why raising the age of criminal responsibility and keeping children aged 10-13 out of detention is essential.

The Royal Commission found that for many survivors, the experience of child sexual abuse in youth detention contributed to *“a cycle of reoffending and incarceration they have struggled to break, often driven by anger, substance use and mental health problems”*. For example, some survivors reported feeling “enormous anger” about their abuse, leading them to engage in anti-social behaviour or commit violent offences. Others spoke about using drugs or alcohol to cope, leading them to commit offences either while under the influence or to finance their substance use. Overall, 90 per cent of survivors who had experienced sexual abuse in contemporary youth detention identified their further involvement in the criminal justice system as an impact of the abuse.³⁰

These experiences are also reflected in knowmore's client group. During the Royal Commission, we heard stories of life-long institutionalisation from clients who had experienced sexual abuse in youth detention. Typically, they were males aged between 30 and 45 years when they told their stories. They had had contact with the out-of-home care or child protection systems as a child, and experienced early childhood sexual abuse. This led to dysfunctional behaviours such as alcohol and drug misuse, and early offending that saw them spend time in youth detention. Here, they experienced sexual abuse again, often in prolonged and very violent forms, accompanied by severe physical and emotional abuse. Patterns of reoffending and recurrent incarceration in youth detention and adult prisons then followed. As a result, many of these clients had spent a significant part of their lives in detention, often living in the community for less than a year before being re-imprisoned for breaches of parole orders or new offences. One such client, who was 49 years old at the time, had been incarcerated in youth detention centres and adult prisons for a cumulative 27 years.

The Bill's Explanatory Memorandum outlines the Bill's intention to shift the response from a criminal to a rehabilitative one to better address the underlying needs of the child and their family. knowmore welcomes this shift, given our experiences of assisting survivors with lived experience of child sexual abuse in youth detention, and its subsequent impacts. We also

³⁰ Royal Commission, *Final Report: Volume 15*, p. 100.

refer to the Queensland Family and Child Commission's ("QFCC") report on the age of criminal responsibility in Queensland which found that, "detention is not rehabilitative."³¹

The QFCC stated that detention exposes children to more negative influences, quoting a young person who revealed detention, *"taught me to be a better criminal. I went in stealing cars and came out knowing how to cook meth and murder people."*³²

The report concludes:

*Young offenders are typically exposed to complex experiences including intergenerational disadvantage, poverty, homelessness, abuse and neglect, mental illness and parental criminality. Children who come into contact with the youth justice system at an early age are more likely than other children to become chronic adult offenders. They are also less likely to complete their education or undertake further training or studies. To achieve positive outcomes for these children we need to apply appropriate interventions rather than sentencing them to youth detention. 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. There is a need to shift the focus from responding to consequences of youth crime to addressing the underlying behaviours, experiences and trauma of young offenders. Rather than sentencing young offenders, we should be directing focus and resources to diversionary programs, restorative justice principles, prevention and early intervention models.*³³

The above impacts and findings highlight that keeping young people out of detention is not just in their interests, in terms of reducing the risk of child sexual abuse in these settings and the experience of further harm, it is also very much in the public interest given the criminogenic environment of detention, and the enormous costs of crime, including government expenditure on the criminal justice system.³⁴ These reasons further support our recommendations that this Bill be passed or alternatively the Committee makes a recommendation encouraging the Queensland Government to introduce a minimum age of detention of 14 years.

³¹ Queensland Family and Child Commission, [the age of criminal responsibility in Queensland](#), 2017, p. 30.

³² Ibid.

³³ Ibid p. 37.

³⁴ A 2014 report estimated that crime cost Australia almost \$48 billion in 2011 (R Smith et al., *Counting the Costs of Crime in Australia: A 2011 Estimate*, Australian Institute of Criminology, Canberra, 2014, p. 1). In 2017–18, Australian governments spent about \$16.5 billion on the criminal justice system (Productivity Commission, *Report on Government Services 2019: Justice Sector Overview – Attachment*, Australian Government, Canberra, 2019, Table CA.1).

Case study from the Royal Commission's private sessions

The Royal Commission published 3,954 de-identified narratives based on the accounts of survivors and people directly impacted by institutional child sexual abuse who shared their experiences at private sessions. knowmore has reviewed the published narratives of survivors who reported experiencing child sexual abuse in youth detention settings after 1990, and has reproduced the following narrative that provides necessary context to the above discussion and emphasises the importance of this Bill to survivors of child sexual abuse.³⁵

³⁵ Extract from Royal Commission, Narratives: [REDACTED] story.

██████████ story – An Aboriginal man from Queensland who was first sent to a youth detention centre around the age of 11

“As a young kid, my grandmother grew me up really, ‘cause my mum couldn’t... I was doing everything good with Nan, you know, but when Nan passed away that’s when me life just turned upside down.” ██████ grandmother died when he was 10, and it wasn’t long before he started getting into trouble. He was moved between different kinship placements, but kept running away, trying to return home to his mother. “I was 11, 12 years old when I first went to juvie... break and enter, and stealing a car... part of a group of boys... all around the same age.” ██████ spent time in three juvenile detention centres in Queensland in the late 1990s, and was physically and sexually abused in all of them [by three different officers, and a visiting doctor]... ██████ told the Commissioner [from the Royal Commission into Institutional Responses to Child Sexual Abuse], “I tried to report what happened to me to senior officers and counsellors, but no one was interested in my cry and complaints for help... I lost faith in adults and authorities”...

Once ██████ was released from juvenile detention, his drug use escalated. “I started to inject speed to escape the pain, shame and embarrassment... I was in pain, a lot of pain. I only ever felt good when I was on drugs. I constantly sought refuge from the evil pain of my past in the form of speed... I kept re-offending to pay for my drug habit... I would get out of jail and be back in within weeks or months.”

[At the time of speaking to the Royal Commission] ██████ [was] in his mid-30s and [had] been in jail for half his life. During his time inside [he’d] become alienated from his Aboriginal culture. “I became distant from my family, community and culture. I came to believe they would reject me and be ashamed of me.”

“I was once a proud man. I’m now a broken man who lost my identity... I lost contact with my culture. I was once a talented artist. I lost my creativity. My inspiration to express my art had abandoned me. I was over-ridden with pain and sorrow. I avoided culture events and gatherings. I stopped my art, dancing, playing music.”

After many years of confusion over his sexual identity, ██████ now has a loving partner and young child. His partner was the first person ██████ told about the sexual abuse and she was shocked, but very supportive. When he is released from jail this time, he wants to stay out. When he is released from jail this time, he wants to stay out.

“Looking back, my identity was stolen from me. Those evil men prevented the course of my innocence. I know I have to control my past in order to move on and have closure ... I’m now trying to find myself. I am trying to embrace my culture. I’m back doing my art and starting to open up about what happened to me.”

██████████ is worried that his teenage sons are heading down the same path as he did. “[I] just don’t want the same thing happening to them when they go to them places.”

Compatibility with Human Rights

The Queensland *Human Rights Act 2019* (“the *Human Rights Act*”), transposes reference to the best interests of the child principle, as contained in Article 3(1) of the UN *Convention on the Rights of the Child*.³⁶ The *Human Rights Act* sets out:

*Every child has the right, without discrimination, to the protection that is needed by the child, and is in the child’s best interests, because of being a child.*³⁷

We submit that ensuring the adequate protection of the child and the best interest of the child requires the minimum age of criminal responsibility to be set at 14 years old, as proposed under this Bill. In support of this, we refer the Committee to a number of sections within Queensland’s own *Human Rights Act*, to highlight how this Bill falls in line with provisions contained within it. In particular, we refer to sections 28, 32 and 33, which we set out below:

Section 28

Cultural rights—Aboriginal peoples and Torres Strait Islander peoples

- (1) Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights.
- (2) Aboriginal peoples and Torres Strait Islander peoples must not be denied the right, with other members of their community—
 - (a) to enjoy, maintain, control, protect and develop their identity and cultural heritage, including their traditional knowledge, distinctive spiritual practices, observances, beliefs and teachings; and
 - (b) to enjoy, maintain, control, protect, develop and use their language, including traditional cultural expressions; and
 - (c) to enjoy, maintain, control, protect and develop their kinship ties; and
 - (d) to maintain and strengthen their distinctive spiritual, material and economic relationship with the land, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition or Island custom; and
 - (e) to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources.
- (3) Aboriginal peoples and Torres Strait Islander peoples have the right not to be subjected to forced assimilation or destruction of their culture.

³⁶ UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p 3.

³⁷ *Human Rights Act 2019* (Qld), s 26(2).

Section 32

- (1) ...
- (2) ...
- (3) A child charged with a criminal offence has the right to a procedure that takes account of the child's age and the desirability of promoting the child's rehabilitation.

Section 33Children in the criminal process

- (1) An accused child who is detained, or a child detained without charge, must be segregated from all detained adults.
- (2) An accused child must be brought to trial as quickly as possible.
- (3) A child who has been convicted of an offence must be treated in a way that is appropriate for the child's age.

The ability for Aboriginal and Torres Strait Islander children to maintain their cultural rights in a criminal justice process or detention setting can be severely diminished, and in some cases will be impossible. These rights are guaranteed in section 28 of the *Human Rights Act* and this Bill provides a renewed opportunity for the Queensland Government to meet the obligations it has set for itself. The identity of children develops well into their teenage years; the current approach that criminalises the behaviour of children under the age of 14 is a direct disruption to this development. For Aboriginal and/or Torres Strait Islander and culturally and other linguistically diverse children, this is particularly pertinent impact of current practices.

With regard to section 32(2) of the *Human Rights Act*, we submit that taking due account of a child's age requires reliance on human rights standards and medical evidence. Both provide that children under the age of 14 years old do not have the same maturity or decision-making capacity as adults do. Further, we submit that promoting a child's rehabilitation, is not congruent with making them criminally responsible for their actions, or locking them up in detention settings.

Section 33(3) of the *Human Rights Act* outlines the rights of children in the criminal process. Notably, it refers again to the requirement that the treatment of a child in this process must be appropriate for their age. We submit that no criminal process is appropriate for a child aged under 14 years. The distress that legal proceedings can cause, even with necessary protective measures in place, can be irreversible. Where the conclusion of a criminal

process ends in detention, the detriment to children is even greater, where children are locked up away from their family and connections to the outside world.

To avoid this damage and in recognition that a child under 14 does not possess the requisite maturity, emotional or intellectual acuity to be deemed adequately responsible for the commission of crimes, passing this Bill is vital. The criminal sentencing process and detention is aimed to punish and both specifically and generally deter offenders. Where children have not developed to an age where they can fully understand or comprehend the consequences of their actions, the criminal process will do nothing to promote deterrence and rehabilitation of offenders. It is not within the best interests of children to go through criminal processes, be held in detention or be exposed to irrevocable harm. The *Human Rights Act* in Queensland itself recognises the importance of distinguishing between children and adults, and we encourage the Committee to recommend this Bill to further give effect to this recognition.

International Human Rights Standards

This Bill aligns with contemporary human rights standards and is in line with Australia's obligations under international law. In 2019, the Committee on the Rights of the Child, released General Comment 24 on children's rights in the child justice system. In particular, this General Comment stated:

International standards recommend that the minimum age of criminal responsibility shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity. In line with this rule, the Committee recommended States parties not to set a minimum age at too low a level and to increase the existing low minimum age to an internationally acceptable level. In the original general comment No. 10 (2007), the Committee had considered 12 years as the absolute minimum age. However, the Committee finds that this age indication is still low. States parties are encouraged to increase their minimum age to at least 14 years of age. At the same time, the Committee commends States parties that have a higher minimum age, for instance 15 or 16 years of age. The Committee recommends that State parties should under no circumstances reduce the minimum age of criminal responsibility, if its current penal law sets the minimum age of criminal responsibility at an age higher than 14 years.³⁸

In accordance with this, the Committee on the Rights of the Child has recommended that State parties to the Convention, must set the age of criminal responsibility to *at least 14*

³⁸ UN Committee on the Rights of the Child (CRC), *General comment No. 24 (2019): on children's rights in the child justice system*, 18 September 2019, CRC/C/GC/24, at [33].

years of age. While General Comments made by the Committee on the Rights of the Child are in their nature not binding, they offer clear directives for best practice for State parties to the Convention. This General Comment, replaces and builds on the Committee's previous General Comment No. 10, which was made in 2007.³⁹ In its previous comment in 2007, the Committee determined:

From these recommendations, it can be concluded that a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable. States parties are encouraged to increase their lower MACR [minimum age of criminal responsibility] to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level.⁴⁰

We emphasise that this was a General Comment made fourteen years ago, and Australia is still lagging behind in its consideration of these principles. The internationally acceptable standard recognised by the Committee on the Rights of the Child in 2007, is still ahead of where Queensland's legislation currently sits. As the world progresses and a greater understanding and knowledge of children and child offending is gained in the context of human rights, Queensland and Australia as a whole, continues to fall further behind.

This Bill would not only bring Queensland into line with United Nations guidance from over a decade ago, but would more importantly bring it in line with acceptable standards as set out in 2019. It is clear that Australia as a nation is lagging in its commitment to children within the youth justice system, and we implore the Committee to take a positive step in moving to rectify this.

The *Convention on the Rights of Child* contains vital guidance for the Committee and Queensland Parliament to consider alongside its own *Human Rights Act*. In particular, we bring the Committee's attention to Article 40 of this Convention:

³⁹ UN Committee on the Rights of the Child (CRC), General comment No. 10 (2007): Children's Rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10.

⁴⁰ UN Committee on the Rights of the Child (CRC), General comment No. 10 (2007): Children's Rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10, at [32].

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. (...)
3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:
 - (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
 - (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

While Article 40(3) of the *Convention of the Rights of the Child* does not specify a minimum age of criminal responsibility, the General Comments of the Committee on the Rights of the Child provide the contemporary and requisite guidance on how the Convention should be implemented. We submit that in line with Article 40 of the *Convention on the Rights of the Child*, maintaining an age of criminal responsibility below 14 years old is detrimental to both a child's health, social reintegration and their ability to assume a constructive role in society.

The United Nations Committee on the Rights of the Child recommends that all signatories to the Convention adopt a minimum age of criminal responsibility as 14 years, as outlined above with reference to General Comment 24. Queensland has the opportunity to lead the way, alongside the ACT, in establishing this standard and the Committee, in recommending this Bill, has the opportunity to show its commitment to international human rights standards and set an example for best practice within Australia.

Conclusion

knowmore recommends that the Committee make a recommendation that the Bill be passed. In the alternative, knowmore recommends that the Committee make a recommendation encouraging the Queensland Government to introduce a minimum age of detention of 14 years. We strongly believe that this Bill represents the necessary and appropriate reform for Queensland and Australia's youth justice system as a whole. While Australia has not yet achieved national consistency for the age of criminal responsibility, the passing of this Bill would bring Queensland in line with international human rights standards. The Bill encapsulates a number of aims from Queensland's *Human Rights Act*,

and we submit that the Committee should support this Bill to further the development of human rights within Queensland.

Increasing the age of criminal responsibility from 10 to 14 years old, or in the alternative, introducing a minimum age of 14 years old for detention, not only protects children from the harm that criminal justice processes can have, but also prevents the risk of exposing children to further harm, including child sexual abuse, within detention environments. In light of clear evidence and best practice standards set by human rights bodies, we encourage the Committee to recommend this Bill and in doing so, prevent vulnerable children from suffering further harm.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'W. Strange', with a stylized flourish at the end.

WARREN STRANGE

Chief Executive Officer