

Children, Youth and Families (Raise the Age) Amendment Bill 2021

Introduction Print

EXPLANATORY MEMORANDUM

General

Children who are below the minimum age of criminal responsibility at the time of the commission of an offence cannot be held responsible in criminal law proceedings. Children at or above the minimum age can be formally charged and subjected to justice procedures.

The purpose of the Children, Youth and Families (Raise the Age) Amendment Bill 2021 (the Bill) is to raise the minimum age of criminal responsibility in Victoria from 10 to 14 years, consistent with current medical understanding of child development, and contemporary human rights standards.

Clause Notes

Part 1—Preliminary

- Clause 1 sets out the purposes of the Bill, which are to—
- raise the minimum age of criminal responsibility in Victoria from 10 to 14 years by amending the **Children Youth and Families Act 2005**; and
 - make other consequential amendments to the **Crimes Act 1958**, the **Fines Reform Act 2014**, and the **Infringements Act 2006**.
- Clause 2 provides for the commencement of the Bill.
- Subclause (1) provides that, subject to subclause (2), the Bill comes into operation on a day or days to be proclaimed.

Subclause (2) provides that, if a provision of the Bill does not come into operation before 7 November 2022, it comes into operation on that day. The delayed commencement will allow time to undertake work to strengthen the therapeutic, community-based programs and services for children aged between 10 and 13 as an alternative to the criminal justice system.

- Clause 3 provides that, in this Act, the **Children, Youth and Families Act 2005** is called the Principal Act.
- Clause 4 amends the definition of a *child* in section 3(1)(a) of the Principal Act, to raise the minimum age a person is considered a child in relation to criminal matters, so that in the case of a person who is alleged to have committed an offence, a child is defined as a person between the ages of 14 and 18 years at the time of the alleged commission of the offence.
- Amends the definition of a *child* in section 3(1)(ae) of the Principal Act, to raise the minimum age a person is defined as a child in relation to a criminal proceeding in section 354A of the Principal Act. This amendment is necessary as children under the age of 14 will no longer be subject to criminal proceedings in court. Section 354A relates to the powers of the Court in criminal proceedings when a child accused voluntarily participates in therapeutic treatment programs. While this excludes the criminal division of a court referring children aged between 10 to 13 to the Secretary in relation to seeking an application for therapeutic treatment orders, such referrals can still be made to the Secretary by the police or any person.
- Clause 5 amends section 344 of the Principal Act, by raising the age that it is conclusively proved children cannot commit an offence from under 10 years, to under 14 years. This amendment raises the effective minimum age of criminal responsibility in Victoria from 10 to 14 years, meaning that children under 14 years of age at the time of the commission of an offence cannot be held responsible in criminal law proceedings.
- Clause 6 amends section 410(1)(b) of the Principal Act to reflect the fact that children under the age of 14 years can no longer be subject to a youth residential centre order.

- Clause 7 amends 464 of the Principal Act that is required due to the repeal of section 465.
- Clause 8 repeals section 465 of the Principal Act. Section 465 provides the circumstances in which the Youth Parole Board may direct that a child under the age of 14 years be transferred to a youth justice centre.
- Clause 9 inserts new section 632 in the Principal Act. New section 632 contains transitional provisions to provide that all amendments do not have retrospective effect.

Subclause (1) provides that the definition of *child* in section 3(1), as in force immediately before the commencement day, continues to apply for the purposes of a proceeding that is commenced before the commencement day.

Subclause (2) provides that sections 344 and 410 of the Principal Act, as in force immediately before the commencement day, continues to apply for the purposes of a proceeding that is commenced before the commencement day.

The practical effect of subclauses (1) and (2) is that children between the ages of 10 and 13 at the time of an offence that is committed before the commencement day, can be held responsible in criminal law proceedings. The transitional arrangements are intended to provide legal and practical clarity during the transition from a criminal justice centred approach, to a therapeutic and community-based approach when responding to problematic behaviours of children aged under 14 years. It is anticipated that a discretionary approach will be adopted when considering whether to commence criminal proceedings against children under 14 in the period prior to the commencement day.

Subclause (3) provides that Section 465, as in force immediately before the commencement day, continues to apply in respect of a person against whom a proceeding is commenced before the commencement day.

Subclause (4) provides that the definition of *child* in clause 2 of Schedule 3, as in force immediately before the commencement day, continues to apply in respect of an infringement offence alleged to have been committed before the commencement day.

Subclause (5) defines *commencement day* as the day on which Part 2 comes into operation.

- Clause 10 amends the definition of a *child* in Schedule 3, clause 2 of the Principal Act, to raise the minimum age from 10 years to 14 years, in regards to a person alleged to have committed an infringement offence.

Part 3—Consequential amendments to other Acts

Division 1—Amendment of Crimes Act 1958

- Clause 11 amends section 464L of the **Crimes Act 1958** (the Crimes Act) to reflect the minimum age of criminal responsibility being raised to 14 years. Section 464L provides for the taking of fingerprints of children aged 14 years or under. The amendment prevents the taking of fingerprints of children aged under 14 years.
- Clause 12 amends section 464M(5) of the Crimes Act to reflect the minimum age of criminal responsibility being raised to 14 years. Section 464M provides that the Children's Court may order the fingerprinting of children. The amendment prevents the Children's Court from ordering the fingerprinting of children under 14 years.
- Clause 13 amends section 464U of the Crimes Act to reflect the minimum age of criminal responsibility being raised to 14 years. Section 464U provides for the circumstances that a police officer may undertake a forensic procedure on a child. The amendment prevents a police officer from undertaking a forensic procedure on a child under the age of 14 years.
- Clause 14 amends section 464ZF(1) of the Crimes Act to reflect the minimum age of criminal responsibility being raised to 14 years. Section 464ZF provides for forensic procedures following the commission of a forensic sample offence. The amendment changes the definition of a *child* from 10 years or more but under 18 years, to 14 years or more but under 18 years.
- Clause 15 amends section 464ZFAAA(1) of the Crimes Act to reflect the minimum age of criminal responsibility being raised to 14 years. Section 464ZFAAA provides for forensic procedures following a finding of not guilty because of mental impairment. The amendment changes the definition of a *child* from 10 years or more but under 18 years, to 14 years or more but under 18 years.

Clause 16 inserts new section 638 into the Crimes Act. New section 638 contains transitional provisions to provide that all amendments do not have retrospective effect.

Subclause (1) provides that sections 464L, 464M and 464U of the Crimes Act as in force immediately before the commencement day, continue to apply for the purposes of a proceeding commenced before the commencement day.

Subclause (2) provides that the definition of *child* in section 464ZF(1), as in force immediately before the commencement day, continues to apply in a proceeding commenced before the commencement day.

Subclause (3) provides the definition of *child* in section 464ZFAAA(1), as in force immediately before the commencement day, continues to apply in a proceeding commenced before the commencement day.

Subclause (4) provides that the commencement day means the day on which Part 3 comes into operation.

Division 2—Amendment of Fines Reform Act 2014

Clause 17 amends the definition of a *child* in section 3 of the **Fines Reform Act 2014** (the Fines Reform Act) to raise the minimum age from 10 years to 14 years, so that a child is a person who at the time of the alleged infringement offence is under the age of 18 but of or above the age of 14 years.

Clause 18 inserts new section 201C to the Fines Reform Act. New section 201C provides that the definition of a *child* in section 3 of the Fines Reform Act, as in force immediately before the commencement day, continues to apply for the purposes of an infringement offence alleged to have been committed before the commencement day.

Division 3—Amendment of Infringements Act 2006

Clause 19 amends the definition of a *child* in section 3(1) of the **Infringements Act 2006** (the Infringements Act), to raise the minimum age from 10 years to 14 years, so that a child is a person who at the time of the alleged infringement offence is under the age of 18 but of or above the age of 14 years.

Clause 20 inserts New Division 4 of Part 16 of the Infringements Act. New Division 4 of Part 16 provides that the definition of *child* in section 3(1), as in force immediately before the commencement day, continues to apply for the purposes of an infringement offence alleged to have been committed before the commencement day.