**Submission by Director for Children, Ministry for Women, Children and Social Protection to the Committee for Human Rights Standing Committee on Justice, Law & Human Rights.**

**Child Justice Bill 2024**

**28 June 2024**

Dear Honourable Committee Members,

I write in my capacity as the newly appointed Director for Children in the Ministry for Women, Children and Social Protection, regarding the importance of the Child Justice Bill to the future of Fiji, and to bring our child protection and justice systems into the 21st Century.

The Child Justice Bill is a Bill based on child rights and the science of what stops children offending.

1. **The Child Justice Bill finally sees us implement the human rights for children that we signed up to years ago**

Fiji ratified the UN Convention on the Rights of the Child in 1993. Our current *Juveniles Act 1973* and the way we treat children in conflict with the law, is in breach of the Convention. Twelve (12) years ago, the government at the time started the process of developing both the new Child Care and Protection Bill and the Child Justice Bill, but neither were finalised. This is now our chance. In 2021, Fiji received a list of issues from the special representative of the Permanent Secretary to the United Nations that the country still needs to address. The Child Justice Bill is a key plank in achieving that.

Science shows that continuing to lock up traumatised, vulnerable children only does more harm to their development and increases their chances of coming into conflict with the law as adults, where they continue to be excluded from society and find it harder and harder to be a part of their community. As the following submission shows, the ‘rights issue’ is backed up by medical science and research that shows this.

1. **Why the *Juveniles Act 1973* must urgently be replaced.**

Despite various amendments, the *Juveniles Act* 1973 has never been reviewed.

In fact, the *Juveniles Act 1973* adopts an old British approach which is now seen as archaic: to treat children who are in need of care the same as children who have offended against the law. This law is now obsolete and indeed frowned upon in England, but is still in place here in Fiji.

As our practices and approach to child welfare have evolved, the Juveniles Act 1973 is also now out of step with our current Fijian approach to child protection and care.

Importantly, the law assumes that the children who come into conflict with the law make rational decisions about ‘good behaviour’ and ‘bad behaviour’, and that arresting them, and locking them away will change this. Science has proven this untrue. In some of our nearest neighbours, we are seeing that young children who are incarcerated have an 85% chance of offending again, compared to only 50% if they are not arrested and receive diversionary measures.[[1]](#footnote-1)

By comparison to the new Child Justice Bill, the 1973 law lacks any approach to diversion, restorative justice – and importantly, there was no ministry charged with overseeing children who were vulnerable and at risk, to ensure they are not re-offending.

1. **The Child Justice Bill changes this, to a better life for its children and to build a safer Fiji.**

The new Child Justice Bill finally responds to **why** children come into contact with the law and puts into practice the long-established evidence on what we know stops children from offending. It clearly places responsibility upon the Ministry for Women, Children and Social Protection to lead and coordinate the rehabilitation and reintegration of children who have offended back into the community successfully.

This means we now have the chance to pass a law that will keep the community safer, because our justice measures will work.

Today we know that often children who offend have fled unsafe homes or have no homes at all. There is a deep interweaving between children who have no care, love, affection and support and children who offend. I discuss this issue further on in the submission.

1. **The new Child Justice Bill can stop children offending because it is based on the science of what works.**

Questions have been asked about what will happen to children under the age of 14. Will they go without punishment? Does that mean they will offend again?

It has repeatedly been shown that the current minimum age of criminal responsibility is unscientific, and indeed does harm. Modern medicine documents that, ‘the science proves unequivocally that adolescents aged below 14 have under-developed brains’ (Blakemore & Robbins, 2012).[[2]](#footnote-2)

This is why children and adults are treated differently by our legal system in other areas that recognise they have different capacities at different stages of development (e.g. the right to drink, vote, marry etc.) The age of criminal responsibility of 10 years old is out of step with these other legal rights and responsibilities.

1. **Who are the children coming in conflict with the law and how does this Bill change that?**

Most children in contact with the justice system have come from backgrounds where they have been abused, neglected or abandoned, and they are highly traumatised. Research in our region shows that children who have experienced the psychological damage of child abuse trauma, or who have an intellectual disability make up about 90% of the children incarcerated, and that the crimes they commit are largely crimes to survive or to self-medicate their trauma (Telethon Kinds Institute 2018, Hodgkinson et al. 2020).[[3]](#footnote-3)

It’s only logical, that if we intervene to specifically to address these things, we will drastically reduce crime committed by children, and disrupt the cycle of offending. In the last 10 years alone, there has been study after study that shows that diversion is exceedingly more successful in stopping child crime than charging or imprisoning a child. For example, one regional diversion program was evaluated to show that three quarters of kids do not offend again in the next 6 months, and over half won’t go on to reoffend in 2 years.[[4]](#footnote-4)

The new Child Justice Bill represents the first time in Fiji we would have laws that recognise the life factors that have caused children coming to come into conflict with the law, and puts clear responsibility on the Ministry to intervene and address it.

1. **Why children under 14 years do not have the brain development capable of criminal decision-making.**

Research has repeatedly confirmed that younger brains cannot make the rational decisions we attribute them in the justice system, but this is magnified hugely for children who have experienced abuse. Childhood maltreatment affects brain structure, function and connectivity and only impairs decision making for these children more (Goddings et al. 2019).[[5]](#footnote-5)

Research also shows that younger children are much more likely to ‘confess to a crime they did not commit’. Because younger children are less able to understand complex processes, they are also more vulnerable to making ‘choices that reflect a propensity to comply with authority figures, such as confessing to the police rather than remaining silent’ (Grisso et al. 2003).[[6]](#footnote-6)

It is therefore unsurprising that extensive research across the world now clearly shows that the younger a child is at their first contact with the criminal justice system, the greater their chances of future offending. A study of incarcerated youth found that children arrested before the age of 14 are three times more likely to reoffend as adults, as children arrested when they are over 14 years of age.[[7]](#footnote-7)

Therefore, diverting younger children, just as this Bill does, increases the chances greatly that they will not offend again. This has the impact of keeping our community safer. This also underlines the importance of the Bill’s commitment to reducing custody for younger children.

1. **The opportunity the Bill presents to turn around criminal behaviour.**

The Bill does not propose to leave children under the age of 14 out on the streets to ‘offend again’, or any other children who are diverted from the courts.

Instead, it comes from an understanding that we need to ask who these children are and why they came into conflict with the law in the first place. If we don’t do that, how can we stop it from happening again? More often than not, we will find they may be experiencing homeless because their home environment is not conducive, unsafe and they are committing survival crimes, or they are children who have experienced significant trauma who need care and support.

The point at which police come into contact with a child can either be an opportunity to change their path – and get them the support they need to address the real reasons they came into contact with the law. Or, on the other hand, it can make lives far worse, by placing children into the revolving door of arrest and incarceration, where we know there is a high risk they might identify their history of abuse as their fault, and something they will never recover from; seeing themselves only as a ‘criminal’. This risk is well established in the literature (Athanassiou et al. 2021).[[8]](#footnote-8)

1. **Fears and concerns about costs across Ministries**

It is more expensive right across our government to charge and convict children under the age of 14 than divert them, especially when you consider the likelihood that they will come into contact with the justice system repeatedly, the younger they are charged and convicted. The cost to our children’s lives and the next generation is what matters most, But if we *were* to be so reductionist as to make this just about money – we must remember that incarceration of a child is very expensive. It costs our legal system and our rehabilitation centres. Add to this the likelihood of reoffending that increases just by being in the criminal justice system (research above), and the cost magnifies – and will be likely to be borne again and again in the adult justice system

Parts 3 and 4 of the Bill are exhaustive in describing the diversion and alternative processes that must be followed for children. While this will involve new ways of operating for police and courts, it will ultimately result in reduced workload as repeat offending should reduce, in line with what we know about the success of diversionary processes on reducing reoffending.

It should be noted also, that there was extensive consultation on both Bills, convened over the course of two and half months by both the Office of the Solicitor-General and the Ministry for Women, Children and Social Protection. These consultations engaged community members, the justice community, faith-based community, child rights organisation, CSOs and other Fijian Government agencies on these and other major aspects of each Bill. This means we have a good appreciation of the impact across Ministries and other areas, and can address any issues they fear may arise from the Bills.

The Child Care and Protection Bill and the Child Justice Bill provide for the upgrading of Child Protection Services Unit under the Department of Social Welfare to a Department of Children with its own Director of Children and a complement of specialised child welfare officers at the national and divisional levels.

As a result, the major costs will be borne by the Ministry for Women, Children and Social Protection.

**Some final thoughts:**

Even leaving aside the fact that criminalising children under the age of 14 contravenes Fiji’s commitments under the Convention on child rights, such a low age of criminal responsibility as we have now is out of step with many places in the World. With a few exceptions, almost all European countries have a minimum age of criminal responsibility of 14, as do countries like Countries like Korea, China, Cambodia, Kuwait, Laos, Kyrgyzstan, Mongolia, the Philippines and Timor Leste, to name a few (some of these countries have a minimum age of 15).[[9]](#footnote-9)

The introduction and passage of these Bills would propel Fiji not just into the position of Pacific leader in child justice and child protection legislation, and a role model for the entire Oceania region. Honourable members of our Parliament have the chance to make this history – and change the course of our future generations permanently.

1. Sentencing Advisory Council (2016), *Reoffending by Children and Young People in Victoria,* Victorian Government, Australian: <https://www.sentencingcouncil.vic.gov.au/sites/default/files/2019-08/Reoffending_by_Children_and_Young_People_in_Victoria.pdf> [↑](#footnote-ref-1)
2. Blakemore, S.-J., & Robbins, T. W. (2012). *Decision-making in the adolescent brain*. Nature Neuroscience, 15(9), 1184–1191 [↑](#footnote-ref-2)
3. Telethon Kinds Institute (2018), *Nine out of ten young people in detention found to have severe neuro-disability*, research funded by the Australian Medical Health and Research Council: <https://www.telethonkids.org.au/news--events/news-and-events-nav/2018/february/young-people-in-detention-neuro-disability/> . Also, Hodgkinson, R., Beattie, S., Roberts, R. et al. *Psychological Resilience Interventions to Reduce Recidivism in Young People: A Systematic Review.* Adolescent Res Rev 6, 333–357 (2021). <https://doi.org/10.1007/s40894-020-00138-x> [↑](#footnote-ref-3)
4. Victorian Government (2022), Evaluation of Children’s Court Diversion 2020-2022, in *Diversion:*

   *keeping young people out of youth justice to lead successful lives*, p15: <https://files.justice.vic.gov.au/2022-03/Youth-diversion-statement.pdf> [↑](#footnote-ref-4)
5. Goddings, A. L., Beltz, A., Peper, J. S., Crone, E. A., & Braams, B. R. (2019). *Understanding the role of puberty in structural and functional development of the adolescent brain*. Journal of Research on Adolescence : The Official Journal of the Society for Research on Adolescence, 29(1), 32–53 [↑](#footnote-ref-5)
6. Grisso, T., Steinberg, L., Woolard, J., Cauffman, E., Scott, E., Graham, S., Lexcen, F., Reppucci, N. D., & Schwartz, R. (2003*). Juveniles’ competence to stand trial: A comparison of adolescents’ and adults’ capacities as trial defendants.* Law and Human Behavior, 27(4), 333–363. [↑](#footnote-ref-6)
7. Alltucker, K. W., Bullis, M., Close, D., & Yovanoff, P. (2006). *Different pathways to juvenile delinquency: Characteristics of early and late starters in a sample of previously incarcerated youth*. Journal of Child and Family Studies, 15(4), 475–488. [↑](#footnote-ref-7)
8. Athanassiou, U., Whitten, T., Tzoumakis, S., Hindmarsh, G., Laurens, K. R., Harris, F., Carr, V. J., Green, M. J., & Dean, K. (2021). *Examining the overlap of young people’s early contact with the police as a person of interest and victim or witness*. Journal of Criminology, 54(4), 501–520 [↑](#footnote-ref-8)
9. Child Rights International Network, *Minimum Ages of Criminal Responsibility Around the World*: <https://archive.crin.org/en/home/ages.html> [↑](#footnote-ref-9)