

The Minimum Age of Criminal Responsibility



Australian
Human Rights
Commission

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In each jurisdiction in Australia, the law provides a conclusive presumption that a child under the age of 10 cannot commit an offence on the basis that they are not criminally responsible for that offence.¹

The minimum age of criminal responsibility in Australia is low compared with other countries.²

In addition to the minimum age, the principle of *doli incapax* operates throughout Australia. This principle assumes that children aged 10 to 14 are 'criminally incapable' unless proven otherwise. If properly applied, *doli incapax* may serve to avoid unnecessary incarceration of children at a young age. However, in the [2019 Children's Rights Report](#), the Commission found that there is limited evidence that this principle is routinely applied in practice.

There are many reasons the Commission advocates for raising the age of criminal responsibility, including that:

- Many children involved in the criminal justice system come from disadvantaged backgrounds and have complex needs better addressed outside the criminal justice system³
- Raising the age would help decrease the rate of overrepresentation of Aboriginal and Torres Strait Islander children in detention.⁴ The [Productivity Commission's latest figures](#) tell us Aboriginal and Torres Strait Islander youth are detained at a rate of 23 times that of non-Indigenous young people
- Research on brain development shows that 10 year olds have not developed the requisite level of maturity to form the necessary intent for full criminal responsibility⁵
- Children under the age of 12 years lack the capacity to properly engage in the criminal justice system, resulting in a propensity to accept a plea bargain, give false confessions or fail to keep track of court proceedings⁶



- Criminal offending by children is generally non-violent and more than 50 percent of crimes committed by children between age 10 and 14 are theft, burglary or property related offences⁷
- A snapshot of children in juvenile detention facilities reveals that at any one time over 50% are on remand, not having been convicted or sentenced⁸
- Studies have shown that the younger the child is when encountering the justice system, the more likely they are to reoffend⁹
- It would bring Australia into line with its obligations under the Convention on the Rights of the Child, particularly article 40 which requires the establishment of a minimum age of criminal responsibility.

In 2019 the [Committee on the Rights of the Child recommended](#) all countries increase the minimum age of criminal responsibility to at least 14 years of age. The [Committee on the Rights of the Child specifically urged the Australian Government](#) to raise the minimum age of criminal responsibility to an internationally accepted level and make it conform with the upper age of 14 at which *doli incapax* applies.

The Council of Attorneys-General are currently undertaking a review of the minimum age of criminal responsibility. The Age of Criminal Responsibility Working Group has consulted with the public but have deferred any reporting or decisions until 2021. [The group cited](#) a lack of alternatives to imprisonment as the reason for the delay.

On 14 October 2019, MP Rebekha Sharkie introduced the [Crimes Legislation Amendment \(Age of Criminal Responsibility\) Bill 2019](#) to the House of Representatives. The Bill would have amended the *Crimes Act 1914* and the *Criminal Code Act 1995* to increase the minimum age of criminal responsibility for Commonwealth offences from 10 years of age to 14 years of age. As of September 2020, the Bill has not proceeded.

On 20 August 2020, the ACT became the first jurisdiction in Australia to support raising the age of criminal responsibility from 10 to 14 years. The resolution states that it will be the responsibility of whichever party forms government after the ACT election in October to amend the legislation. The Legislative Assembly motion said in amending any legislation, consideration should also be given to medical evidence on cognitive capacity of children over 14, and there should be options to shift the age or provide exemptions for more serious criminal offences.

Recommendation

Governments raise the minimum age of criminal responsibility from 10 years to at least 14 years.



Endnotes

¹ Children (Criminal Proceedings) Act 1987 (NSW), s 5; Criminal Code Act 1995 (Cth), The Criminal Code Part 7.1; Criminal Code 2002 (ACT), s 25; Criminal Code Act (NT), s 38(1); Criminal Code Act 1899 (Qld), s 29(1); Young Offenders Act 1993 (SA); Criminal Code Act 1924 (Tas), s 18(1); Children, Youth and Families Act 2005 (Vic), s 344; Criminal Code Act Compilation Act 1913 (WA), 29.

² Australian Human Rights Commission, *Children's Rights Report 2019* (2019) 244.

³ Sally Parnell, Jesuit Social Services, *Too Much Too Young: Raise The Age of Criminal Responsibility*, Letter to Attorneys-General (2015)

⁴ Thomas Crofts, 'A Brighter Tomorrow: Raise the Age of Criminal Responsibility' (2015) 27 (1) *Current Issues in Criminal Justice* 123, 131.

⁵ Elly Farmer, 'The age of criminal responsibility: developmental science and human rights perspectives' (2011) 6(2) *Journal of Children's Services*, 86, 87.

⁶ *Ibid* 86-95.

⁷ Australian Institute of Health and Welfare, *Young people aged 10-14 in the youth justice system 2011-2012* (Report, 2013) 7.

⁸ Australian Human Rights Commission, *Children's Rights Scorecard* (2019) 21.

⁹ Australian Human Rights Commission, *Children's Rights Report 2019* (2019) 244.