



**Ngaanyatjarra  
Pitjantjatjara  
Yankunytjatjara  
Women's Council**

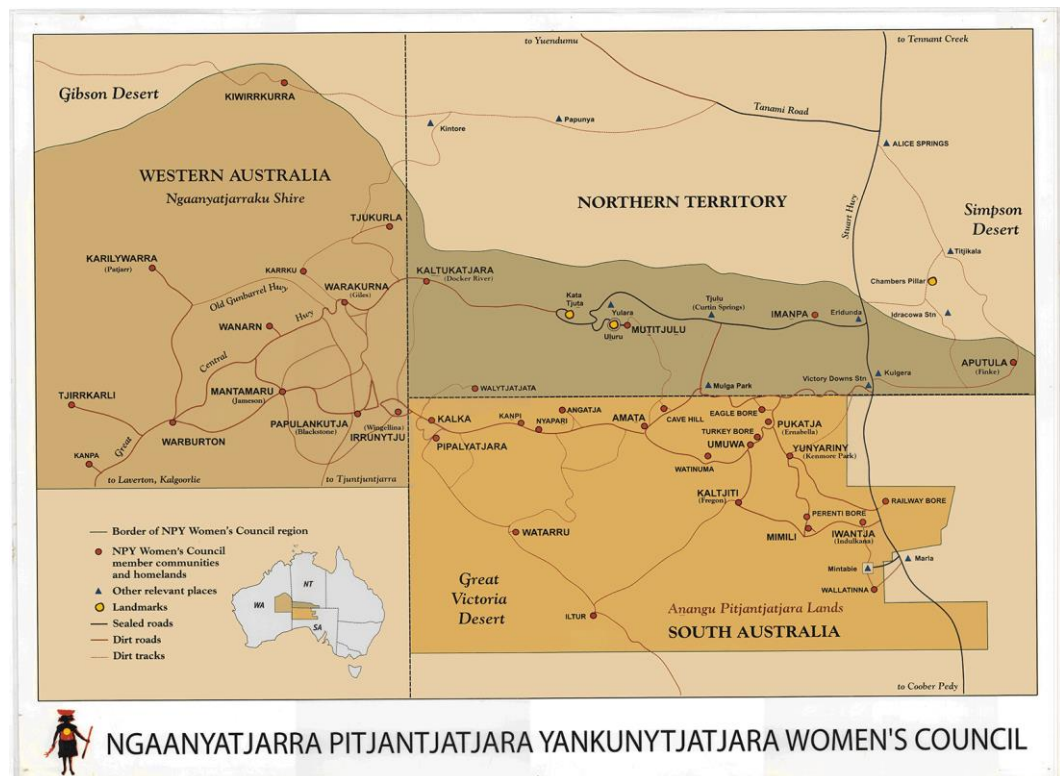
## NPYWC Youth Justice and Child Wellbeing Reform Submission

30<sup>th</sup> June 2023

NPY Women's council is led by women's law, authority and culture to deliver health, social and cultural services for all Anangu.

In 1980 NPY Women's Council began as an advocacy body based on the need for Anangu women to have a voice and representation in conversations on land rights, policy and cultural affairs of the late 70's and early 80's. In 1993 NPYWC was funded to provide services, recognizing the strength of supporting women and children for the benefit of the whole community.

NPYWC is now a leader in the provision of human services in the NPY region. Proudly Anangu led, NPYWC is governed and directed by Aboriginal women across 26 desert communities in the cross-border regions of Western Australia, South Australia and the Northern Territory – an area covering 350,000 sq km.



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## 1. What factors contribute to children's and young people's involvement in youth justice systems in Australia?

Indigenous young people in the NPY region face significant disadvantage in Australia. The issues they confront are complex and varied. For instance, at the last census, the Northern Territory had the highest rate of homelessness in the country, with the Territory's homeless population being 87% indigenous (ABC, 2023). In addition, only 19% of indigenous people in the Northern Territory had completed a Cert III or above qualification in 2021, while 77% of non-indigenous Territorians held a Cert III or above (Productivity Commission, 2023). Consequently, it is unsurprising that only 34.8% of Indigenous Territorians are fully engaged in education or employment, compared to 80.6% of non-indigenous Territorians (Productivity Commission, 2023). This disadvantage extends to Indigenous children and young people throughout the NPY region, and along with other systemic issues, lack of service provision and interactions with the child protection system, contributes to Indigenous children and young people's involvement in the youth justice system.

A lack of investment in the remote communities that make up the NPY region is highlighted by the lack of, and inappropriate early childhood development and education programs. Across the NPY region, there is inconsistent access to early childhood educational and diversion programming, including playgroups, bilingual education and Learning on Country programs. With NPY Women's Council's Youth Program only having the capacity to provide diversion programming and case management support to young people aged 10-25, there is an urgent service gap for youth aged 10 and under. Without targeted programming, youth aged 10 and under are likely to miss key developmental indicators for educational and socio-emotional well-being, leaving them more susceptible to the anti-social behaviour that increases their probability for interacting with the youth justice system. Additionally, a lack of stable housing is also a barrier to ensuring consistent school attendance. The [Little Children are Sacred](#) report highlights getting children to school is vital for keeping them safe and to decrease or delay their contact with the youth justice system during that pivotal early developmental stage (ages 7-10).

Stagnant funding levels for our Youth Services since 2017 in the face of rising costs and inflation have resulted in NPYWC significantly downsizing its youth service programs in communities across Western Australia and the Northern Territory. Not only does this impact young people because they miss out on recreational opportunities, but NPYWC's Youth Development Officers are faced with fewer resources to tackle increasing case management needs in these remote communities. These issues directly affect the number of young people who "fall through the cracks" and do not receive the support they need, which creates the impetus for offending, thereby involving them in the youth justice system.

During 2020-1, 64% of Indigenous young people under youth justice supervision had an interaction with the child protection system (AIHW, 2022). The same report also establishes a link between youth justice supervision and multiple Out of Home Care placements, young people under community-based supervision and in detention were most likely to have been in continuous care for less than 12 months.

Observations from our staff on the ground describe a "culture of apathy" that surrounds Indigenous young people in very remote communities where their environment fosters the conditions for their anti-social behaviour that brings them in contact with the youth justice system. This culture is perpetuated when young people see adults in their communities languish due to lack of jobs and educational opportunities and using drugs and alcohol to cope with inter-generational trauma. This culture festers when young people are further disadvantaged by the teacher and youth worker recruitment shortages. All these deter young people from putting effort into their education or even having employment aspirations, creating an apathy that is observed as boredom, and bored kids sometimes do things that get them into trouble "for the fun of it". This culture of apathy must be disrupted by exposing young people to positive Anangu role models who can mentor them and model resilience despite scarcity. Implementing the six recommendations of [the National Framework for Protecting Australia's Children \(2009-2020\)](#) can also help to combat this phenomenon and make kids feel safe, supported and hopeful for their future.

## 2. What needs to be changed so that youth justice and related systems protect the rights and wellbeing of children and young people? What are the barriers to change, and how can these be overcome?

The tri-state complexity in which children and young people live in the NPY region must be considered when assessing youth justice and related child protection systems. While legislative borders mark the State and Territory boundaries, these borders bear little significance to Anangu from the NPY region. Communities are highly mobile across this region to meet family and cultural obligations (NPYWC Submission to Child Protection Systems Royal Commission, 2015).

The tri-state child protection context presents significant challenges, barriers and delays in areas such as different notification and mandatory reporting requirements as well as laws that are defined by state borders that are invisible to families. Child protection legislation, policy, and practice can differ vastly between the tri-state service jurisdictions, thereby complicating matters for families and services navigating the child protection system. These issues provide a strong rationale for the development of cross border legislation that would allow for the better use of resources and create better outcomes for children and families in central Australia. To better integrate the child protection sector into a Tri-State youth strategy, NPYWC have previously suggested that Alice Springs needs to be the base of a single central Australian child protection authority that works across jurisdictions in conjunction with service providers, (NPYWC Submission to Child Protection Systems Royal Commission, 2015). Fragmented approaches, gaps in service provision, and missed opportunities for early intervention and prevention are all barriers to overcoming these significant challenges. Efforts to promote collaboration and integration among various sectors are crucial for ensuring the holistic safety and well-being of children in Australia.

In addition to youth justice system reform, governments need to invest more in universal supports that prevent youth justice involvement in the first place. We support the key recommendations of SNAICC's 2022 *Family Matters* report, including Building Block 1, "that all family enjoy access to quality, culturally safe, universal and targeted services necessary for Aboriginal and Torres Strait Islander children to thrive" (p .8). This includes increased investment in Aboriginal and Torres Strait Islander community-controlled (ACCO) early childhood education and care, maternal and child health, family support services, trauma-informed and healing services, and family violence prevention and response.

On the NPY lands, there is desperate need for more funding of wrap around services, to support all families to raise healthy and thriving children.

### Early childhood education and care

Playgroups and preschool operate in some, but not all NPY communities. There is a pertinent need for more funding/resourcing to ensure that playgroups and preschools are available and appropriately resourced in all NPY communities.

### Addressing poverty and socio-economic disadvantage

NPYWC believe that many children at risk of entering the child protection system and youth justice systems are experiencing ongoing structural and systemic disadvantage, which places them at greater risk of harm.

NPYWC recently published research findings of the affordability of healthy food on the APY Lands (SA). The report found that healthy diets are not affordable when they cost more than 30% of household income (Lewis et al. 2022). Anangu on welfare payments in the APY lands would have to spend more than half (51%) of their income to access a healthy diet in their home communities. Thus, healthy diets are not affordable for most families in the APY lands. Additionally, since May 2021, the cost of a healthy diet has increased by 10% in the APY lands. Incomes on the APY lands increased by only 2% to 5% over the past year. Survey findings show that more needs to be done in the APY lands to improve affordability of healthy foods and drinks, to help improve nutrition and health outcomes for Anangu.

NPYWC recommend that service providers who are providing direct support to children and families who are at risk of entering the child protection system are adequately resourced to provide brokerage and material assistance to decrease the compounding stressors that children and families face each day.

### Targeted therapeutic interventions

In addition to universal wraparound services, there needs to be more investment in therapeutic interventions targeted to support families whose children have been identified as at risk of harm or abuse. Walytjapiti is NPY Women's Council's family support service that has been operating in some but not all communities in the NPY lands since 2012. This program currently provides Child and Family Intensive Support in four communities on the APY Lands (SA), four communities on

the NPY Lands (NT), and one community on the Ngaanyatjarra Lands (WA). The Walytjapiti program is frequently holding wait lists for children and families at risk of entering the Child Protection System. This service receives no State based funding despite the Nyland Report recommendation (211) for additional funding to the Walytjapiti program, to ensure case files can remain open over a sustained period.

### **Implement all 5 elements of the Aboriginal and Torres Strait Islander Placement Principle (ATSICPP)**

Through *Safe and Supported*, all governments committed to “undertake reform in each jurisdiction’s next review of relevant legislation and policy, with a view to fully embedding the 5 elements of the Aboriginal and Torres Strait Islander Child Placement Principle” (DSS, 2021, p. 28). There is varied progress towards this commitment across jurisdictions. There remains significant gaps in governments’ commitments and progress towards implementing all 5 elements of the ATSICPP in each of these jurisdictions.

### **Raise the age of criminal responsibility**

An example of a policy that could benefit from having coherence across the tri-state region is the age of criminal responsibility. Across all Australian jurisdictions, a child under 10 years cannot be found guilty of a criminal offence. Between 10 and 14 years, the prosecution must prove that the child knew their conduct was wrong before they can be convicted of an offence (called the doctrine of *doli incapax*). However, not all jurisdictions have included this doctrine in relevant legislation. Table 2 (see Appendix) summarizes the current definitions of ‘youth’, the criminal age of responsibility and the carve outs across the tri-state region. NPYWC is a member of the National Raise the Age Coalition and supports raising the age of criminal responsibility to fourteen years with no carve outs.

**3. Can you identify reforms that show evidence of positive outcomes, including reductions in children’s and young people’s involvement in youth justice and child protection systems, either in Australia or internationally?**

A trans-national review of community efforts that strengthen local capacity for systems-level interventions in Indigenous mental health ([Victor Lopez-Carmen et al, 2019](#)) shows positive effects for young children including resilience, pro-social identity and leadership ([Ungar et al., 2013](#)). As a result of these coordinated systemic interventions in mental health, behavioural improvements were seen in engagement and participation in school and community ([Ungar et al., 2013](#)) and involvement with the juvenile justice sector ([Whiteford et al., 2014](#)). This serves as evidence of how integrated, systemic approaches can help achieve progress across many of the factors identified in this submission as contributing to young people’s involvement in the youth justice system.

When isolated issues regarding child wellbeing and youth justice arise in remote communities, they need to be addressed systematically through coordinated multi-sector action targeting the root causes. This approach can effectively mitigate the problem, so it does not flare up into a public safety issue impacting multiple jurisdictions. Evidence of the success of trans-jurisdictional schemes can be found in the evaluation of the Cross-Border Justice Scheme (Putt et al, 2013), which highlights improved networks and communication across borders among various stakeholder groups as the most identified positive impact of the Scheme, as well as several police stakeholders noting that it was a very useful tool for their operational work generally.

NPYWC also advocates for a collaborative approach to child protection in the tri-state region to improve outcomes for children and their families. NPYWC’s work includes working with state and territory child protection agencies to improve processes to keep children connected to family, culture and country. Evidence shows that a more collaborative approach to child protection would address barriers to information sharing and cross-border operations, to improve outcomes for children, families, State and Territory governments, and the broader community. NPYWC has highlighted in numerous reports and submissions the ways in which tristate borders can be a barrier to good child protection practice.

**Supporting ACCO’s to increase capacity and services**

NPYWC’s Child Advocacy Program (CAP) works with families, children and carers where child protection intervention has already occurred, enshrining children’s connection to family with CAP as a conduit. Whilst CAP is a relatively new program and is yet to be formally evaluated it has already supported many families across the region and contributed greatly to lessening the burden of navigating three child protection jurisdictions. This work aims to lower the rate of Indigenous over representation in OOHC and by extension the number of children and young people becoming involved in the youth justice system.

NPYWC’s strong reputation has allowed for enhanced trust and connection, countering barriers of fear and distrust. Furthermore, NPYWC CAP workers have increased ability to locate and connect with family, and spend face to face time with clients. With many Anangu not having a phone or changing their number frequently, these relationships and connections are crucial to supporting children and families to thrive.

#### 4. From your perspective, are there benefits in taking a national approach to youth justice and child wellbeing reform in Australia? If so, what are the next steps?

Yes. These benefits have been demonstrated in the child wellbeing sector, as *Safe and Supported* was the first framework for protecting children designed alongside Aboriginal Torres Strait Islander people, and has shown some signs of real progress. Whilst there is still a long way to go, NPYWC support SNAICC's (2022) contention that transformation is not the responsibility of a single agency or government, and that genuine collaboration between governments and agencies is necessary.

While this submission intends to highlight how our unique context as a tri-state very remote Aboriginal service provider requires a contextually specific approach to youth justice reform and children's well-being, NPYWC recognizes that some national initiatives can strengthen Aboriginal participation, inclusion and address systemic inequalities in the youth justice system. As previously mentioned, the [National Raise the Age \(RTA\) campaign](#) addresses the disproportionately high rates of Aboriginal youth incarceration by increasing the age of criminal responsibility across the Commonwealth to at least 14 years with no carve outs. Enacting the policy goals of this campaign would ensure equity in sentencing across our jurisdictions, making sentencing and youth justice fairer.

Paramount to any of the initiatives proposed in this submission is the baseline duty to engage in consultation with Aboriginal communities and ensure their agendas are prioritised. [The Voice to Parliament](#) is a broader national effort to ensure this direct participation and consultation informs the policies that impact Aboriginal communities. NPYWC advocates for "Yes" to the constitutional referendum to create a national Aboriginal voice to Parliament and we look forward to participating in the co-creation of what this body will look like.

Next steps for policy makers should include:

##### **Tri-state strategy**

Developing a tri-state strategy to tackle the systemic and service provision factors that contribute to increased youth involvement in youth justice system. This strategy would help to disrupt the "culture of apathy" present among Aboriginal youth, shifting away from policy siloes and into systemic trans-jurisdictional approaches with appropriate authority and implementing coherence in child protection and youth justice policies that intersect our service area.

##### **Tristate child protection system**

Establishing a tristate child protection system would address the unique situation of Anangu living in the NPY lands, and provide them with access to ongoing and consistent care across borders. A tristate child protection system could benefit families and communities by enabling adequate information sharing across jurisdictions. Additionally, it would prevent children from being neglected from the system or inadequately supported, due to falling through legislative gaps as a result of living between multiple jurisdictions.

Our CAP staff have experienced occasions where there is significant delays in placing a child in safe care with a family member, due to bureaucratic barriers that limit child protection workers' abilities to travel with the child across borders. The result is that whilst a child protection worker is seeking permission to travel, the child may spend extended periods of time in unsupported, or unsafe care. This is just one example of the complexities and inefficiencies of navigating three separate child protection systems for one child. Furthermore, the time and effort spent communicating between three jurisdictions, and changing orders to preside with different jurisdictions limits the capacity of workers to effectively attend to the child's needs. A tristate child protection system would help address these issues, and allow for a more effective child protection response for Anangu children and families.

##### **Increase funding and resourcing to address structural disadvantage in remote communities**

As mentioned earlier in the submission, poverty and disadvantage are common barriers for families to provide safe and effective care for children, and are significantly more prevalent in remote communities. If Australia is to reduce child protection and youth justice involvement, there is urgent need for significant investment in remote communities so that residents can experience an equitable standard of living, and raise happy and healthy children. NPYWC recommend:

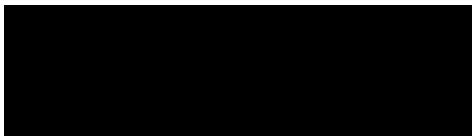
- Building more houses in remote communities to address overcrowding, beginning with the communities that have the highest rates of overcrowding.

- Subsidising costs of food in community stores so that healthy food is financially accessible with the wages/Centrelink payments that community members receive.
- Increasing base Centrelink payments for people living on the lands or in remote communities, to accurately reflect the significant mark up on food and essential items, compared to cities. The current Centrelink rates are not adequate for a sustainable life, and community members do not have access to the same level of food and resources as Centrelink recipients in cities.

### Meaningful investment in ACCOs

As discussed earlier, there is pressing need for more investment in ACCOs to deliver a range of services that both prevent child protection involvement, and uphold the Aboriginal and Torres Strait Islander peoples' right to family and culture following and during child protection involvement. Focusing on the communities NPYWC services, governments should fund and support ACCOs to deliver the following services in the NT, SA and WA:

- Targeted services to address contributors to child protection involvement, including family and domestic violence, alcohol and drug, and mental health services
- Youth services in all remote communities in our region
- Universal supports including early childhood education (including preschool and playgroups) maternal support, and general health and wellbeing
- Kinship scoping/family finding, carer recruitment and support, case planning and reunification



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## Appendixes

**Table 1**

The below table (Table 1) summarises and builds on recommendations from SNAICC's (2022) *Family Matters* report to implement all 5 elements of the ATSCIPP in the Northern Territory, South Australia and Western Australia.

NT	Prevention	<ul style="list-style-type: none"> <li>Needs-based funding for Aboriginal organisations in the NT to address contributors to child protection involvement, including family and domestic violence, alcohol and drug services, and mental health</li> <li>Investment in ACCO delivered family support services</li> </ul>
	Partnership	<ul style="list-style-type: none"> <li>Resource a specialist Aboriginal child and family services peak body in the NT</li> <li>TFHC funding and commissioning processes to formally recognise and support the role of ACCOS in family finding, case planning and reunification</li> </ul>
	Placement	<ul style="list-style-type: none"> <li>Meaningful investment in Aboriginal led, managed and delivered programs that deliver Kinship scoping/family finding, carer recruitment and support, to reduce the number of Indigenous children placed with non-Indigenous carers and being disconnected from family.               <ul style="list-style-type: none"> <li>CAP supports the stabilisation and maintenance of Kinship placements through the work of our two Kinship Case Managers, however it is currently only funded to be delivered in SA.</li> </ul> </li> <li>Where children must be placed with non-Aboriginal Carers, TFHC should adhere to strict protocols including ongoing assessment of the foster carer's suitability, investment in building cultural safety and trauma-informed practice competencies, and demonstrated adherence to the Connection elements of the ATSCIPP to maintain bonds to family, language, culture and Country</li> </ul>
	Participation	<ul style="list-style-type: none"> <li>In implementing the 10-year Generational Strategy, articulate and resource specific mechanisms for Aboriginal decision making power, such as Aboriginal Family Led Decision Making (AFLDM) and delegation of statutory authority to Aboriginal organisations</li> </ul>
	Connection	<ul style="list-style-type: none"> <li>Increasing funding and resourcing to ACCOs to support reunification</li> <li>Increased accountability to ensure TFHC develops and follows cultural support plans</li> </ul>
SA	Prevention	<ul style="list-style-type: none"> <li>Increased investment in universal supports and targeted therapeutic interventions, as discussed earlier.</li> </ul>
	Partnership	<ul style="list-style-type: none"> <li>Delegate authority for to ACCOs for delivery of key services</li> </ul>
	Placement	<ul style="list-style-type: none"> <li>The removal and subsequent placement of Anangu children on the APY lands in South Australia does not always follow the ATSCIPP hierarchy. NPYWC maintain that the use of 'should' and 'if reasonably practicable' in the <i>Safety Act</i> at s 12(3)(a) effectively makes the placement principles discretionary, significantly undermining their efficacy. Instead, the <i>Safety Act</i> should require the Department to exhaust all possible options at one level of the hierarchy before considering a lower-order placement.</li> <li>No placement should be made unless the child's family and community representatives have participated in decision-making. NPY Women's Council notes family members (either parent or</li> </ul>

		<p>caregiver) with additional complexities such as disability have been observed to have limited access and involvement in case-planning and in placement decision-making</p> <ul style="list-style-type: none"> <li>• NPY Women’s Council have also observed, due to lack of resources or miscommunication, parallel placement planning is not often pursued. During the assessment and investigation period the Department has been unable to undertake kinship carer assessments resulting in children being placed off the lands in foster care or in kinship arrangements that are not approved by families. NPY Women’s Council are funded to undertake kinship scoping across the APY lands however referrals from the Department often come too late or aren’t made at all. We recommend the Department’s internal policies are strengthened to ensure thorough and adequate kinship scoping is undertaken in a timely manner.</li> <li>• We also recommend that all kinship scoping for Aboriginal children be outsourced to place-based Aboriginal Community Controlled Organisations, including NPY Women’s Council, to ensure culturally appropriate processes are used and the nuances and intricacies of kinship relationships are accurately and adequately captured.</li> <li>• Allocate brokerage funding to NPYWC’s Kinship stabilisation, to counteract the effects of structural poverty and disadvantage, and allow carers and families to meet basic needs whilst case managers work to address underlying issues regarding money story, including Centrelink payments.</li> </ul>
	Participation	<ul style="list-style-type: none"> <li>•</li> </ul>
	Connection	<ul style="list-style-type: none"> <li>• Legislative amendments that allow minimum contact with family to be court ordered and mandate cultural plans for all children in OOHK that are reviewed regularly.</li> </ul>
<b>WA</b>	Prevention	<ul style="list-style-type: none"> <li>• Increase funding and resourcing of intensive family support and family support services to align with the policy focus on early intervention and intervention outlined through <i>Building Safe and Strong Families: Earlier Intervention and Family Support</i> strategy. In 2020-21, spending these services accounted for only 5.62% of the state’s total expenditure on child protection services, the lowest proportional investment in the country.</li> </ul>
	Partnership	<ul style="list-style-type: none"> <li>• Appropriately resource ACCOs to be involved in placement decisions and cultural support plans</li> </ul>
	Placement	
	Participation	
	Connection	<ul style="list-style-type: none"> <li>• Reduce reliance on long term and permanent care orders to manage the rising number of children entering care each year</li> </ul>

**Table 2**

Jurisdiction	Definition of 'youth'	Criminal Age of Responsibility	Carve outs/Exemptions
Northern Territory	>10 ≤ 18 years	10 years; A recommendation to raise the age of criminal responsibility from 10 years to 12 years was supported in principle by NT government, but has yet to be implemented	Section 38(1) of the <a href="#">Criminal Code Act 1983</a> (NT) includes <i>doli incapax</i> .  <a href="#">Youth Justice Act 2005</a> (NT) sets out different requirements for older children in some circumstances: <ul style="list-style-type: none"> <li>- Maximum terms of detention/imprisonment for &lt;15 years and those &gt;15 ≤18 years.</li> <li>- if an offence is committed after a youth turns 15 years of age, that offence can be adjudicated by all courts (not just the Youth Justice Court)</li> </ul>
South Australia	>10 ≤ 18 years	10 years	No <i>doli incapax</i> provision.  Under <a href="#">Young Offenders Act 1993</a> offenders over 17 years of age can be transferred to a prison under some circumstances (section 63), the Act does not distinguish between older and younger children.
Western Australia	>10 and <18 years	10 years; Western Australian Labor passed a motion to raise the age of criminal responsibility from 10 years to 14 years at their state conference on 2 October 2021. The WA Government has yet to act on this motion.	<a href="#">Criminal Code Compilation Act 1913</a> includes provisions for <i>doli incapax</i> .  <a href="#">Young Offenders Act 1994</a> states that a young person over the age of 16 years can be held in a prison for adults but cannot share living quarters with an adult (section 7).  Sections 50, 50A and 50B provide for different sentencing options for a young person aged <17, aged 17 ≤ 18, and >18 at the time of sentence.

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