

Age of Criminal Responsibility

ACSO calls for all Australian jurisdictions, state and federal, to set the minimum age of criminal responsibility to at least 14 years and ensure that children who come to the attention of the criminal justice system have access to prevention, early intervention and diversionary responses which are trauma informed and culturally appropriate.

The United Nations Committee on the Rights of the Child has long held the position that the minimum age of criminal responsibility should be set at 14 or higher and recommends that children under 16 should not be deprived of liberty. Years of well-established evidence has shown that for young people, contact with the criminal justice system significantly increases the risk of further long-term contact and exacerbates already poor outcomes for young people (AIHW, 2013).

The current age of criminal responsibility is inconsistent with research on brain development. Children lack the necessary components of criminal responsibility, both in terms of behaviour control and moral awareness. Contact with the criminal justice system has significant negative effects on a child (COSS, 2020).

Children in contact with the system are likely to suffer worse health, educational and employment outcomes and are “more likely to die an early death.” (AMA, 2019). In most cases contact with the system only exacerbates further contact and does nothing to prevent further criminal behaviour.

Studies have repeatedly shown that children engaged in offending behaviour at young ages are more than likely to be living in situations of disadvantage. These children are more likely to have experienced child abuse and neglect, exposure to or experience of mental illness, drug and alcohol abuse, violence and homelessness (JSS, 2013). Current policy, government and community responses fail to respond to the circumstances and reasons as to why these children are engaged in criminal behaviour.

In reality, a change to these laws within Australia would actually only impact on a very small number of children who come into contact with the criminal justice system. Nationally, just 12% of the total offender population in Australia consisted of children aged between 10 and 17 years old. Those aged under 14 years made up just 4% of the total offender population (ABS, 2022).

As with adults, First Nations children in Australia are significantly overrepresented in the justice system. Far too many Aboriginal and Torres Strait Islander children are incarcerated in this country, and we must urgently address the underlying issues resulting from colonisation. Raising the age of criminal responsibility would address the overrepresentation of Aboriginal and Torres Strait Islander children in the justice system but this must be accompanied with culturally appropriate early intervention and diversionary solutions that are community designed and led.

Having the age of criminal responsibility set at 10 years does not align with current medical and social science knowledge of childhood development, long-term health effects of criminal justice involvement, evidenced-based cultural determinants of health, or human rights law. ACSO calls for the immediate increase in the minimum age of criminal responsibility to 14 in all circumstances, with no exceptions. Australia is lagging behind many country of the world in not addressing this issue and must immediately rectify this situation to ensure we are meeting our human rights obligations.