



Raising the Age of Criminal Responsibility: There is a better way

In Australia, at this time, a child as young as ten can be charged with a crime, put before a court and punished as a criminal. Jesuit Social Services believes this is not only bad for children, but also for the wider community. Our new paper—*Raising the Age of Criminal Responsibility: There is a better way*—shows the way forward.

We believe the age of criminal responsibility should be raised to 14, in line with international standards. But we should not stop there. Our paper shows that we can hold children more effectively to account for their actions, prevent further antisocial behaviour, and better protect the wider community. It is based on extensive Australian and international psychological, social and criminological research. The message is clear: our current approach makes us less safe and hurts vulnerable children. A different approach would be both more just and more effective.

There are a number of reasons to make a change:

1. A child under 14 is still developing.

Children are not adults. It is generally accepted that society owes a special duty of care to children, and one of the main reasons for this is that we recognise childhood as a period of cognitive and emotional development. Children's brains are still developing and they are, in general, less able than adults to form good judgements. That's why in many instances we treat children differently; they're not allowed buy alcohol or drive cars, for example. Evidence detailed in our report shows that children under 14 are not developmentally mature enough to be tried in the criminal justice system. That's why a number of leading medical bodies including the Australian Medical Association, the Royal Australian College of Physicians and the Australian Indigenous Doctors' Association have called on governments to raise the age of criminal responsibility.

Several recent Royal Commissions have reminded all Australians of the duty of care owed to every child, and the damage that can be done when institutions fail in this respect. By treating children under 14 as criminally responsible, our current criminal justice arrangements fail to adequately acknowledge the developmental difference between adults and kids.

2. Society has an interest in the healthy development of all children.

Everyone wants to live in safety and security, and Australians rightly expect governments to work to reduce crime. But sometimes efforts in this area can be counterproductive. Our report shows that when a child has contact with the criminal justice system before the age of 14, he or she is more likely to reoffend, and reoffend violently, in the future. In 2016 the Sentencing Advisory Council in Victoria found that 80 per cent of children who were first sentenced aged 10 to 13 went on to reoffend, and 60 per cent went on to commit offences against the person.

If we treat children as criminals, they are more likely to commit crime as adults. Community safety is best served by a different approach.

3. Many children in the criminal justice system are highly vulnerable.

Research shows that of the 438 children aged 10 to 13 who were first sentenced or diverted in the Children's Court in 2016-17, half had been the subject of a report to child protection. A third had experienced out of home care. In other words, a significant proportion of children in the criminal justice system are already disadvantaged in relation to their peers.

We owe special care to children who, through no fault of their own, do not experience a safe and secure home life. When we treat children under 14 as criminals, we are in danger of compounding the harms already done.

There is a better way.

Our report shows there is a better way to respond to the small number of children who cause harm to others. It involves holding children to account for their actions while addressing the underlying causes of those actions. It also involves creating a society in which children are less likely to offend in the first place. In brief:

- Low level offences should be met with immediate support for the families of the children in question so that the problem can be diagnosed and a solution found. This may be accompanied by a 'restorative justice' approach where the goal is acknowledgement of harm done and reconciliation with victims and the community. There are a number of excellent programs that aim to support children and their families through early intervention:
- The Victorian Government's **Navigator** program helps disengaged young people return to education and learning by working with them to address the issues underlying their disengagement. It is delivered by community agencies working closely with local schools.

- **Before it Starts** is a Jesuit Social Services program developing new ways to identify 8-14 year olds who are at risk of disengaging from education, and support them to remain in school.
- Community hubs in schools, involving allied health personnel (social workers, speech pathologists, occupational therapists) can support families when problems are identified.
- Culturally specific programs such as **Bareng Moorop** provide intensive caseworker support and links to welfare, housing, family and education for young Aboriginal people aged 10-14 years who are involved in the justice system.
- More serious offences should be dealt with by engaging expert panels to assess the needs of the child and their family. As detailed in our report, children's hearings in Scotland put the welfare and best interests of the child at the centre of proceedings. There are also a number of evidence-based, specialised responses available to deal with violence within families, which are also detailed in our report.
- Very serious violent offences by children under 14 are extremely rare. Where it is absolutely necessary, children who commit such offences should receive 'wrap-around' support in small facilities with well-trained staff. The environment should not be punitive, but intensely therapeutic, and should address criminogenic behaviour.
- Finally, our report details a number of measures we can take to build a society in which children are less likely to commit offences in the first place. These include improving housing, education and health equity, and further improving maternal-child health services. For Aboriginal and Torres Strait Islander children in trouble, both children and their families should receive culturally-specific and community-led support. And in areas of complex and entrenched disadvantage, a place-based approach will ensure that assistance is targeted where it is most needed and will do the most good.

Conclusion

Very few young children are currently involved in the criminal justice system: on an average day in Victoria less than 3 per cent of children and young people under youth justice supervision are under 14. Further, we know that youth offending is largely property and deception offences, not crimes against the person.

People should be held accountable for their actions, and children are no exception to this rule. But responses to children need to be carefully calibrated to their level of development to avoid doing more harm than good. The evidence is overwhelming: our current arrangements make us all less safe—especially the vulnerable children in question. A new response to children under 14 will make communities fairer and safer for everyone.