



Helping Children get their lives back on track - Raising the minimum age of criminal responsibility to 14 years of age

August 2020

Colossians 3:21: *"Fathers, do not embitter your children, or they will become discouraged."*

Zechariah 7:9-10: ⁹*"This is what the Lord Almighty said: 'Administer true justice; show mercy and compassion to one another. ¹⁰Do not oppress the widow or the fatherless, the foreigner or the poor. Do not plot evil against each other.'*

In 2019, the United Nations Committee on the Rights of the Child recommended member states raise their minimum age of criminal responsibility to 14 years of age. Currently, this minimum is 10 years of age across all jurisdictions in Australia. Between July 2019 and July 2020, there were around 600 children between the ages of 10 and 14 in detention. Between 65-70 percent of those children are Aboriginal or Torres Strait Islander.

These unacceptable and disproportionate incarceration rates remain high are a testament to the systematic failings. Subsequent federal and state governments have failed to address the institutionalised social inequality faced by Aboriginal or Torres Strait Islander peoples in Australia that contribute to these statistics.

This means that further reforms are urgently needed to address social disadvantages, and to reduce the rate of which the justice system and Indigenous peoples come into contact. Doing so will help to reduce incarceration rates and the number of deaths in custody. One such step is to take immediate action toward implement non-custodial reform for children under the age of 14.

The profoundly relevant *Statement from the Heart* made at Uluru in 2017 said *"Proportionally, we are the most incarcerated people on the planet. We are not an innately criminal people. Our children are alienated from their families at unprecedented rates. This cannot be because we have no love for them. And our youth languish in detention in obscene numbers. They should be our hope for the future."*

Children need to be loved and supported so they can reach their full potential and not locked up.

Doli incapax is the legal definition describing the capacity to form the intent to commit a crime. This is a key difference in establishing the degree of criminal culpability between children and adults committing an offence. Children do not possess the standard of intellectual and moral development in order to differentiate between right and wrong. Physiologically, children under the age of 14 are still developing their frontal cortex, and are unlikely to fully understand the impact of their actions. Psychologically, adolescence is an age of rapid development where the capacity for decision-making and impulse control is impacted. Developmental and neuroscientific evidence informed the United Nation's decision to set the minimum age of 14 despite some arguments it should be higher still.

Dujuan is a 13 year old boy from Arrernte and Garrwa Country near Alice Springs. He starred in the recent observation feature documentary *'In My Blood It Runs'* at the age of 10. In September 2019, he delivered a speech to the United Nations Human Rights Council. In his speech he said *"The film shows that I felt like a failure at school. I was always worried about being taken away from my family. I was nearly locked up in jail. I was lucky because my family they know I am smart. They love me. They found a way to keep me safe. There are some things I want to see changed: I want my school to be run by Aboriginal people. I want adults to stop crueLLing 10 year old kids in jail. I want my future to be out on land with strong culture and language."*



Raising the criminal age of responsibility from 10 to at least 14 does not suggest offences go unaddressed. Criminalising children for behaviour at such a young age is ineffective at preventing future offending behaviour. A study of incarcerated youth in Oregon, USA, 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.

Instead, children should be diverted away from engaging formally with the criminal justice system's punitive mechanisms. The United Nations Convention on the Rights of the Child states that all children "should grow up in a family environment, in an atmosphere of happiness, love and understanding". Raising the age of criminal culpability puts a greater emphasis on rehabilitation and the welfare of the child by not separating them from their families.

In August 2020, the Australian Capital Territory became the first jurisdiction to support raising the age of criminal responsibility from 10 to 14.

What you can do:

Write a polite and respectful letter to:

Victoria	Tasmania
The Honourable Jill Hennessy Attorney-General Level 26 121 Exhibition Street Melbourne Victoria, 3000	The Honourable Elise Archer MP Attorney-General Department of Justice GPO Box 825 Hobart Tasmania 7001
Salutation: Dear Minister	

Points to make in your letter:

- Express that you are pleased the National Council of Attorneys-General meeting in July 2020 identified the need for further work to occur regarding the need for adequate processes and services for children who exhibit offending behaviour.
- Express that you are encouraged by ACT's willingness to raise the minimum age of criminal culpability to be in line with international standards set by the United Nations.
- State that children need to be loved and supported so they can reach their full potential, and not be locked up.
- Point out a child's brain is still developing, especially the parts that regulate judgement, decision-making and impulse control. This means that kids cannot foresee the consequences of any action and cannot fully understand the criminal nature of their behaviour.
- Point out that Indigenous Aboriginal and Torres Strait Islander children are disproportionately detained, and non-custodial measures are needed to address this.
- Point out that the Committee on the Rights of the Child has called on member countries to raise the age to at least 14 years old.
- Request meaningful steps to raise the minimum age of criminal culpability from 10 to 14 be taken, and request they advocate for the standard to be endorsed nationally through the National Council of Attorneys-General.