

2020 Sir Ronald Wilson Lecture

Kids in Jail: Raising the Age of
Criminal Responsibility

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Law Council of Australia

- The peak body of law associations in Australia.
- The Law Council is the voice of the legal profession in Australia, speaking on issues of national and international importance, federal law and the operation of federal courts and tribunals.
- Represents approximately 65,000 Australian legal professionals through constituent member Bar Associations and Law Societies ('Constituent Bodies').



Outline of Issues

During this lecture I will look at:

1. The legal framework of the age of criminal responsibility in Australia
2. Why it is problematic, and
3. The disproportionate rate of First Nations children in the legal system.

And ask the question: Why do Australians lock up children?

The Legal Framework of the Age of Criminal Responsibility in Australia

- States and territories have responsibility for their own juvenile justice systems.
- Each statute provides a framework for dealing with children in contact with the criminal justice system, outlining, for example, procedures for how police respond to young people, how courts deal with young people and how youth detention centres are operated.
- And these major pieces of legislation interact with other pieces of legislation, such as those regulating police powers, children's courts and bail procedures, as well as those that create or codify criminal offences.

If you are 10, you are old enough to be a criminal in Australia.



Under our federal legal framework, the minimum age of criminal responsibility is currently set at just 10 years old across all Australian federal, state and territory jurisdictions.

What does this mean?

When a child turns 10, they may be at risk of being:

- arrested and placed in handcuffs,
- transported in the back of a paddy wagon,
- held in a watchhouse,
- subjected to strip searches,
- interviewed by police,
- charged with criminal offences,
- made subject to bail conditions,
- held in custody, made to stand trial, and incarcerated.

Why are children as young as 10 locked up?

- There are concerns that raising the minimum age may undermine community safety.
- But we know that having a low minimum age of criminal responsibility of 10 does not work to make communities safer.
- It does not prevent reoffending or rehabilitate children.
- Instead, it's likely to entrench criminality and create cycles of disadvantage.

Why is the current legal age problematic?

- The earlier a child comes into contact with the criminal justice system, the more prolonged their involvement will be.
- They are less likely to complete their education.
- They are less likely to find employment.
- They are less likely to 'grow out of' crime.

Universities of Crime



Doli Incapax

- Raising the age to 14 would remove the need for courts to consider the confusing and complex common law doctrine of *doli incapax*.
- *Doli incapax* states that anyone aged between 10-14 cannot be held responsible for a crime, unless the prosecution can demonstrate that they knew their behaviour was seriously wrong.
- This doctrine is leading to inconsistencies in different jurisdictions and it is difficult to use in a courtroom.
- This is leading to children being held in custody for lengthy periods of time before the presumption can be led or tested in court, and the child acquitted.

The Neurological Evidence

- Neurological evidence supports a higher age for criminal responsibility.
- Younger children are not sufficiently able to reflect before acting or comprehend the consequences of an offending action.
- People's cognitive functions do not develop fully until their early 20's.

Putting It In Context

- You can't get a Facebook account until you're 13.
- You can't board a plane unsupervised until you're 12.
- In some states, you cannot get your ears pierced without parental permission until you're 16.
- You cannot apply for a Medicare card until you are 15.
- In Queensland, it is a criminal offence for a parent or guardian to leave a child under the age of 12 on their own.
- But in Australia you can be locked up at the age of ten years.
- And it costs roughly \$531,000 per year to lock up a child
- Yet we know locking up kids doesn't work to stop crime

Childhood Disadvantage

Children in conflict with the law are significantly more likely to have experienced childhood adversity:

- Neglect, physical and sexual abuse,
- Family disruption,
- Significant economic, social and medical disadvantage, including deprivation, poor educational experiences and supports, and
- Inadequate medical care, all of which might contribute in turn to poor health, cognitive disabilities, learning difficulties, mental health issues, and substance misuse in children.

First Nations Children

- Aboriginal and Torres Strait Islander children aged between 10 and 17 are 23 times more likely to be in detention than non-Indigenous children
- First Nations children are 17 times as likely as other children to have had contact with both the justice system and social services
- Dujan Hoosan – a young man from Arrernte and Garrwa country – Alice Springs
- *In My Blood It Runs*
<https://www.dropbox.com/home/In%20my%20Blood?preview=In+My+Blood+It+Runs.mov>

What does this say about Australia?

- Australia's laws are out of step with international human rights standards.
- We ratified the United Nations Convention on the Rights of the Child, but we don't comply.
- We are out of step with the rest of the world.
- Elsewhere, the average age for detaining children is 12 and in Europe it rises to 14.

What's the answer?

- Children under 14 should be held accountable for their actions, but they should not be held criminally responsible and incarcerated.
- Instead they should be handled through care proceedings, preferably in the family law courts, rather than criminal proceedings.
- We need to listen to and support those who know the most about how the laws and policies impact their own communities.

What's the answer?

