

Raising the minimum age of criminal responsibility

Social Policy Position

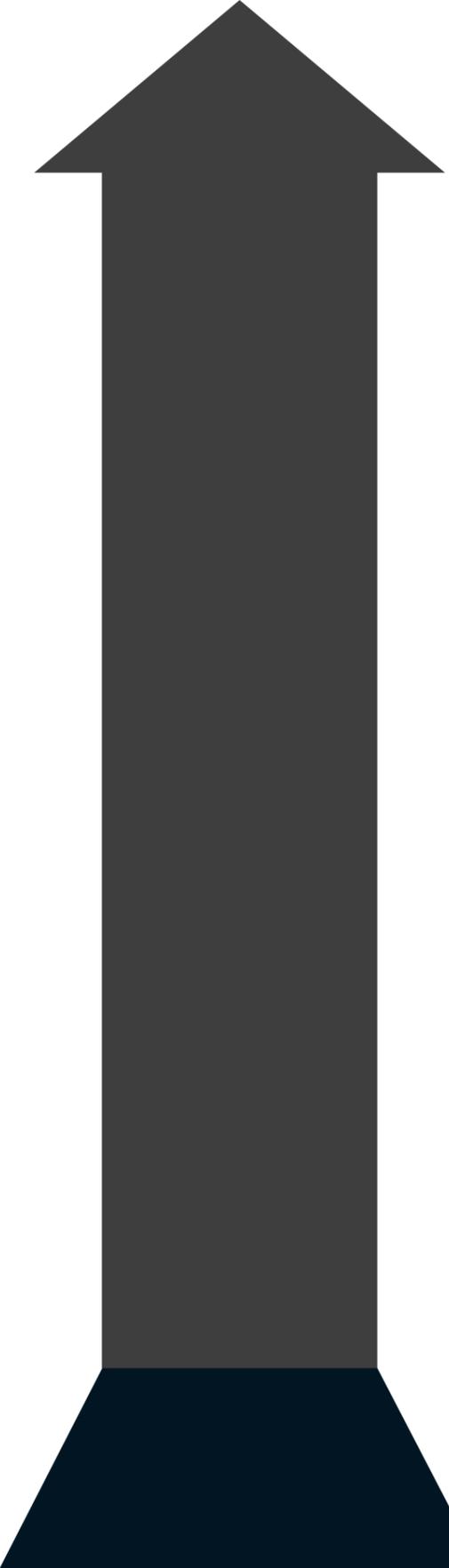
September 2021



**LIFE
WITHOUT
BARRIERS**

Ten-year-old kids often still sleep with their favourite soft toy, are still losing their baby teeth, and not supposed to sit in the front seat of a car. Yet in this country, around 600 children aged 10-13, are in prison because the minimum age of criminal responsibility in Australia is horrifyingly low. Imagine yourself at 10, your child, and any child you know being convicted of a crime and placed in prison.

Life Without Barriers joins national and international calls to raise the age of criminal responsibility in all Australian states and territories from 10 to a minimum of 14 years of age.



Raising the age of criminal responsibility has been identified nationally and internationally as an area for urgent reform for Australia.

What we know about a child's ability to form criminal intent

Our justice system is built on a person's culpability, that being were they able to form intent or understand the potential consequences for their actions. The current legal view of criminal culpability at the age of 10 years is in direct contrast to evidence on children's cognitive and emotional development. Research over the past decades both within Australia and overseas has categorically shown that brain development continues through to a person's 20's and the formative years through to early teens is a crucial period.

There is a section of the brain called the 'pre-frontal cortex' and it is this part which is important for impulse control and decision making. This part of the brain continues to develop into the early twenties, more than 10 years after the current age of criminal responsibility. Importantly many children have other biological reasons for behaviour that might be seen as anti-social behaviour.

Childhood abuse and neglect also has a significant physiological impact on brain development, and can interact with biological factors that a child may have had from birth.

Our experience supporting young people with justice involvement has given us a strong understanding of the typical life story and adversities these children face.

Life Without Barriers has observed that most children with justice involvement have at least one of the following issues:

- psychological damage from past trauma, abuse and/or neglect
- developmental delay (either congenital or stemming from child maltreatment)
- mild to moderate intellectual disability, or another disability (e.g. autism)
- acquired brain injury
- a diagnosed or undiagnosed mental illness
- a substance misuse problem, often linked to a mental illness or past trauma.

Many children have several of these challenges that impact on their capacity to understand and therefore make pro-social choices, and significantly contribute to their engagement in offending.

- **In 2020, alone, there were 499 children aged between 10 and 13 imprisoned, 65% of whom were Aboriginal or Torres Strait Islander¹**
- **Almost 70 per cent of 10-year-olds in detention had also received child protection services²**
- **The rational part of a teen's brain isn't fully developed and won't be until approx. age 25³**
- **Children under 14 who enter the justice system are more likely to be suffering from underlying trauma and have an undiagnosed disability**
- **The UN has recommended on numerous occasions for Australia to raise the age of criminal responsibility in children to the internationally accepted age of minimum of 14⁴**
- **A number of studies have shown incarcerating children doesn't work, in fact it exacerbates the risk of reoffending and impacts a child's future opportunities.**

¹ Australian Institute of Health and Welfare 2021. Youth Justice in Australia 2019–20. Cat. no. JUV 134. Canberra: AIHW.

² AIHW

³ Cohen, A.O. & Casey, B.J. (2014) Rewiring juvenile justice: the intersection of developmental neuroscience and legal policy. Trends in Cognitive Sciences, v.18, pp. 63-65.

⁴ UN Committee on the Rights of the Child, Consideration of Reports submitted by State Parties Under Article 44 of the Convention : Concluding observations – Australia (20 October 2005 and 28 August 2012)

Our Experience

Numerous studies prove children's cognitive and emotional development hasn't matured anywhere near enough to make rational decisions to a degree that renders them culpable for a crime under current Australian legislation. We need to look at first look at our police responses and where there may be an over criminalisation for petty activity. We also need to look at what leads to anti-social behaviours and have services and a whole of community response that address the factors behind a child's offending.

Life Without Barriers is partnering with advocates and community-led organisations to share our expertise and thirty years' experience working with young people, who have been involved in the criminal justice system, with current evidence-based interventions that we know reduce youth offending – including Multi-Systemic Therapy. We encourage law makers to recognise research on brain development that is relevant to setting a minimum age of criminal responsibility, and the relevance of brain impairments to retributability, and on how criminal sanctions can entrench youth offending.

[Learn more about our youth justice services](#)

Our Recommendations

Recommendation 1

Lift the Minimum age of criminal responsibility to 14 years

A child the age of 10 is far too young to be held accountable for a criminal offence and subjected to punitive punishments. Life Without Barriers proposes that the minimum age of criminal responsibility be raised to 14 years. If this proposal was adopted, any child aged under 14 years who engages in behaviour deemed antisocial would receive a compassionate, evidence-informed social work response.

Recommendation 2

Legislation to change to apply the doctrine of doli incapax to young people aged 14 and 15

Life Without Barriers recommends that the rebuttable presumption of doli incapax, which currently applies to children aged 10 to 13, be extended to young people aged 14 and 15. Our view is supported by research showing the prevalence of intellectual disability, developmental delay, acquired brain injury, and other medically diagnosed and undiagnosed conditions in this vulnerable population.

Recommendation 3

The development of new therapeutic, developmentally and culturally appropriate interventions that address the spectrum of criminogenic needs

Life Without Barriers recommends the not for profit sector works in partnership together and with Government to deliver services that are based on their suitability to the developmental age of young people.

Most importantly, we encourage programs that support young people to re-engage in education, which includes learning support to address developmental delays and minimise the challenges associated with brain-based disabilities.

[Click here to read our submission to the Council of Attorney Generals](#)

**LIFE
WITHOUT
BARRIERS**