

LEGAL STUDIES

Young Offender & the Criminal Justice Process

The aim of laws regarding young offenders in the criminal justice system should target deterrence and rehabilitation. Whilst punishment must exist in the criminal justice system it should not be the primary criteria.

Features of the current laws:

In order for young offenders and society to achieve justice laws need to change to reflect the ever progressive nature of society. Under Australian Criminal Law young offenders refers to people under the age of 18 at the time of the offence and under the age of 21 at the time of sentencing. The law makes special provisions for the protection of young people on the basis of age and the criminal justice process.

Under the United Nations Convention of the Rights of a Child, all signatory countries are obliged to 'establish a minimal age below which children shall be presumed not to have the capacity to infringe the penal law'. In Australia, under Federal law and the NSW criminal justice system the age of criminal responsibility among children is 10 years of age. Children under this age are believed too not have the maturity levels to commit criminal offences.

Under the common law system inherited from Britain, the principle of 'doli incapax' was incorporated into our legal system. This principle is the belief that children between the age of 10 and 14 are incapable of committing a criminal offence due to lack of mens rea. Doli incapax means they do not have the physical, mental and intellectual capacity to understand at the time what they did was seriously wrong. Under this principle, in order to charge and convict an offender, the prosecution must prove the criminal standard of proof 'beyond reasonable doubt' that the accused knew at the time of the offence that their actions were 'seriously wrong' and not just an act of naughtiness and childish mischief. In 1997, the report 'Seen and Heard' conducted by the Australian Law Reform Commission and the Human Rights and Equal Opportunity Commission, stated 'the principle of doli incapax was a practical way of acknowledging young people's developing capacities and allowed for a gradual transition to full criminal responsibility.'

Under Australian criminal law, once a child turns 14, the offender assumes full responsibility for their criminal actions. For offenders 14 or over who have been charged with a criminal offence, whilst detained in custody and only for the means of determining ones identity, the police have a legal right to take their fingerprint and an identity photograph. However, for offenders under 14 years the police are required to submit an application for a court order to further pursue such actions. Under the law, enforced through the Summary Offences Act 1988, if the police suspect someone under 18 to be carrying or consuming alcohol in public the accused is required to identify themselves.

Under the *Children (Criminal Proceedings) Act (1987)*, any alleged offender under the age of 18 is required to have a responsible adult (e.g. parent, guardian, youth worker, and/or solicitor) present during questioning with police. Furthermore, under this act anything that the offender says without the presence of a responsible adult will likely be inadmissible in court. Under the *Young Offenders Act, 1997 (NSW)*, for trivial offences, if a young offender whilst in the presence of a responsible adult admits their guilt relating to an offence they are legally entitled to alternative forms of punishments such as a police caution or youth justice conference.

Under the *Children's Court Act 1987 (NSW)* offenders between the age of 10-17 at the committal of an alleged traffic offence, and under 21 years when charged, are sentenced under a separate jurisdiction to adult offenders and trialed in the Children's Court. However, more serious indictable offences are exceptions to this jurisdiction and are held in closed sessions in the Supreme Court.

In 1990 Australia ratified the UN Convention on the Rights of the Child (CROC) which recognises the importance of diverting young offenders from the formal processes of the criminal justice system. In current society, under the *Children (Community Service Orders) Act 1987 (NSW)*, community service orders were established as an alternative form of punishment for young offenders who violate the law. Young offenders under the age of 21 whilst charged who plead guilty or have been determined guilty are eligible for this alternative punishment.

The *Young Offenders Act 1997 (NSW)* establishes an alternative regime for dealing with young people who commit certain offences, by diverting them from the Children's Court. It provides the legislative framework for warnings, cautions and Youth Justice Conferences which are integral alternative forms of intervention for Young Offenders in current society.

For and against changing the laws & suggestions for possible changes:

Many laws relating to young offenders and the criminal justice system need to be changed and altered if justice is to be achieved for individuals and society. As norms, values, morals and ethics of society change, the laws controlling society should alter to reflect such changes. The Australian law reform needs to acknowledge that in the 21st century Australia is a vastly multi-cultural country and that laws governing society should reflect this and cater for Australia's changing and diverse society.

In order to achieve justice for the individual and society new laws need to be created, old laws neglected and/or altered and alternative modern forms of punishment established which mirror current society. Victims should have rights in the criminal law system and a vital role in restorative justice involving young offenders. Arguments for and against changing laws include:

1. The age of Criminal Responsibility (10 yrs):

For:

- It may increase deterrence

Against:

- It may remove the fundamental protections of young children.

Possible Changes:

- Depending on the severity of the crime and the individuals' case, some form of light punishment to discourage re-offending and should be in place.
- Although children bound by this act are only those under ten, the law should consider any past offences and act accordingly to help fix the root issues as to why the child continues to re-offend rather than harshly punishing them.

2. The 'doli incapax' notion:

For:

- As this law was inherited from Britain it needs changing to reflect the drastic differences in society. How can such law help to achieve justice for the individual and society in 21st century Australian society if it was developed in Britain long before Australia was even colonised by the British? This is reinforced through the words of Mr Scarlet 'A child of 12 in Australia has access to television, radio and the internet, and has a far greater understanding of the world than a 12yr old in rural Britain 1769'.

- Children in modern society are growing up quicker and becoming more mature at a younger age than previously therefore such law should reflect such concept.
- Children today have greater access to information and education hence the laws should reflect such change in society.
- Today's children more able to distinguish right from wrong therefore legal age limits need to be lowered as young children can use and abuse the law to escape the justice they lawfully deserve.

Against:

- Young people have differing stages of development and understanding. The law must protect developmentally delayed, disadvantaged, disabled and emotionally immature children.
- It protects our most vulnerable members of society.
- It allows for flexibility within the law.
- It protects children from the harsh adult criminal jurisdiction.
- It is a mechanism providing an important safeguard for hormonal young children who are exploring new things, taking risks and pushing boundaries.

Possible Changes:

- The accused should have to prove they did not have the mens rea and the capacity to understand that what they were doing was wrong when committing the crime.
- The act should be amended to only bind ages of 10-12.
- The act should consider mitigating circumstances such as access to educational, information and criminal awareness to determine final verdicts. Each case should be judged on its own merits. Although hopefully achieving justice for individuals, it would not achieve equality within the legal system and may ultimately arouse conflict and anarchy.
- A limitation of two times that an individual can call upon such defenses. However, even if this were the case, there may still be mitigating circumstances. It is important to remember though that Mandatory sentencing can have unpleasant consequences.
- Possibly for developmentally delayed, disadvantaged, disabled or emotionally immature children the age should be extended to 15 or 16. This may abandon the idea of equality.

3. 14yrs – full responsibility for legal actions:

For:

- For many people teenage years are the hardest yet best times of their lives. Their emotions are running wild and they are drifting away from the comfort and guidance of their parents, pushing boundaries and exploring new and exciting things. Therefore they need support and education to guide them through such times. The law should work with them not against them. Therefore the age of full criminal responsibility should be extended to 16.

- As society is becoming more consumerist and materialistic laws should integrate and/or consider this regarding young offenders. As 1/3 of reported or detected crime is by juveniles and the highest area of crime rate among them is property theft laws should provide special help in this area of crime.
- The law needs to adapt to modern society and consider the degree of responsibility, maturity and awareness of youths today ultimately showing the age for full criminal responsibility should be reduced to 12.
- Finger printing or DNA testing could affect a person for the rest of their lives for what may have been a minor matter therefore the law should strongly consider rethinking such concept.

Against:

- Young people develop differently.
- Offenders could get criminal records for minor offences.

Possible Changes:

- A blanket law for 14-18 year olds is difficult because every child's background is different and they develop differently. Therefore the law society of Australia need to further define segments of such law into smaller categories.
- If a someone is suspected to have been involved in an indictable offence then the police should have the right to fingerprint people, regardless of whether they are in custody or not. This would help solve more crimes and those crimes more efficiently. However if found not guilty by the courts it should be removed from the system although if found guilty it should remain in the system.
- People caught consuming alcohol in public places should not be legally required to give police their name. If a young offender is intoxicated in a public place the police should have the right to order them to go home and only then if they refuse to follow their orders should they be legally able require the person's identity.

4. Children Criminal Proceedings Act 1987:

For:

- In current society, children seem to be becoming further independent from their parents at a younger age than ever before. Some parents no-longer have influence or control over the well-being of their children so why should information obtained by police without a responsible adult present be inadmissible?
- In many cases having a parent present may cause the accused to respond to police questions un-truthfully. They may feel ashamed of their actions and not want to admit things in front of their parents.

Against:

- Need to protect the rights of young people.
- Protects youths from being tricked into saying certain things.

- Protects young people from being abused by police powers and the criminal legal system.
- Allows young people to have legal personnel (i.e lawyer, barrister etc) for protection to make sure the police treat them fairly.

Possible Changes:

- The age requirement to have a responsible adult present during questioning should be reduced to 16 to reflect current evolving society, or perhaps children over 16 but under 18 could have the choice to having an adult present.
- The requirements could be waived for minor crimes.

5. Children (Community Service Orders) Act 1987 (NSW):

For:

- Less sentencing options

Against:

- This act offers alternative forms of punishment to the courts and the juvenile justice system.
- Juvenile Justice Conferences give victims certain rights and pavers.
- This form of punishment is more effective, cheaper and beneficial for society and the offender. It has been proven more effective to stop the cycle of those who come into contact with the criminal justice system from reoffending.
- Helps offenders give something back to society.
- Means of punishment without custodial detention.

Possible Changes:

- This form of punishment for appropriate offences should be available to everyone not just young offenders. Present innovations in NSW have been initially Conferencing for Young Adults, Circle Sentencing and Forum Sentencing which all aim at restorative justice.

6. Young Offenders Act:

For:

- Under this act the law is portrayed as being too flexible and lenient regarding young offenders. The number of police cautions under this Act, for a young person is currently three which is far too many.
- Repeat offenders may treat the system as 'soft'

Against:

- The alternative forms of punishment that this act provides have proven to work better in

reducing crime rates among young people. According to the Australian Bureau of Statistics since the implementation of the Young Offenders Act (1997) there has been a 38% decrease in children's numbers appearing before the court on criminal offences.

- Elements of this act provide alternative punishments that are less expensive and less time consuming than court processes.
- Alternative forms of punishment provided under the act make imprisonment a final resort.
- It provides young people with alternate means of punishment allowing for complex and sensitive issues to be dealt with away from court.
- It makes young people take responsibility for their actions whilst acknowledging victim's rights.
- It provides means to involve the victims and their families in a conference decision-making process.
- Elements embodied in this act improve public confidence in the juvenile justice system.

Possible Changes:

- The number of cautions in the young offenders act should be reduced to two as many people are using it to escape harsher punishment.
- The offender must prove that they are willing to attempt to change and possibly according to the severity of the crime should be placed on parole??
- Elements of the Young Offenders Act, although with many conditions, should be made available to the whole of society. The trial of Forum Sentencing in NSW has worked in addressing the issues of re-offending and victim's rights.

7. Children's Court Act 1987 (NSW):

For:

- Court appearances are counterproductive, mentally and physically draining for offenders and victims.
- People involved in trials who don't have background knowledge of the legal system (mainly victims, offenders, and their families, juries etc) often find it difficult to logically understand and interpret the court jargon.
- Court appearances are costly and time consuming methods of punishment.
- Often bombarding people with the formalities of the courts causes them to rebel, re-offend and develop a hate for the law. For young offenders it should be a course of last resort.
- It is difficult to get complete impartiality within the legal system.

Against:

- Offers a separate jurisdiction to adult criminal jurisdiction.
- Often more lenient and considerate than mainstream courts which is appropriate for young offenders.

- As it is a closed court it protects young offenders from the public and media.
- It is used in many developed Western countries and allows the accused to be judged by their peers.
- Some offenders need the Court system as a deterrence.

Possible Changes:

- The age bracket for children being trialed and charged in the children's court should be reduced to 16. This should be discretionary as all cases should be trialed on their own merits. Furthermore it should strongly depend in the severity of the crime and the individuals' record as to whether they be trialed in the childrens' or the adults' jurisdiction. An example of the law whereby 16 year olds are already dealt with in open Court is for driving matters.

8. Juvenile Detention- Children (Criminal Proceedings) Act 1987 Section 19:

For:

- Juvenile increases the danger of trapping young people in a cycle of crime by learning from their peers in custody.
- Many offenders use juvenile detention as a way of supporting themselves as it provides them with food, water and a roof over their heads. Therefore, for some people it is not seen as a punishment but more like a vacation from being homeless.
- It is a very expensive process: holding people in custody and also helping them to adapt back into society upon their release.
- Many ex-juvenile people can't support themselves and adapt back into mainstream society therefore they develop a pattern of criminal offences.
- Spending time in detention often develops hatred for the law and such experiences often result in deeper, life-enduring problems for the accused.

Against:

- Juvenile detention must be available, even as a last resort, as both punishment and deterrence.

Possible Changes:

- Some form of community training or conscription could be made available as an alternative to juvenile detention.

Laws change with society values and children are no longer put into custody for 'stealing a loaf of bread'. However rehabilitation is the best outcome for young offenders. Punishment must be available in any criminal law system but used appropriately as a deterrent.