

‘The criminal justice system must treat young offenders differently in order to achieve justice.’ To what extent is this statement true?

The criminal justice system (CJS) defines a young person as an individual under the age of 18. There is a prevalent focus on rehabilitation and diversion from incarceration as the main focus in the treatment of young offenders under the CJS. Hence, The Australian CJS has employed unique strategies, that aim to protect the rights and wellbeing of young offenders, as well as society’s needs and interests. Relevant implementation includes the Children’s court and Youth Justice Conferencing. Furthermore, the legal system acknowledges juvenile maturity and vulnerability through its application of the *doli-incapax* principle. Though the unique treatment of young offenders is carried out in an effort to divert them from criminal activity, it is apparent that these approaches have contentions. Thus, to an adequate extent The CJS’ execution of a unique approach towards the treatment of young offenders, achieves justice.

The age of criminal responsibility in Australia has shown to be ineffective in the achievement of justice for all parties concerned. The Children’s (Criminal Proceedings) Act 1987 states that children under the age of 10 cannot be legally responsible for a crime. This absence of legal responsibility for children is termed *doli-incapax*, and is based on the recognition that since children have limited life experience, they may not be able to understand the seriousness of their actions to have the necessary criminal intent to form *mens rea*. *Doli-incapax* is implicated within the CJS with an aim to protect the child by diverting them from incarceration and thereby improving their future prospects of rehabilitation and community contribution, as evident in R v LMW (1999). However, this poses issues about whether the vulnerability of the young offender outweighs justice for victims, as young offenders who hold *doli-incapax* are not held criminally liable. Thus although *doli-incapax* can allow for the achievement of justice for offenders, this reduces the effectiveness of the CJS’ ability to achieve justice for victims. This approach differs greatly from the system utilised for individuals over the age of 18, as they hold legal responsibility for crimes committed. Further, due to *doli-incapax* the CJS views incarceration as the last resort and focuses on rehabilitation, which has proven to be ineffective. In 2015 BOSCAR reported, that despite the fact that young offenders are treated differently in comparison to adult offenders, they hold a higher recidivism rate of 79%, compared to the adult recidivism rate of 56%. Therefore, the age of criminal responsibility as a contrast to adult offenders liability, has proven to be ineffective in the achievement of justice for victims.

The children’s court has provided an effective method to deal with young offenders as it provides a less intimidating procedure that is focused on rehabilitation. Established by the Children’s Court Act 1987(NSW) it’s presided over by a specially trained magistrate, and abides by strict requirements in the Children’s (Criminal Proceedings) Act 1987(NSW) so as to protect the child and assist their rehabilitation. Special proceedings include a closed court and names being suppressed so that the privacy of the child is protected in an attempt to act in a situationally preventative manner. This is a comparison to conventional courts which are more intimidating. Furthermore, in accordance with Article 12 of CROC 1989, the best interests of the child are held paramount in all decisions and formalities are minimised so that children can understand complex concepts and participate in the acquisition of justice. However, its effectiveness was found to be limited, as a 2012 BOCSAR report found young offenders presented to the Children’s court had a 65% recidivism rate. In spite of this, adults presented to conventional courts were found to have a comparatively higher recidivism rate of 75%. Thus, although the Children’s Court is distinctive to the conventional court in its method of proceedings, it has been ultimately effective in achieving justice for young offenders through its focus on rehabilitation and increased measures of protection.

Further, methods within the CJS such as Youth Justice Conferencing (YJCs) have been effective in achieving justice for victims, offenders and society. YJCs were established under the Young Offenders Act 1997 (NSW), as a voluntary conference between the offender, victim and support persons, who resolve to collectively deal with the aftermath of the offence. They thus reflect the rights of the victim, seen as there is a high victim satisfaction rate, where 88% of victims said they would recommend YJC to other victims. Additionally, it has high public support, where 87% of people agreed the victim should have a chance to talk to the offender about how the crime affected their life – affirming the rights of society. An example of the effective use of Youth Justice Conferences is referenced in the SMH article 'Racist attack on bus: offender's Youth Justice Conference' (2014), in which drunk teenagers who yelled anti-Semitic insults, agreed to visit the Sydney Jewish museum, and to partake in a school harmony project run by the NSW Jewish Board of Deputies. This is effective as a means of achieving justice as it is resource efficient, saving time and money –, further reflecting the rights of the community. However, the effectiveness of YJC substantially depends upon the discretionary sincerity of the victim and offender partaking in the process. However, YJCs only account for 5% of all youth offenders, and 50-60% are referred by the Children's Court- mitigating the use of YJC's as an alternative to court. Further, YJCs do not necessarily reduce recidivism, as 64% of people referred to a YJC were reconvicted of further offenses within 24 months. Though YJC's do not reduce the recidivism rate, as a unique approach in the treatment of young offenders they prove to achieve justice for victims, offenders and society,

Conclusively, the Criminal Justice System has proven to possess effective and non-effective approaches towards the achievement of justice with regards to how they deal with young offenders. Evidentially, the legal system applies specifically orchestrated mechanisms, legislation and services, to the cases of young offenders, which enable the acknowledgement of the vulnerability and immaturity of a young person, thus providing methods focused on rehabilitation and protection. Although these mechanisms mostly maintain the rights of victims, offenders and society, it is evident that in areas such as the age of criminal responsibility there is a slight imbalance between the achievement of justice for all parties. Mechanisms that allow for the effective balance of justice for all parties include the children's court and youth justice conferencing. However, such mechanisms also possess limitations, such, as not effectively reducing the rate of recidivism within youth justice conferencing, however this does achieve justice for victims, offenders and society. Ultimately, however, the unique processes and procedures within the criminal justice system designed for the treatment of young offenders is adequately effective in achieving justice.