



YOUTH  
ADVOCACY  
CENTRE INC

# ORANGE PAPER 3

**Raising the Minimum Age of Criminal  
Responsibility (MACR)**

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# Executive Summary

**Youth Advocacy Centre (YAC) supports raising the minimum age of criminal responsibility (MACR) in Queensland from 10 to 14 years without any carve-outs for types of offenders or offending. The case for raising the age is well supported by research and literature and across a range of professions.**

Ten-year-olds are in Grade 5 and still in primary school. Thirteen-year-olds are in Grade 8 and commencing the move to adolescence. Children should be at home, in school, and participating in family and community activities. They do not belong in police stations, courts, and detention centres.

A legal response is not useful in addressing the causes of offending behaviour, which are essentially developmental and social welfare issues, particularly in relation to younger children. Addressing the causes of offending needs a multidisciplinary response – hence YAC’s operational model, which includes legal, bail, court, youth, homelessness and family support services.

## **Key points in support of raising the age include:**

- Contrary to media reports, there is no youth offending crisis.
- Children’s brains are not the same as adults’ brains. Brains are not fully mature until around 25 years of age.
- There is a range of environmental factors which affect the maturing process of the brain over which children have no control. Some of these factors put children at greater risk of offending behaviour.
- Children are also dealing with physical and emotional changes as they enter adolescence.
- The criminal law applies to children in substantially the same way as it applies to adults. The legal processes in the criminal justice system have only been slightly modified for children – the ‘youth justice system’.
- The civil law provides protections to children on the basis of their immaturity and vulnerability, while at the same age the criminal law prosecutes children.
- The legal concept of 'doli incapax' should protect the 10–13-year-old age group, but it has failed to do so in Queensland.
- The UN Committee for the Convention on the Rights of the Child has set the age of 14 years as the MACR and has criticised Australian jurisdictions for the use of 10 years.
- The younger a child enters the justice system, the more likely it is that they will remain in it.
- Aboriginal and/or Torres Strait Islander children are significantly over-represented in the justice system and the younger the child, the greater the over-representation. All Australian jurisdictions have agreed a Closing the Gap target to reduce this.

- Children in the care system, particularly those in out-of-home care, are over-represented in the youth justice system, often for offences which are related to their care situation.
- Youth detention centres (YDCs) are prisons for 10–17-year-olds. Like all prisons, they may exacerbate rather than address offending behaviour.
- Over 85% of children in Queensland YDCs are on remand, that is, their court matter is yet to be finalised. They may not receive a sentence of detention.

Providing more beds in YDCs and remanding more children in custody is not a solution to addressing the factors putting children at risk of behavioural problems or supporting children’s positive development. A more effective response for addressing offending behaviour in children, underpinned by a set of key principles, would be:

- Prevention and early intervention: the best response would be an approach which prevents development of problem behaviours, or enables them to be addressed very quickly, through a range of universal and targeted services and supports for children and their families. This links with the Government’s stated aim of a 'great start for all Queensland’s children'.
- Diversion: provide supports and services to children and their families to assist in diverting children to a more positive life path where their behaviour is causing concern and was not identified early enough for prevention and early intervention.
- A justice reinvestment approach would support prevention, early intervention and diversionary services and supports for 10–13-year-olds and their families. This community-led approach has been used successfully in Bourke, NSW.

**YAC calls for an evidence-based response, supported across the Parliament, which does not continue to politicise youth justice and our children.**

**When a flower doesn’t bloom –  
you fix the environment in which it grows, not  
the flower**

Alexander den Heijer

# Background

Queensland's Criminal Code contains most of the offences which make up the criminal law in Queensland. It also provides that the criminal law applies to any person who has reached the minimum age of criminal responsibility (MACR). The MACR in Queensland and across Australia is 10 years of age.

If a child aged 10 or older is alleged to have broken the law, they are dealt with in the criminal justice system. Overall, child offenders (those aged 10–17 years) are not dealt with very differently to adult offenders.

Children have a small number of protections additional to adults in relation to police processes, such as the presence of a support person at a formal police questioning or search. Where a child is aged 10 but under 14 years of age, the police must not only prove the child committed the offence but also meet a test on the culpability of the child – generally known as the 'doli incapax' rule.

If the police decide to take the matter to court, children will go to a magistrates' court sitting as a Childrens Court. The court process is generally the same as that for adults except that:

- Youth Justice Services also attend court
- parents must attend court with their child
- the court is closed to the general public and, although the media may attend, it is an offence to publish any information which would identify the child.

For the more serious offences, the child will go on to a court presided over by a judge. These courts are open to the public, but again, no-one can publish information identifying the child.

The range of sentence options available for children is very similar to that for adults except that the length of sentences is shorter due to children's experience of time being different to that of adults. For the most serious of offences, a child can still be given a life sentence, which means for 'the term of their natural life' in Queensland. If a child turns 18 while in youth detention, they will be sent to an adult prison unless they only have a short time left to serve.

## Youth offending

There is no youth offending crisis. Children's offending is predominantly property-related and opportunistic. In 2019–20, 8% of offences proven to have been committed by children were violence related, 6% drug related, and 0.4% involved sexual offences.

The number of youth offenders has been decreasing for some years in Queensland, in Australia and in countries such as the UK and Canada. There are around 535,000 10–17-year-olds in Queensland, only 0.9% of whom appear in court in a given year. Around 10% of child offenders (about 500 a year) commit around 45% of the offences committed by all youth offenders.

## Youth offenders

The small group of those who continue to offend share a number of challenges. On a given day in 2019, of children in detention:<sup>ii</sup>

|            |  |
|------------|--|
| <b>60%</b> | had experienced or been impacted by domestic and family violence         |
| <b>55%</b> | were disengaged from education, training, or employment                  |
| <b>46%</b> | had a mental health and/or behavioural disorder (diagnosed or suspected) |
| <b>38%</b> | had used ice or other methamphetamines                                   |
| <b>30%</b> | had at least one parent who spent time in adult custody                  |
| <b>29%</b> | were in unstable and/or unsuitable accommodation                         |
| <b>12%</b> | had a disability (assessed or suspected)                                 |

Children under 14 in the justice system are more likely to be experiencing underlying trauma, have an undiagnosed disability, and come from a low-socioeconomic background.<sup>iii</sup> The younger a child commences in the youth justice system, the more likely they are to remain in it, the more often they are in detention, and the more likely they are to return.<sup>iv</sup>

Some cohorts of children are overrepresented in the justice system, particularly Aboriginal and/or Torres Strait Islander children, but also other disadvantaged groups such as children in contact with the child protection system.

# Support Raising MACR

**YAC supports raising MACR to 14 years without any carve-outs for types of offenders or offending.**

## **United Nations Convention on the Rights of the Child (UNCROC)**

The Convention on the Rights of the Child confirms that the universal economic, social, cultural, civil and political rights apply equally to children, but it also includes additional protections for children because of their immaturity and vulnerability.<sup>v</sup> The Standard Minimum Rules for the Administration of Juvenile Justice (the ‘Beijing Rules’) stress the importance of establishing a set of laws, rules and provisions specifically applicable to juvenile offenders to meet their varying needs, while protecting their basic legal rights.<sup>vi</sup>

The UN Committee on the Rights of the Child has criticised Australia’s low age of 10 years as the MACR and has encouraged all countries ... "to take note of recent scientific findings, and to increase their minimum age accordingly, to at least 14 years of age. It recommends a higher age of 15 or 16, since scientific evidence indicates that brains are continuing to mature even then."<sup>vii</sup>

A review of ages of criminal responsibility across the world indicates that 14 is the most common minimum age, with many countries having a higher requirement.

## **Inconsistency of the law**

While children of primary school age are considered old enough to go through the rigours of the criminal justice system, there is a concurrent divergent view that children need to be protected because of their age and consequent vulnerability due to lack of life experience and knowledge. For example:

- it is an offence for a person who has care or charge of a child under 12 years to leave them unsupervised for an ‘unreasonable time’
- for a number of offences, the fact that the victim of the offence is under 12 years of age is a circumstance of ‘aggravation’, thus attracting a higher maximum sentence
- ‘indecent treatment of a child’ relates to a person up to and including the age of 15
- ‘child exploitation material’ relates to images of a person up to and including the age of 15
- film, television and computer game classification take the age of 15 as the threshold: for example, PG – Parental Guidance (potentially only ‘mild impact’ but not recommended for viewing by people under the age of 15 without adult guidance)
- it is an offence for a person who has care or charge of a child under 16 years to abandon the child or fail to provide them with adequate food, clothing, and medical support
- a child under 18 cannot have a tattoo irrespective of parental permission.

## **Doli incapax**

In theory, the legal concept of ‘doli incapax’ should be a protection for younger children and mean that those under 14 should not be prosecuted except for the most minor of matters. However, it tends to enable the prosecution of younger children for more serious offences in Queensland. This is due to the way the section was drafted in 1899.

## **Inappropriate use of the criminal law**

The police and the criminal law are not infrequently used as a behaviour management tool for unruly or troubled children, particularly those children in the child protection system who are in out-of-home care. This generally relates to situations where there has been property damage or physical interaction with a worker. Children are placed in out-of-home care because they have complex needs following substantiated abuse or neglect allegations<sup>viii</sup> and cannot live in a family situation. It is to be expected that they have behavioural problems. Staff should have the skills to manage and be able to work with the child to address these problems. YAC lawyers have represented children whose criminal history comprises only offences committed in their placement.

The problem is sufficiently serious that Child Safety, the Queensland Police Service, and non-government partners in the out-of-home care system have entered into a Joint Protocol<sup>ix</sup> aimed at reducing the criminalisation of young people as a response to those situations. However, YAC’s view is that this does not sufficiently address the situation.

## **Overrepresentation of Aboriginal and/or Torres Strait Islander children**

The Commonwealth, States and Territories are all parties to the National Agreement on Closing the Gap on Indigenous Disadvantage. This includes addressing overrepresentation of Indigenous children in the criminal justice system with a specific target of reducing the rate of Aboriginal and Torres Strait Islander young people (10–17 years) in detention by 30% by 2031.

Aboriginal and/or Torres Strait Islander children accounted for 46% of all child defendants in 2019–20 while comprising only around 7% of all 10–17-year-olds in Queensland. The number was significantly higher in the younger ages (93% of 10-year-olds, 82% of 11-year-olds, 66% of 12-year-olds and 59% of 13-year-olds). The fact that Aboriginal and/or Torres Strait Islander children predominate in the younger age groups should be an important factor in MACR.

## **Detention**

Queensland has three youth detention centres (YDCs) with a total of 306 beds: two at Wacol (Brisbane and West Moreton) and one in Townsville (Cleveland). Detention is costly – about \$1500 per day per child. Children may be sentenced to a period in detention if found to have committed the alleged offence. They may also be detained in custody if they are arrested and charged and not granted bail (remanded) pending the court dealing with their matter. Queensland has a particularly high level of remand – 85% of those held on any given day. Children should only be held in police watchhouses for short periods as they are

particularly unsuitable for children.

Despite the mythology, there is nothing luxurious – or even particularly comfortable – about a YDC. They are prisons for 10–17-year-olds. They can exacerbate rather than address the issue of reoffending, sometimes being referred to as ‘schools of crime’. Children aged 10–13 need an environment and supports which are conducive to their positive and age-appropriate development. YAC’s view is that YDCs, by their nature, are unable to adequately provide these.

## **Child and youth development**

There is an extensive body of research, literature, and data across a range of domains (justice, psychology, sociology, health, education) which relates to child and youth development and behaviour and its significance in terms of youth offending and youth offenders. There is well-documented evidence that at the age of 12 and 13 years, the frontal cortex of the brain is still developing and maturity and capacity for abstract reasoning is continuing to evolve. As such, children are unlikely to understand the impact of their actions or to comprehend criminal proceedings.<sup>x</sup>

In early adolescence, those parts of the brain that deal with reward processing are more easily aroused but those that deal with harm avoidance and self-regulation are still comparatively immature. Even at age 16 the capacity for judgement-making and impulse control is still evolving.<sup>xi</sup>

Some argue that today’s children are more sophisticated and so are better able to understand their actions than previously, particularly due to technological advances.

Brain development is not ‘sped up’ as a result of access to technology. In any event, not all children have access to technology and technology has negative as well as positive impacts. Computer games, internet, and television mean children are not experiencing situations and the impacts or consequences of actions in person or learning how to behave appropriately in response. As such, a child may not fully appreciate the impacts of their actions and how others may be affected or react in real situations.

Children are also dealing with the onset of puberty. Children start puberty at different ages. Girls range from 8–13 years (average 10–11) and boys from 9–14 years (average 11–13). It can last between one-and-a-half and five years and brings additional challenges.

Ten-year-olds are in Grade 5. Thirteen-year-olds are in Grade 8. Their life experience is limited simply because of their short lifespan. Children make their way in a world dominated and run by the adults around them. The child’s environment is a critical factor in their development, positively and negatively. Some children’s lives are compromised as a result, and this leads to challenges and potentially their involvement in the criminal justice system.

A legal response is not useful in addressing the causes of offending behaviour, which are essentially developmental and social welfare issues, particularly in relation to younger children. Addressing the causes of offending needs a multidisciplinary response – hence YAC’s operational model, which includes legal, bail, court, youth, homelessness and family support services.



# Alternative Responses

**YAC supports raising the MACR without carve-outs for offenders or offences. Children should be at home, in school, and participating in family and community activities. They do not belong in police stations, courts, and detention centres. We need to look for alternative responses to addressing the causes of offending behaviour.**

## **Prevention and early intervention**

The best response would be a prevention and early intervention approach so that children do not develop the problem behaviours, or they are addressed very quickly. This links well with the Government's stated vision of all "Queensland children to have a great start in life, supported by their family, service providers and the wider community to improve their life chances and reach their full potential<sup>xviii</sup> and its early years plan, 'A Great Start for All Queensland Children'.

A number of sectors have a role to play in supporting families and children, particularly housing, education, and health. Schools, for example, are uniquely placed to interrupt the pathway to youth offending through early identification and support. Actions include:

- universal home visits by nursing staff pre-birth, for the first year and thereafter as needed
- prioritisation of health and disability screening for children at key developmental points
- focus on oral language competency from an early age
- qualified social workers attached to schools as a resource for parents and a referral point for teachers
- prohibition on suspension and exclusion in prep and primary school
- incentives to schools not to suspend or exclude children and supports to address problems
- prioritisation of affordable housing for families
- family support centres that are located in neighbourhood centres or other appropriate hubs and are not funded by, or connected with, Child Safety Services.

There is a wealth of information available to support early intervention and prevention service delivery, including work by the Australian Research Alliance on Children and Youth and, more locally, 'Pathways to Prevention' (a longitudinal project based around Inala) and 'Logan Together'.

## **Diversion**

If a well-constructed and delivered prevention and early intervention system works appropriately, there should be reduced need for diversion in due course. For the immediate future, however, there will be 10–13-year-olds whose behaviour may be a cause for concern. Where a child's behaviour is having an impact on others, it will need to be addressed.

Again, a multidisciplinary response is needed. There can be no ‘one-size-fits-all’ approach. Each child and their family must be considered in the context of their individual needs and circumstances. Potentially there will be one case plan for the child and one for the family which run in parallel. They will include ensuring relevant assessments have been undertaken, therapeutic responses put in place as required, parenting issues or challenges addressed (including consequences for the child which are developmentally and age appropriate in relation to behaviours), linking with community activities which respond to the child’s interests and provide positive mentors and relationships, and support for improving family relationships as appropriate.

## **Some key principles for services and supports**

Irrespective of when supports or services are delivered, they should:

- be focused on the wellbeing and best interests of the child, not simply on managing ‘risk’
- involve families, parents, and carers where appropriate and provide them with better and earlier supports which are non-judgemental
- be age-appropriate and strength-based
- assess and diagnose cognitive impairments, mental health, and other issues and identify services and supports as early as possible
- be trauma-informed – ask questions such as, ‘What happened to you?’ not ‘What’s wrong with you?’ or ‘What have you done?’<sup>xiv</sup>
- be locally based and have a whole of community focus and participation, particularly where there are ‘hot spots’ of offenders or offending
- as a priority, address the overrepresentation of Aboriginal and Torres Strait Islander children and children in the child protection system
- provide a mechanism which ensures that every adult or agency which is supporting a child or their family takes responsibility for what they have committed to do and is held accountable for it.

## **Justice reinvestment approach**

This response can be set within a justice reinvestment approach, whereby money is not spent on detention centre beds but rather on the responses identified above – preventing the problem arising in the first place rather than waiting for the inevitable to occur. The Maranguka Justice Reinvestment project in Bourke, NSW, shows how this can be done successfully. Most importantly, it is a community-led justice reinvestment approach. A community strategy for change was developed: ‘Growing Our Kids Up – Safe, Smart, Strong’. The project is directed and guided by the Bourke Tribal Council and a team works with existing services to work collectively to develop and implement local solutions.<sup>xv</sup>

# Challenges to Raising the Age

A significant challenge is the mythology which surrounds youth justice – ‘youth offending is out of control’ and ‘they only get a slap on the wrist’ being two of the most common statements.

We have noted previously that the number of youth offenders has been declining and that there is only a very small group of ongoing offenders. We also know what puts them at greater risk of getting into trouble. We know where the ‘hot spots’ are for offenders and offending and, therefore, where to focus the most effective responses.

However, youth justice has become highly politicised. The lack of general understanding of the facts of youth offending and the youth justice system feeds a punitive response, which pressures politicians and policy makers.

There is evidence that the community is supportive of initiatives such as early intervention and diversion, education/employment programs, better support to children who have been abused or neglected, and treatment for drug addiction in order to turn children’s lives around.

Clearly, the community needs to be brought on board with any proposal to raise MACR. YAC believes that it can be if the public is properly informed about child offenders, child offending and effective responses.

**YAC calls for an evidence-based response, supported across the Parliament, which does not continue to politicise youth justice and our children.**

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# Acknowledgements

YAC affirms that the Aboriginal and Torres Strait Islander peoples are the Indigenous inhabitants of Australia and acknowledges their unique relationship with their ancestral country. In particular, we acknowledge the Turrbal and Jagera peoples, the Traditional Custodians of the land in and around Brisbane, and pay our respects to their Elders, past, present and emerging. We acknowledge our Aboriginal and/or Torres Strait Islander staff and the insight they bring to YAC and their support for it to continue to develop as a culturally competent organisation. YAC is proud to support its Indigenous clients and staff, its LGBTIQ+ clients and staff and welcomes diversity in all its forms.



**YOUTH  
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YAC provides legal services, youth support and family support services to young people aged 10 to 25 years in South East Queensland and Cairns.

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