

Raise The Age NSW: A human rights and homelessness issue

The criminalisation of children in NSW

In NSW, and throughout Australia, a child as young as 10 can be arrested, remanded in custody, convicted and held in detention, under the Children (Criminal Proceedings Act) 1987. Australia has faced international condemnation for having one of the lowest ages of criminal responsibility in the world – the average minimum age of criminal responsibility globally is 13.5 (which is still considered too low by the international community). A minimum age of criminality responsibility of 10 years is a human rights breach and is causing harm to children, families and communities.

Table 9.1: Minimum age of criminal responsibility, by selected countries

Age (years)	Country
10	Australia, New Zealand, England, Wales
11	Japan
12	Belgium, Canada, Israel, Netherlands
13	Greece
14	Austria, Germany, Italy, Spain
15	Denmark, Finland, Iceland, Norway, Sweden
16	Portugal

Source: Child Rights International Network 2020.

(cited in AIHW. (2022). *Youth Justice in Australia 2020–21*)

In November 2021 in NSW, a private member's bill – Children (Criminal Proceedings) Amendment (Age of Criminal Responsibility) Bill 2021 – was introduced by David Shoebridge MLC. The bill sought to raise the age of criminal responsibility to 14 and ensure that children under the age of 16 cannot be detained or imprisoned. The bill was voted down by the Parliament of NSW.

Criminalisation harms children and does not prevent crime

Criminalising children, through arrests, charges, sentencing and detention, does not work to keep children or society safe and makes life harder for many young people already facing discrimination. Arguments for increasing minimum age of criminal responsibility include:

- Children are still undergoing significant brain and social development. Scientific evidence shows that children as young as 10 do not have a full understanding of the severity and impacts of their actions.
- Engaging young people in the criminal justice system makes it more likely that young people will offend in the future. It doesn't work as a deterrent and tends to entrench young people in the justice system.

- Criminalising children, particularly placing young people in detention, separates children from their families. Evidence shows that close relationships with families are key to children and young people's lifelong wellbeing.
- There are disproportionate impacts of a low minimum age for criminal responsibility on children with disabilities, mental illnesses and children involved with the child protection system.
- Young people from remote and very remote parts of Australia and those from the lowest socioeconomic areas, are more likely than their peers to be under youth justice supervision.
- There is a strong evidence base on effective alternatives to supervision and detention. There are a range of therapeutic interventions and diversion programs that have been demonstrated to have long-term positive impacts for young people.

In particular, this is a significant issue of discrimination and inequality for Aboriginal and Torres Strait Islander children. Only 5.8% of young people aged 10-17 years in Australia are Aboriginal and Torres Strait Islander people. However, 49% of young people under youth justice supervision and 53% of those in youth detention are Aboriginal and Torres Strait Islander young people.

Raising The Age is vital to solving homelessness

Placing children as young as 10 in the justice system is a human rights issue *and* it is an issue inextricably linked with homelessness. Children and young people in the justice system are more likely to become homeless, and children and young people who experience homelessness are more likely to become involved with the justice system.

- Young people in detention, particularly young women, are at high risk of becoming homeless.
- At least 54% of people who exit prison report that they are likely to be homeless upon release. Criminalising children makes it more likely that they will be among those who experience homelessness as adults.
- Those same young people who experience greater risks of criminalisation are those also facing the greatest risks of homelessness – poverty, removal from care of families, disconnection from education, mental illness, disability and various forms of discrimination. The solutions to homelessness are the same solutions to youth social injustice and inequality.
- Many unsentenced young people experiencing homelessness are detained because they cannot provide a bail address.
- Homelessness impacts young people's mental health, substance use and overall wellbeing – all factors that make a person more at risk of involvement in the justice system.

The voices of children

Children and young people's voices and stories must be at the heart of change. Children and young people must play a role in monitoring and holding the justice system to account. A powerful example of a strong young advocate is Dajuan Hoosan from Arrernte and Garrwa country. In 2019, at the age of 12, Dajuan was the youngest person ever to address the United Nations. He called for Australia to stop putting children in detention and said "I want adults to stop being cruel to 10-year-old kids in jail.". Watch Dajuan's speech [here](#) and if you get the chance watch the documentary about Dajuan's story here '[In My Blood It Runs](#)'.

Call to action: Join the Raise The Rate NSW campaign

The Raise The Age NSW campaign is calling on the NSW Government to raise the minimum age of criminal responsibility to at least 14 and help to bring about positive change for kids and communities. Partners currently leading this campaign including NCOSS, Amnesty International, Aboriginal Legal Service and Youth Action.

Homelessness NSW is a member of the Raise The Age partner network.
Find out more about the campaign here <https://raisetheagensw.org.au/>

Sources

Amnesty International. (2022). Why we need to raise the minimum age of criminal responsibility. Available at <https://www.amnesty.org.au/why-we-need-to-raise-the-minimum-age-of-criminal-responsibility/>

Australian Human Rights Commission. (2021). The minimum age of criminal responsibility. Available at https://humanrights.gov.au/sites/default/files/2020-10/australias_minimum_age_of_criminal_responsibility_-_australias_third_upr_2021.pdf

Australian Institute of Health and Welfare. (2012). Children and young people at risk of social exclusion: Links between homelessness, child protection and juvenile justice. Available at <https://www.aihw.gov.au/reports/children-youth/children-and-young-people-at-risk-of-social-exclus/summary>

Australian Institute of Health and Welfare. (2022). Specialist homelessness services annual report 2021-22. Available at <https://www.aihw.gov.au/reports/homelessness-services/specialist-homelessness-services-annual-report/contents/about>

Australian Institute of Health and Welfare. (2022). Youth detention population in Australia 2022. Available at <https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2022/contents/summary>

Australian Institute of Health and Welfare. (2022). Youth justice in Australia 2020–21, catalogue number JUV 13. Available at <https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2020-21/contents/summary>

Crofts, T. (2019) Will Australia raise the minimum age of criminal responsibility? *Criminal Law Journal*, 43 (1). pp. 26-40.

Drabsch, T. (2022). Age of criminal responsibility. NSW Parliamentary Research Service. Available at <https://www.parliament.nsw.gov.au/researchpapers/Documents/Age%20of%20criminal%20responsibility%20-%20Final.pdf>

Ewenson, L., & Naylor, B. (2021). Protecting human rights in youth detention: Listening to the voices of children and young people in detention. *Australian Journal of Human Rights*, 27(1), 97-119.

Lin, B., Clancey, G., & Wang, S. (2020). Youth justice in Australia: Themes from recent inquiries. *Trends and Issues in Crime and Criminal Justice [electronic resource]*, (605), 1-19.

NSW Government. (2023). Children (Criminal Proceedings) Act 1987 No 55. Legislation. Available at <https://legislation.nsw.gov.au/view/html/inforce/current/act-1987-055#sec.5>

Yfoundations. (2021). Young, in trouble and with nowhere to go: Homeless adolescents' pathways into and out of detention in NSW. Available at https://www.yfoundations.org.au/report_young_in_trouble_and_with_nowhere_to_go_homeless_adolescents_pathways_into_and_out_of_detention_in_nsw