

Minimum Age Of Criminal Responsibility

POSITION STATEMENT

College position

ACRRM believes that young people living in rural and remote settings should be supported to live safe and healthy lives, and that those before the justice system, should be treated with humanity and with a focus on directing them toward constructive life paths.

ACRRM recognises that youth offending presents critical societal challenges, and that the criminal justice system has limited capacity to respond appropriately to early offenders, including those from rural and remote settings. However, all levels of government in Australia should seek to implement effective mechanisms to address crime and its impacts on communities, that do not involve incarceration of children.

The College calls on State and Territory health ministers to act to ensure that across Australia the age of criminal responsibility is a minimum of at least 14 years. There are sound evidence-based justifications for doing this, on ethical grounds as well as on the basis of efficacy and economic costs and benefits.

ACRRM calls for increased investment in therapeutic, evidence-based diversion programs and approaches that prioritise rehabilitation over criminalisation to provide a more positive and humane path forward.

Efforts should include preventative strategies, and these if they are to be effective must extend to addressing the deficiencies in access to quality food, safe housing, education, employment and other key social determinants experienced by many young people and their families in rural and remote areas.

Rural Generalists and rural General Practitioners can provide important support for at-risk young people, criminal offenders and those reintegrating into the community, and their families, by offering affordable, accessible health services, that are non-judgemental, culturally safe, and by building relationships of trust over time, through continuity of care.

Age of criminal responsibility under Australian law

In Australia, while there is an overarching criminal code, youth justice is primarily the domain of each state and territory and is governed differently in each jurisdiction.¹ Currently, under the national legislation, young people are deemed to have criminal responsibility from the age of 10 however jurisdictions may enact overriding legislation.² While some states moved to raise the minimum age in 2023, a consistent commitment is still needed across all jurisdictions to raise the minimum age to at least 14 years of age.

Under the Commonwealth Crimes Act 1914 and the Criminal Code Act 1995, children from the age of 10 can be prosecuted if it is proven they knew their actions were wrong. However, most young people are presumed to be *doli incapax*, meaning they cannot be held criminally responsible unless it is proven beyond reasonable doubt that they understood their conduct was wrong. Despite this presumption, there are concerns that children as young as 10 years old can be held in custody before *doli incapax* is determined. Additionally, children aged 10 and 11 can still be subject to youth justice supervision in custody in most Australian jurisdictions.

Cognitive development, impairment and trauma

Cognitive development in young children is critical to understanding their behaviour. Studies show that brain immaturity can impact areas such as impulsivity, reasoning, and the ability to think through consequences.³ Children aged 10 to 13 are at a delicate stage of brain development and lack the ability to fully comprehend the consequences of their actions.

Additionally, many children who come before the judicial system have medical conditions and impairments which further undermine their capacity to calculate risk and consequences, and to regulate their emotions and actions. These conditions can often coincide with extreme socio-economic disadvantage.

It is well documented that children who commit crimes commonly come from backgrounds of trauma, social disadvantage, and unmet needs, including high prevalence of FASD and severe neurodevelopmental impairment.⁴ Children in youth detention with neurodevelopmental delays or mental health conditions may also exhibit behaviours and cognitive abilities that are developmentally younger than their chronological age.

Evidence shows that children under 12 with significant emotional and behavioural difficulties are two to three times more likely to engage in long-term, serious offending.⁵

There are high rates of Attention Deficit Hyperactivity Disorder (ADHD), Foetal Alcohol Spectrum Disorder (FASD), and other neurodevelopmental disorders among First Nations children which may contribute to their over-representation in the criminal justice system. Furthermore, these conditions often go undiagnosed or untreated reflecting multifactorial barriers to access to healthcare.⁶

Recidivism and long-term costs of incarceration

Research consistently shows that youth detention has minimal impact on reducing recidivism and should be used only as a last resort.⁷ Detention, particularly for young people who have experienced abuse and neglect or who have mental health issues and intellectual disabilities, is often harmful and has limited effectiveness in reducing reoffending.

A series of inquiries, including the Royal Commission into the Protection and Detention of Children in the Northern Territory, have highlighted that incarceration is an ineffective method of rehabilitation for young offenders.⁸ Additionally, evidence shows that incarceration can aggravate existing health conditions, and lead to new ones, such as depression, post-traumatic stress disorder and suicidal ideations in young children.⁹

The rising costs of recidivism and incarcerating young people in Australia places significant financial strain on the justice system and public resources. The financial burden of youth detention extends further to broader society, including the costs associated with crime, social services, and long-term support for those released from detention.

Furthermore, detention can lead to disengagement from education and employment, contributing to higher rates of unemployment and poverty.

Research has shown that community-based interventions and diversion programs are more cost-effective alternatives. These approaches not only reduce the financial burden on the justice system but are also more effective in promoting positive outcomes for young people by lowering the risk of recidivism.¹⁰

Over-Incarceration of Aboriginal and Torres Strait Islander Children

The negative impacts of policies of youth detention are disproportionately felt by young Aboriginal and Torres Strait Islander children and their families. Aboriginal and Torres Strait Islander children aged 10-17 are 29 times more likely to be in detention than their non-Indigenous counterparts,¹¹ with the rate of detention in First Nations children higher compared with their non-Indigenous counterparts in all states and territories.¹²

Underlying these headline statistics is a complex inter-relationship between socio-cultural disadvantage impacting many First Nations children and families, and experiences as both victims and perpetrators of crimes. The Australian Indigenous Doctor's Association (AIDA) have pointed to an intricate relationship between the social determinants of health, incarceration, intergenerational trauma, and adverse health outcomes facing Aboriginal and Torres Strait Islander peoples.¹³ Efforts to combat rates of youth criminality can only be effective where the root causes and the cycles of disadvantage are addressed.

ACRRM believes that raising the age is critical for reducing the overrepresentation of Aboriginal and Torres Strait Islander children in the justice system and to making positive progress toward the Closing the Gap targets. Additionally, more funding is needed to support Aboriginal-led, specialist, holistic services, and family support programs. These services are essential to ensure that children and their families have access to the appropriate support and resources to prevent harm and improve outcomes.

The College believes that access to culturally safe health services and therapeutic approaches focused on rehabilitation is essential for providing at-risk children with early opportunities to engage in programs that help them develop strategies for managing stress, pressure, and trauma. The College supports diversionary programs that prioritise safety and continuing connection to culture, family, and Country.¹⁴ Additionally, the College advocates for prevention programs as a positive alternative to criminalisation, seclusion, and isolation.

Positive approaches and strategies to address youth crime

The College advocates for raising the minimum age of criminal responsibility to ensure that young people are not criminalised at an age when they are still developing. ACRRM strongly supports multifaceted approaches to preventing and responding to youth crime, that offer alternatives to youth incarceration.

ACRRM recognises the importance of evidence-based approaches to youth offending, particularly in rural and remote areas, where access to services can be limited. All decisions affecting young people should be grounded in solid evidence to ensure the best possible outcomes. To this end, ACRRM supports initiatives such as the National Crime and Justice Data Linkage Project to improve understanding of the movement of young people between the youth and adult justice systems, as well as patterns of recidivism.

ACRRM strongly advocates for a shift from punitive measures to preventive and rehabilitative approaches, particularly in rural and remote regions where resources may be limited.

The College believes that a preventative approach should be applied including provision of services to assess and identify high-risk children early, steering them away from the justice system and preventing their progression into criminal behaviour and detention. Additionally, ACRRM advocates for strategies focused on preventing and managing developmental disorders in young people, alongside early intervention, and rehabilitation for youth offenders.

ACRRM advocates for therapeutic, evidence-based diversion programs and approaches that prioritise rehabilitation over criminalisation, as outlined in the *Help Way Earlier* report, to provide a more positive and humane path forward.¹⁵ Diversionary programs that are culturally safe, supportive, and provide access to legal and health services are essential, particularly in rural and remote communities. These should offer young people the resources they need to build a positive future, rather than criminalising them and separating them from mainstream society. Additionally, positive community-initiated programs such as *Kings Narrative* in Northern Territory which mentors and builds personal resilience in young men experiencing difficulties, offer models for adoption.

For the people in youth detention facilities, efforts should be made to provide the most effective, compassionate and culturally appropriate models of management. The facilities should seek to provide support, training and pathways to employment and rehabilitation for their inmates and maximise their continued connection to family and community. Programs such as *Reframe the Behaviour*, which focuses on upskilling the custodial workforce to better manage youth with FASD and other neurodevelopmental impairments should be promoted.¹⁶

The role of the College and Rural Generalists

Rural Generalists (RGs) and rural General Practitioners (GPs) have a key role to play in the health and well-being of young people in rural and remote communities and can be part of a strengths-based approach to preventing people from criminal behaviours and supporting those who have committed crimes in their rehabilitation and future wellbeing.

The long-term relationships these doctors have with patients and their families enables them to build relationships of trust and to have a better understanding of and capacity to address the broader social determinants of health, such as domestic violence, poverty, unstable housing, and maltreatment.

RGs and rural GPs are often the first point of contact for young people facing mental health issues, substance abuse, family problems, or behavioural challenges—factors that can lead to criminal behaviour. Early screening and mental health treatment may divert children away from the justice system.

In addition to direct healthcare, rural doctors can build community engagement, and connect patients with local services to ensure continuity of care. They can play an especially important conduit to services for patients who may distrust or feel isolated from authorities due to personal experiences with the justice system. They often act as advocates, helping families and young people navigate local services such as education, housing, and community programs. Collaboration with local schools, juvenile justice systems, and social services further strengthens the support network for at-risk youth.

ACRRM believes that it is part of the role and responsibility of RGs to:

- Identify signs of mental health issues or risky behaviours in youth as early as possible.
- Provide holistic care, addressing both physical and mental health needs of young people in rural communities.
- Advocate for at-risk youth, ensuring access to appropriate family support services and NDIS if required.
- Provide patients impacted by youth crime with appropriate medical advice and counselling.
- Contribute to the health of rural communities, fostering safer and healthier environments for young people.
- Promote access to community-based resources, including youth services and diversionary programs that aid in rehabilitation and reintegration.

Endnotes

- 1 Clancey, G., Wang, S., & Lin, B. (2020). Youth justice in Australia: Themes from recent inquiries. Trends and issues in crime and criminal justice, (605), 1-19.
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- 8 Cth of Aust (2017) Royal Commission into the Protection and Detention of Children in the Northern Territory: Findings and Recommendations. <https://www.royalcommission.gov.au/system/files/2020-09/findings-and-recommendations.pdf>
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- 11 Australian Institute of Health and Welfare (2023). Youth justice in Australia 2021-22.
- 12 Sentencing Advisory Council (2020) Indigenous Young People in Detention. Available at **Aboriginal and Torres Strait Islander Young People in Detention | Sentencing Council**
- 13 AIDA (2022) Incarceration: the disproportionate impacts facing Aboriginal and Torres Strait Islander people. <https://aida.org.au/app/uploads/2022/09/FINAL-Incarceration-paper-on-25yr-header.pdf>
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- 16 Passmore, H. M., Mutch, R. C., Watkins, R., Burns, S., Hall, G., Urquhart, J., ... & Bower, C. (2021). Reframe the behaviour: Evaluation of a training intervention to increase capacity in managing detained youth with fetal alcohol spectrum disorder and neurodevelopmental impairments. Psychiatry, Psychology and Law, 28(3), 382-407. <https://doi.org/10.1080/13218719.2020.1780643>

Find out more

If you have any queries relating to this Position Statement, please contact us by:

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ACRRM acknowledges Aboriginal and Torres Strait Islander peoples as the custodians of the lands and waters where our members and staff work and live across Australia. We pay respect to their elders, lores, customs and Dreaming. We recognise these lands and waters have always been a place of teaching, learning, and healing.