

Commissioner's Position

The Commissioner for Children and Young People believes that the minimum age of criminal responsibility should be increased.

The minimum age of criminal responsibility in South Australia is currently set at 10 years. This is too low and does not align with our understanding of childhood development and how best to support inclusion and healthy development of children's complex needs.

Raising the minimum age of criminal responsibility will better reflect the developmental level of children and young people and take into account what we already know about the children who are in contact with our justice system.



What we know

Childhood and adolescence are critical periods for brain development. The mental skills and abilities adults use to coordinate information, create mental priorities, focus on tasks and make good decisions are not fully developed until the mid-20s.

The development of reasoning and good decision making ability, planning and self-regulation occurs during childhood and adolescence through a mixture of positive experiences and environment that support healthy brain development and impulse control skills.

As a community our focus should be on working alongside families to create the conditions, programs and resources all children and young people need to support healthy brain development. This includes providing safe community environments to support and practice applying positive mental skills and abilities.

Some children in our community start life without healthy supportive relationships. In some instances they have been exposed to toxic stress early on which can impact on their brain function and development. This can mean they

use self-destructive and harmful behaviour, can be aggressive, and find it difficult to assess danger. They often also have planning for the future.

When this is coupled with a lack of caring adults to guide them through adolescence we have an obligation to these children and young people to intervene on their behalf. This intervention should aim to divert them from the justice system and instead be designed to offset the effects of disruptive brain function and lack of impulse control skills.

Raising the minimum age of criminal responsibility

Commissioner for
Children & Young People

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What needs to happen?

The Commissioner recommends the minimum age of criminal responsibility be raised to the internationally acceptable age of 14 years.

Most young children who come into contact with the criminal justice system have histories of severe physical and sexual abuse, neglect, stress, and violence. These children will struggle to thrive if an approach based on punishment and isolation from community continues to be applied.

These children should be diverted from the criminal justice system and receive programs that enable them to learn self-control skills, experience positive supportive relationships with adults who care and develop meaningful and lasting connections with their community.

Children and young people do not have the same mental capacity or ability to reason as adults.

Just as children and young people's bodies develop and grow until adulthood, so do their minds. Our understanding of how children and young people's minds grow has progressed significantly over the last decade and we now have a better understanding of how this affects their behaviour.

This evidence makes it clear that it doesn't make sense for us to hold children and young people to the same criminal standard when they are still developing the ability to control their decisions and understand what affect their decisions have on themselves and others. Until children and young people are able to develop these abilities we need to promote their welfare and give them an opportunity to thrive keeping them away from the justice system.

The minimum age of criminal responsibility disproportionately affects the most vulnerable in our society and exacerbates problems surrounding child safety and welfare in South Australia

Adopting a contemporary approach to the minimum age of criminal responsibility will go a long way in helping us to address the South Australian government's commitment to safeguard and promote the welfare of children and young people in the State. At the moment the most vulnerable members of our community are disproportionately affected by the minimum age of criminal responsibility. For example, children from disadvantaged communities are more likely to be apprehended and once in the justice system are far more likely to remain it when compared with those from more advantaged communities.

Despite representing only 2% of the population in South Australia we know that Aboriginal and Torres Strait Islander children are 15 times more likely to be apprehended by police and more than 30 times more likely to be detained than the rest of the population.

At such a young age we know that contact with the justice system can have a lifelong impact which can further marginalise and exacerbate disadvantage.

We need to rethink our approach to the use of the justice system when it applies to children and young people to ensure that we create a fairer system; one that improves rather than diminishes future prospects for our State's children and young people, the most vulnerable in our community.