

Doli Incapax and the Age of Criminal Responsibility

Year 12

NSW

Module [1/1]

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Doli Incapax

- Doli Incapax is a **rebuttable** presumption that a child of a certain age is “incapable of a crime”.
- The standard of proof is that beyond a **reasonable doubt**.
- In NSW, “doli incapax” applies to children **aged 10 to 14**.

The age of criminal responsibility

- A child **below 10** is incapable of committing a crime (**s 5 Children (Criminal Proceedings) Act 1987 (NSW)**).
- This is known as the **age of criminal responsibility**.
- It is a **conclusive** presumption.

Doli incapax and the age of criminal responsibility

- Children aged under 10 are not capable of committing a crime.
- Children aged 10 to 14 are assumed to be incapable of committing a crime unless the Court can prove that the child understood the nature of what they had done, and its wrongfulness, then they can be tried and found guilty of committing a crime.

DOLI INCAPAX IS NOT A DEFENCE

Doli Incapax forms part of the case that the Prosecution needs to prove beyond reasonable doubt, using evidence, in order to convince the Court that the accused person is guilty of committing the crime they have been charged with.

Case study

The case of **Patrick Slater**

One of the youngest people to be charged for a crime in Australia was 11 years old. He was found guilty of manslaughter for killing Patrick Slater by stabbing him with a screwdriver.

Discussion

Should the age of criminal responsibility be increased in Australia?



Case study

The case of RP v The Queen

RP was accused of sexually assaulting his younger brother over the course of several months in different ways. He was 11-12 at the time of the incidents, and his brother was 6-7.

Trial Judge

Doli Incapax was rebutted through the evidence of RP's behaviour during the incidents.

NSW Court of Criminal Appeal

Agreed with Trial Judge that RP's secretive behaviour and response to the victim's distress

High Court

Doli Incapax had not been rebutted because the Prosecution failed to use evidence other than the circumstance of the incidents to establish understanding.

Class activity

Split into two groups, read through the mock scenario and discuss ways to rebut Doli Incapax, or reasons why Doli Incapax should apply.





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Summary

- The age of criminal responsibility (10 in NSW) is the youngest age a child can be held capable of a crime.
- Doli Incapax is a rebuttable presumption that a child of a certain age (10-14 in NSW) is incapable of a crime. It is assessed using context.
- There are policy arguments to increase the age of criminal responsibility based on modern understanding of development and to reduce recidivism amongst child offenders.

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