

Age of criminal responsibility worksheet

Doli Incapax is a common law rule presumption that a child of a certain age is “incapable of a crime”.

The age of criminal responsibility is the minimum age that the law allows a child to be charged with a crime – the underlying assumption is that children younger than this age of fundamentally incapable of understanding the nature of a crime and therefore incapable of committing the crime.

What is a rebuttable presumption?

What is a conclusive presumption?

What is the age range that doli incapax applies to in NSW?

What is the minimum age of criminal responsibility in NSW?

How do Doli incapax and the age of criminal responsibility work together?

Policy considerations

“The Commission has considered whether the age of criminal responsibility from which a child can be charged with a criminal offence should be increased from 10 to 12 years. Not only would this more accurately reflect modern understanding of brain development, it would ensure that the number of children brought before the courts is reduced.” – Royal Commission into the Protection and Detention of Children in the Northern Territory, Volume 2B, Chapter 27, p. 417

“Research suggests that the relationship between the child protection system, juvenile justice and adult incarceration is so strong that child removal into out-of-home care and juvenile detention could be considered key drivers of adult incarceration.” – Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples, p. 34, - see also p. 44 & p. 76

“Compared to other countries, the age threshold of 10 for treating children as criminally culpable and permitting their incarceration in Australia is low. In New Zealand and Germany, the age of criminal responsibility is 14-years-old - the most common minimum age worldwide. In Canada it is 12-years-old and in Portugal it is 16-years-old.

The United Nations Committee on the Rights of the Child recommends that the absolute minimum age be 12 years of age.

Many studies have shown that children even well into their teens have not yet fully developed the ability to distinguish right from wrong, make careful judgments, delay gratification, restrain impulsive behaviour, or think through their actions.

*Younger children also lack the capacity to properly engage in the criminal justice system, are more likely to accept a plea bargain, give false confessions or fail to keep track of court proceedings.” – Megan Mithcell, Children’s Commissioner,
<https://www.humanrights.gov.au/news/opinions/jail-answer-australian-kids>*

What are some of the key policy considerations for reforming the laws around age of criminal responsibility?

Group one: Why Doli Incapax should not apply

Steven is an 11 year old boy. His only sibling is his sister Kate who is 20 years old. His parents separated when Steven was 4 years old and he has very little to do with his biological father. However, he has a really supportive step-father who has offered to adopt him several times. Steven's step father spends as much free time as possible with Steven but is a shift worker and therefore has very unusual work hours. Steven's step father is a natural rule follower and has taught his step-children to be respectful and rule-abiding. Kate does not appreciate her step-father's imposition and will often rebel against him just to rile him up. Steven understands that what his sister does is wrong because his step-father told him so, but doesn't understand why his sister doesn't get punished if she has done the wrong thing. He also isn't sure if it is wrong because of the rules at home, or due to some other reason.

Steven's mother is highly supportive but suffers from bi-polar disorder. As a result her behaviour can be quite erratic. During her "highs" she is a very involved parent and will actively check Steven's homework, discipline him for not completing his chores and contact the school regularly to find out how he is finding school. During her "lows" she becomes disinterested and will often let Steven do whatever he pleases at home, buy him expensive gifts due to guilt and let him stay out late with his friends. During his mother's lows, Steven relies heavily on Kate to help him get ready for school, take him to extra-curricular activities and to make his meals.

Steven goes to an independent school and suffers from mild dyslexia. Despite this, he is a reasonably good student and is the class monitor. This means he is in charge of making sure the room is packed up properly at the end of the day. As part of his role as class monitor he can give his classmates warnings for bad behaviour. Steven has a group of three close friends – his friend James is the son of a police officer and loves to talk about the bad guys his mum has put away, his friend Alice is the only child of two high powered professionals and spends most of her time with her babysitter who is a freelance artist and his friend Michael is the class clown and loves to do things simply because they are controversial.

One day when they're at the local shops, Michael dares Alice to go into a shop and pull the pants down on all the mannequins. Alice agrees and the game of dare slowly escalates until Michael dares Steven to steal a DVD. When he realises what is going on, James walks away saying he doesn't want to be like the bad men his mum arrests. Alice on the other hand says it's not really stealing if they give it back afterwards. Steven isn't sure what to do but knows that his step-dad would be unhappy if he got into trouble. Steven decides to take the DVD and come back later to return the DVD and explain he hadn't intended to steal it. There is a sign at the door that says "All DVDs are alarmed and will set off the shop's silent alarm if taken out of store before de-activation". As a result, once Steven

crosses the threshold, the alarm is set off. They are standing around outside the shop joking about what just happened when two security guards approach them. They tell Steven he is in big trouble and the police are on their way. When the police get there, they demand that Steven tell them what happened. Steven asks for his parents and the police tell him that they don't have to call his parents unless he is officially arrested, and that they're just having a casual chat. Steven agrees to explain the whole story, and at the end of it the police arrest Steven.

You are the research assistant to the prosecution and you are asked to identify and justify why the presumption of Doli Incapax should not apply.

Group two: Why Doli Incapax should apply

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You are the research assistant to Steven's lawyer. You know that the prosecution needs to rebut the presumption of *Doli Incapax* and you are asked to identify why the presumption should imply.

Summary of today's lesson:

- 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.

Helpful contacts

<p>Legal</p> <p>For free and confidential legal help, you can contact Youth Law Australia. You can access free legal information at yla.org.au through their factsheets or access personalised legal advice at lawmail.org.au.</p> <p>The LegalAid Youth Hotline provides legal advice and information to people under the age of 18. Its business hours are 9:00 am - 12:00 am weekdays, with a 24 - hour service from Friday 9:00 am to Sunday 12:00 am. You can call them on 1800 10 18 10.</p> <p>You may be able to get assistance from a community legal centre that helps adults. You can search for your local community legal centre from this website: www.naclc.org.au</p> <p>You can contact LawAccess for free information, advice and referrals on 1300 888 529, Monday to Friday from 9am to 5pm.</p>	<p>Counselling</p> <p>For counselling support you can call the Kids Helpline on 1800 55 1800 for free and private counselling (available 24 hours a day, but there can be a wait to get through). They are happy to talk to young people aged 5-25 about anything that's troubling them. You can also email them or chat online at http://kidshelpline.com.au.</p> <p>eHeadspace provides counselling to young people aged 12-25 who are worried about their mental health or are feeling alone. You can call them on 1800 650 890 from 9am to 1am. You can also email them or chat online at: https://www.eheadspace.org.au.</p> <p>Lifeline offers 24-hour crisis support and suicide prevention counselling on 13 11 14. You can also speak to a counsellor online from 7pm to 4am at: https://www.lifeline.org.au/Get-Help/Online-Services/Online-Services.</p>
<p>Relationship support</p> <p>For family counselling support you can contact Relationships Australia for family counselling and mediation on 1300 364 277 or visit them at https://www.relationships.org.au.</p> <p>Family Planning clinics provide sexual healthcare (safe sex) services and advice. You can call Family Planning NSW on 1300 658 886 or visit them online at www.fpnsw.org.au</p> <p>For relationship support you can contact 1800RESPECT on 1800 737 732 or visit them at https://www.1800respect.org.au.</p> <p>If you would like to speak to someone about relationship issues or if you're not sure about what is or isn't ok, you can call 1800 MYLINE (1800 695 463).</p>	<p>Other</p> <p>The Office of the eSafety Commissioner is committed to increasing online safety and supporting people to feel protected online. As part of this, they can hear reports on cyber-bullying and help to get the offensive material taken down. They also have helpful resources and guides on what you can do to remain safe online. You can check them online at https://www.esafety.gov.au/</p> <p>The FairWork Ombudsman can provide information and help on anything to do with employment e.g. working hours or pay rates. You can call them Monday-Friday from 8am to 5.30pm on 13 13 94.</p>