



Law reform worksheet

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**AMA CALLS FOR AGE OF CRIMINAL RESPONSIBILITY TO BE  
RAISED TO 14 YEARS OF AGE**

The AMA is calling for the age of criminal responsibility to be raised to 14 years of age. The new policy was passed at the AMA Federal Council meeting in Canberra last week. The age of criminal responsibility is the age at which a child is considered capable of being dealt with by the criminal justice system. Currently, children aged 10 can be charged, prosecuted, and imprisoned.

AMA President, Dr Tony Bartone, said today that raising the age of criminal responsibility will prevent the unnecessary criminalisation of vulnerable children.

“Australia has one of the lowest ages of criminal responsibility in the world,” Dr Bartone said. “The criminalisation of children in Australia is a nationwide problem that disproportionately impacts Aboriginal and Torres Strait Islander children.

“Most children in prison come from backgrounds that are disadvantaged. These children often experience violence, abuse, disability, homelessness, and drug or alcohol misuse.

“Criminalising the behaviour of young and vulnerable children creates a vicious cycle of disadvantage. and forces children to become entrenched in the criminal justice system.

“Children who are forced into contact with the criminal justice system at a young age are also less likely to complete their education or find employment, and are more likely to die an early death.

“The AMA wants the Commonwealth and State and Territory Governments to support developmentally and culturally appropriate health, education, and rehabilitative-based alternatives to the criminal justice system,” Dr Bartone said.

**Background:**

- Around 600 children below the age of 14 are locked away in youth jails each year, with Aboriginal and Islander children constituting 70 per cent of this cohort.
- Around 9,000 children below the age of 14 are dealt with in the broader criminal justice system each year.

- Overall, Aboriginal and Torres Strait Islander children constitute around 5 per cent of the youth population, yet close to 60 per cent of children in prisons.
- The United Nations Committee on the Rights of the Child has consistently said that countries should be working towards a minimum age of 14 years or older. The Special Rapporteur on the Rights of Indigenous peoples urged Australia to increase the age of criminal responsibility, saying that children *'should be detained only as a last resort, which is not the case today for Aboriginal and Torres Strait Islander children'*.
- Australia has been repeatedly criticised by the United Nations, most recently by the Committee on the Elimination of Racial Discrimination, for failing to reform the current minimum age.
- Raising of the age of criminal responsibility is supported by many other organisations, including The Royal Australian College of Physicians (RACP), the Australian Indigenous Doctors' Association (AIDA), The National Aboriginal and Torres Strait Islander Legal Services, the Lowitja Institute, the Human Rights Law Centre (HRLC), Amnesty International, and UNICEF.

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### Law reform worksheet

#### ***Minimum age of criminal responsibility***

In New South Wales, the *Children (Criminal Proceedings) Act 1987* provides that a child under the age of 10 cannot commit an offence. Under all other state and territory jurisdictions in Australia, a person under 10 cannot be charged with a criminal offence. This is known as the age of criminal responsibility as it is the minimum age that a child can be charged with a crime. There has been considerable discussion around raising the minimum age of criminal responsibility in Australia.

#### *Policy considerations*

There has been an argument to raise the age of criminal responsibility from 10 to 12. This would mean that here in NSW, children under the age of 12 would not be capable of being found guilty of a crime i.e. that the rebuttable presumption would apply from 12 to 14. This is a recommendation echoed by the UN Committee on the Rights of the Child. In addition, The Royal Commission into the Protection and Detention of Children in the Northern Territory made this recommendation on modern understandings of brain development, and recommended it as a method of better protecting children by reducing the number of children brought before the Court. Another argument for increasing the age of criminal responsibility can be seen in reports by the Australian Law Reform Commission and the Australian Human Rights Commission which suggest that raising the age is necessary to protect children and reduce the likelihood of further interaction with the criminal justice system. These reports make the argument that children, and even teenagers might not necessarily have the capacity to make an informed decision and weigh up the consequences of their actions purely due to their age, and that the minimum age of criminal responsibility should be raised in order to prevent children from a lifetime of arrests, charges and jail time. Studies have shown that children who appear in children's court are more likely to appear before the court again. Professor Thomas Crofts, a law professor at the University of Sydney states that "It is well known that contact with the criminal justice system at a young age means that young people are 'more likely to offend for longer, more frequently and go on to receive a custodial sentence' On the other hand, there are others who believe *doli incapax* should remain at 10. The argument here is that the structure of the criminal justice system, and protections for young people, the law is not as "punitive" as it once was, meaning children are treated much better than they used to be, and aren't punished as severely. Therefore there is not as a high a need to protect children.

#### *Some helpful sources*

The following quotes and sources may help you to formulate an argument for or against changing the minimum age of criminal responsibility:

“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 Mitchell, Children’s Commissioner,  
<https://www.humanrights.gov.au/news/opinions/jail-answer-australian-kids>

“From an international perspective the minimum age level in Australia exposes children to the criminal justice system at too young an age.” – Thomas Crofts, Professor of Law, USYD,  
<http://rightnow.org.au/opinion-3/the-age-of-innocence-raising-the-age-of-criminal-responsibility/>

### ***Suspect Targeting Management Plans***

The Suspect Targeting Management Plan (STMP) aims to prevent future offending by identifying repeat offenders and people at risk of committing crime in the future. It is at both a tool used by NSW Police using risk assessment to identify subjects, and a policing program that guides police interaction with individuals who are subject to it. Presently, data indicates that a large number of young people, particularly those from an Aboriginal or Torres Strait Islander background, have been subjected to STMPs. STMP-listed persons have been subject to repeated and often confrontational interactions with police through measures such as stop and search, move on directions and regular home visits. Currently, any NSW police officer can nominate someone to be placed on the STMP list. Once a candidate is nominated, an intelligence package is put together around the person to assess the nomination by the targeting team. A report is generated, listing the candidate's details and the reasons for their nomination.

#### *Some helpful sources*

A report issued by the Youth Justice Coalition outlines many of the concerns that STMPs introduce when imposed upon young people. There are three main issues:

1. There is **no impact** on crime prevention - the STMPs have failed to demonstrate any measurable effectiveness and are, in fact, leading to young people experiencing increased contact with the criminal justice system in many cases.
2. There has been little to **no transparency** in the program, including insight into how the program is evaluated or governed. This is particularly noticeable given that STMP criteria is not publicly available.
3. There has been an **introduced risk** in the exercise of lawful police powers, particularly as young people on STMPs may be subjected to poor police practice, exposing the police to a compromised efficacy and civil litigation.

Source: <http://www.yjc.org.au/resources/YJC-STMP-Report.pdf>

JustInvest believes that STMP can “further escalate conflict between young Aboriginal and Torres Strait Islander peoples and police” due to “further harassment by the police, young people feeling ‘under siege’, ‘unfairly treated, discriminated against and victimised.”

Furthermore, a Legal Aid lawyer highlighted the subsequent implications of the secretive STMP in amplifying “historic patterns and experiences of policing” in addition to causing



strains upon family units that may derive from intergenerational targeting by police of Aboriginal families.

*Source: <http://www.justreinvest.org.au/wp-content/uploads/2017/12/JRNSW-Submission-Youth-Diversionary-Programs.pdf>*

STMPs have received criticism for being a highly secretive tool with little to no legislative backing.

*Source: <https://alhr.org.au/human-rights-lawyers-slam-nsw-pre-emptive-policing-program/>*

*Source: <https://www.sbs.com.au/nitv/nitv-news/article/2018/04/18/racist-policing-nsw-police-slammed-data-reveals-more-half-youth-targeted-secret>*

PIAC made 6 key recommendations around the use of STMPs around young people, most notably that they should not be applicable to people under 18.

*Source: <https://www.piac.asn.au/wp-content/uploads/2018/03/18.02.05-PIAC-Submission-NSW-Parliament-Youth-Diversion-Inquiry.pdf>*



**Task: Using the sources above, and your own research, prepare a letter to your local MP explaining why you believe that law reform should occur on your chosen issue (Minimum age of Criminal responsibility OR Suspect Targeting Management Plans). Please work in groups of no more than 5.**

For guidance on preparing your letter, please see the following sample letter. Writing formal letters to your local MP can be a beneficial way to demonstrate your concern for an issue. In order for a letter to be persuasive, it should be clearly structured and articulate your argument. You can check out this guide for further information on letter writing: <https://www.climatecouncil.org.au/how-to-write-an-effective-letter-to-your-mp/>

Below a sample letter has been provided with the key aspects of the letter highlighted.

Hon M.J. Thistlewaite MP  
Member for Kingsford Smith  
PO Box 895  
Maroubra NSW 2035

Dear Sir

My name is Jane Smith and I am a student in Year 11 at Fawkes High. I have been studying about law reform in my legal studies class. I am writing to you on behalf of my class as we believe that we should raise the age of criminal responsibility from 10 years of age to 12 years of age.

Before we explain why we should raise the age of criminal responsibility, we want to talk about why the arguments against this change are unhelpful. Some professionals argue that there are other safeguards in place to protect young people. For example, certain articles online suggest that because of the principle of doli incapax, children's rights continue to be protected, and because of police discretion, it is less likely that very immature or young people will come into contact with the criminal justice system. However, did you know that around 600 Australians under the age of 14 will be jailed every year? This figure is alarming and suggests that police discretion and the principles of doli incapax are not doing much to protect children. Furthermore, whilst we might be tempted to think that having such a low age of criminal responsibility will "straighten kids out", its likely to have the opposite effect – 2.3% of young offenders are likely to reoffend according to the Australian Bureau of Stastics (ABS, 2018). Whilst this rate is falling, it still suggests that incarceration is not the solution and is not teaching young people to stay out of trouble.

Turning to our reasons for raising the age, first of all, as argued in the Northern Territory Royal Commission's final report, and the Child Rights Taskforce's report about the Conventions of the Rights of the child, Australia has one of the lowest ages of criminal responsibility in the world. The average age of criminal responsibility internationally is 12 years of age according to Youth Policy. We have received a lot of criticism for this, especially considering we are parties to the UN Convention on the Rights of the Child. Secondly, studies show that young people's brains mature at different rates. There is conflicting information about this, but its suggested that at the very earliest, our brains are mature at 16, and at the latest, in our mid 20s. It would be unrealistic to expect 10 year olds to have the comprehension to understand the nature of the actions as criminal if science tells us that even 16 years olds might have trouble with this. Finally, our focus should be on rehabilitation

**Commented [MS1]:** Letters should contain the name and address of the MP you are contacting. You can use Google to find the name of your local MP and their contact details.

**Commented [MS2]:** You may address the MP as Sir/Madam or with their title followed by their surname.

**Commented [MS3]:** Your opening paragraph should include an introduction and a clear/straightforward statement explaining the reason you are writing.



and not retribution. Young people who come into early contact with the criminal justice system are far more likely to have repeated exposure throughout their lives and as such, it would be better to keep young people out of the justice system.

**Commented [MS4]:** In the body of the letter you should include an explanation of why you believe the law should be changed. You may choose to include statistics or references to other material to reinforce your argument.

This issue became important to our class after volunteering at a local women's refuge. We met a lot of women who are currently homeless due to various issues including drug addiction which has led to them being repeatedly imprisoned and unable to hold down a job or get an education. Many of these women told us that they believe this is the life they are destined to live because they have been in and out of jail since as young as 14.

**Commented [MS5]:** If you have a personal reason, story or can explain why this issue is important to you, it would be good to include this in the body of the letter to reinforce your argument.

We believe that raising the age of criminal responsibility will have a positive impact on society as young people are given a better opportunity to rehabilitate when they break the law. It will also bring Australia's laws into line with the rest of the world and will have a positive impact on attitudes toward Australia. We are writing to you to ask that you raise this issue in parliament and vote to have the laws around criminal responsibility (specifically s 5 of the *Children (Criminal Proceedings) Act 1987 (NSW)*) amended to raise the minimum age of criminal responsibility from 10 to 12.

**Commented [MS6]:** You should conclude your letter by making it clear what you are asking the MP to do – vote on an issue? Raise an issue in parliament?

We would love for you to write back to us at Fawkes High School (we are in Ms Mia Moroney's legal studies class). Our mailing address is:

Ms Mia Moroney  
1221 Fake Street  
Fawkes 2453 NSW

**Commented [MS7]:** You could conclude your letter with a request to write back and the best contact details. This way you can follow-up with them on this issue. It will also demonstrate how important the issue is to you.

Yours sincerely,

*Jane Smith*

Jane Smith

Summary of today's lesson:

- Law reform is an important mechanism for achieving justice – it involves evaluating current laws and advocating for change.
- The minimum age of criminal responsibility in NSW is 10 years old – there has been a strong push to increase this age.
- STMPs are a police management tool to try and reduce crime. There are several policy and legislative reform issues of the STMP process for under 18s

**Helpful contacts**

<p><b>Legal</b></p> <p>For free and confidential legal help, you can contact <b>Youth Law Australia</b>. You can access free legal information at <a href="http://yla.org.au">yla.org.au</a> through their factsheets or access personalised legal advice at <a href="mailto:lawmail.org.au">lawmail.org.au</a>.</p> <p>The LegalAid <b>Youth Hotline</b> 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 <b>community legal centre</b> that helps adults. You can search for your local community legal centre from this website: <a href="http://www.naclc.org.au">www.naclc.org.au</a></p> <p>You can contact <b>LawAccess</b> for free information, advice and referrals on 1300 888 529, Monday to Friday from 9am to 5pm.</p>	<p><b>Counselling</b></p> <p>For counselling support you can call the <b>Kids Helpline</b> 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 <a href="http://kidshelpline.com.au">http://kidshelpline.com.au</a>.</p> <p><b>eHeadspace</b> 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: <a href="https://www.eheadspace.org.au">https://www.eheadspace.org.au</a>.</p> <p><b>Lifeline</b> 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: <a href="https://www.lifeline.org.au/Get-Help/Online-Services/Online-Services">https://www.lifeline.org.au/Get-Help/Online-Services/Online-Services</a>.</p>
<p><b>Relationship support</b></p> <p>For family counselling support you can contact <b>Relationships Australia</b> for family counselling and mediation on 1300 364 277 or visit them at <a href="https://www.relationships.org.au">https://www.relationships.org.au</a>.</p> <p>Family Planning clinics provide sexual healthcare (safe sex) services and advice. You can call <b>Family Planning NSW</b> on 1300 658 886 or visit them online at <a href="http://www.fpnsw.org.au">www.fpnsw.org.au</a></p> <p>For relationship support you can contact <b>1800RESPECT</b> on 1800 737 732 or visit them at <a href="https://www.1800respect.org.au">https://www.1800respect.org.au</a>.</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 <b>1800 MYLINE</b> (1800 695 463).</p>	<p><b>Other</b></p> <p>The Office of the <b>eSafety Commissioner</b> 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 <a href="https://www.esafety.gov.au/">https://www.esafety.gov.au/</a></p> <p>The <b>FairWork Ombudsman</b> 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>