

The age of criminal responsibility

Since the publication of *The age of criminal responsibility* (Urbas 2000), some jurisdictions have revised their legislation, confirming a trend over the last 20 years to uniformity in age limits for criminal responsibility. In the Australian Capital Territory, the *Criminal Code 2002 Div 2.3.1* now deals with the criminal responsibility of children. From 1 July 2005 in Victoria, the age jurisdiction of the criminal division of the Children's Court has increased from 17 to 18 years. In Queensland, for the purposes of the *Juvenile Justice Act 1992* a child is a person who has not turned 17 years.

Doli incapax means a presumption that a child is "incapable of crime" under legislation or common law. Recent Australian reviews (Bradley 2003 and Crofts 2003) have discussed amending the *doli incapax* presumption, including reversing the onus of proof and changing its application to ages twelve and under.

Ages of criminal responsibility in Australian jurisdictions

Jurisdiction	Cannot be charged with a criminal offence	<i>Doli incapax</i>	Maximum age for appearance in child, juvenile or youth court
Commonwealth	Under 10 ^{1(a)}	10 to under 14 ^{1(b)}	n/a
Australian Capital Territory	Under 10 ^{2(a)}	10 to under 14 ^{2(b)}	Under 18 ^{2(c)}
New South Wales	Under 10 ^{3(a)}	10 to under 14 ^{3(b)}	Under 18 ^{3(c)}
Northern Territory	Under 10 ^{4(a)}	10 to under 14 ^{4(b)}	Under 18 ^{4(c)}
Queensland	Under 10 ^{5(a)}	10 to under 14 ^{5(b)}	Under 17 ^{5(c)}
South Australia	Under 10 ^{6(a)}	10 to under 14 ^{6(b)}	Under 18 ^{6(c)}
Tasmania	Under 10 ^{7(a)}	10 to under 14 ^{7(b)}	Under 18 ^{7(c)}
Victoria	Under 10 ^{8(a)}	10 to under 14 ^{8(b)}	Under 18 ^{8(c)}
Western Australia	Under 10 ^{9(a)}	10 to under 14 ^{9(b)}	Under 18 ^{9(c)}

Not applicable: Dealt with in accordance with state/territory laws

SOURCES:

- Cth:** 1(a) *Crimes Act 1914* s4M; *Criminal Code Act 1995* s7.1; 1(b) *Crimes Act 1914* s4N; *Criminal Code Act 1995* s7.2
ACT: 2(a) *Criminal Code 2002* s25; 2(b) *Criminal Code 2002* s26; 2(c) *Children and Young People Act 1999* Part 1.3 ss7 and 8, and s69
NSW: 3(a) *Children (Criminal Proceedings) Act 1987* s5; 3(b) Common law *doli incapax*; 3(c) *Children (Criminal Proceedings) Act 1987* s3
NT: 4(a) *Criminal Code Act* s38(1); 4(b) *Criminal Code Act* s38(2); 4(c) *Juvenile Justice Act* s3
QLD: 5(a) *Criminal Code Act 1899* s29(1); 5(b) *Criminal Code Act 1899* s29(2); 5(c) *Juvenile Justice Act 1992* Schedule 4
SA: 6(a) *Young Offenders Act 1993* s5; 6(b) Common law *doli incapax*; 6(c) *Young Offenders Act 1993* s4;
TAS: 7(a) *Criminal Code Act 1924* s18(1); 7(b) *Criminal Code Act 1924* s18(2); 7(c) *Youth Justice Act 1997* s3
VIC: 8(a) *Children and Young Persons Act 1989* s127; 8(b) Common law *doli incapax*; 8(c) *Children and Young Persons Act 1989* s3
WA: 9(a) *Criminal Code Act Compilation Act 1913* s29; 9(b) *Criminal Code Act Compilation Act 1913* s29; 9(c) *Young Offenders Act 1994* s3

REFERENCES:

- Bradley L 2003. The age of criminal responsibility revisited. *Deakin law review* 4. Web version available at <http://www.austlii.edu.au/>
 Crofts T 2003. *Doli incapax*: why children deserve its protection. *E-law* 10(3):1-15. Web version available at <http://www.murdoch.edu.au/elaw/issues/v10n3/crofts103.html>
 Urbas G 2000. The age of criminal responsibility. *Trends & issues in crime and criminal justice* no 181. Web version available at <http://www.aic.gov.au/publications/tandi/tandi181.html>