

# It's time to stop criminalising children under 14

Position brief | September 2019

## We should raise the age of criminal responsibility from 10 to a minimum of 14 years old

Children are children and have the right to be treated as such, regardless of how they behave. When children engage in harmful behaviour there are always complex causes at play. Raising the age of criminal responsibility would acknowledge that dealing with the root causes of harmful behaviour supports children to move on from harmful behaviour. It would also lessen the odds of that behaviour being repeated.

At a minimum the age of criminal responsibility should be raised to 14 and we encourage discussions about a higher minimum age.

## We have no excuse to criminalise children now that we know better

We now know that our ability to understand the consequences of our actions keeps developing into early adulthood up to age 25. Neuroscience is central to the debate on the proposed minimum age of criminal responsibility given that to hold someone criminally culpable we have decided that they are able to understand their actions and resulting consequences in full. To serve as a juror and assess criminal culpability we have determined that 18 is the appropriate age.

Brain development of children can be further affected by trauma, abuse or neglect. Their capacity to be responsible for their actions is therefore affected.

**"Some of the CYFs workers were confusing. I didn't understand them. The way he speaks is hard to understand. I'm like 'yep, yep', when in my head I'm like 'what's he saying?'"**

(young person)\*

## Children in the greatest social need are swept up in our justice systems

We should prioritise children's wellbeing, care and protection as the "most effective and enduring mechanism through which to tackle their harmful behaviour."<sup>\*\*</sup>

A low age of criminal responsibility can result in a criminal justice response to welfare, poverty and disability issues. The criminal justice response does not address the underlying issues or prevent further harm.

In 2018 there were only 3 out of 118 children aged 10 to 13 referred for a youth justice Family Group Conference who had not had a report of concern to Oranga Tamariki about their care and protection<sup>†</sup>. Ninety-seven percent of these children had negative childhood experiences prior to their criminalisation<sup>‡</sup>.

**"The system needs to see that the whānau and child are also victims"**

(adult interview)<sup>‡</sup>

## Māori children are particularly targeted by criminalisation

Some children are far more likely to be criminalised than others. Māori children aged 10 to 13 who offend are 3 times more likely to have proceedings against them than Pākehā 10 to 13 year olds who offend<sup>†</sup>. Our system should prioritise reducing these inequities and challenge systemic racism.

*"They are all Māori in here. It's like being in YJ [youth justice] residence is a Māori thing"* (15 year old young man)<sup>‡</sup>

\* Metzger et al. (2018) Listening to young peoples' experiences of communication within the youth justice sector in New Zealand. Point Research and Talking Trouble

\*\* The Report of the Advisory Group on the Minimum Age of Criminal Responsibility (2016) Scotland

† Ministry of Justice (2019) Youth Justice Indicators Summary Report August 2019

‡ From an interview as part of our routine monitoring work in youth justice residences



Children's Commissioner Judge Andrew Becroft represents the 1.1 million people in Aotearoa New Zealand under the age of 18, who make up 23 percent of the total population. He advocates for their interests, ensures their rights are upheld, and helps them have a say on issues that affect them.

For more information:



[www.occ.org.nz](http://www.occ.org.nz)



@occnz



[children@occ.org.nz](mailto:children@occ.org.nz)



@childrenscommnz

## An age of criminal responsibility lower than 14 cannot be justified

The UN Committee on the Rights of the Child has responded to emerging knowledge about child and adolescent development as well as evidence on the detrimental effects of criminalising children. A new General Comment calls on countries to increase their minimum age of criminal responsibility to at least 14 years of age, if not 15 or 16<sup>1</sup>.

**“Some staff see us as criminals. They don't see us for who we are or look past what we've done”**

(15 year old young man)‡

## The current NZ system criminalises children

The minimum age of criminal responsibility in New Zealand is ten<sup>2</sup>. Ten and eleven year olds can be charged with murder and manslaughter and these cases are heard in the High Court, although no child this young has ever been charged. Twelve and thirteen year olds can be charged with offences, such as robbery while in possession of a weapon<sup>3</sup>, that carry a maximum 14 year prison sentence. Twelve year

olds can also be charged if they have a previous serious offence and the current offence carries a maximum 10 year prison sentence, such as burglary<sup>4</sup>. Fourteen year olds can be charged with any crime and enter the youth justice system<sup>5</sup>. If the crime is serious they can be referred to adult court.

The decision to include 12 and 13 year olds in the youth justice jurisdiction only took effect from 1 November 2010 and was a backward step. In 2018/19 there were 33 children aged 10 to 13 charged in court<sup>6</sup>. We can do far better for this small group of children. The Family Court, through care and protection processes, has more interventions at its disposal, for the child and the child's family. There are a wider range of interventions available through the Family Court system for the child and their family.

**“I have 3 wishes: 1) I wana be free of the systems, of everything, 2) have money and 3) be with my aunty and her family forever”**

(13 year old girl)‡

This paper includes quotes from children and young people about their youth justice experiences. One of these is from a report published by Talking Trouble and Point Research. All other quotes are from our routine independent monitoring work in youth justice residences.

***Raising the minimum age of criminal responsibility is just one of the many changes that would have a positive impact on the wellbeing of children and young people in New Zealand. Other specific changes include stopping the use of police pursuits where children are suspected to be in the vehicle and ending the practice of remanding children in police cells. Systemic issues, such as institutional racism in the criminal justice system will not be solved through these changes and require transformative change. Children and young people should be actively involved in shaping any changes that affect them.***

<sup>1</sup>UN General Comment 24, paragraphs 30-35

<sup>2</sup>Crimes Act 1961, s21(1)

<sup>3</sup>Oranga Tamariki Act 1989, s272

<sup>4</sup>Oranga Tamariki Act 1989, s272

<sup>5</sup>Crimes Act 1961, s22(1)

<sup>6</sup>Ministry of Justice (2019) Justice Statistics: Children and Young People with charges finalised in any court

For more information: