GILSHENAN & LUTON
LEGAL PRACTICE



Understanding criminal responsibility of children in Queensland

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In Queensland, the principles governing criminal responsibility for children are carefully structured to address their developmental stages. Under the *Criminal Code 1899* (Qld) (**'the Code'**), the legal system recognises that children are not always capable of understanding the consequences of their actions in the same way adults are.

The age of criminal responsibility

Under section 29 of the Code, the law is clear that:

- children under 10 years old are not criminally responsible for any act or omission; and
- children aged 10 to 13 years can be charged with criminal offences, but they are presumed not to be criminally responsible, a principle known as *doli incapax* (incapable of evil).

Criminal responsibility of children under 10

Children under the age of 10 are deemed incapable of criminal responsibility.

This age limit recognises that very young children are generally not capable of forming criminal intent or understanding the consequences of their actions. As such, they cannot be subjected to the criminal justice system in the same way older individuals can. This means they cannot be arrested, charged, or found guilty of criminal offences

Criminal responsibility of children 10 to 13

For children between the ages of 10 and 13, the legal framework introduces a presumption of *doli incapax*. This legal principle assumes that a child in this age range is not criminally responsible unless the prosecution can prove beyond reasonable doubt that the child had the capacity to understand that their actions were wrong.

When a child in this age group is charged with an offence, the onus is on the prosecution to provide evidence that the child had the capacity to know their actions were wrongful. This involves demonstrating that the child understood the difference between right and wrong at the time of the offence.

Practically, the presumption of *doli incapax* plays a crucial role in the defence of children charged with criminal offences. Evidence is key in the prosecution efforts to rebut this presumption. The prosecution must present sufficient admissible evidence to prove that the child comprehended the wrongful nature of their actions. This often involves examining the child's understanding and mental state at the time of the offence.

Age, maturity and cognitive development are key considerations of criminal responsibility

During a police interview involving children, officers commonly attempt to establish whether a child understood that their conduct was wrong by seeking admissions from the child.

However, any statements or admissions made by the child must be carefully considered, taking into account their age, maturity, and cognitive development. The child's ability to understand and articulate their actions plays a significant role in evaluating the validity of their statements and/or admissions.

The legal provisions regarding the criminal responsibility of children in Queensland underscore the importance of age and developmental stage in determining criminal culpability. These principles are crucial for ensuring that justice is administered in a manner that is both fair and developmentally appropriate.

Get help from a criminal lawyer

The lawyers at Gilshenan &Luton have expertise in the complex area of youth justice and juvenile crime law and can provide representation for your child or a child you care for at any stage of a criminal matter.

The legal system can be an intimidating and confronting process, especially for a child. It is vital that you obtain advice and assistance from knowledgeable lawyers with expertise in this area at the earliest opportunity.

Contacting Gilshenan &Luton Lawyers

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Further reading:

- Diversionary options for young offenders in Queensland
- Sentencing children in Queensland
- A guide to child protection orders in Queensland

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.