Let's be Adult about being Juvenile

Paul Spooner

When does a child become an adult? Ironically this issue has been put in the spotlight due to John Howard's political wheeling and dealing in regards to mandatory sentencing laws in the Northern Territory.

Raising the age at which a person in the Northern Territory is considered to be an adult from 17 to 18 is a positive step, maintaining mandatory sentencing is definitely not. Such are the contradictions of political policy making on the run.

"We have a great opportunity to reconsider the age at which criminal offenders can be considered adults"

The events in the Northern Territory have highlighted the current situation in Queensland where 17 year olds are treated as adults before the court.

Two particular questions remain in regards to juvenile offenders in Queensland. What is in the best interest of young people and the community? And, what are the implications of the change in the Northern Territory law for how the Queensland Government views and treats young offenders? Queensland and Victoria are the only states which still charge 17 year olds as adults.

To be a young person in our community has always been seen as a transition period from childhood to adulthood. A child is dependent on parents, caregivers and other significant people for the provision of the necessities of life including love and emotional support.

As a child enters the teenage years we witness a transition from a dependence on family to a growing sense of being an individual in one's own right. This is a time of testing the boundaries, of recognising your place in the world and of defining oneself in relation to others. It is a time of learning about responsibilities and being supported in that process by the significant adults in a young person's life.

What is the age at which young people stop being an adolescent, with one foot in a child's world and the other in an adult world? You don't have to be a Rhodes Scholar to realise that the accepted community standard for being considered an adult is at the point a young person attains the age of 18.

Traditionally, young people celebrate becoming an adult with family and friends on their 18th birthday. It is seen as a rite of passage. My own son will be doing just that next weekend. Nobody I know does this when they reach the age of 17.

No young Australia is allowed to be deployed into war until the age of 18 but in Queensland we have no hesitation in sending 17 year olds to face the personal traumas and battles of spending time in an adult gaol.

A young person who is 17 cannot legally walk into a hotel and buy a beer because they are not considered old enough. Yet, when they break the law they are charged as an adult.

At the next state election no 17 year old in Queensland will be able to cast a vote to determine who will sit in our next parliament. This privilege is reserved for those people who have reached the age of 18.

It seems quite clear that the accepted community standard for young people to be considered as an adult is the age of 18. For consistency and fairness it seems only proper that any young person under 18 should not be considered an adult when it comes to breaking the law.

The Committee on the Convention on the Rights of the Child has recommended that all Australian States should raise the upper age for child offenders to 18. This is in line with the accepted definition of a child as contained in the Convention. As Australia is a signatory to this Convention it would seem only appropriate that all States should follow such a recommendation.

The new Child Protection Act established by the current State Government defines a child as a person under 18. To maintain a difference between this Act and the Juvenile Justice Act is clearly discriminatory and illogical.

So, what should the Queensland Government be doing about this contradictory state of affairs? Interestingly enough, the answer is very simple. It does not even require a change in the Juvenile Justice Act. Contained within the Act covering juvenile offenders is Section 6 (1) that states:

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Charging children with crimes?

DCI Submission to the NSW Government Review of *doli incapax*

In February 2000, the Criminal Law Review Division (CLRD) of the NSW Attorney General's Department published a discussion paper, A Review of the Law on the Age of Criminal Responsibility of Children. *The discussion paper outlined several proposals to reform the law in relation to* doli incapax *in NSW. Defence for Children International received a small grant from the Law Foundation of NSW to prepare a submission which is outlined here.*

Doli incapax refers to the presumption that children below 14 are incapable of committing a crime because they are deemed to lack *mens rea* or the intent to commit a crime (see ACRN No 23, Nov 1999, article by Craig Mackie)

At common law, children over seven (where legislation has not raised that age) can be charged with a crime but if they are under 14, the onus is on the prosecution to prove that the child was aware at the time that what he or she was doing was seriously wrong, as opposed to merely 'naughty' or 'mischievous'. In practice, this generally means that children are asked by the police or the prosecution whether they knew whether what they did was seriously wrong.

It appears, however, that the defence of *doli incapax* is often *not* raised by defence lawyers, especially in rural and regional areas but there are no figures to indicate how often it is raised nor how often it is successful. However, it is only applicable where the child pleads not guilty and 80-90% of children plead guilty. There is no evidence therefore that the existence of the presumption prevents most children from being held criminally liable for their actions in New South Wales.

Recently, here in Australia and elsewhere, there have been moves to allow more punitive sanctions against children who commit offences, and there has been some debate about the need for *doli incapax* and the possibility of reducing the age of the presumption to 12. This debate was given some impetus in New South Wales by a high profile case in which an 11-year-old was prosecuted for the manslaughter of a younger child in 1999. This case attracted considerable media attention and stimulated community debate about the appropriateness of charging a child of this age with manslaughter. In the course of this debate, it was suggested, as it has been in the UK and elsewhere, that *doli incapax* may have outlived it usefulness because children today are more able to distinguish between right and wrong than their earlier counterparts by virtue of their advanced education and access to information technology.

Whether or not this is the case was one of the key questions CLRD asked for comment on as part of their review of *doli incapax*. DCI's submission reviews the psychological literature relating to the moral development of children and adolescents and concludes that there is no reliable evidence to justify this proposition. While children clearly learn the difference between right and wrong by observation, by learning from the consequences of their actions and by the model provided by others, especially their parents, peers and teachers, there is no good evidence that formal education or exposure to information technology is effective in promoting moral development. Indeed, there is some evidence

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'The Governor in Council may, by regulation, fix a day after which a person will be a child for the purposes of this Act if the person has not turned 18 years.'

In other words, all the current parliament is required to do is regulate for the change to allow young people to be considered as juveniles until they reach the age of 18.

What will then be necessary is for the Government to fund such a change accordingly. Possibly, the Federal Government may help out in this regard. After all, they found $5 million dollars for the Northern Territory. Surely, Queensland young people deserve the same consideration.

Quite simple, really. It's time for the Government to act.

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