Youth justice in Victoria

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Executive Summary

This paper provides an overview of the changing nature of youth offenders and youth offending and the pressures that these have placed on the youth justice system, as well as the related policy developments of the Andrews Government. (Section 12)

Victoria has long been regarded as the leader in youth justice with significantly lower rates of young people on remand or serving custodial sentences than other Australian jurisdictions. Evidence shows consistently fewer young people are offending each year and young people are responsible for a diminishing proportion of all crime committed in Victoria. (Section 5)

Despite these positive developments, there is a small but increasing cohort of young people exhibiting violent behaviours who are responsible for a disproportionate number of offences. (Section 7)

Youth justice is a complex issue that encompasses important areas of public policy, including systemic disadvantage, community safety, offender rehabilitation and the human rights of children and young people. Youth justice is distinct from the mainstream criminal justice system due to the unique circumstances and the context of youth offending. (Section 2)

The causes and effects of youth offending and the state of Victoria’s youth justice system have become the subject of widespread debate following a series of violent incidents in Victorian youth justice centres.

Although diversion is fundamental to reducing reoffending by young people, access to diversion programs has been somewhat limited, particularly for young people in rural and regional Victoria. Access to bail support programs has also been limited. (Sections 3.7 and 10.3)

The unprecedented proportion of young people in youth justice centres held on remand creates significant challenges in the management of these centres and complicates the process of rehabilitation of young people. (Section 10)

Investigations by the Victorian Ombudsman and, most recently, by the Commissioner for Children and Young People, have detailed concerns about circumstances within youth justice centres and the treatment of young people held therein. These investigations have found that young people have been subjected to conditions that breach their rights as provided for by the Children and Young People Act 2005 (Vic) and the Charter of Human Rights and Responsibilities 2006 (Vic). (Sections 8 and 9)

An analysis of similar investigations in other Australian jurisdictions shows that these issues are not unique to Victoria. (Section 9.1)

The significant over-representation of Indigenous people in the youth justice system is another particularly complex and systemic issue common to each Australian state and territory. This over-representation reflects the multi-layered nature of disadvantage and marginalisation experienced by Indigenous people. The Koori Youth Justice Program aims to reduce over-representation through early intervention services targeting young people at risk of offending and people on community-based and custodial orders. (Section 6)
### List of Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Name</th>
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<tbody>
<tr>
<td>AIHW</td>
<td>Australian Institute of Health and Welfare</td>
</tr>
<tr>
<td>CCYP</td>
<td>Commission for Children and Young People</td>
</tr>
<tr>
<td>CSA</td>
<td>Crime Statistics Agency</td>
</tr>
<tr>
<td>DHHS</td>
<td>Department of Health and Human Services</td>
</tr>
<tr>
<td>DJR</td>
<td>Department of Justice and Regulation</td>
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<tr>
<td>OPCAT</td>
<td>Optional Protocol to the Convention against Torture</td>
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<tr>
<td>SAC</td>
<td>Sentencing Advisory Council</td>
</tr>
<tr>
<td>VEOHRC</td>
<td>Victorian Equal Opportunity and Human Rights Commission</td>
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<tr>
<td>VLA</td>
<td>Victoria Legal Aid</td>
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</tbody>
</table>
1. The Victorian youth justice framework

In February 2017, the Andrews Government announced that the Department of Justice and Regulation (DJR) would assume responsibility for the youth justice system, including all custodial and community-based youth justice services, from the Department of Health and Human Services (DHHS) as of 3 April 2017.¹

The current youth justice policy – *A Balanced Approach to Juvenile Justice in Victoria (2000)* – details a three-pronged approach, focusing on:

- diverting young people from entering the youth justice system, or progressing further into a life of crime;
- providing better rehabilitation of high-risk young offenders; and
- expanding pre-release, transition and post-release support programs for custodial clients to reduce the risk of reoffending.²

1.1 Structure

Youth justice services are currently provided by the Youth Justice and Disability Forensic Unit, youth justice teams, Youth Justice Custodial Services, youth justice senior practice advisers and community service organisations. It is unclear how this structure will change when DJR assumes responsibility for the youth justice system on 3 April 2017.

The Youth Justice and Disability Forensic Unit undertakes review, design and development of specialised statutory services. Youth justice teams supervise young people on statutory orders residing in the community. The youth justice centres are structured as follows:

- Parkville Youth Residential Centre: 10 to 14-year-old males, 10 to 20-year-old females;
- Melbourne Youth Justice Centre: 15 to 18-year-old males;
- Malmsbury Secure Youth Justice Centre: 15 to 20-year-old males;
- Malmsbury Senior Youth Justice Centre: 18 to 20-year-old males.

The Grevillea Unit at Barwon Prison has been gazetted as a youth justice facility and remand centre following damage to the Parkville Youth Residential Centre during riots in November 2016 which reduced its capacity.³

1.2 The legal framework

The *Children, Youth and Families Act 2005* (Vic) (the Act) is the principal legislation for Victoria’s youth justice service. Chapter 7 of the Act provides for the constitution of the Children’s Court of Victoria and Part 5.1 provides for the criminal responsibility of children. The Children’s Court has jurisdiction to hear and determine charges against children and young people aged 10 years or over but under 18 years at the time of the alleged offence and aged under 19 years when court proceedings begin.⁴ Other legislation relating to the youth justice service includes:

- *Sentencing Act 1991*;
- *Crimes Act 1958*;

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¹ D. Andrews, Premier (2017) *Building a stronger and more secure youth justice system*, media release, 6 February.

² ibid.


⁴ *Children, Youth and Families Act 2005* (Vic) s 3.
There are ten sentencing orders under s360(1) of the Act when a child is found guilty of an offence:

(a) dismissal (without conviction)
(b) non-accountable undertaking (without conviction)
(c) accountable undertaking (without conviction)
(d) good behaviour bond (without conviction)
(e) fine (with or without conviction)
(f) probation (with or without conviction)
(g) youth supervision order (with or without conviction)
(h) youth attendance order (with conviction)
(i) detention in youth residential centre (with conviction)
(j) detention in youth justice centre (with conviction)

Section 362(1) of the Act requires that the Children’s Court have regard to:

(a) the need to strengthen and preserve the relationship between the child and the child’s family; and
(b) the desirability of allowing the child to live at home; and
(c) the desirability of allowing the education, training or employment of the child to continue without interruption or disturbance; and
(d) the need to minimise the stigma to the child resulting from a court determination; and
(e) the suitability of the sentence to the child; and
(f) if appropriate, the need to ensure that the child is aware that he or she must bear a responsibility for any action by him or her against the law; and
(g) if appropriate, the need to protect the community, or any person, from the violent or other wrongful acts of the child.

The Children’s Court is not required to have regard to general deterrence as a relevant sentencing factor, in contrast to the sentencing of adult offenders.

1.2.1 The age of criminal responsibility

The age of criminal responsibility in Victoria is 10 years. Section 344 of the Act states ‘[i]t is conclusively presumed that a child under the age of 10 years cannot commit an offence.’ The common law doctrine doli incapax holds that a child younger than 14 years is incapable of committing a crime because they cannot form the necessary criminal intent (mens rea). The prosecution must prove beyond all doubt that the accused knew at the time of committing the offence that their conduct was seriously wrong as distinct from naughty. The presumption has been strongly affirmed by the Court of Appeal in Victoria.

1.2.2 The Charter of Human Rights

The Charter of Human Rights and Responsibilities Act 2006 (Vic) (the Charter) provides for protection of the rights of an accused child. Section 23 of the Charter states:

(1) An accused child who is detained or a child detained without charge must be segregated from all detained adults.

(2) An accused child must be brought to trial as quickly as possible.
(3) A child who has been convicted of an offence must be treated in a way that is appropriate for his or her age.

Section 25(3) states that ‘[a] child charged with a criminal offence has the right to a procedure that takes account of his or her age and the desirability of promoting the child’s rehabilitation.’

1.2.3 Convention on the Rights of the Child

The United Nations Convention on the Rights of the Child (the Convention) similarly recognises and affirms the unique circumstances of children who face criminal charges. It articulates several key principles relevant to sentencing young offenders, including:

- the best interests of the child as a primary consideration in decision making;
- diversion from judicial proceedings, where appropriate;
- proportionate sentencing;
- an emphasis on rehabilitation; and
- the use of detention as a last resort and for minimal time frame.

While the Convention has not been incorporated into Australian law, meaning that it cannot operate as a direct source of law, Australian courts have been prepared to consider international human rights conventions in exercising sentencing discretions. In Director of Public Prosecutions v TY (No 3), Justice Bell held that the Convention was significant in that it supplied a further basis for, and reinforced ‘the existing principle of giving primary emphasis to youth and rehabilitation as a mitigating factor when sentencing children.’ However, his Honour also emphasised that other considerations should be taken into account where the crime is very serious and that the Convention can ‘cut both ways’ where the victim is a child.

1.3 The dual track system

Some 18 to 20 year olds convicted of serious offences can be detained in a youth justice centre instead of an adult prison if the court believes the young person has reasonable prospects for rehabilitation, or is particularly impressionable, immature or likely to be subjected to undesirable influences in an adult prison. This dual track system reflects the key policy objective of diverting young people from the youth justice system. Around half of all 18–20 year olds in the dual track system are in the youth justice system.

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8 ibid, article 40(3)(b).
9 ibid, article 40(4).
10 ibid, article 40
11 ibid, article 12.
13 C. Maxwell (2005) ‘Human Rights: A view from the bench’, address to the Annual General Meeting of the Administrative Law and Human Rights Section of the Law Institute of Victoria, 26 October, p. 3
14 Director of Public Prosecutions v TY (No 3) [2007] VSC 489 [51], quoted in P. Power (2015) op. cit., 11.1.16.
15 ibid [48].
18 ibid.
2. The context of youth offending

It is widely acknowledged internationally and within Australia that responses to youth offending must reflect the unique circumstances of young people, including:

- the developmental nature of adolescence and its link to offending;
- the criminogenic effect of imprisonment; and
- the public interest rehabilitation of young people.19

2.1 Adolescence and offending

Children in the criminal justice system receive different treatment to adults because they are assumed to ‘lack the degree of insight, judgement and self-control’20 of a rational adult and may often act impulsively without weighing up the consequences of their actions. Research shows that this behaviour is linked to the rapid changes in biology, cognition and emotion that occur during adolescence which affect response inhibition, the calibration of risks and rewards and the regulation of emotions.21 Incomplete brain development, an attraction to risk-taking behaviour and underdeveloped consequential thinking creates a lack of impulse control which research suggests may undermine adolescents’ ability to refrain from criminal behaviour.22

Young people are also more vulnerable to risk factors that contribute to offending, such as mental health problems and alcohol and other drug use.23 This is compounded by the effects of peer pressure, which children and young people are particularly vulnerable to24 due to the developmental changes associated with adolescence and the role of peer networks in the lives of young people.25

The relationship between adolescence and offending underpins the differing approaches to children and adults in the Victorian justice system in which children and young people are deemed less culpable than adults.26 On this relationship, President of the Children’s Court of New South Wales (NSW) Peter Johnstone observed:

This is not to say that the findings from neurobiology research exculpate all young offenders from criminal responsibility. Rather, these findings indicate that there is a grey area between right and wrong when considering the moral culpability of a young offender.27

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20 Director of Public Prosecutions v TY (No 3) [2007] VSC 489 [43].
23 Richards (2011) op. cit., p. 4.
2.2 Imprisonment increases probability of reoffending

Another factor shaping youth justice policy in Victoria is the criminogenic effect of custody on a young person whose brain is still developing. Findings from several studies indicate that a young offender who participates in a diversion program is far less likely to reoffend than a young person whose case is determined in court and who is subsequently incarcerated. This includes controlling for various factors likely to influence recidivism.

Research by the Australian Institute of Health and Welfare (AIHW) found that of offenders aged 10–16 who were released from sentenced detention, 50 per cent returned to sentenced supervision within six months and 76 per cent returned within 12 months. Of offenders who were released from supervised community-based sentence, 20 per cent returned to sentenced supervision within six months and 44 per cent returned within 12 months. There are several explanations for this. Firstly, the court process can have a stigmatising effect on a young person by labelling them as ‘deviant’. This negative labelling can marginalise young people, which can lead to secondary deviance whereby they begin to identify with and adopt such identities. A young person may gravitate towards groups of deviant peers due to negative labelling, which produces further criminal socialisation and, thereby, increases the risk of reoffending. This concern is reflected in the statutory obligation on the Children’s Court of Victoria to have regard to the need to minimise the stigma to the child resulting from a court determination in considering a sentence.

Secondly, incarcerating a young offender can have a criminogenic effect by creating delinquent peer groups which increases the probability of further offending in the future. Studies indicate that rates of offending usually peak in late adolescence and decline in early adulthood. As most young people grow out of offending, diversion and early intervention play an important part in avoiding the criminogenic effects of incarceration, thereby stopping the cycle of offending before it begins.

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33 Children, Youth and Families Act 2005 (Vic) s 362(1)(d).
35 P. Power (2015) op. cit., 11.1.3
2.3 Rehabilitation reduces reoffending

The process of development and maturation that diminishes a young offender’s culpability also provides a unique opportunity for rehabilitation, which minimises the risk of reoffending. This is reflected in the youth justice policy *A Balanced Approach to Juvenile Justice in Victoria*, which cites the following statement in *R v Mills* as a guide to the Government’s directions for youth justice:

‘In the case of a youthful offender, rehabilitation is usually far more important than general deterrence. This is because punishment may in fact lead to further offending. Thus, for example, individualised treatment focusing on rehabilitation is to be preferred. Rehabilitation benefits the community as well as the offender.’

By focusing on addressing the underlying causes of youth offending, rehabilitation reduces reoffending by reconnecting young people with family, school, accommodation and other services. Accordingly, the focus of the Act is predominantly rehabilitative, as is the central overarching aim of sentencing in the Children’s Court. Where necessary, however, the Court must balance this objective with the need to protect the community, to specifically deter offenders and to ensure offenders are held accountable for their actions.

3. Youth justice interventions

Victorian youth justice services are underpinned by the following priorities:

- diverting young people from entering or progressing further into the criminal justice system;
- providing better rehabilitation of high risk offenders; and
- delivering pre-release, transition and post-release support programs to reduce the risk of reoffending.

Evidence shows that most crimes committed by young people involve low-level offences and that most young people grow out of offending as they mature. Further, the later a young person enters the justice system, the less likely they are to have continued involvement. Accordingly, diversion is central to Victoria’s youth justice system.

3.1 Police cautioning

Victoria Police can issue formal cautions to young people depending on the following factors:

- the seriousness of the crime;
- the circumstances of the young offender and the victim;
- the extent of damage or injury caused;

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38 11.4
whether a caution would effectively deter the young offender from future offending;
- the number of people affected by the crime; and
- whether a caution has been previously issued to the young offender.44

Victoria Police have found cautioning effective in deterring reoffending, reporting that one year after being cautioned, 80 per cent of young people have not reoffended and after three years, 65 per cent have not reoffended.45

Analysis of police cautioning
Victoria Police are the primary gatekeepers of diversion in Victoria, as is the case with police forces throughout Australia.46 Unlike other jurisdictions, however, formal cautioning by Victoria Police is not underpinned by legislation.47 Other jurisdictions have enacted police cautioning in legislation to:
- create consistency in diversion decisions;
- avoid the targeting of minorities, such as Indigenous youth; and
- increase the number of young people being diverted from the criminal justice system.48

The data on Victoria Police cautioning supports concern about the discretionary nature of cautioning. One study of police cautioning found that formal cautioning rates for 2010-2011 range from 14 per cent in Melbourne and Yarra to 31 per cent in Hobsons Bay, Maribyrnong and Wyndham.49 Analysis of data by offence type reveals greater variation, with the proportion of young people cautioned for crimes against the person ranging from 22.4 per cent in Horsham to 1.3 per cent in the Melbourne and Yarra region.50 Similarly, for offences against property, the proportion of young people formally cautioned in Hosbons Bay, Maribyrnong and Wyndham was 39.6 per cent, compared to 13.3 per cent in Latrobe.51

Research shows that discretionary police powers to caution can be used discriminatorily, towards marginalised groups such as homeless young people and people from refugee and migrant backgrounds in particular.52 Studies have also found that young Indigenous people are less likely to receive police referrals to diversionary processes than others.53 In 2009, the Drugs and Crime Prevention Committee Inquiry into Strategies to Prevent High Volume Offending and Recidivism by Young People, July, Melbourne, The Committee, p. 186.

47 Children and Young People Act 2008 (ACT) ch 4; Young Offenders Act 1997 (NSW) pt 4; Youth Justice Act (NT) pt 3; Juvenile Justice Act 1992 (Qld) pt 2 div 2; Young Offenders Act 1993 (SA); Youth Justice Act 1997 (Tas) s 8; Young Offenders Act 1994 (WA) pt 5 div 1.
51 Ibid.
Young People recommended that the rules, procedures, guidelines and administration of police cautioning be incorporated into legislation so that all apprehended young people could benefit from the strategy of diversion.\textsuperscript{54} This may help to create consistency in diversion decisions, avoid the targeting of minorities, such as Indigenous youth, and increase the number of young people being diverted away from the criminal justice system.\textsuperscript{55} The Government Response to the report noted that Victoria Police would consider the recommendation on police cautioning during the re-evaluation of its Child and Youth Strategy 2009-2013.\textsuperscript{56}

3.2 Drug Diversion Program

People apprehended by police for use or possession of an illicit drug other than cannabis may participate in the Drug Diversion Program. To be eligible for a caution under the program, the person must:

- be over 10 years of age;
- be arrested for the use and/or possession of a small (non-trafficable) amount of illicit drugs other than cannabis;
- admit to the offence; and
- not have received any more than one previous cautioning notice.\textsuperscript{57}

3.3 Cannabis Caution

Police may issue a Cannabis Caution to a person caught with a small amount of cannabis providing they admit to owning it. The procedure for a cannabis caution is the same as that of a police caution, as described above.

3.4 Ropes Program

The Ropes Program is a court diversion program involving Victoria Police, the Children’s Court of Victoria and youth workers. It is aimed at first-time offenders who have committed minor offences.\textsuperscript{58} Ropes only operates in metropolitan Melbourne and in a small number of country regions.\textsuperscript{59}

To be eligible for Ropes:

- the young person must have been under the age of 18 when the offence was committed;
- the offence must be triable summarily;
- the young person must admit the offence and have only received cautions in the past or be appearing in the Children’s Court for the first time;
- the young person must not have previously participated in a Ropes course;
- the young person must agree to participate and parents or guardians must also agree; and
- the young person must be considered suitable.\textsuperscript{60}


\textsuperscript{55} ibid.


\textsuperscript{58} E. Martakis (2017) op. cit., p. 4.


\textsuperscript{60} Department of Justice (2010) *Statewide Diversion in the Children’s Court*, report, cited in H. Little & T. Karp (2012) op. cit., p. 34.
A young person participating in the program undertakes a ropes course or rock climbing, as well as education sessions about the implications of a criminal record and how to avoid further antisocial behaviour. Upon successful completion of the program, police recommend to the court that the charge be struck out. As a result, there is no finding of guilt and no sentencing order.

A KPMG evaluation of Ropes found that although it is valuable to young people as a second chance, it is less likely to bring about sustained change amongst those most likely to reoffend. Rates of reoffending of young people participating in the program are around 10 to 12 per cent. Participation in the Ropes Program is based on a young person’s suitability, as assessed by the police informant. The report, however, found few guidelines to define ‘suitability’ and notes that referral tends to be discretionary.

### 3.5 Right Step

Right Step is a more intensive diversion program than Ropes for young people aged 10–17 who have engaged in more serious offending. It aims to address the causes of offending by partnering the young person with a case manager who designs an individualised plan tailored to an individual’s circumstances. These may include:

- substance abuse;
- mental illness;
- family breakdown;
- housing; and
- disengagement from education, training or employment.

The young person has at least one session each week with the case manager for eight weeks. The case manager then provides a report to the magistrate who will dismiss the charges if they decide that the young person has successfully completed the program. Right Step is not government funded. It receives funding from the philanthropic and community sectors. It is delivered in the Moorabbin Children’s Court, meaning it is only available to young people who reside in the Bayside, Kingston and Glen Eira areas. Young people living in these areas who are due to appear in the Moorabbin Children’s Court must be referred to the program by the police, with the consent of the victim, and must admit to the offence.

### 3.6 Youth Justice Group Conferencing

Youth Justice Group Conferencing is based on restorative justice principles and aims to balance the needs of young people, victims and the community by encouraging dialogue between young people who have offended, their victims and others affected. More specifically, the program aims to:

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62 H. Little & T. Karp (2012) op. cit., p. 34.
64 E. Martakis, op. cit., p. 14.
65 ibid.
68 Youth Connect (2012) op. cit., p. 6.
69 E. Martakis (2017) op. cit., p. 4.
• develop the young person’s understanding of the impact of their offending on the victim, their family and/or significant others and the community;
• reduce the frequency and seriousness of reoffending by the young person;
• improve the young person’s connection to family/significant others and their integration into the community;
• negotiate an outcome plan that sets out what the young person will do to make amends for their offending;
• increase victim satisfaction with the criminal justice process; and
• divert the young person from a more intensive sentence.71

Group conferencing is available in circumstances where the court is considering imposing probation or a youth supervision order.72 A young person must be aged between 10–18 years, plead guilty to the offence and be appearing before the court for the first time to be eligible for group conferencing.73 In Victoria, only the court can refer a young person to group conferencing whereas referrals are made by police and courts in all other Australian jurisdictions. Accordingly, the level of youth justice group conferencing in Victoria is particularly low, even accounting for lower levels of youth offending in Victoria.74 Government expenditure on group conferencing is correspondingly low.75

Table 1: 2014-15 group conferences

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>No. of group conferences resulting in agreement</th>
<th>Government expenditure on group conferencing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Victoria</td>
<td>228</td>
<td>$1,946,000</td>
</tr>
<tr>
<td>New South Wales</td>
<td>1,163</td>
<td>$4,333,000</td>
</tr>
<tr>
<td>Queensland</td>
<td>663</td>
<td>$5,273,000</td>
</tr>
<tr>
<td>South Australia</td>
<td>1,213</td>
<td>$1,739,000</td>
</tr>
<tr>
<td>Western Australia</td>
<td>1,929</td>
<td>$32,812,000</td>
</tr>
<tr>
<td>Tasmania</td>
<td>167</td>
<td>$111,000</td>
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<tr>
<td>Australian Capital Territory</td>
<td>112</td>
<td>$830,000</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>232</td>
<td>$4,867,000</td>
</tr>
</tbody>
</table>


A 2010 evaluation by KPMG found youth group conferencing was more successful in reducing reoffending than more formal sanctions. Within 12 months of completing group conferencing, 18.6 per cent of young people reoffended, compared to 27.6 per cent of young people who received probation or a Youth Supervision Order.76 The distinction was more pronounced 24 months later, with 19.2 per cent of group conferencing participants reoffending compared to 42.9 per cent who received

71 ibid.
72 Section 415 the Act.
75 ibid.
the more formal sanctions. Despite the success of youth justice group conferencing, it is not available in all areas, to all young offenders.

The circumstances in which the court can consider deferring sentencing to enable a young person to participate in group conferencing was broadened by amendments to the Act in 2014. Previously, the court could only consider deferral of sentencing for the purposes of group conferencing if a probation order or a youth supervision order were in contemplation. The court can now also consider deferral for group conferencing where a youth attendance order or a period of detention is being considered.

3.7 Analysis of youth justice diversion in Victoria

Analysis of youth diversion in Victoria suggests it is somewhat ad hoc. As the above overview indicates, there is limited access to diversion programs based on location, types of offending and the age of offenders.

3.7.1 Geographic limitations

The 2013 Youth Justice Remand Bail Strategy acknowledges that ‘[c]urrently there is significant variation in the availability of diversion options across the state, meaning that a young person’s access can be restricted by their location. Programs are often more widely available in metropolitan Melbourne than in regional and rural Victoria.’ As a result, young people in rural and regional Victoria don’t have access to the same opportunities to be diverted from the criminal justice system. This inequity in access to diversion programs between rural and regional young people and their metropolitan peers has been described as a form of ‘postcode justice’ or ‘justice by geography’. Former President of the Children’s Court, Judge Paul Grant, observed that ‘the unavailability of diversion for some young Victorians is a significant access to justice issue.’ Further, where diversion programs do exist, their efficacy can be constrained by limited access to community-based interventions, including accommodation services, or mental health and drug and alcohol programs, which are less accessible in rural and regional areas.

3.7.2 Legislated court-based diversion for young people

Although diversion is at the heart of the youth justice framework, Victoria is the only Australian jurisdiction that does not have a legislative, court-based diversion scheme for children and young people. The existing diversionary programs rely solely on police discretion. This is in contrast to the adult justice system, in which a magistrate can adjourn proceedings for 12 months to allow an accused to participate in a diversion program and, if successful, avoid court proceedings. This discrepancy between youth justice and the mainstream criminal justice system has been the subject of criticism, particularly in light of the previously detailed unique circumstances of youth offending. The

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77 ibid.
78 L. Jordan & J. Farrell (2013) op. cit., p. 419
80 Department of Justice (2013) Youth Justice Remand Bail Strategy, DoJ, Melbourne, p. 3.
83 P. Grant (2013) op. cit., p. 16.
84 Youth Parole Board (2007) Annual Report, Melbourne, p. xi;
86 ibid., p. 3.
Sentencing Advisory Council (SAC) has observed ‘[i]ronically, given the lesser emphasis on diversion for adult offenders, the situation is far better in the adult system, which has the (legislated and co-ordinated) Criminal Justice Diversion Program available to offenders 18 years and above.’ Inequitable outcomes and net-widening in certain areas can occur in the absence of a comprehensive state-wide diversion program for young people. Further, ‘[i]t may also be a missed opportunity in terms of keeping potentially large numbers of low-level young offenders out of the Children’s Court.’ It has been observed that the absence of legislated court-based diversion for children and young people jeopardises the principle of custody as a last resort as provided for in the Act.

3.7.3 State-wide diversion program

A pilot Children’s Court diversion program commenced in 2015, operating in four metropolitan courts and three courts in the Grampians region. It operates through court referrals of eligible young people to Jesuit Social Services, the main provider, for in-court assessment. If a young person is considered to be suitable, recommendations are made to the court about a broad-ranging tailored diversion plan, focusing on links to family, school and community. The program targets young offenders who acknowledge their offending and who have little or no prior history of offending. As of April 2016, more than 90 per cent of the 270 participants had successfully completed the program.

In the 2016/17 Victorian Budget, the Andrews Government announced $5.6 million over two years to support the diversion program. DJR has assumed responsibility for delivering the Children’s Court youth diversion service in all Children’s Courts across Victoria.

4. Detention

Youth justice in each Australian state and territory is underpinned by the key principles that young people should be detained only as a last resort and for the shortest appropriate period. This is reflected in the Act which states that detention may not be imposed if another sanction is appropriate. It is, however, an available option for the purposes of community protection and offender accountability.

89 ibid; L. Jordan & J Farrell op. cit., p. 423.
90 ibid.
92 D. Ritchie & N. Hudson (2016) op. cit., p. 9.
93 ibid, p. 10.
98 Section 361.
99 Section 361(1)(g).
4.1 Youth justice detention facilities

The Malmsbury Youth Justice Centre accommodates young males aged 15-18 years sentenced to detention in a youth justice centre and the Malmsbury Senior Youth Justice Centre accommodates males aged 18–20 years sentenced to detention in a youth justice centre.\(^{100}\) The Parkville Youth Residential Centre accommodates 10-to-14-year-old males and 10–20 year old females held on remand pending a court hearing or sentencing,\(^{101}\) and those sentenced to detention in a youth residential centre.\(^{102}\) The Melbourne Youth Justice Centre accommodates 15-to-18-year-old males held on remand pending a court hearing or sentencing,\(^{103}\) and those sentenced to detention in a youth justice centre.\(^{104}\) As previously mentioned, the Grevillea Unit of Barwon Prison was gazetted as a youth justice facility and remand centre in November 2016.

4.2 Purposes of youth justice custodial services

DHHS states that the aims of youth justice custodial services are to ensure:

- safe and secure youth justice custodial facilities for clients and staff;
- young people are rehabilitated with reduced likelihood of further offending;
- factors associated with offending are addressed through evidence-based programs; and
- complex clients are provided with integrated and well-coordinated services that meet their individual needs.\(^{105}\)

4.3 Rights of young people in detention

Young people detained in remand centres, youth residential centres and youth justice centres have the following rights in accordance with Section 482 of the Act:

(a) to have their development needs catered for;
(b) to receive visits from parents, relatives, legal practitioners and other persons;
(c) to reasonable efforts made to meet their medical, religious and cultural needs, including, in the case of Aboriginal children, their needs as members of the Aboriginal community;
(d) to receive information on the rules of the centre in which they are detained;
(e) to complain to the Secretary or the Ombudsman about the standard of care, accommodation or treatment; and
(f) to be advised of their entitlements under this sub-section.

The Act prohibits certain actions in relation to a young person in detention, including:

(a) the use of isolation as punishment;
(b) the use of physical force unless it is reasonable and necessary, or unless otherwise authorised;
(c) the administering of corporal punishment;
(d) the use of any form of psychological pressure intended to intimidate or humiliate;
(e) the use of physical or emotional abuse; and
(f) the adoption of any kind of discriminatory treatment.\(^{106}\)

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\(^{102}\) *Children, Youth and Families Act 2005* (Vic) s 411.


\(^{104}\) *Children, Youth and Families Act 2005* (Vic) s 412.

\(^{105}\) Department of Health and Human Services (2012) op. cit., accessed on 8 February 2017.

\(^{106}\) Section 487
Section 488 prohibits the isolation of a young person in detention unless:

(a) all other reasonable steps have been taken to prevent them from harming himself/herself or any other person, or from damaging property; or

(b) the person’s behaviour presents an immediate threat to his/her safety, the safety of any other person or to property.\(^\text{107}\)

The period of isolation must also be approved by the Secretary.\(^\text{108}\) All isolation must be recorded in a dedicated isolation register.\(^\text{109}\)

Further discussion on young people in detention can be found in section 8.

5. Trends in youth justice

5.1 Number of young offenders

The 2016 Sentencing Advisory Council Data Update Report notes that between 2010 and 2015, the number of children sentenced in the Children’s Court of Victoria decreased by approximately 43 per cent.\(^\text{110}\)

Figure 1: Number of sentenced young offenders between 2008-09 and 2014-15

![Graph showing the number of sentenced young offenders between 2008-09 and 2014-15.]


\(^{107}\) Section 488(1).

\(^{108}\) Section 488(3).

\(^{109}\) Section 488(6).

\(^{110}\) D. Ritchie & N. Hudson (2016) op. cit., p. 12.
The number of young offenders aged below 18 years processed by police has also steadily decreased from 35,956 young people in 2008-09 to 25,956 in 2012-13. These figures correspond with a Crime Statistics Agency (CSA) analysis of age-specific trends of young offenders which found a 37 per cent decrease in the number of alleged offenders aged 10 to 14 years from 2006-10 to 2011-15.111

Figure 2: Number of cases sentenced in the Children’s Court by year, 2010 to 2015

![Graph showing the number of cases sentenced in the Children's Court by year, 2010 to 2015.]

5.2 Average number of charges

The number of offences committed per offender, however, increased from a consistent average of around 4.5 charges per case for years 2010 to 2013 to an average of 5.2 charges per case in 2014, and 6.4 charges per case in 2015. Again, this figure corresponds with the CSA analysis, which found that the number of offences per offender aged 10 to 14 years increased from 3.8 from 2006-10 to 5.4 in 2011-15, averaged over four years.

In 2013, the Napthine Government amended the Bail Act 1977 (Vic), creating an offence for an accused to contravene conditions of bail. This applied equally to children and young people, and adults. The SAC suggests that a significant proportion of the increase in charges from 2013 to 2015 is attributable to the new bail-related offences of contravening a conduct condition of bail and committing an indictable offence whilst on bail. This is supported by the data that shows the total number of charges sentenced in the Children’s Court in 2015, including bail-related offences, was 21,236 and...
18,559 excluding bail-related offences. This is less than the total number of charges sentenced in the Children’s Court in 2013, which was 18,817.\textsuperscript{117} A 2016 amendment by the Andrews Government exempted children from the breach of bail condition offence,\textsuperscript{118} however, the offence of committing an indictable offence whilst on bail remains in place.

### 5.3 Proportion of offences committed by young offenders

The proportion of incidents committed by offenders under the age of 25 has fallen since 2007-08 from 52 per cent of all recorded incidents to 40 per cent of all incidents in 2015–16.\textsuperscript{119} The CSA notes that the decline was most notable in the 10-to 14-year-old and 15-to 19-year-olds, with the proportion of offences accounted for by these groups decreasing from 13 per cent to 6 per cent and from 24 per cent to 16 per cent respectively.\textsuperscript{120} There was a corresponding increase in the proportion of offences by those aged 25 or older, from 48 to 60 per cent over the same period.\textsuperscript{121}

The following figure illustrates the breakdown of offences committed by young offenders as a proportion of overall offences committed. It shows both a decrease in the proportion of incidents committed by young offenders and an increase in the proportion committed by offenders aged 25 or older.

**Figure 3: Proportion of incidents recorded by offender age group**

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\textsuperscript{117} ibid.

\textsuperscript{118} *Bail Amendment Act 2016* (Vic) s 16(2); *Bail Act 1977* (Vic) s 30A.


\textsuperscript{120} ibid.

\textsuperscript{121} ibid.
Proportion of offenders that are children

Only 12 per cent of offenders in the year to September 2016 were between 10–17 years of age and more than half of all offenders were aged 18–34.122 Of Victoria’s 10–17 year olds in 2015, less than 1 per cent were sentenced for criminal offences and the number of children and young people sentenced has declined each year since 2008–09.123

Figure 4: Annual number of unique offenders aged under 25 and 25 and over, from 2006 to 2015


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Figure 5: Number of alleged offenders by age group, year ending 31 December 2016


Figure 6: Alleged offender incidents by age group

Figure 7: Alleged offender incidents by age and offence categories, year end December 2016

![Chart showing alleged offender incidents by age and offence categories from Crime Statistics Agency (2017) 'Alleged offender incidents data tables: January to December 2016', CSA, Melbourne.](image)

Figure 8: Proportion of young offenders aged 10–24 recorded for one or more of each crime type

![Chart showing proportion of young offenders aged 10–24 recorded for one or more of each crime type from Millsteed, M. & P. Sutherland (2016) 'How has Youth Crime in Victoria Changed over the Past 10 Years?', Crime Statistics Agency, Number 3, p. 5.](image)
As the report observes, the fall in the proportion of offenders who recorded at least one property and deception offence is mainly due to a significant decrease in those recorded for theft. In 2007–08 43.6 per cent of all young offenders were recorded for at least one theft offence. This dropped to 31.0 per cent by 2015–2016.  

Criminal damage offences accounted for 19.6 per cent in 2007–08, decreasing to 16.8 per cent in 2011–12, and increasing again to 19.4 per cent in 2015–16. The report highlights a significant increase in assault and related offences, with 22.4 per cent in 2007–08 and 27.8 per cent in 2015–16 contributing to the overall increase in crimes against the person.  

The increase in justice procedures offences from 2011–12 to 2015–16 corresponds with the link identified by the SAC between the increase in the average number of charges per young offender and the changes to the Bail Act 1977 (Vic), as discussed above.

### 5.4 Categories of offenders

The CSA conducted research in 2016 across the first eight years of young offenders born between April 1996 and March 1998 and identified four groups of offenders:

- Low – those with a very low level of offending across all ages, with an average of 2.2 offences
- Adolescent limited – those who offend early and whose offending declines after 15
- Late developing – those who start offending after 15 and whose offending then rapidly increases
- High – those whose offending increases rapidly from 12 years of age with an average of 76.5 offences.

As the table below illustrates, the 1.6 per cent of offenders who were high offending, or 182 young people, accounted for 23.6 per cent of all 13,914 offences recorded across an eight-year period. The CSA observes that this equates to an average of 76.5 offences per individual offender in the high group from the time of their tenth birthday through to their last day as a 17-year-old.

This corresponds with the consensus in research that a small proportion of chronic offenders are responsible for a disproportionately large amount of crime. A 2016 SAC report examining offending patterns for young people sentenced in the Children’s Court of Victoria found that offenders who were first sentenced at an earlier age tended to have higher reoffending rates than those first sentenced at a later age. Children sentenced to youth detention before they are 10–12 years old reoffend at a rate of 86 per cent, more than double the rate of those first sentenced at 19–20 years old, which is 33 per cent.

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124 ibid.
125 M. Millsteed & P. Sutherland (2016) op. cit., p. 2.
126 ibid, p. 1.
128 ibid.
131 ibid, p. 45.
Further, the younger a child is at first sentence, the more likely they are to reoffend and to reoffend violently, and to be imprisoned in an adult prison before their 22\textsuperscript{nd} birthday.\textsuperscript{132} After accounting for the effect of other factors, each additional year in age at entry into the criminal courts was associated with an 18 per cent decline in the likelihood of reoffending.\textsuperscript{133}

### Table 2: Number and proportion of offenders, incidents and offences by offender group

<table>
<thead>
<tr>
<th>Offender group</th>
<th>Number of offenders No.</th>
<th>Number of offenders %</th>
<th>Number of incidents No.</th>
<th>Number of incidents %</th>
<th>Number of offences No.</th>
<th>Number of offences %</th>
<th>Average number of offences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low</td>
<td>10,240</td>
<td>88.7%</td>
<td>16,636</td>
<td>41.9%</td>
<td>22,113</td>
<td>37.5%</td>
<td>2.2</td>
</tr>
<tr>
<td>Adolescent limited</td>
<td>737</td>
<td>6.4%</td>
<td>8,671</td>
<td>21.9%</td>
<td>13,688</td>
<td>23.2%</td>
<td>18.6</td>
</tr>
<tr>
<td>Late developing</td>
<td>388</td>
<td>3.4%</td>
<td>5,666</td>
<td>14.3%</td>
<td>9,203</td>
<td>15.6%</td>
<td>23.7</td>
</tr>
<tr>
<td>High</td>
<td>182</td>
<td>1.6%</td>
<td>8,707</td>
<td>21.9%</td>
<td>13,914</td>
<td>23.6%</td>
<td>76.5</td>
</tr>
</tbody>
</table>


### Table 3: Number and proportion of offences by offence type and offender group

<table>
<thead>
<tr>
<th>Offender group</th>
<th>Crimes against person No.</th>
<th>Crimes against person %</th>
<th>Property and deception offences No.</th>
<th>Property and deception offences %</th>
<th>Drug offences No.</th>
<th>Drug offences %</th>
<th>Public order and security offences No.</th>
<th>Public order and security offences %</th>
<th>Justice procedures offences No.</th>
<th>Justice procedures offences %</th>
<th>Other offences No.</th>
<th>Other offences %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low</td>
<td>4,735</td>
<td>21.4%</td>
<td>13,124</td>
<td>59.4%</td>
<td>1,095</td>
<td>5.0%</td>
<td>1,973</td>
<td>8.9%</td>
<td>671</td>
<td>3.0%</td>
<td>515</td>
<td>2.3%</td>
</tr>
<tr>
<td>Adolescent limited</td>
<td>3,188</td>
<td>23.3%</td>
<td>8,137</td>
<td>59.5%</td>
<td>326</td>
<td>2.4%</td>
<td>1,102</td>
<td>8.1%</td>
<td>800</td>
<td>5.8%</td>
<td>135</td>
<td>1.0%</td>
</tr>
<tr>
<td>Late developing</td>
<td>1,931</td>
<td>21.0%</td>
<td>5,447</td>
<td>59.2%</td>
<td>267</td>
<td>2.9%</td>
<td>665</td>
<td>7.2%</td>
<td>843</td>
<td>9.2%</td>
<td>50</td>
<td>0.5%</td>
</tr>
<tr>
<td>High</td>
<td>2,445</td>
<td>17.6%</td>
<td>9,363</td>
<td>67.3%</td>
<td>257</td>
<td>1.9%</td>
<td>813</td>
<td>5.8%</td>
<td>920</td>
<td>6.6%</td>
<td>116</td>
<td>0.8%</td>
</tr>
</tbody>
</table>


\textsuperscript{132} ibid, p. 10.

\textsuperscript{133} ibid, p. 10.
5.5 Characteristics of young offenders

The current youth justice policy states:

Juvenile crime is not just a legal problem, it is also a social problem with social causes and effects. Socioeconomic disadvantage, poor educational attainment, family breakdown, sexual abuse and violence, family drug abuse, unemployment and a history of failures – their own, their family’s and their support systems – all increase the likelihood of young people offending.134

Research consistently identifies a number of risk factors associated with juvenile offending. The following table illustrates the risk factors and protective factors associated with youth offending.

**Table 4: Risk and protective factors associated with youth offending**

<table>
<thead>
<tr>
<th>Risk factors</th>
<th>Protective factors</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Community</strong></td>
<td></td>
</tr>
<tr>
<td>• Poverty</td>
<td>• Culture of cooperation</td>
</tr>
<tr>
<td>• Low neighbourhood attachment and community</td>
<td>• Stability and connectedness</td>
</tr>
<tr>
<td>disorganisation</td>
<td>• Good relationships with adults outside family</td>
</tr>
<tr>
<td>• Availability of drugs</td>
<td>• Opportunities for meaningful contribution</td>
</tr>
<tr>
<td><strong>School</strong></td>
<td></td>
</tr>
<tr>
<td>• Academic failure</td>
<td>• A sense of belonging</td>
</tr>
<tr>
<td>• Poor relationships in school</td>
<td>• Positive achievements</td>
</tr>
<tr>
<td>• Early and persistent antisocial behaviour and</td>
<td>• Attendance at preschool</td>
</tr>
<tr>
<td>bullying</td>
<td></td>
</tr>
<tr>
<td>• Low parental interest in children</td>
<td></td>
</tr>
<tr>
<td><strong>Family</strong></td>
<td></td>
</tr>
<tr>
<td>• History of problematic alcohol and drug use</td>
<td>• Connectedness to family</td>
</tr>
<tr>
<td>• Family conflict</td>
<td>• Feeling loved and respected</td>
</tr>
<tr>
<td>• Alcohol and drugs interfering with family</td>
<td>• Proactive problem-solving and minimal conflict during</td>
</tr>
<tr>
<td>rituals</td>
<td>infancy</td>
</tr>
<tr>
<td>• Harsh/coercive or inconsistent parenting</td>
<td>• Maintenance of family rituals</td>
</tr>
<tr>
<td>• Marital instability or conflict</td>
<td>• Warm relationship with at least one parent</td>
</tr>
<tr>
<td>• Favourable parental attitudes towards risk-taking</td>
<td>• Absence of divorce during adolescence</td>
</tr>
<tr>
<td>behaviour</td>
<td></td>
</tr>
<tr>
<td><strong>Individual/peer</strong></td>
<td></td>
</tr>
<tr>
<td>• Alienation, rebelliousness, hyperactivity,</td>
<td>• Temperament/activity level, social responsivity,</td>
</tr>
<tr>
<td>aggression, novelty seeking</td>
<td>autonomy</td>
</tr>
<tr>
<td>• Seeing peers taking drugs</td>
<td>• Development of special talents, hobbies and</td>
</tr>
<tr>
<td>• Friends engaging in problem behaviour</td>
<td>enthusiasm for life</td>
</tr>
<tr>
<td>• Favourable attitude toward problem behaviour</td>
<td>• Work success during adolescence</td>
</tr>
<tr>
<td>• Early initiation in problem behaviour</td>
<td></td>
</tr>
</tbody>
</table>


The cumulative effect of multiple risk factors has a snowball effect, with subsequent risk factors exacerbating existing problems. The more risk factors, the greater the probability that a young person will engage in antisocial or criminal behaviour.135

The significance of these risk factors is illustrated in the results of a Department of Health and Human Services snapshot survey of 167 males and nine females detained on sentence and remand. The survey found that:

- 45 per cent had been subject to a previous child protection order;
- 19 per cent were subject to a current protection order;
- 63 per cent were victims of abuse, trauma or neglect;
- 62 per cent had previously been suspended or expelled from school;
- 30 per cent presented with mental health issues;
- 18 per cent had a history of self-harm or suicidal ideation;
- 24 per cent presented with issues concerning their intellectual function;
- 11 per cent were registered with Disability Services;
- 10 per cent had a history of alcohol misuse;
- 16 per cent had a history of drug misuse;
- 66 per cent had a history of both alcohol and drug misuse;
- 12 per cent had offended while under the influence of alcohol but not drugs;
- 20 per cent had offended while under the influence of drugs but not alcohol;
- 58 per cent had offended while under the influence of both alcohol and drugs;
- 12 per cent were parents;
- 38 per cent had a family history of parental or sibling imprisonment;
- 12 per cent spoke English as a second language; and
- 10 per cent were homeless with no fixed address or residing in insecure housing prior to custody.136

5.5.1 Child protection

The finding that 64 per cent of young offenders have been or are in child protection and 63 per cent were victims of abuse, trauma or neglect highlights the problematic pathways between child protection and youth justice supervision. It is consistent with research that shows children and young people who have been abused or neglected are at greater risk of engaging in criminal activity.137 An AIHW report found that young people in the child protection system were 14 times as likely as the general population to be under youth justice supervision in the same year.138 Young people under youth justice supervision were 15 times as likely as the general population to be in the child protection system in the same year.139 Further, the younger someone was at their first youth justice supervision, the more likely they were also to be in child protection.140

5.5.2 Socioeconomic disadvantage

Research indicates a strong correlation between socioeconomic status and the probability of youth offending. Criminologists Rob White and Chris Cunneen have observed that a young person from a

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139 Ibid.
140 Ibid, p. 12.
low-income background living in a high crime rate area is far more likely to engage in offending
behaviour than the same person living in a low crime neighbourhood.141 Almost one-third (32 per cent)
of young people under supervision on an average day were from the lowest socioeconomic areas
based on postcode of last address.142 Young people aged 10–17 from the lowest socioeconomic areas
were about 6 times as likely to be under supervision as those from the highest socioeconomic areas.143
A 2010 report also found that 25 per cent of children on youth justice orders in 2010 came from only
2.6 per cent of postcodes.144

A report by Director of the NSW Bureau of Crime Statistics and Research analysing the relationship
between socioeconomic disadvantage, child neglect/abuse and youth offending made the following
conclusions:

- postcode areas with high levels of poverty tended to have significantly higher levels of parenting
deficiency such as child neglect;
- there is a strong relationship between the level of child neglect/abuse in a postcode area and the
  level of youth participation in crime in that area;
- economic and social stress exert most of their effects on crime, at least in urban areas, by
  increasing the risk of child neglect; and
- young people rendered susceptible to involvement in crime by poor parenting are more likely to
  become involved in crime if they reside in ‘offender-prone’ neighbourhoods.145

### 5.5.3 Implications of characteristics of young offenders

The youth justice policy acknowledges the distinct correlation between the risk factors identified in the
DHHS survey of young people in detention and youth offending:

> Juvenile crime is not just a legal problem, it is also a social problem with social causes and effects.
> Socio-economic disadvantage, poor educational attainment, family breakdown, sexual abuse and
> violence, family drug abuse, unemployment and a history of failures – their own, their family’s and
> their support systems – all increase the likelihood of young people offending.146

The DHHS observes ‘[t]he youth justice system cannot address youth crime in isolation from other
systems such as welfare, drug and alcohol, disability, housing, mental health, education and
employment.’147 Accordingly, it provides a range of services to address the underlying causes of youth
offending through the Youth Justice Community Support Service (YJCSS).

The YJCSS aims to:

- reduce the severity, frequency and rates of reoffending and minimise progression into the criminal
  justice system;
- facilitate the transition from the youth justice system to local community services;
- prepare clients for adulthood by developing their independence, resilience and connectedness to
  family and community; and

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142 ibid, p. 9.
144 M. Ericson & T. Vinson (2011) op. cit., p. 54.
145 Youthlaw (2008) Submission to the Drugs and Crime Prevention Committee, Inquiry into Strategies to Prevent
High Volume Offending and Recidivism by Young People, July, Melbourne, The Committee, citing D. Weatherburn
Criminal Justice, No. 85, Australian Institute of Criminology, Canberra.
146 C. Campbell, Minister for Community Services (2000) op. cit., p. 3.
2017.
- develop the capacity of young people for meaningful educational and economic participation.\textsuperscript{148}

It provides a single intake point for a range of services to meet the needs of clients referred via the regional Youth Justice Unit. The service includes:

- intensive case management support to assist young people to connect to family, education, training, employment and community;
- integrated access and supported referrals to a range of services including drug and alcohol, mental health and health services, housing, education, training, culturally and linguistically diverse and Indigenous-specific services; and
- transitional housing and support, including assistance and housing outreach support for clients who are homeless or at risk of homelessness, to maintain stable accommodation and enhance capacity for independent living.\textsuperscript{149}

Services are provided by a consortium including Jesuit Social Services, Youth Support + Advocacy Service, Salvocare East, VincentCare, Wombat and VICSEG, together with DHHS.\textsuperscript{150}

6. Indigenous youth justice

The landmark 1991 federal Royal Commission into Aboriginal Deaths in Custody found that the social, economic and cultural disadvantage faced by Indigenous Australians was at the heart of over-representation in the criminal justice system, particularly of Indigenous youth.\textsuperscript{151} Indigenous offending, the Royal Commission found, could not be separated from a history of violent dispossession, the forced removal of children from their families during the Stolen Generation, assimilation and dislocation from culture and community. The impact of institutional racism in criminal justice processes, including policing, court hearings and sentencing were found to compound the situation.

In 2005, the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) commissioned a report into systemic racism in the Victorian criminal justice system and over-representation by leading criminologists. The report observed that:

The ongoing over-representation of Indigenous Australians in the criminal justice system cannot be accounted for solely in terms of the prejudices of individuals within the system, or greater levels of offending by Indigenous people – although these may play an accompanying role. They are, rather, a reflection of the multiply layered patterns of disadvantage and extreme forms of marginalisation experienced by Aboriginal people.\textsuperscript{152}

Analysis of over-representation of Indigenous youth in Victoria’s criminal justice system supports this conclusion.

\textsuperscript{149}ibid.
6.1 Over-representation in the criminal justice system

Indigenous over-representation in prison populations is a systemic problem in all Australian jurisdictions. Victoria is no exception. Indigenous young people constitute only 2 per cent of the Victoria’s population aged 10–17 but in 2014–15 they were around 15 per cent of those aged 10–17 under supervision on an average day. The rate of Indigenous young people aged 10–17 under supervision on an average day was 137 per 10,000 compared with 12 per 10,000 for non-Indigenous young people. As the AIHW observes, this means that an Indigenous young person in Victoria is 11 times as likely as a non-Indigenous young person to be under youth justice supervision. This is lower than the national level in which an Indigenous young person is 15 times as likely to be under youth justice supervision than a non-Indigenous young person.

Between June 2006 and June 2016, the growth rate in the number of Aboriginal and Torres Strait Islander prisoners more than doubled the number of non-Indigenous prisoners (up 147 per cent and 62 per cent respectively), according to the SAC. The significance of this statistic is questionable, however, due to the small size of the Aboriginal and Torres Strait Islander population in Victoria, meaning that small changes in the number of prisoners will have a large effect on the imprisonment rate. The AIHW supports this qualification, noting that rate ratios ‘should be interpreted with caution where there are small denominators.’

Over-representation, nonetheless, remains an ongoing, complex problem. The Youth Parole Board has stated that it ‘remains concerned about the continued overrepresentation of Aboriginal young people in custody, particularly the increase of young Aboriginal people receiving custodial orders in the Children’s Court.’

6.2 Underlying causes of over-representation

Numerous comprehensive investigations have examined the underlying causes of over-representation of young Indigenous people in the criminal justice system. Given the complexity and intersections in these underlying causes, this paper does not analyse these issues but rather mentions them for the purposes of context. Some important and specific factors necessary to explain Aboriginal over-representation, according to the 2005 VEOHRC report, include:

- offending patterns (especially over-representation in offences likely to lead to imprisonment such as serious assaults, sexual assaults and property offences);
- the impact of policing (in particular the adverse use of police discretion);
- legislation (especially the impact of laws which may give rise to direct and indirect discrimination such as criminal laws and local government laws which regulate the use of public space);
- factors in judicial decision-making (in particular, bail conditions, the weight given to prior record, the availability of non-custodial options);
- policy and practice which is neutral on the surface, but has a different impact on Indigenous people (for example, bail conditions, access to diversionary schemes);
- environmental and locational factors (especially the social and economic effects of living in small rural communities);

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154 ibid.
155 ibid.
157 ibid, p. 13.
159 Youth Parole Board (2016) op. cit., p. 19.
• cultural difference (such as different child-rearing practices, the use of Aboriginal English, vulnerability during police interrogation);
• socio-economic factors (in particular, high levels of unemployment, poverty, lower educational attainment, poor housing, poor health);
• marginalisation (in particular, drug, alcohol and other substance abuse; alienation from family and community);
• resistance (some offences may be responses and resistances to non-Indigenous institutions and authorities; and
• the impact of specific colonial policies (especially the forced removal of Indigenous children of the Stolen Generation).  

6.3 Recidivism and age of first offence

The fact that Indigenous offenders are more likely to begin offending at a younger age than their non-Indigenous peers compounds the problem of over-representation. First contact with the criminal justice system for Indigenous offenders occurs at age 14, on average, compared to age 19 for non-Indigenous offenders. As previously mentioned, the younger the first age of contact with the criminal justice system is, the more likely it is that reoffending will occur. A 2001 study by the Department of Human Services found that the recidivism rate for Indigenous young offenders was 65 per cent, compared with 47 per cent for non-Indigenous young offenders. Corresponding findings have been made in other Australian jurisdictions. A Queensland study found that 86 per cent of the Indigenous young people progressed from the youth justice system to the adult correctional system, compared to 75 per cent of non-Indigenous young people. Similarly, a NSW study reported that the court reappearance rate for Indigenous young people is about 187 per cent higher than that of non-Indigenous young people. The study also noted that ‘the odds of an Indigenous juvenile defendant appearing in an adult court within eight years of his or her first court appearance are more than nine times higher than those for a non-Indigenous defendant.’

6.4 The Aboriginal Justice Agreement

The Victorian Aboriginal Justice Agreement (the Agreement) was developed in response to the crisis of over-representation and the underlying issues highlighted by the Royal Commission. A joint initiative of the Department of Justice, the Department of Human Services, the Aboriginal and Torres Strait Islander Commission and the Victorian Aboriginal Justice Advisory Committee, the Agreement aims to:

• address the ongoing issue of Aboriginal over-representation within all levels of the criminal justice system;
• improve Aboriginal access to justice-related services; and

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160 H. Blagg, et al. (2005) op. cit., p. 36.
166 Ibid.
promote greater awareness in the Aboriginal community of their civil, legal and political rights.\textsuperscript{168}

To achieve these goals, the Agreement acknowledges that the relationship between Aboriginal communities and all levels of the justice system must change and that ‘[t]his change can only occur when justice agencies and the Aboriginal community work together.’\textsuperscript{169} The purpose of the Agreement’s reforms are to:

- create a shared vision and agreed priorities for action within government and community sectors;
- establish appropriate systems for monitoring Aboriginal outcomes;
- develop stronger and more sustainable approaches to tackling the many issues associated with over-representation of Aboriginal people in the justice system;
- empower local communities to become involved in policy, planning and service delivery;
- reduce duplication in service delivery and target effort and resources more effectively;
- share ideas and expertise; and
- increase accountability and transparency in decision making.\textsuperscript{170}

The Agreement is in its third phase and is now focusing on reducing reoffending and addressing drivers such as alcohol and drugs, mental health, unstable housing and unemployment through offender rehabilitation and behaviour programs, transition support and continuity of care.\textsuperscript{171}

### 6.5 Indigenous youth justice services

Several programs and initiatives have been established to divert young people from the youth justice system and to prevent reoffending.

#### 6.5.1 Koori Youth Justice Program

The Koori Youth Justice Program, developed in 1992 in response to the findings of the Royal Commission,\textsuperscript{172} provides early intervention services, targeting young people at risk of offending and people on community-based and custodial orders. It provides access for young Aboriginal and Torres Strait Islander offenders to role models and culturally sensitive support, advocacy and casework through Koori youth justice workers. The program is operated in the community, mainly by local Aboriginal community controlled organisations.

#### 6.5.2 Children’s Koori Court

The Children’s Koori Court of Victoria began operating in October 2005 as a two-year pilot and has since received ongoing funding. The key objectives of the Children’s Koori Court are to reduce the over-representation of Koori youth in Victoria’s youth justice system and to increase community ownership of the administration of the law.\textsuperscript{173} The Children’s Koori Court exercises jurisdiction over defendants who are descended from, identify as or are accepted as an Aboriginal and Torres Strait Islander by an Aboriginal and Torres Strait Islander community.\textsuperscript{174} The defendant must intend to plead guilty or have been found guilty in a mainstream Children’s Court.\textsuperscript{175} Koori Elders or Respected Persons provide the

\textsuperscript{168} ibid, p. 5.
\textsuperscript{169} ibid, p. 6.
\textsuperscript{170} p. 10.
\textsuperscript{171} Victoria Aboriginal Justice Advisory Committee (2013) \textit{Victorian Aboriginal Justice Agreement: Phase 3}, Department of Justice, Melbourne, p. 15.
\textsuperscript{174} ibid, p. 6.
\textsuperscript{175} ibid.
court with advice relating to cultural matters to ensure more culturally relevant and inclusive sentencing for young Indigenous people charged with offences.\textsuperscript{176}

A 2010 evaluation of the Children’s Koori Court found that failure to appear and court order breaches were very low and that it fostered positive participation by Koori youth, their families and their community, and increased the accountability of the Koori community for Koori youth.\textsuperscript{177} It also fostered increased community awareness of Indigenous and community codes of conduct and standards of behaviour.\textsuperscript{178}

\subsection*{6.5.3 Koori Intensive Support Program}

The Koori Intensive Support Program (KISP) provides intensive outreach support to Aboriginal young people on youth justice orders as well as those on bail, deferred sentences and those reintegrating with their community after release from custody.\textsuperscript{179} Koori youth justice workers within communities also assist Aboriginal young people who are at risk of engaging with the criminal justice system, or are subject to youth justice orders in the community, to comply with their order and engage in their local and cultural communities.\textsuperscript{180}

The Koori Early School Leavers and Youth Employment Program aims to prevent contact with the justice system by engaging young Aboriginal people (aged 10–20 years) with school or alternative educational, vocational or employment pathways to counteract disconnection or poor connection to school, training or work.\textsuperscript{181}

\section*{7. Statistics}

Victoria is widely recognised as a leader in youth justice, with consistently low levels of youth crime and young offenders.\textsuperscript{182} ‘Victoria has always had, and still has, one of the lowest youth offending rates in the country’, the CCYP has noted.\textsuperscript{183}

This is illustrated in the following series of tables sourced from the Productivity Commission’s \textit{2015 Report on Government Services} and the Australian Institute for Health and Welfare’s \textit{Youth justice in Australia: 2014–15}. The tables compare the following indicators of youth justice in Victoria with all Australia states and territories:

\begin{itemize}
  \item a. numbers and rates of young people under supervision
  \item b. expenditure on youth justice services
  \item c. the cost per young person for detention and community-based supervision.
\end{itemize}

\subsection*{7.1 Young people under supervision}

\textbf{Table 5: Number of young people under supervision on an average day}

\begin{itemize}
\item \textsuperscript{176} D. Byles & T. Karp (2010) \textit{‘Sentencing in the Koori Court Division of the Magistrates’ Court: A statistical report’}, Sentencing Advisory Council, Melbourne, p. 8.
\item \textsuperscript{177} A. Borowski (2010) op. cit., p. 46.
\item \textsuperscript{178} ibid.
\item \textsuperscript{179} Youth Parole Board (2016) op. cit., p. 19.
\item \textsuperscript{180} ibid, p. 20.
\item \textsuperscript{181} ibid, p. 19.
\item \textsuperscript{183} L. Buchanan & A. Jackomos (2016) ‘NT footage reminds us the end result of a “tough on crime” approach to children’, CCYP, Melbourne.
<table>
<thead>
<tr>
<th>Year</th>
<th>Vic</th>
<th>NSW</th>
<th>Qld</th>
<th>WA</th>
<th>SA</th>
<th>Tas</th>
<th>ACT</th>
<th>NT</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011–12</td>
<td>1,485</td>
<td>1,947</td>
<td>1,468</td>
<td>N/A</td>
<td>441</td>
<td>290</td>
<td>127</td>
<td>N/A</td>
</tr>
<tr>
<td>2012–13</td>
<td>1,312</td>
<td>1,700</td>
<td>1,475</td>
<td>N/A</td>
<td>410</td>
<td>256</td>
<td>111</td>
<td>N/A</td>
</tr>
<tr>
<td>2013–14</td>
<td>1210</td>
<td>1584</td>
<td>1572</td>
<td>850</td>
<td>421</td>
<td>201</td>
<td>89</td>
<td>174</td>
</tr>
<tr>
<td>2014–15</td>
<td>1155</td>
<td>1,436</td>
<td>1,524</td>
<td>754</td>
<td>357</td>
<td>148</td>
<td>82</td>
<td>174</td>
</tr>
</tbody>
</table>


**Table 6: Rates of young people under supervision on an average day, per 10,000**

<table>
<thead>
<tr>
<th>Year</th>
<th>Vic</th>
<th>NSW</th>
<th>Qld</th>
<th>WA</th>
<th>SA</th>
<th>Tas</th>
<th>ACT</th>
<th>NT</th>
<th>National average</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011–12</td>
<td>18.7</td>
<td>25.5</td>
<td>28.1</td>
<td>N/A</td>
<td>23.3</td>
<td>40.0</td>
<td>32.7</td>
<td>N/A</td>
<td>28.05</td>
</tr>
<tr>
<td>2012–13</td>
<td>16.1</td>
<td>22.2</td>
<td>28.0</td>
<td>N/A</td>
<td>21.2</td>
<td>35.3</td>
<td>27.7</td>
<td>N/A</td>
<td>25.1</td>
</tr>
<tr>
<td>2013–14</td>
<td>14.0</td>
<td>20.8</td>
<td>30.3</td>
<td>32.3</td>
<td>21.7</td>
<td>27.2</td>
<td>22.5</td>
<td>61.2</td>
<td>23.1</td>
</tr>
<tr>
<td>2014–15</td>
<td>14.4</td>
<td>18.8</td>
<td>29.2</td>
<td>28.5</td>
<td>18.4</td>
<td>20.6</td>
<td>21.9</td>
<td>54.1</td>
<td>21.5</td>
</tr>
</tbody>
</table>


### 7.2 Expenditure on youth services

**Table 7: Real recurrent expenditure on youth justice services ($’000)**

<table>
<thead>
<tr>
<th>Year</th>
<th>Vic</th>
<th>NSW</th>
<th>Qld</th>
<th>WA</th>
<th>SA</th>
<th>Tas</th>
<th>ACT</th>
<th>NT</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011–12</td>
<td>$69,607</td>
<td>$158,028</td>
<td>$72,001</td>
<td>$50,627</td>
<td>$17,444</td>
<td>$12,982</td>
<td>$16,858</td>
<td>$10,489</td>
</tr>
<tr>
<td>2012–13</td>
<td>$70,951</td>
<td>$151,295</td>
<td>$78,956</td>
<td>$47,660</td>
<td>$21,276</td>
<td>$14,122</td>
<td>$16,778</td>
<td>$12,912</td>
</tr>
<tr>
<td>2013–14</td>
<td>$68,834</td>
<td>$150,774</td>
<td>$84,841</td>
<td>$47,619</td>
<td>$21,413</td>
<td>$13,968</td>
<td>$17,683</td>
<td>$10,950</td>
</tr>
<tr>
<td>2014–15</td>
<td>$75,016</td>
<td>$156,190</td>
<td>$89,208</td>
<td>$50,570</td>
<td>$20,916</td>
<td>$13,389</td>
<td>$17,923</td>
<td>$14,976</td>
</tr>
</tbody>
</table>

Table 8: Total expenditure on community-based youth justice services ($’000)

<table>
<thead>
<tr>
<th>Year</th>
<th>Vic</th>
<th>NSW</th>
<th>Qld</th>
<th>WA</th>
<th>SA</th>
<th>Tas</th>
<th>ACT</th>
<th>NT</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011–12</td>
<td>$45,774</td>
<td>$60,780</td>
<td>$49,091</td>
<td>$22,323</td>
<td>$11,936</td>
<td>$3,436</td>
<td>$2,407</td>
<td>$5,102</td>
</tr>
<tr>
<td>2012–13</td>
<td>$47,030</td>
<td>$56,263</td>
<td>$58,927</td>
<td>$22,199</td>
<td>$12,394</td>
<td>$4,209</td>
<td>$2,344</td>
<td>$3,290</td>
</tr>
<tr>
<td>2013–14</td>
<td>$46,584</td>
<td>$57,418</td>
<td>$64,326</td>
<td>$23,211</td>
<td>$10,695</td>
<td>$4,257</td>
<td>$2,721</td>
<td>$3,516</td>
</tr>
<tr>
<td>2014–15</td>
<td>$45,747</td>
<td>$57,924</td>
<td>$64,035</td>
<td>$19,515</td>
<td>$9,852</td>
<td>$4,022</td>
<td>$2,892</td>
<td>$3,502</td>
</tr>
</tbody>
</table>


Table 9: Government expenditure on group conferencing ($’000)

<table>
<thead>
<tr>
<th>Year</th>
<th>Vic</th>
<th>NSW</th>
<th>Qld</th>
<th>WA</th>
<th>SA</th>
<th>Tas</th>
<th>ACT</th>
<th>NT</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011–12</td>
<td>$1,857</td>
<td>$6,558</td>
<td>$12,680</td>
<td>$32,602</td>
<td>N/A</td>
<td>$219</td>
<td>$725</td>
<td>N/A</td>
</tr>
<tr>
<td>2012–13</td>
<td>$1,866</td>
<td>$5,796</td>
<td>$10,833</td>
<td>$33,566</td>
<td>$1,784</td>
<td>$179</td>
<td>$767</td>
<td>$6,300</td>
</tr>
<tr>
<td>2013–14</td>
<td>$1,884</td>
<td>$5,709</td>
<td>$5,692</td>
<td>$35,005</td>
<td>$1,906</td>
<td>$146</td>
<td>$642</td>
<td>$4,881</td>
</tr>
<tr>
<td>2014–15</td>
<td>$1,946</td>
<td>$4,333</td>
<td>$5,273</td>
<td>$32,812</td>
<td>$1,739</td>
<td>$111</td>
<td>$830</td>
<td>$4,867</td>
</tr>
</tbody>
</table>


Table 10: Total government expenditure on youth justice ($’000)

<table>
<thead>
<tr>
<th>Year</th>
<th>Vic</th>
<th>NSW</th>
<th>Qld</th>
<th>WA</th>
<th>SA</th>
<th>Tas</th>
<th>ACT</th>
<th>NT</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011–12</td>
<td>$117,238</td>
<td>$225,365</td>
<td>$133,772</td>
<td>$105,551</td>
<td>$29,380</td>
<td>$16,637</td>
<td>$19,991</td>
<td>$15,591</td>
</tr>
<tr>
<td>2013–14</td>
<td>$117,302</td>
<td>$213,901</td>
<td>$154,859</td>
<td>$105,835</td>
<td>$34,014</td>
<td>$18,372</td>
<td>$21,047</td>
<td>$19,347</td>
</tr>
<tr>
<td>2014–15</td>
<td>$122,709</td>
<td>$218,447</td>
<td>$158,515</td>
<td>$102,897</td>
<td>$32,507</td>
<td>$17,522</td>
<td>$21,646</td>
<td>$23,345</td>
</tr>
</tbody>
</table>

### 7.3 The cost of detention-based and community-based supervision per young person

#### Table 11: The cost per young person subject to detention-based supervision ($'000)

<table>
<thead>
<tr>
<th>2014-15</th>
<th>Vic</th>
<th>NSW</th>
<th>Qld</th>
<th>WA</th>
<th>SA</th>
<th>Tas</th>
<th>ACT</th>
<th>NT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average daily number of young people subject to detention-based supervision</td>
<td>$142.0</td>
<td>$286.0</td>
<td>$169.0</td>
<td>$156.2</td>
<td>$48.0</td>
<td>$10.3</td>
<td>$9.0</td>
<td>$42</td>
</tr>
<tr>
<td>Total recurrent expenditure on detention-based supervision ($'000)</td>
<td>$75,016</td>
<td>$156,190</td>
<td>$89,208</td>
<td>$50,570</td>
<td>$20,916</td>
<td>$13,389</td>
<td>$17,923</td>
<td>$14,976</td>
</tr>
<tr>
<td>Cost per day, per young person subject to detention-based supervision on an average day</td>
<td>$1,446.36</td>
<td>$1,495.19</td>
<td>$886.61</td>
<td>$886.61</td>
<td>$1193.01</td>
<td>$3,562.44</td>
<td>$5,452.39</td>
<td>$976.21</td>
</tr>
</tbody>
</table>


#### Table 12: The cost per young person subject to community-based supervision ($'000)

<table>
<thead>
<tr>
<th>2014-15</th>
<th>Vic</th>
<th>NSW</th>
<th>Qld</th>
<th>WA</th>
<th>SA</th>
<th>Tas</th>
<th>ACT</th>
<th>NT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average daily number of young people subject to community-based supervision</td>
<td>1,026.0</td>
<td>1290.0</td>
<td>1,393.0</td>
<td>635.3</td>
<td>332.0</td>
<td>142.5</td>
<td>73.0</td>
<td>148.0</td>
</tr>
<tr>
<td>Total recurrent expenditure on community-based supervision</td>
<td>$45,747</td>
<td>$57,924</td>
<td>$64,035</td>
<td>$19,515</td>
<td>$9,852</td>
<td>$4,022</td>
<td>$2,892</td>
<td>$3,502</td>
</tr>
<tr>
<td>Cost per day, per young person subject to community-based supervision on an average day</td>
<td>$122.07</td>
<td>$122.94</td>
<td>$125.86</td>
<td>$84.11</td>
<td>$81.24</td>
<td>$77.27</td>
<td>$108.47</td>
<td>$64.78</td>
</tr>
</tbody>
</table>

### 7.4 Workforce data

The following youth justice workforce data has been compiled from the DHHS annual reports.

**Figure 9: Youth justice workforce data from 2011 to 2016**

![Graph showing workforce data from 2011 to 2016](image)

Compiled by the Parliamentary Library Service

### 8. Youth justice centre inquiries and reviews

A number of investigations by independent officers and inquiries and reviews by consultants on behalf of DHHS have examined conditions in youth justice centres and the treatment of young people held therein.

#### 8.1 Investigations into youth justice centres

The problematic history of Victoria’s youth justice centres is detailed in three reports by the Victorian Ombudsman relating to youth justice facilities, and incidents therein, since 2010. The most recent investigation, by the Commission for Children and Young People (CCYP) examines the use of isolation, separation and lockdowns in the Victorian youth justice system.

**8.1.1 2010 Investigation into conditions at the Melbourne Youth Justice Precinct**

The Victorian Ombudsman undertook an investigation of the Youth Justice Precinct at Parkville in 2010 in response to claims of serious misconduct by a whistleblower. The subsequent report was highly critical, concluding, '[i]t is clear from the unacceptable conditions that the department has failed to
meet its statutory obligations under the Act and human rights principles. In my view, this brings into question the capacity of the department to operate youth justice services.’\textsuperscript{184}

Among the conditions found to be unacceptable were:

- hanging points throughout the precinct;
- an open front to the precinct, allowing persons to easily enter precinct grounds;\textsuperscript{185}
- a high prevalence of communicable infections such as scabies and school sores;
- electrical hazards;
- overcrowding resulting in mattresses being placed in isolation rooms with young people having to go to the toilet in buckets;
- inadequate beds for the number of remanded or sentenced detainees, causing an undesirable mixing of detainees of widely varying ages and different legal status; and
- remanded detainees being placed in units with sentenced offenders.\textsuperscript{186}

Placement of detainees of widely varying ages and different custodial status in the same unit amounted to a breach of section 482(1)(c–d) of the Act and the Charter, in particular section s22(2), s22(3), s23(1) and 23(3), according to the report.\textsuperscript{187} These arrangements, the Ombudsman observed, ‘create a situation in which younger detainees could be bullied or negatively influenced. Placing detainees of different ages, maturity levels and history of offending does not promote a rehabilitative environment or meet the needs of detainees.’\textsuperscript{188}

The report established that there had been inadequate responses to allegations of improper conduct, including that staff incited fights between detainees, assaulted detainees, used excessive force against detainees and introduced contraband to the precinct.\textsuperscript{189} The Ombudsman noted that failure to address improper conduct, particularly where it impacts on the health and safety of detainees, ‘contravenes the department’s statutory obligations and human rights provisions.’\textsuperscript{190}

The Ombudsman concluded that the design and location of the precinct is inappropriate for a custodial facility which houses vulnerable children and that the structural problems are beyond simple maintenance and repair.\textsuperscript{191} Consequently, it was observed that ‘the only practical way to address the conditions at the Precinct in the long-term is to develop a new facility at another site.’\textsuperscript{192} The Department accepted all 27 recommendations,\textsuperscript{193} and a 2013 report on the implementation of Ombudsman’s recommendations found that all recommendations had been implemented.\textsuperscript{194}

8.1.2 2013 Investigation into transfers of children from the youth justice system to the adult prison system

In July 2012, four young people attempted to escape the Precinct and, in the process, a staff member was assaulted and required stitches after being cut several times on the neck with a makeshift

\textsuperscript{185} ibid, p. 8.
\textsuperscript{186} ibid, p. 8.
\textsuperscript{187} ibid, p. 38.
\textsuperscript{188} ibid.
\textsuperscript{189} ibid, p. 10.
\textsuperscript{190} ibid.
\textsuperscript{191} ibid, p. 9.
\textsuperscript{192} ibid.
\textsuperscript{193} ibid, p. 15.
In August 2012, two young people were involved in a violent assault at Parkville Youth Justice Centre that resulted in two staff members requiring hospitalisation and another staff member requiring medical treatment. The Victorian Ombudsman investigated the subsequent transfer of young people involved in these incidents to the adult prison system in response to information that a 16-year-old had been held in solitary confinement for several months.

Ombudsman George Brouwer found that the young people were locked in solitary confinement for 23 hours a day for a number of months and observed that DHHS had failed to:

- consider a number of rights under the Charter;
- document the consideration of alternative placement options within youth justice;
- consult with the Victorian Aboriginal Child Care Agency, Child Protection or the children’s legal representatives;
- provide relevant information such as mental health history to the Youth Parole Board; and
- follow up the transfer with Corrections Victoria to ensure the placement of the children was appropriate.

‘In placing these children in isolation for a number of months, Corrections Victoria acted inconsistently with the children’s rights under sections 17(2), 22(1) and 22(3) of the Charter,’ the Ombudsman found. Further, the Ombudsman expressed concern about the placement of children in isolation in terms of international human rights, noting ‘that international human rights principles identify that the use of solitary confinement may amount to cruel, inhuman or degrading treatment. Where detainees are children, the likelihood of solitary confinement constituting such treatment is significantly increased.’ The investigation also found that accused children were not segregated from all detained adults, contrary to section 23(1) of the Charter.

In conclusion, Ombudsman Brouwer noted:

> It is evident that the youth justice system is limited in its capacity to deal with a small, but increasing, cohort of young people exhibiting violent behaviour. It is important that the youth justice system respond appropriately to these children rather than abrogate its responsibility by transferring them to the adult system. I am of the view that there are no circumstances that justify the placement of a child in the adult prison system.

### 8.1.3 2017 Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville

Riots at the Parkville Youth Justice Centre in November 2016 caused an estimated $2 million in damage and halved the centre’s accommodation capacity from 120 beds to 60. The Victorian Ombudsman’s 2017 report examines the response to recent events by oversight agencies to the pressures placed on youth justice detention in Victoria due to the riots.

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196 ibid.

197 ibid, p. 3.


199 ibid, p. 37.

200 ibid.

201 ibid, p. 39.

202 ibid.

In response to the riots, the Andrews Government announced it would expedite the planned rebuild of the centre, which was deemed no longer fit for purpose, requiring the transfer of young people to other facilities.\footnote{G. Brown & R. Wallace (2016) ‘Youth rioters facing adult jail’, The Australian, 15 November, p. 5.} Minister for Corrections, Gayle Tierney, announced that around 40 young offenders would be transferred to the Grevillea Youth Justice Centre, a newly gazetted youth justice unit in Barwon Prison, a maximum security adult correctional facility, on 17 November 2016.\footnote{G. Tierney, Minister for Corrections (2016) Young offenders to be put in adult prisons, media release, 17 November.}

**Legal proceedings**

The Human Rights Law Centre and the Fitzroy Legal Service challenged the transfer of young people to an adult facility, arguing that the decision failed to give proper consideration to the human rights of the young people in question and that it was, consequently, invalid. The Supreme Court of Victoria upheld the challenge and the Court of Appeal dismissed the Minister’s subsequent appeal. The Government regazetted Barwon Jail as a youth detention facility, claiming that the issues that led to the Court’s declaration of invalidity had been rectified.\footnote{J. Mikakos, Minister for Families and Children (2016) Government gazettes Grevillea Unit of Barwon Prison, media release, 29 December.}

**Conditions in youth justice facilities**

Given the intersections between the work of the Victorian Ombudsman, the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) and the CCYP, the CCYP took the lead in relation to issues arising from the government’s response to the riots at Parkville. Accordingly, the Ombudsman’s report draws on correspondence between Principal Commissioner for Children and Young People Liana Buchanan and Commissioner for Aboriginal Children Andrew Jackomos with the Hon. Jenny Mikakos MLC, Minister for Families and Children.

This correspondence raises several concerns about the detention of young people in the Grevillea Unit of Barwon Prison, including that young people:

- were spending only one or two hours per day out of their cells
- did not have access to fresh air or the unit’s exercise yard;
- had insufficient bedding and clothing to keep warm;
- were not provided with clean clothing on a daily basis;
- could not have visits with families;
- had not been provided access to educational activities, despite two young people being of mandatory school age (16 years); and

The Commissioners also noted their concern about Corrections Victoria staff interacting with young people without having Working With Children Checks. Further, the CCYP sought written advice about the circumstances in which Corrections Victoria Security and Emergency Services Group, which uses a range of weapons not ordinarily employed in Victorian youth justice facilities (tear gas, batons and canines), can enter the Grevillea Unit.\footnote{Principal Commissioner for Children and Young People Liana Buchanan and Commissioner for Aboriginal Children Andrew Jackomos (2016), correspondence sent to the Hon. Jenny Mikakos MLC, Minister for Families and Children, 25 November, cited in Victorian Ombudsman (2017) op. cit., p. 27.}
In subsequent correspondence, Principal Commissioner Buchanan expressed ongoing concern about the infrastructure of the unit, designed for maximum security adult prisoners, which ‘may negatively impact on the psychological wellbeing of the children and young people over time.’ The Principal Commissioner observes, ‘[t]hese factors may pose a risk to the mental health of the children and young people, many of whom are already vulnerable to additional trauma.’

The DHHS response to these concerns notes that young people in the Grevillea Unit have access to health services, including mental health services, and ongoing assessment of their mental health. It was also observed that a Youth Justice Client Movement Panel had been established to consider proposed transfers between youth justice centres. Among the range of factors the Panel considers in deciding on proposed transfers is the mental health and wellbeing of young people. In January 2017, the Principal Commissioner observed that some children and young people continued to spend extensive time in effective seclusion, locked in their cells for 23 hours per day. It was also noted that seclusion was being used punitively contrary to the Act.

Conclusions
In assessing the causes and consequences of incidents in youth justice facilities, Ombudsman Deborah Glass noted that extended lockdowns of young people contribute to the tension that leads to disturbances and incidents of violence. ‘It is evident that this is affected by a toxic combination of staff shortages and increasing overcrowding. It is predictable that a regime of lockdowns for young people will create unrest, and equally predictable that more lockdowns will follow that unrest,’ the Ombudsman observed.

In assessing the state of youth justice in Victoria, the Ombudsman observed ‘while youth crime is decreasing overall, more is being committed, more violently, by a small cohort of repeat offenders, who the system is plainly failing to deal with.’ Ombudsman Glass noted that successive governments have failed to make the significant investment needed to address the long-term issues. ‘There is no short-term fix to the serious problems affecting youth justice, which have their origins not only in ageing infrastructure but in the complex interplay of health and human services, education and the justice system,’ the Ombudsman stated.

8.1.4 Commissioner for Children and Young People Inquiry into isolation, separations and lockdowns

The CCYP undertook an inquiry into isolation, separations and lockdowns in Victoria’s youth justice centres from 1 February 2015 to 31 July 2016 and during December 2016. The report was tabled in

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210 ibid.
212 ibid. 29.
215 ibid, p. 1.
216 ibid.
217 ibid, p. 2.
Parliament on 22 March 2017. The report details systemic over-reliance on isolation and ‘a cavalier approach to decision-making, without adequate consideration of the gravity or impact of the consequences – not only on the children and young people but also on the staff and the broader safety of the centres.’

**Number of incidents in youth justice detention**

The report places the incidents at youth justice centres in a national context, observing that Victoria had the highest number and rate of young people in detention who were injured following a serious assault across Australia, according to the 2017 Report on Government Services. Victoria also had the highest number and rate of young people and staff injured as a result of a serious assault per 10,000 custody nights for the same period, compared to other states and territories.

DHHS reporting of critical incidents is based on a two-tiered system: Category One incidents are those that result in serious outcomes or trauma and Category Two incidents relate to events that threaten the health, safety and/or wellbeing of children, young people and others. There were 34 Category One incidents in 2014–15 and 100 in 2015–2016, an increase of 194 per cent. According to the report, DHHS advised that the increase was largely due to a change in practice in August 2015 in which young people are now asked upon admission if they wish to report any incidents related to their arrest and treatment prior to arriving at youth justice custodial services. When these incidents are excluded, however, the number of Category One incidents nonetheless increased by 59 per cent, the Commissioners found.

**Isolation**

Data provided by DHHS showed there was an average of 8.8 isolations in place per day during the primary review period of February 2015–July 2016. In December 2016, however, the average increased nearly fivefold to 42.4 isolations, the report notes. The Commissioners note that the incidence of isolation was likely to be much higher due to under-reporting. While some recorded isolations were for short periods of one hour (23 per cent), some children and young people were isolated for weeks at a time.


219 Productivity Commission (2016) op. cit., Table 16.5.

220 ibid.

221 Commission for Children and Young People (2017) op. cit., p. 6.

222 ibid, p. 4.

223 ibid, p. 64.

224 ibid, p. 14.
Nearly two-thirds of isolations occurred in bedrooms, however, during the period under investigation 1,700 involved children and young people being placed in isolation spaces. The report observes that the lack of sanitation in some isolation rooms led to young people urinating, and at times defecating, in isolation rooms. The Commissioners note a concerning reliance on isolation to manage vulnerable young people, including those who had been the victim of assault or had health concerns. Although the Act prohibits the use of isolation to punish a child or young person, the Commissioners expressed concern that DHHS policies contemplate the use of isolation as a ‘consequence’ for poor behaviour. This was supported by evidence of children and young people who told the inquiry they were put in isolation as punishment.

Staff raised concerns that some periods of isolation may occur because of inadequate staff training, particularly as the induction training course had been reduced from five weeks to three in 2016, according to the report.

**Lockdowns**

Young people were denied access to fresh air, exercise, meaningful activities, education, support programs and visits, sometimes for extended periods as a result of lockdowns. The inquiry found that there were more than 50 occasions when at least one unit of children and young people (up to 15 individuals) were held in continuous lockdown for over 36 hours and 88 occasions where detainees were locked in their rooms for 13 to 20 hours. The DHHS Unit Lockdown Policy states that general managers may authorise lockdowns of up to six hours. Lockdowns longer than six hours must be authorised by the Director of Secure Services. The Commissioners note, however, that the majority

225 ibid.
226 ibid, p. 15.
227 ibid, p. 64.
228 ibid.
229 ibid, p. 54.
230 ibid, p. 13.
231 ibid, p. 16.
232 ibid, p. 79.
of lockdowns were not appropriately authorised. The policy also states that lockdowns may occur due to staff shortages or because of safety concerns associated with the behaviour of children or young people. Records show that the vast majority (83 per cent) of lockdowns at Parkville were attributed to staff shortages. At Malmsbury, 25 out of 32 lockdowns (78 per cent) were attributed to staff shortages.

Consequences
The Commissioners found that lockdowns ‘disrupted positive routines and structures within the centres. They restricted access to education, programs and therapeutic support.’ Staff, children and young people told the inquiry that lockdowns were a source of increased tension and frustration within the youth justice centres. The Commissioners observed that most children and young people in youth justice centres have a history of trauma or disadvantage. The negative effects of trauma on a child’s brain and behaviour influence their response to being detained, the report states. Loss of liberty, being isolated, unclothed searches, threats from others and conflict from peers can act as further triggers, activating a ‘fight or flight’ response that takes the form of aggressive or self-harming behaviour. Accordingly, lockdowns and isolation can exacerbate harm and hinder rehabilitation.

Compliance
The Commissioners expressed concern about poor compliance with legislation and policy in relation to isolation and lockdowns, including:
- inadequate record keeping;
- lack of clarity about the reasons that children and young people were placed in isolation;
- failure to follow authorisation processes;
- lack of consistent process in determining when children and young people would be released from isolation;
- absence of adequate strategies to prevent and intervene in situations of escalating risk;
- inadequacies in the facilities used for isolation;
- lack of clarity about responsibilities to intervene in situations of self-harm; and
- inadequate involvement and supervision by health services.

Recommendations
The Commissioners make several recommendations aimed at avoiding excessive use of separation and isolation, improving compliance and improving conditions in isolation facilities. They call for clarifying legislative and policy guidance on the circumstances in which these interventions can be used, underpinned by the principle that they be used for the shortest possible time and not as a primary behaviour management tool. Further, where separation plans involve periods of isolation, this should be justified, accurately reflected in relevant records and accompanied by a broader range of individualised interventions to address a young person’s behavioural issues or risk. The Commissioners advise that the Act should be amended so that children and young people have a legislative prescribed hour of access to fresh air, as adults in custody do.

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233 ibid.
234 ibid, p. 79.
235 ibid, p. 16.
236 ibid, p. 79.
237 ibid, p. 16.
238 ibid, p. 85.
239 ibid, p. 13.
240 ibid.
241 ibid.
242 ibid, p. 50.
243 ibid, p. 16.
244 ibid.
Children and young people in the youth justice system who are acutely mentally unwell do not have access to designated facilities, unlike adults, the Commissioners note. They recommend the establishment of a dedicated unit to support children and young people who are experiencing significant psychological and psychiatric issues. This aligns with recommendations of the 2009 parliamentary inquiry and the 2010 Victorian Ombudsman’s report, each of which called for a mental health treatment facility for young offenders with mental health needs.

8.2 Reviews and inquiries into youth justice centres

There have been a range of reviews and inquiries relating to youth justice detention centres over the past two decades, including the following:

- 2000 Graeme Baird report: Malmsbury Youth Justice Centre;
- 2001 Graeme Baird report: Melbourne Juvenile Justice Centre;
- 2004 Bob Falconer: Temporary leave programs;
- 2010 Neil Comrie: Escape incident;
- 2015 Peter Muir: Parkville Youth Justice Precinct;
- 2016 Peter Muir: Riots at Parkville in March 2016;
- 2017 Neil Comrie: Youth Justice Precinct (ongoing); and
- 2017 Legal and Social Issues Committee Inquiry into Youth Justice.

Although these reviews remain confidential, several have been leaked to media organisations and subsequently reported on by the media.

8.2.1 Independent reviews

In a 2001 inquiry into the then Melbourne Juvenile Justice Centre, consultant Graeme Baird found that workers felt unsafe, there were high levels of sick leave and staff turnover, as well as excessive use of isolation for offenders. Former Victoria Police chief commissioner Neil Comrie undertook an inquiry into a breakout by six young people at Parkville in May 2010, during which a staff member was assaulted. Although it has not been released, the Victorian Ombudsman noted in 2014 that the Comrie report ‘presented symptoms of a system requiring a sustained focus on structural and cultural change.’

Peter Muir, former NSW Juvenile Justice Director, has submitted two reports to the Andrews Government into the Parkville Youth Justice Precinct, in 2015 and 2016. Although both Muir reports remain confidential, the 2016 report was leaked to Fairfax Media which published excerpts in The Age newspaper on 25 January 2017. The Age quotes the Muir report as stating that the excessive use of lockdowns, in which young persons are locked in their cells for long periods of time, was due to endemic staffing problems. This, the report is quoted as stating, was ‘increasing tension … and contributing to the level of risk.’ According to The Age, the Muir report stated that youth justice staff

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250 Ibid.
'cannot be expected to house the mix (remand/sentenced), complexity and severity of offenders in the current set of facilities.'\textsuperscript{251}

In January 2017, DHHS engaged Neil Comrie to report on the incidents at the Melbourne Youth Justice Centre and on any specific safety issues. The Executive Summary of Stage 1 of the review includes a recommendation that the DHHS develop a business plan for the construction of a new youth justice precinct at a suitable location, not the existing Parkville Precinct.\textsuperscript{252}

\textbf{8.2.2 Legal and Social Issues Committee inquiry}

On 10 November 2016, the Legal and Social Issues Committee of the Legislative Council was tasked with inquiring into issues at Parkville and Malmsbury youth justice centres, including, but not limited to:

1. matters relating to incidents including definitions, numbers and any changes to the reporting of incidents;
2. the security and safety of staff, employees and young offenders at both facilities;
3. reasons for, and effects of, the increase in the numbers of young people on remand in the last 10 years;
4. implications of incarcerating young people who have significant exposure to trauma, alcohol and/or other drug misuse and/or the child protection system, or who have issues associated with mental health or intellectual functioning, in relation to –
   a. the likelihood of reoffending
   b. the implications of separating young people from their communities and cultures;
5. additional options for keeping young people out of youth justice centres;
6. the culture, policies, practices and reporting of management at the centres;
7. the role of the Department of Health and Human Services in overseeing practices at the centres; and
8. any other issues the Committee considers relevant.\textsuperscript{253}

The Committee is required to report to Parliament on or before 1 August 2017.

At a public hearing on 17 March 2017, Commissioner for Children and Young People Liana Buchanan told the Committee that there is an investigation into allegations that nine young people had been assaulted by staff in the Grevillea Unit inside Barwon Prison in February.\textsuperscript{254} The Commissioner also described how staff shortages in youth justice centres had resulted in the extensive use of lockdowns. ‘There are some fairly longstanding problems with retention, recruitment, absenteeism [of staff] and my view is that the current instability in the system isn’t going to be … addressed unless those staffing issues are resolved,’\textsuperscript{255} the Commissioner stated.

\textsuperscript{251} ibid.
\textsuperscript{252} N. Comrie (2017) \textit{Review of the Parkville Youth Justice Precinct (Stage One): Executive Summary}, report prepared for the Department of Health and Human Services, Melbourne, p. 4.
\textsuperscript{255} ibid.
9. The effects of isolation on young people

The effects of isolation on young people are relevant to the quality of care provided by the DHHS, how this affects the prospects of a young person’s rehabilitation and the incidence of violence within youth justice centres.

The World Health Organization has found that solitary confinement, or isolation, can affect rehabilitation efforts and undermine a former detainee’s chances of successful reintegration into society following their release.256 There is considerable evidence linking time spent in isolation with poor mental health outcomes. Studies have found a correlation between isolation and depression, high rates of suicide, post-traumatic stress disorder and future criminal activity.257 Common responses to isolation include emotional breakdowns, self-mutilation, suicidal ideation and suicide attempts.258

People with pre-existing mental illness are particularly vulnerable to the effects of isolation.259 This is pertinent to the isolation of young people given the prevalence of mental illness and the presence of risk factors for mental illness, such as emotional trauma, drug and alcohol abuse and difficulties in education, amongst young offenders. Research shows that isolation of young people can exacerbate pre-existing mental illness and increase the likelihood of subsequent drug abuse.260 A report by the Australian Children’s Commissioners and Guardians supports this hypothesis. It notes that ‘[c]hildren in detention are particularly susceptible to medical, social and psychological problems. These issues are exacerbated by extended periods in isolation.’261 The fact that young people are still developing physically, mentally and socially, as previously detailed, also increases their vulnerability to the effects of isolation.262

The consequences of a young person’s isolation resonate beyond their period of isolation. A study into the effects of isolation found that although many of the acute symptoms suffered by inmates will likely subside once they are no longer in isolation, many ‘will likely suffer permanent harm as a result of such confinement.’263 Studies have found that people subjected to isolation face greater difficulty assimilating back into their communities, increasing the risk of recidivism.264 Further, violence towards staff is more likely where detainees are kept in isolation265 and units with large numbers of detainees in isolation are more likely to experience property damage.266

259 World Health Organization (2014) op. cit., p. 27.
In 2011, the United Nations Special Rapporteur on Torture called for a worldwide ban on solitary confinement, describing it as torture or cruel, inhuman or degrading treatment or punishment, and noted that irreversible harmful psychological effects can occur after 15 days. The Special Rapporteur also noted that the imposition of solitary confinement, of any duration, on juveniles is cruel, inhuman or degrading treatment and violates Article 7 of the International Covenant on Civil and Political Rights and article 16 of the Convention against Torture. United Nations treaty bodies, it is noted, consistently recommend that children and juvenile offenders should not be subjected to solitary confinement. Rule 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty specifically lists solitary confinement among prohibited treatments.

The effects of isolation on young people has caused the American Academy of Child and Adolescent Psychiatrists to call for a ban on solitary confinement. The Academy noted that ‘the potential psychiatric consequences of prolonged solitary confinement are well recognized and include depression, anxiety and psychosis’, juvenile offenders, due to their developmental vulnerability, are at particular risk of such adverse reaction.

9.1 Incidence of violence and isolation

Although confinement, or isolation, of young people is not supposed to be used as a disciplinary measure, the Australian Children’s Commissioners and Guardians have found that it occurs in youth justice settings in all Australian states and territories. The Commissioners observed:

It is almost impossible to reconcile seclusion with the “best interests” of the child as it serves no integrative or rehabilitative objective. Children in detention are particularly susceptible to medical, social and psychological problems which can be seriously exacerbated by the use of seclusion cells or being left alone in their own cells for extended periods of time.

The following overview of violent incidents in youth justice centres in NSW, Western Australia, the Northern Territory and Queensland, and preceding or subsequent isolation of young people, supports the concern of the Commissioners regarding the use of isolation as a disciplinary measure. The investigations into outbreaks of violence and prolonged periods of isolation of young people highlight recurring themes of staff shortages, subsequent lockdowns and unrest amongst detainees.

**New South Wales**

In October 2016, the New South Wales Government announced a review into behaviour management in youth detention centres following reports that young offenders were being kept in isolation for up to 23 hours a day as punishment. Existing case-management plans allow for the confinement of young people who have assaulted other detainees or staff for a lengthy period of time. Reports suggest that some detainees had been required to wear handcuffs during their recreation hour or were banned from mixing with others.

Juan E. Méndez, *Report of the Special Rapporteur on Torture*, UN Doc A/66/268 (5 August 2011) [77].

ibid.

ibid, 66.


Australian Children’s Commissioners and Guardians (2016) op. cit., p. 61.


ibid.
The *Children (Detention Centres) Act 1987* (NSW) specifies that detainees cannot be confined to their room for more than 12 hours or, in the case of a detainee over 16 years of age, 24 hours. In one incident, four detainees were kept in isolation for 23 hours a day and handcuffed during their recreation hour for 10 days before reviews were conducted. Corrections Minister, David Elliott, reported that one detainee spent 166 days over a 10-month period in isolation. More than 300 incidents of self-harm were recorded in youth justice detention centres in the 2014–15 financial year, a rate four times higher than in the 2008-9 financial year. One young person, who attempted to hang himself while in isolation, was placed on antipsychotic medication for auditory hallucinations which he had not experienced prior to the period in isolation.

**Western Australia**

The Office of the Inspector of Custodial Services found that excessive lockdowns of detainees due to ongoing and escalating staff shortages contributed to a riot in Banksia Hill Youth Justice Centre, Western Australia, on 20 January 2013. In the month before the riot, approximately 22 uniformed staff out of the 80 rostered each day were absent. Even after others were brought in to cover the shifts through overtime, the facility was still down 15 uniformed staff every day on average. The report concluded ‘[a] consequence of the continuing and escalating staff shortages were the excessive lockdowns of detainees, a factor which precipitated the riot.’ The Office of the Inspector of Custodial Services recommended that lockdowns be minimised ‘to meet improved standards of decency and dignity.’

**Northern Territory**

The Children’s Commissioner of the Northern Territory highlighted the practice of lockdowns, or isolation, at Don Dale Youth Detention Centre in a self-initiated report in 2015 in response to a critical incident in August 2014 in which staff used tear gas and a security dog to subdue young people who had armed themselves and tried to escape. Commissioner Colleen Gwynne found that six young people had been kept in a Behaviour Management Unit on 24-hour and 72-hour regimes contrary to the *Youth Justice Act*. ‘It was common for young people to remain in isolation for periods longer than 72 hours in a Behaviour Management Unit if their behaviour did not improve,’ the Commissioner observed. Conditions were found to be well below acceptable standards, with no access to natural light, drinking water, or programs to address rehabilitation or perceived behavioural issues.
young person who participated in the violence had been held in isolation for 17 days straight, for up to 23 hours a day.\textsuperscript{289}

The facility where Don Dale was located was shut down following the incident and Don Dale was subsequently moved to the former Berrimah adult prison. It has since become the subject of a Royal Commission following a damning investigation by the ABC show \textit{Four Corners}, which uncovered CCTV footage of abuse of detained young people. Former staff member at Don Dale, Leonard De Souza, gave evidence to the Royal Commission that the centre was struggling with overcrowding, increased lockdowns, poor staff training and staff shortages. At one point, there was a ratio of up to 30 inmates to one staff member, Mr De Souza stated.\textsuperscript{290} The Royal Commission is due to report by 1 August 2017.\textsuperscript{291}

\subsection*{Queensland}

The Cleveland Youth Detention Centre (CYDC) in Townsville, Queensland, has experienced similar ongoing issues to those of the Parkville Youth Detention Centre, including riots and detained young people causing damage to the facility and injuries to staff.\textsuperscript{292} A report by the Queensland Commission for Children and Young People and Child Guardian into the response to a security incident in 2012 observed that the Centre was experiencing overcrowding and staffing shortfalls preceding, during and following the incident, and was struggling to maintain order.\textsuperscript{293} The report notes that the Centre struggled to maintain adequate staffing levels to meet the ratios required for the high number of detained young people.\textsuperscript{294} Following the incident, eight children were locked in solitary confinement for up to 22 hours a day, for 10 consecutive days in 2012, the Commission found.\textsuperscript{295} According to the Commissioner, although the use of isolation was justified immediately after the incident, the continued separation once the situation had stabilised was not appropriate or justified.\textsuperscript{296}

The Commissioner noted ‘[t]here is a substantial body of national and international research, reviews, case studies and inquest findings available into the harmful effects of locked door separation [isolation], including in relation to the particular impacts on young people and Indigenous Australians.’\textsuperscript{297} As such, according to the Commission, ‘it is possible that the young people may have suffered emotional harm as a consequence of being subjected to locked door separation [isolation], with limited mental and physical stimulation, for a minimum of 22 hours a day for a ten day period.’\textsuperscript{298}

In November 2016, Attorney-General Yvette D’Ath ordered a review into the Townsville and Brisbane youth detention centres following reports of mistreatment and abuse of detainees.\textsuperscript{299} In one incident, a 17-year-old was reportedly detained, handcuffed, stripped and taken into isolation after refusing to

\begin{flushleft}
\textsuperscript{289} L. Hughes-Jones (2017) ‘Don Dale was “spiralling out of control”’, \textit{Australian Associated Press}, 22 March, online.
\textsuperscript{290} ibid.
\textsuperscript{291} G. Brandis, Attorney-General (2016) \textit{Reporting date extended for Royal Commission into the protection and detention of children in the Northern Territory}, media release, 16 December.
\textsuperscript{294} ibid.
\textsuperscript{295} Youth Detention Inspectorate, \textit{Cleveland Youth Detention Centre Inspection Report: June Quarter 2012}, YDI, Brisbane, pp. 6-9.
\textsuperscript{296} Commission for Children and Young People and Child Guardian (2014) ibid, p. 23.
\textsuperscript{297} ibid, p. 1.
\textsuperscript{298} ibid, p. 27.
\end{flushleft}
take a shower.\textsuperscript{300} Documents obtained by Amnesty International show that there were 31 incidents of children in the CYDC attempting to commit suicide by tying ligatures around their necks in 2015.\textsuperscript{301} This was an increase from 20 instances in 2014.\textsuperscript{302} The final report was provided to the Attorney-General on 14 December 2016, however, it has not been made public.\textsuperscript{303}

### 10. Rising rates of remand

It is widely accepted that the rising rates of remand are problematic in terms of the prospects of individual rehabilitation of young people as well as the youth justice system more broadly.\textsuperscript{304}

The *Youth Justice Remand Bail Strategy* states that the number of young people on remand at the Melbourne Youth Justice Centres has continued to trend upwards since 2008.\textsuperscript{305} In 2005–06, young people on remand comprised 36 per cent of the overall custodial population.\textsuperscript{306} In January 2011, it reached 60 per cent.\textsuperscript{307} The 2015–16 Youth Parole Board *Annual Report* states that 80 per cent of clients in custody were on remand and only 20 per cent were serving a custodial sentence.\textsuperscript{308}

Reforms to the *Bail Act 1977* (Vic) in 2013 that created an offence to breach of bail condition have been identified as contributing to the significant increase in children held on remand in recent years.\textsuperscript{309} The Children’s Court of Victoria *Annual Report 2014–15* shows a 57 per cent increase in the number of children being admitted to remand in the 12-month period following the introduction of the *Bail Act 1977* (Vic) reforms.\textsuperscript{310} The report states ‘the number of alleged young offenders being admitted to remand increased alarmingly following the commencement of amendments to the *Bail Act* in December 2013,’\textsuperscript{311} in what it describes as an ‘undesirable development.’\textsuperscript{312} The following table compiled by Jesuit Social Services illustrates the increased issuance of remand orders from 1 July 2005 to 30 June 2015.

\begin{table}
\centering
\begin{tabular}{|c|c|}
\hline
| Year | Percentage of Children on Remand |
\hline
| 2005–06 | 36 per cent |
| 2011 | 60 per cent |
| 2015–16 | 80 per cent |
\hline
\end{tabular}
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\textsuperscript{300} ibid.
\textsuperscript{302} ibid.
\textsuperscript{305} Department of Justice (2013) op. cit., p. 2.
\textsuperscript{306} ibid.
\textsuperscript{307} ibid.
\textsuperscript{308} Youth Parole Board (2016) op. cit., p. xiv.
\textsuperscript{310} Children’s Court of Victoria (2015) *Annual Report*, Melbourne, p. 3.
\textsuperscript{311} ibid.
\textsuperscript{312} ibid.
Increasing remand figures cannot be explained by changes in crime rates or numbers of young people sentenced by the Children’s Court as these have decreased in recent years. As such, the increase in the number of young people on remand is not due to an increasing number of offenders.

### 10.1 Risk factors for remand

The Act states ‘[b]ail must not be refused to a child on the sole ground that the child does not have any, or any adequate, accommodation.’ Further, the Act requires that children be proceeded against by summons rather than arrest unless exceptional circumstances exist. This reflects the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, which state ‘whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.’ However, as the SAC observes, some legislated protections are ‘at times, undercut by practical difficulties,’ with Children’s Courts ‘sometimes forced to remand young people due to the lack of available, appropriate accommodation.’

Research consistently identifies homelessness and a lack of suitable accommodation as key factors underpinning increasing custodial remand rates of young people. Homeless young people are more...
likely than their peers to be placed on remand rather than released on bail.\textsuperscript{321} Many young people are held on remand because they are unable to meet strict bail conditions, which typically require a young person to reside at a specific address.\textsuperscript{322} Lack of appropriate accommodation also makes it difficult for young people to meet other bail conditions.\textsuperscript{323} In its \textit{Review of the Bail Act}, the Victorian Law Reform Commission (VLRC) expressed concern that ‘bail conditions more onerous than sentencing orders are sometimes imposed on children’, often ‘without organising support for the child’.\textsuperscript{324} Accordingly, young people are sometimes placed on custodial remand ‘for their own good’.\textsuperscript{325}

Studies show that homelessness or lack of suitable accommodation affects particular groups of young people, including young people in regional, rural and remote areas,\textsuperscript{326} and, as a corollary, Indigenous young people.\textsuperscript{327} Young women who have experienced physical and sexual abuse are also at risk of remand because it is less likely that they will have a stable environment to return to.\textsuperscript{328} Young people in out-of-home care are also vulnerable to refusal of bail as a result of not having stable accommodation as child protection agencies are at times unable to provide young people facing remand with appropriate accommodation.\textsuperscript{329}

A national research project into bail and remand for young people in Australia found that young people with complex needs and welfare issues are most vulnerable to receiving custodial remand. The project established that young people with multiple and complex needs are sometimes placed on custodial remand because services and programs exist in custody that are not available in the community.\textsuperscript{330} Stakeholders noted that young people would be more likely to receive appropriate mental health assessments or supported schooling in custody than in the community.\textsuperscript{331} As the researchers observe, ‘[i]n this way, custodial remand acts as a pathway to adequate services for young people with complex histories and needs.’\textsuperscript{332} This implies that there is a lack of appropriate services available to young people in the community, including alcohol and other drug services, physical and mental health services, child protection and out-of-home care services.\textsuperscript{333}

\textsuperscript{323} House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (2011) op. cit.
\textsuperscript{325} K. Richards & L. Renshaw (2013) op. cit., p. 65.
\textsuperscript{329} ibid.
\textsuperscript{331} ibid.
\textsuperscript{332} ibid, p. 100.
\textsuperscript{333} ibid.
Indigenous young people

The complex and interconnected risk factors that contribute to the over-representation of Indigenous young people in the criminal justice system also increase the probability that Indigenous young people will be held on remand rather than released on bail. A 2013 study found Indigenous young people are more than 20 times more likely to be held on custodial remand (222 young people per 100,000 population) compared with the rate of non-Indigenous young people (10 per 100,000). Researchers have identified factors that influence levels of pre-trial remand amongst Indigenous people, including:

- their over-representation at all levels of the criminal justice system;
- how Indigeneity may influence police discretion;
- bail refusal by the courts;
- Indigenous young people are refused bail more often than non-Indigenous young people; and
- how Indigeneity both mitigates and negatively impacts sentencing outcomes and therefore may also influence court decisions around pre-trial remand.

Further, Indigenous young people spend more time on remand than non-Indigenous young people. Out of the total young people on pre-trial remand from 2012–2013 in Australian youth detention centres, Indigenous young people spent two weeks longer remanded in custody than non-Indigenous young people. Ongoing time spent in remand has been found to weaken communities and culture, distort social norms and normalise prison, all of which increase the probability of reoffending. Consequently, Indigenous young people held in detention for any period of time are more likely to reoffend than those who are not detained.

10.2 Consequences of high remand of young people

The high levels of remand of young people in Victoria have consequences for the young offenders in question and the youth justice system more broadly.

Consequences for children and young people

The effects of custody on young people are central to concerns about the high levels of remand. As previously discussed, the principle of detention as a last resort is fundamental to Victoria’s youth justice system. This is due to the unique circumstances underpinning youth offending, as well as the window for rehabilitation that adolescent development provides. The impact of detention on children is similar to its effect on adults, however, because of children’s particular vulnerabilities, detention may cause additional problems for children’s developmental and physical health.

Studies have found that detention has serious and lasting consequences for the emotional, intellectual and social
development of young people. It can impede the developmental process and cause serious mental health problems, including depression, self-harm and suicidal ideation.

Youth detention centres are often far from young people’s homes, meaning many young people held on remand experience separation from family and community. Research has found that removing a young person from their usual social support structures increases the risk of potential physical and psychological harm to the young person. Remand also causes disruption to any education and/or employment a young person may be undertaking. This is problematic in terms of the protective role that engagement with school and employment can play in reducing young people’s offending.

Time in detention increases the probability of reoffending
The criminogenic effect of incarceration and the creation of delinquent peer groups is another troubling element of high levels of remand, particularly where sentenced offenders associate with those on remand. The antisocial associations within a correctional centre are often detrimental to new or less serious offenders who are often exposed to more long term or serious offenders. Research shows that detention is criminogenic and further marginalises young people, which can lead to their entrenchment in the criminal justice system. This is particularly problematic for the 25 per cent of young people remanded who do not go on to receive a custodial sentence, but who have been exposed to circumstances that increase the probability of reoffending.

Separating young people on remand from sentenced young people
A high proportion of detainees on remand also means it is difficult to separate children and young people on remand from those who are sentenced. As the Youth Justice Remand Bail Strategy observes:

Mixing remand and sentenced clients, without reasonable justification, compromises the department’s ability to meet its legal obligations to separate young offenders and remandees in custody as required under section 482 of the Children, Youth and Families Act 2005, and is a potential breach of the Charter of Human Rights and Responsibilities.

This was noted in the Ombudsman’s 2010 report, which found the mixing of remanded and sentenced detainees of varying ages to be contrary to section 22(2) and 23(1) of the Charter and section 481(1)(c) of the Act.

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349 ibid.


352 Department of Justice (2013) op. cit., p. 3.

353 Department of Justice (2013) op. cit., p. 3.

Access to rehabilitative services is limited
Further, access to mandated and required services can be difficult in the remand context where the guilt or innocence of a young person has not yet been established. The Youth Parole Board has acknowledged this point, noting that although programs for young people on remand exist, they are necessarily limited. As a result, a young person may not receive the necessary services for addressing the underlying causes of their offending. The Comrie review into the November 2016 incident at Parkville Youth Detention Centre also observed that ‘the ratio of those on remand to those undergoing sentences presents a new range of challenges in custodial management for youth justice services on a day to day basis.’

The accumulated effect of these factors undermines the prospect of rehabilitation and increases the probability of reoffending.

Legal implications
It has been argued that imprisoning young people for lack of alternative accommodation potentially undermines five key legal principles of the criminal law, youth justice and child protection:
- the presumption of innocence;
- proportionate sentencing;
- the right not to be arbitrarily detained;
- the notion of detention as a last resort for young people; and
- the entitlement of all children to special protection from the state.

These principles are found in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and its associated rules and guidelines, including the Standard Minimum Rules for the Administration of Juvenile Justice, the Rules for the Protection of Juveniles Deprived of their Liberty and the Guidelines for the Prevention of Juvenile Delinquency.

High numbers on remand and incidents in youth justice centres
The high proportion of young people in detention held on remand is linked to unrest and tension within youth justice centres. In response to the 2017 CCYP report into isolation, separation and lockdowns, DHHS noted that the unprecedented increase in remand numbers placed significant pressure on Victoria’s youth justice custodial system as the remand cohort of young people ‘demonstrates even greater unrest than sentenced clients.’ This was supported in evidence to the CCYP inquiry by staff and management, who observed that the increase in remandees has placed pressure on the system and limited their ability to develop positive and trusting relationships.

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356 Youth Parole Board (2016) op. cit., p. xiv.
358 N. Comrie (2017) op. cit., p. 3.
360 Ibid, p. 69.
361 Commission for Children and Young People (2017) op. cit., p. 54.
Recent amendments

In 2016, the Victorian Parliament passed the *Bail Amendment Act 2016* (Vic) to address the steep increase in the number of children arrested and held on remand. The amendments included:

- a presumption in favour of proceeding against children by summons rather than arrest;
- exempting children from the offence of breaching a condition of bail; and
- creating child-specific factors that address the particular needs of children to be considered in bail decisions.

The presumption in favour of initiating criminal proceedings against children by summons, rather than arrest, aligns with Victoria Police best practice. It also reflects the Australian Law Reform Commission’s conclusions in its 1997 report *Seen and Heard: Priority for Children in the Legal Process*: ‘[t]here should be a presumption in favour of bail for all young suspects. The absence of a traditional family network should not negate this presumption.’ The VLRC’s 2007 report similarly recommended a presumption in favour of summons when proceeding against children.

The Andrews Government anticipates that exempting children from the offence of breaching a condition of bail will reduce the number of young people held on remand, as does the Youth Parole Board and Victoria Legal Aid.

The *Bail Amendment Act 2016* (Vic) inserted section 3B into the *Bail Act 1977* (Vic). It states: In making a determination under this Act in relation to a child, a court must take into account (in addition to any other requirements of this Act) –

1. the need to consider all other options before remanding the child in custody; and
2. the need to strengthen and preserve the relationship between the child and the child’s family, guardians or carers; and
3. the desirability of allowing the living arrangements of the child to continue without interruption or disturbance; and
4. the desirability of allowing the education, training or employment of the child to continue without interruption or disturbance; and
5. the need to minimise the stigma to the child resulting from being remanded in custody; and
6. the likely sentence should the child be found guilty of the offence charged; and
7. the need to ensure that the conditions of bail are no more onerous than are necessary and do not constitute unfair management of the child.

Sections (a) – (f) were recommended by the 2007 VLRC review of the *Bail Act 1977*.

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363 *Children, Youth and Families Act 2005* (Vic) s 345(1).
364 *Bail Act 1977* (Vic) s 30A(3).
365 *Bail Act 1977* (Vic) s 3B.
370 Youth Parole Board (2016) op. cit., p. 22.
10.3 Bail programs

Bail support programs play an important part in assisting young people to meet the conditions of their bail, thereby keeping them out of youth justice detention as they await trial.

Central After Hours Assessment and Bail Placement Service

The Central After Hours Assessment and Bail Placement Service is a state-wide service that aims to keep young people who have offended in their community. Court and bail advice is provided to ensure Children’s Courts and bail justices undertake informed decision-making and that young people are dealt with in a manner that is consistent with the key principles of diversion and minimum intervention that underpin the Act.\(^{373}\)

Intensive Bail Supervision Program

The Intensive Bail Supervision Program provides intensive bail supervision and support to young people aged 10–18 years who are at risk of being remanded or re-remanded.\(^{374}\) It aims to assist young people to comply with bail conditions and divert them from future involvement in the criminal justice system.\(^{375}\) The Report on the Bail Act by the VLRC recommended that an intensive bail support program be funded in the Children’s Court, just as adults have access to in the Magistrates’ Court.\(^{376}\)

In 2010, an Intensive Bail Support Program pilot was undertaken, which Victoria Legal Aid (VLA) found to be extremely effective in reducing reoffending.\(^{377}\) VLA noted that many participants would otherwise have stayed in remand until their legal representatives could arrange appropriate support services or until they chose to plead guilty or were found not guilty.\(^{378}\) Until recently, however, the program was only offered in the north, west and south metropolitan regions of Melbourne, meaning young people in regional Victoria did not have the same access to the diversionary support as their metropolitan peers.

Recent amendments

In December 2016, the Andrews Government announced a range of youth justice reforms, including extending the Intensive Bail Supervision Program scheme across the entire state.\(^{379}\) This reform was largely welcomed by agencies and organisations involved in youth justice, with CEO of Youth Affairs Council Victoria Georgie Ferrari stating, ‘[t]hese initiatives have shown success in helping young people to remain in the community with appropriate supports ... a young person should not miss out on getting the right interventions just because of where they live.’\(^{380}\)

The Andrews Government also announced the expansion of the Central After Hours Assessment and Bail Placement Service, which assists police and bail justices in deciding how to deal with a young offender who has been arrested out of hours. This reflects the finding that 80 per cent of arrests of children and young people in Victoria take place outside of business hours.\(^{381}\) The service aims to reduce inappropriate remands in custody, enhance informed decision-making and ensure that young

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\(^{374}\) K. Richards & L. Renshaw (2013) op. cit., p. 87.

\(^{375}\) ibid.


\(^{377}\) Victoria Legal Aid (2012) Submission to the Department of Justice, Discussion Paper on Improving Diversion for Young People in Victoria, Melbourne, p. 11.

\(^{378}\) ibid.

\(^{379}\) D. Andrews, Premier (2016) Sweeping reforms to crack down on youth crime, media release, 5 December.

\(^{380}\) Youth Affairs Council Victoria (2016) ‘Youth justice reforms must tackle the causes of crime’, media release, 8 December.

\(^{381}\) Jesuit Social Services (2014) op. cit., p. 5.
people are dealt with in a manner consistent with the key principles of diversion and minimum intervention that underpin the Act.\textsuperscript{382}

11. Review of youth support, youth diversion and youth justice services

DHHS is currently undertaking a review of youth support, youth diversion and youth justice services to create an overarching policy framework that reflects existing challenges.\textsuperscript{383}

The review will consider the DHHS’s programs and services including:

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<th>Pre-charge / Pre-court / Post-sentencing</th>
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<td>Pre-charge / Pre-court</td>
<td>Youth Support Service</td>
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<td>Community-Based Koori Youth Justice Program</td>
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<td>Pre-court</td>
<td>Youth Referral and Independent Persons Program</td>
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<td>Central After Hours Assessment and Bail Placement Service</td>
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<td>Pre-court / Pre-sentence</td>
<td>Diversion in the Children’s Court (pilot, pre-plea)</td>
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<td>Youth Justice Bail Supervision</td>
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<td>Pre-sentence</td>
<td>Youth Justice Group Conferencing</td>
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<td>Pre-sentence / Post-sentencing</td>
<td>Youth Justice Community-Based Supervision</td>
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<td>Koori Youth Justice Program – statutory response</td>
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<td>Youth Justice Community support service</td>
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<td>Youth Justice Custodial Supervision (remand and sentence)</td>
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<td>Custodial based health services and rehabilitation programs (YHARS)</td>
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<td>Access to tertiary health services including clinical mental health services</td>
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<td>Post-sentencing</td>
<td>Youth Justice support service</td>
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The Terms of Reference acknowledge that there is no departmental youth justice framework that guides the coordination of work by the Department with key partners Victoria Police, the DJR and the Department of Education and Training.\textsuperscript{384} It also notes that the current government policy \textit{A Balanced Approach to Juvenile Justice in Victoria} is 16 years old.\textsuperscript{385}

Former Secretary of the Department of Justice Penny Armytage and Professor James Ogloff, Director of the Centre for Forensic Behavioural Science and Foundation Professor of Clinic Forensic Psychology,

\textsuperscript{382} Department of Human Services (2011) \textit{Youth justice fact sheet – Youth justice community support service}, DHS, Melbourne.
\textsuperscript{384} ibid.
\textsuperscript{385} ibid.
Swinburne University, are leading the review. The findings of the review are due to be released by April 2017.\footnote{386}

12. Recent announcements on youth justice

In December 2016, the Andrews Government announced a range of reforms to youth justice, including:

- increasing the maximum period of detention that can be imposed by the Children’s Court from three to four years;
- establishing a new Youth Control Order to give the Children’s Court the power to issue a more intensive and targeted supervision sentence for young offenders;
- setting up an intensive monitoring and control bail supervision scheme;
- extending the youth justice bail supervision scheme across the entire state, as mentioned in section 10.3; and
- expanding the Central After Hours Assessment and Bail Placement Service.\footnote{387}

On February 6 2017, Premier Andrews announced that responsibility for youth justice in Victoria will be moved from the DHHS to the DJR. Corrections Victoria will permanently manage the security of youth justice facilities.\footnote{388} The Premier also announced a $288 million youth justice centre in Werribee South, including 224 beds for remand and sentenced clients, a 12-bed mental health unit and an intensive supervision unit of at least eight beds.\footnote{389} In response to a community backlash, however, the Andrews Government announced the new youth justice centre would be built in Cherry Creek, Wyndham, rather than Werribee South as initially proposed.\footnote{390}

The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment

In February 2017, the Federal Government announced it would ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) by the end of 2017.\footnote{391} As a result, youth detention centres will be independently monitored by a network of Australian inspectorates to improve the oversight of places of detention in Australia.\footnote{392}

Such inspectorates would have the power to:

- access all places of detention;
- speak to detainees and others in private;
- choose freely which places to visit and which people to talk to;
- access information on the treatment and conditions of detainees; and
- access information about detainees and places of detention.\footnote{393}

\footnote{386 J. Edwards (2017) ‘Youth justice is not the government’s fault – but it’s their job to fix it’, The Age, 9 January, online.}
\footnote{387 D. Andrews, Premier (2016) Sweeping reforms to crack down on youth crime, op. cit.}
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\footnote{389 ibid.}
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\footnote{391 G. Brandis, Attorney-General (2017) Improving oversight and conditions in detention, media release, 9 January.}
\footnote{392 ibid.}
\footnote{393 United Nations Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, opened for signature 18 December 2002, A/RES/57/100 (entered into force 22 June 2006) article 20.}
The commitment to ratify OPCAT was welcomed by Human Rights Commissioner Ed Santow,\(^{\text{394}}\) Amnesty International,\(^{\text{395}}\) the Law Council of Australia\(^{\text{396}}\) and UNICEF.\(^{\text{397}}\) Director of Policy and Advocacy at UNICEF Australia, Nicole Breeze, stated ‘[t]he Federal Government’s commitment to ratify OPCAT is a significant and positive development. Preventative monitoring will ensure better protection for children who are held in places of detention.’\(^{\text{398}}\)


\(^{\text{396}}\) ibid.


\(^{\text{398}}\) ibid.
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Relevant Legislation

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- Bail Act 1977 (Vic)
- Bail Amendment Act 2013 (Vic)
- Bail Amendment Act 2016 (Vic)
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- Children (Detention Centres) Act 1987 (NSW)
- Juvenile Justice Act 1992 (Qld)
- Young Offenders Act 1993 (SA)
- Young Offenders Act 1994 (WA)
- Young Offenders Act 1997 (NSW)
- Youth Justice Act 1997 (Tas)
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- United Nations Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, opened for signature 18 December 2002, A/RES/57/100 (entered into force 22 June 2006)

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