Parliament of Victoria

Youth Justice Bill 2024

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Bill Brief

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Bill information

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Commencement: This Act comes into operation on a day or days to be proclaimed. If Chapter 1 (except Part 1.3), Chapter 3, Chapter 19, Chapter 20, Chapter 22 and section 766 (other than subsection (2)) do not come into operation before 30 September 2025, those provisions come into operation on that day. If a remaining provision of this Act does not come into operation before 30 September 2026, it comes into operation on that day.

Links to key documents including the Bill, Explanatory Memorandum, Statement of Compatibility and second reading speech can be found at the Library's Infolink page for this Bill.

For further information on the progress of this Bill, please visit the Victorian Legislation and Parliamentary documents website.

Abbreviations

CCYD	Children's Court Youth Diversions
CCYP	Commission for Children and Young People
CYF Act	*Children, Youth and Families Act 2005*
DJCS	Department of Justice and Community Safety
EMCs	Electronic monitoring conditions
LCLSIC	Legislative Council Legal and Social Issues Committee
SCAG	Standing Council of Attorneys-General
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
VAAF	Victorian Aboriginal Affairs Framework
VALS	Victorian Aboriginal Legal Service
VLRC	Victorian Law Reform Commission

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Executive summary

The Youth Justice Bill 2024 was introduced to the Legislative Assembly on 18 June 2024. Through this legislation the Victorian Government proposes replacing the current youth justice legislative framework with a new standalone Youth Justice Act. The Bill comes amid a recent increase in recorded youth offending, with the Government attributing responsibility to a small cohort of recidivist offenders.

While much of the existing system is being re-enacted, this Bill proposes major amendments to the system's operation at each stage of the youth justice process, including frontline response, diversions, sentencing, custodial settings, parole and post-release. Some of the most notable reforms include: raising the minimum age of criminal responsibility to 12 years of age; codifying the *doli incapax* legal principle; promoting diversionary and restorative justice; and introducing a trial of electronic monitoring.

Another key aspect of the Bill is addressing the historical over-representation of Aboriginal and Torres Strait Islander people in the justice system and the legacy of systemic injustice. In recognising this, the Bill seeks to embed Aboriginal self-determination throughout all aspects of the youth justice system and provide the basis for a future Aboriginal-controlled youth justice system.

This Bill Brief summarises the background to the Bill's introduction, including analysis of the most recent data available. The paper also provides an outline of some of the Bill's major provisions and themes. Finally, there is a discussion of major stakeholder responses to the Bill and some of its major provisions, together with a jurisdictional comparison of Australian state and territory youth justice approaches.

Introduction

Youth justice has been a topic of parliamentary discussion for much of the last decade. This has encompassed a range of aspects of the system's operation: pre-charge provisions and diversionary responses; the bail and sentencing process; the dual-track custodial framework unique to Victoria; the post-release system; and the experiences of Aboriginal and Torres Strait Islander young people within the system. The new Youth Justice Bill 2024, introduced on 18 June 2024, is the product of a long period of consultation and preparation and introduces a range of provisions across all aspects of the system.

The Victorian Government has implemented several reforms in recent times. These have been informed by several documents, notably the Armytage and Ogloff youth justice system review published in 2017, and government strategies. Up until now, amendments to the youth justice system have applied to the existing system that operates out of the *Children, Youth and Families Act 2005* (CYF Act) and other relevant legislation such as the *Bail Act 1977*. This paper includes a brief history of youth justice's evolution to the present Victorian system and how it is proposed to change.

The Youth Justice Bill 2024 represents a significant reform, removing the legal framework from the CYF Act and enacting a new youth justice framework in a standalone Act. In a press release announcing the Bill's introduction to Parliament, the Premier highlighted a number of focus areas, including amendments to frontline responses to youth crime, reforms for a 'tailored and targeted court system' and a commitment to victims' voices being heard throughout the youth justice process.[1]

In doing this, the Victorian Government proposes to repeal and subsequently re-enact much of the existing framework's provisions in the new Act. This reform comes at a time when the Victorian Government has acknowledged a recent increase in recorded youth crime, driven by a small cohort of high-recidivist offenders. To address this recent uptick and other priorities in youth justice reform, the Youth Justice Bill also introduces several new provisions, each of which is outlined in this paper. These include:

- raising the minimum age of criminal responsibility from 10 to 12 years of age;
- codifying the legal principle of *doli incapax* for certain age cohorts;
- prioritising diversionary and restorative justice across the youth justice system;
- introducing a new police transport power for 10- and 11-year-olds; and
- allowing for a trial of electronic monitoring as a bail condition.

The government also acknowledges that, while trending downwards, historically Aboriginal children and young people have been over-represented in the system for a number of reasons, including systemic injustices. In addressing recommendations from a number of reports, not least from the Yoorrook Justice Commission, the Bill provides the legal basis for a future Aboriginal-controlled youth justice system.

This Bill Brief provides background to the Bill's introduction, including an analysis of the most recent youth justice system data available. While this paper does not constitute an exhaustive summary of the legislation's extensive provisions, it provides a summary of the second reading speech and outlines the key provisions, including the new guiding youth justice principles. The paper then explores in more depth the key themes of the Bill as listed above, including the Government's rationale, policy approaches and recent developments.

With a lengthier break than usual between sitting weeks, there has also been a considerable response to the Bill from stakeholders. The Bill Brief provides a summary of the response to date, along with an overview of the youth justice settings in other Australian jurisdictions. This paper is meant as a useful resource to supplement discussion of the Bill and its major provisions and should not be considered legal advice.

[1] J. Allan, Premier (2024) *New laws to improve community safety and reduce offending*, media release, 18 June.

1 | Background

Origins of the youth justice system

Victoria's youth and children's justice framework first emerged in the late 19th century with the establishment of the Children's Court in 1906 (see Table 1, below). The most recent and substantive reforms, however, took place from 1982 onwards. In that year the Minister for Community Services Pauline Toner and Attorney-General John Cain commissioned an independent review of Victoria's child welfare practices and legislation. The chair of the review, Professor Terry Carney, handed down the committee's final report in 1984.[2] A few years later the *Children and Young Persons Act 1989* commenced, acquitting some of the review's recommendations, most notably raising the age of criminal responsibility from eight to ten years.

Further reforms took place through the adoption of the framework detailed in *A balanced approach to juvenile justice in Victoria* in 2000. These principles were eventually codified via the CYF Act.[3] Three pillars came to encapsulate policy priorities. These consisted of an emphasis on the following:

- diverting young people from entering the youth justice system or progressing 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.

On the age of criminal responsibility, section 344 of the CYF Act states, 'It is conclusively presumed that a child under the age of 10 years cannot commit an offence'.[4] However, the common law doctrine *doli incapax* still applies to children aged 10 to 14. While presuming that a child younger than 14 cannot commit a crime because they cannot form the necessary criminal intent (*mens rea*), a prosecution could still prove beyond all reasonable doubt that an accused knew at the time of committing the offence that their conduct was seriously wrong (see 'Key themes of the Bill').

The *Charter of Human Rights and Responsibilities Act 2006* further codified youth and children's rights. First, an accused child detained without charge 'must be segregated from all detained adults'. Second, an accused child 'must be brought to trial as quickly as possible'. Third, a convicted child 'must be treated in a way that is appropriate for that child's age'.[5]

In practice, the implementation of these principles confronted many difficulties. A series of investigations into the Melbourne Youth Justice Precinct and other facets of the youth justice system consistently found significant operational deficiencies and legislative breaches of young offender's rights.[6] In addition, changes to parole conditions implicit in the *Bail Amendment Act 2016* led to a steady increase in the number of children held in custody or remand.[7]

The *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017* ('Youth Justice Reform Act') introduced measures to strengthen penalties for offenders aged over 16. It introduced the sentencing option of 'youth control orders', which involved 12 months of detention under 'intensive supervision'.[8] It also introduced a re-plea youth diversion scheme

[2] Child Welfare Practice and Legislation Review (Victoria) (1984) *Child Welfare Practice and Legislation Review*: *Report*, Melbourne, The Committee.
[3] C. Campbell (2000) *A Balanced Approach to Juvenile Justice in Victoria, Ministerial Statement,* Melbourne.
[4] *Children, Youth and Families Act 2005*, s 344.
[5] *Charter of Human Rights and Responsibilities Act 2006*, s 23.
[6] Victorian Ombudsman (2010) *Investigation into conditions at the Melbourne Youth Justice Precinct*, Victorian Ombudsman Melbourne.
[7] ibid.
[8] *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017*, part 3.

in both the criminal division of the Children's Court and the Children's Koori Court (the latter of which had been introduced in 2004 to address the disproportionate number of young Indigenous offenders entering the system).[9]

Recent developments

These incremental changes eventually led to more thorough changes after 2017 that were the precursors to the current Bill. It corresponded with the transfer of overall responsibility for youth justice away from the Department of Health and Human Services to the Department of Justice and Regulation (DJR). At the same time, the *Youth Justice Review and Strategy* report by Penny Armytage and Professor James Ogloff AM ('Armytage and Ogloff report') concluded that a 'lack of purpose, focus and coordination' existed in the system and needed to be addressed.[10] They argued that 'a single, modern and responsive legislative framework for youth justice' was required.[11]

These principles informed the *Youth Justice Strategic Plan 2020–2030* and guided DJR's subsequent approach.[12] A separate report, *Wirkara Kulpa: Aboriginal youth justice strategy 2022–2032*, focused on supporting Aboriginal children to remain outside the youth justice system.[13] These reports, among others, have shaped policy priorities around youth justice as a whole in Victoria.

Meanwhile, other jurisdictions have also considered changes to youth justice, with a strong focus on further increasing the age of criminal responsibility. Most notably, the Standing Council of Attorneys-General (SCAG) agreed to convene an Age of Criminal Responsibility Working Group (the Working Group). In 2020, the group released a draft report with key findings including:

- **Finding 1**: Australia's minimum age of criminal responsibility has been criticised for being too low by the United Nations Committee on the Rights of the Child.
- **Finding 2**: Australia's minimum age of criminal responsibility is one of the lowest among OECD member countries.
- **Finding 3**: The evidence regarding the psychological, cognitive and neurological development of children indicates that a child under the age of 14 years is unlikely to understand the impact of their actions or to have the required maturity for criminal responsibility.
- **Finding 7**: Children, particularly Indigenous children, in the youth justice system are more likely to come from disadvantaged backgrounds, have experienced trauma, or have a disability or neurodevelopmental impairment and consequently have complex needs.
- **Finding 12**: Doli incapax does not consistently operate as intended and may not always protect children aged 10 to 14 years who did not know that their behaviour was 'seriously wrong'. Even in cases where doli incapax operates to prove that a child was incapable of criminal responsibility, the late stage at which the presumption is triggered still results in a child being subjected to the criminal justice system, including a criminal trial.[14]

While SCAG's report proposed to raise the minimum age of criminal responsibility to 14, not all jurisdictions agreed.

There have also been attempts within the Victorian Parliament to address the age of criminal responsibility. In 2021 and 2022, Legislative Council Member Samantha Ratnam

[9] ibid.
[10] P. Armytage and J. Ogloff (2017) *Youth justice review and strategy: Meeting needs and reducing offending*, Melbourne, Government of Victoria.
[11] Armytage & Ogloff (2017) op. cit. p 12.
[12] Department of Justice and Community Safety (2020) *Youth Justice Strategic Plan 2020-2030*, Melbourne, DJCS.
[13] Department of Justice and Community Safety (2022) *Wirkara Kulpa: Aboriginal youth justice strategy 2022–2032*, Melbourne, DJCS.
[14] Standing Council of Attorneys-General (2020) *DRAFT Final Report 2020 Council of Attorneys-General Age of Criminal Responsibility Working Group*, Canberra.

twice introduced private member's bills focused on raising the minimum age of criminal responsibility to 14.[15] The 2021 Bill lapsed at the end of the 59th Parliament while the second reading for the Children, Youth and Families Amendment (Raise the Age) Bill 2022 was moved in the Legislative Council on 8 February 2023.

Table 1: Timeline of key developments

Year	Event
1890	*Neglected Children's Act 1890*
1906	*Children's Court Act 1906*
1982	Child Welfare Practice and Legislation Review
1989	*Children and Young Persons Act 1989*
2000	*A balanced approach to juvenile justice in Victoria*, ministerial statement, Melbourne, Government of Victoria
2004	*Children and Young Persons (Koori Court) Act 2004*
2005	*Children, Youth and Families Act 2005*
2006	*Charter of Human Rights and Responsibilities Act 2006*
2017	*Meeting needs and reducing offending: youth justice review and strategy*, Melbourne, Government of Victoria
2020	*Youth Justice Strategic Plan 2020–2030*
2020	*Wirkara Kulpa: Aboriginal youth justice strategy*
2020	Draft final report (2020) of the Standing Council of Attorneys-General Age of Criminal Responsibility Working Group

[15] Children, Youth and Families (Raise the Age) Amendment Bill 2021; Children, Youth and Families Amendment (Raise the Age) Bill 2022. For more information on raising the age of criminal responsibility, see A. Wright (2023) *Children, Youth and Families Amendment (Raise the Age) Bill 2022*, Parliamentary Library & Information Service, Melbourne, Parliament of Victoria.

Background data

The Bill arrives during significant public discussion around a perceived increase in youth crime.[16] Tables 2 and 3 and Figures 1 – 6 summarise the main recent trends in the youth justice sector since 2020. They suggest that a steady fall in offenders until 2021-2 has given away to increases in some categories.

Tables 2 and 3 and Figure 1 indicate that both the overall numbers and rate per 100,000 'Alleged Offender Incidents consistently fell for both the 10-14 years and 15-17 years categories between 2020 and 2022 before beginning to increase again across the last two years.

Table 2: Counts of youth involved in 'Alleged Offender Incidents', Victoria, 2017–2024[17]

Sex	Age group	2020	2021	2022	2023	2024
Females	10-14 years	1626	1231	1351	2009	2274
	15-17 years	3127	3158	2608	2910	3675
Males	10-14 years	3379	2930	3091	4135	4508
	15-17 years	10003	10223	8312	9516	11819
People	10-14 years	5006	4161	4442	6146	6803
	15-17 years	13130	13381	10920	12426	15495

Click for interactive

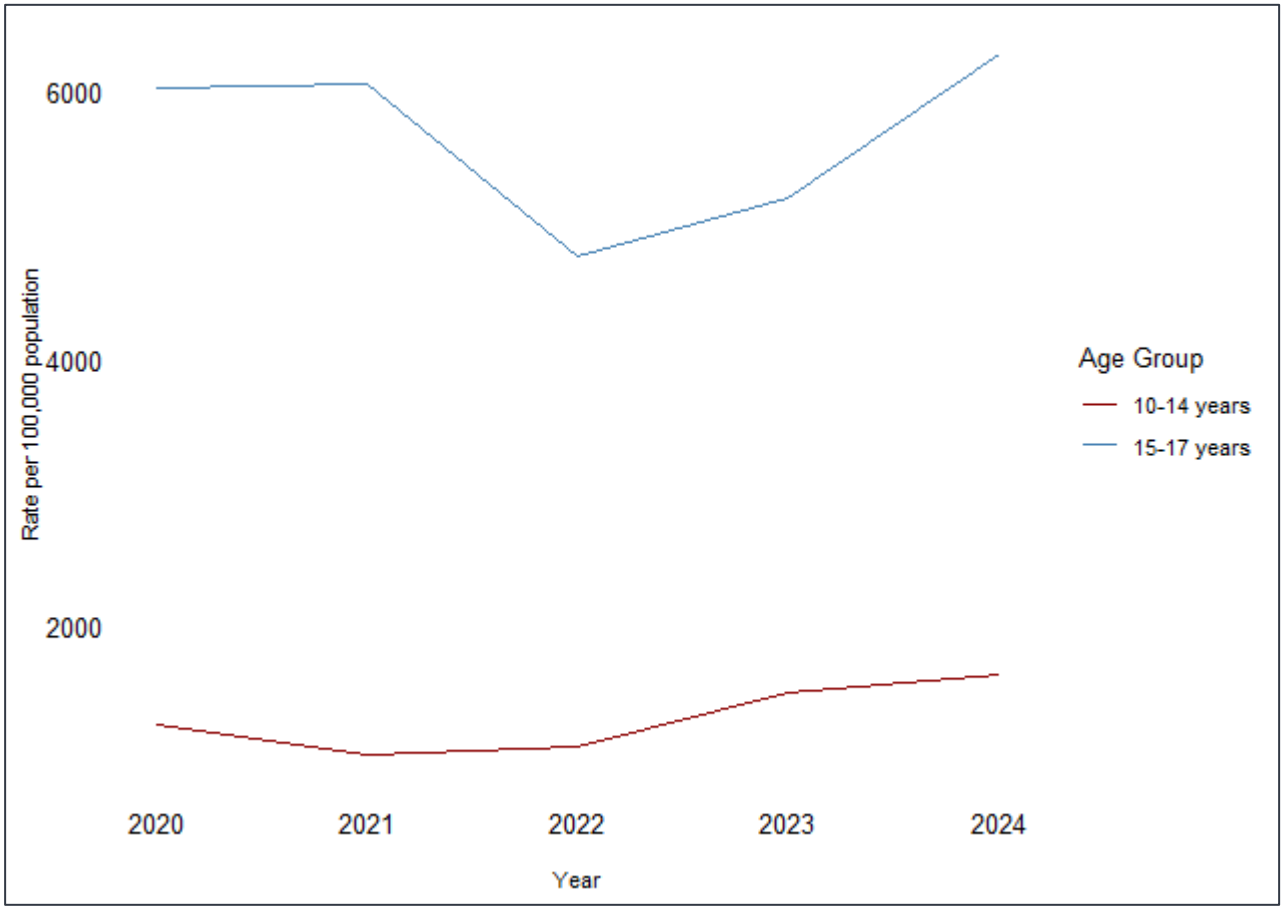
Table 3: Rate per 100,000 of youth involved in 'Alleged Offender Incidents', Victoria, 2020–24[18]

Sex	Age group	2020	2021	2022	2023	2024
Females	10-14 years	844.9	635.4	690	1008.3	1123.6
	15-17 years	2950.4	2940.6	2341.2	2501.9	3062.9
Males	10-14 years	1662.6	1431.5	1498.4	1968.2	2112.4
	15-17 years	8913.7	8990.1	7048.2	7740.4	9320.5
People	10-14 years	1265.1	1044.3	1104.7	1501.5	1636.2
	15-17 years	6017.3	6051.8	4761.7	5193.7	6278.6

Click for interactive

[16] B. Kolovos (2024) Amid claims of a 'youth crime crisis', Victoria's approach is working, advocates say, *The Guardian*, 12 July.
[17] Crime Statistics Agency (2024) *Data Tables Alleged Offender Incidents Visualisation Year Ending March 2024 (XLSX, 395.54 KB)*, Melbourne.
[18] ibid.

Figure 1: Rate per 100,000 of youth involved in 'Alleged Offender Incidents', Victoria, 2020-24[19]



Click for interactive

[19] ibid.

Likewise, Table 4 and Figure 2 indicate by the rate per 100,000 of 'Alleged Offender Incidents' that more serious offences like 'crimes against the person' and 'property and deception offences' also fell between 2020 and 2022 before beginning to increase again across the last two years.

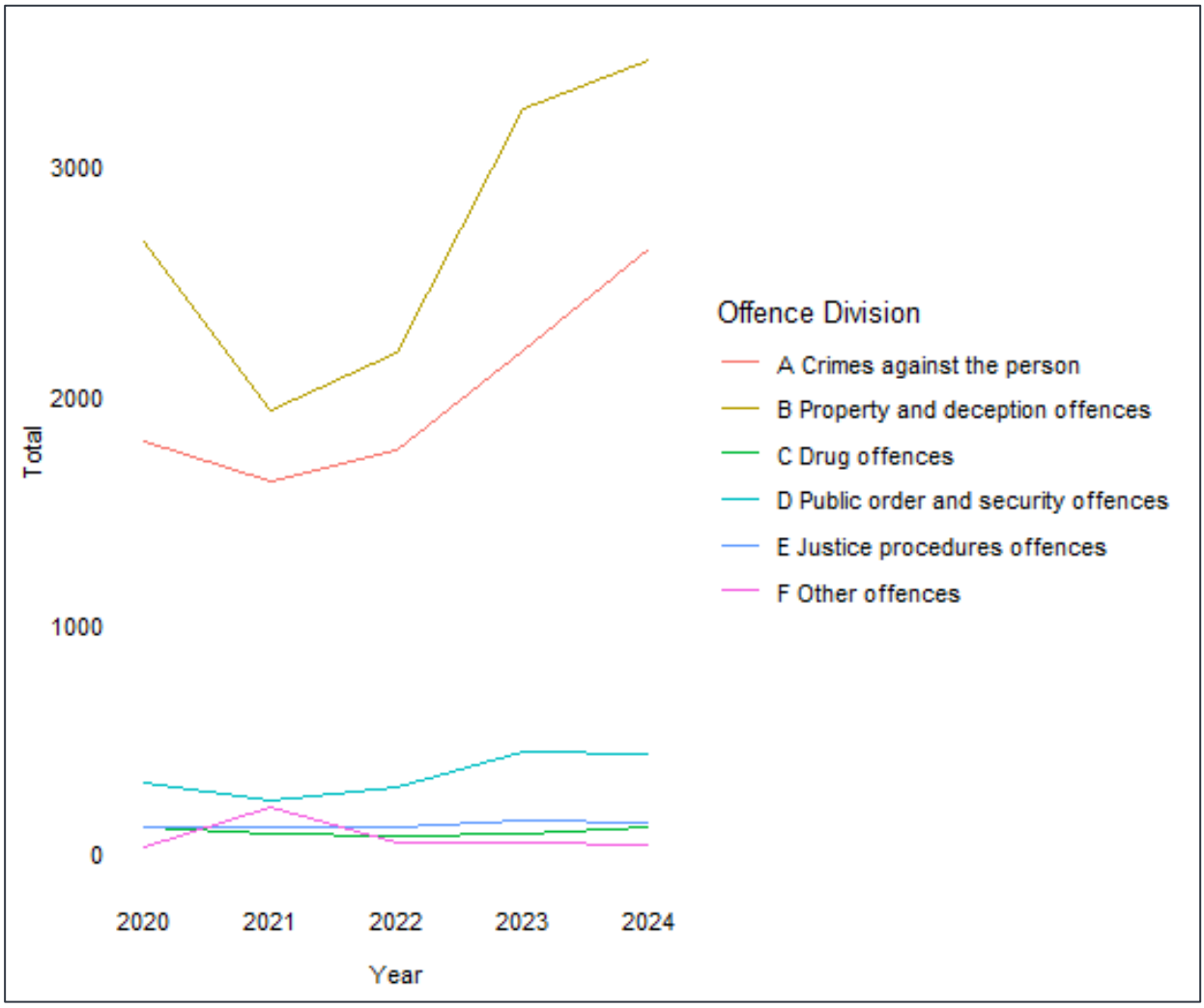
Table 4: Rate per 100,000 of youth involved in 'Alleged Offender Incidents' by offence, Victoria, 2020–24[20]

Age Group	Offence Division	2020	2021	2022	2023	2024
10-14 years	Crimes against the person	1801	1623	1757	2198	2644
	Property and deception offences	2669	1935	2182	3253	3467
	Drug offences	104	76	71	82	104
	Public order and security offences	306	228	286	441	428
	Justice procedures offences	105	104	106	133	130
	Other offences	21	195	40	39	29
Total		5006	4161	4442	6146	6802
15-17 years	Crimes against the person	4476	4018	3589	4198	5062
	Property and deception offences	6433	5566	5102	6222	8203
	Drug offences	710	677	536	536	505
	Public order and security offences	988	825	757	920	1080
	Justice procedures offences	489	471	446	502	583
	Other offences	34	1824	490	48	62
Total		13130	13381	10920	12426	15495

Click for interactive

[20] ibid.

Figure 2: Total Youth 'Alleged Offender Incidents' by Offence, Victoria, 2020-24[21]



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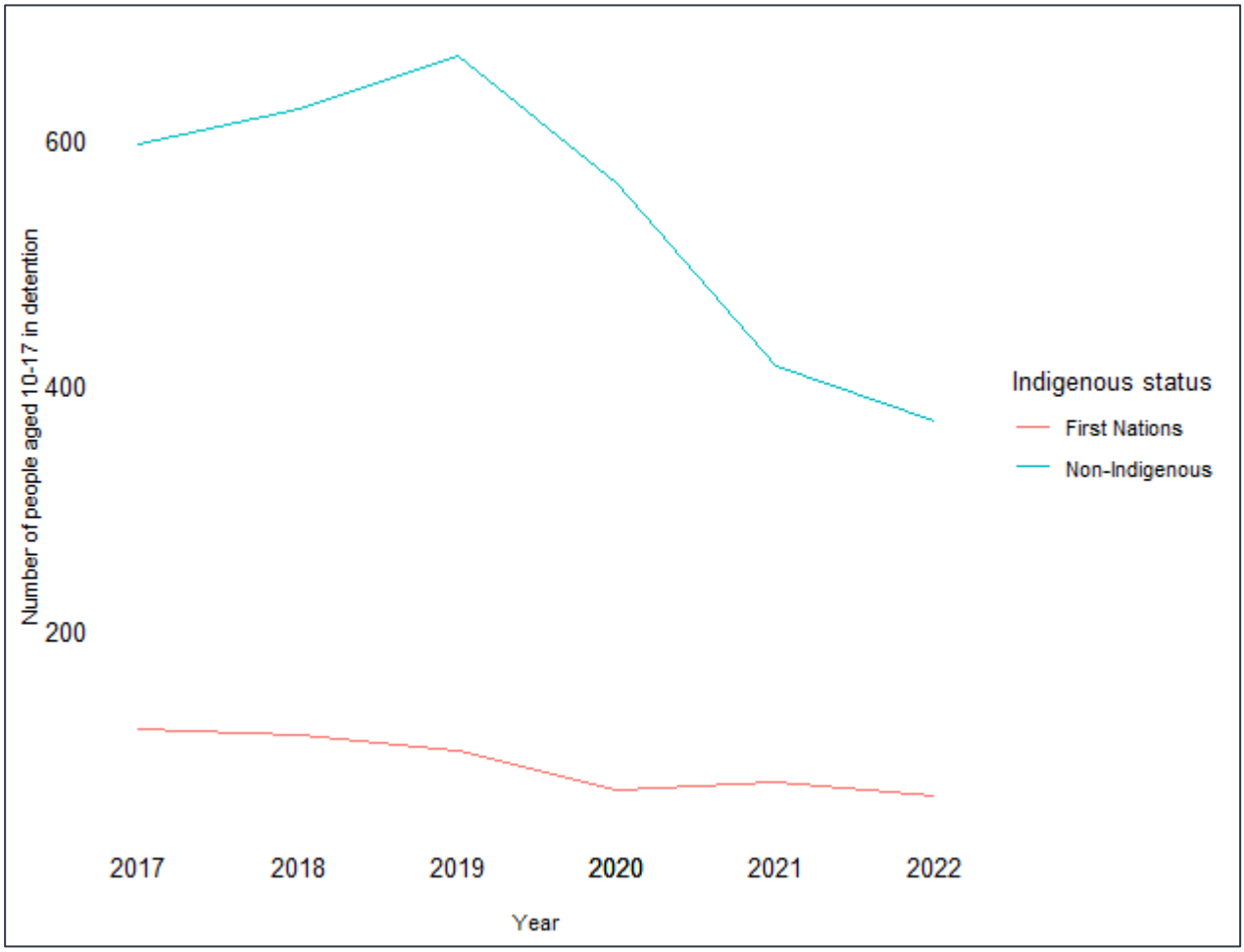
[21] ibid.

Figure 3 presents the counts of young people in detention between 2017–18 and 2022–23. The number of both Indigenous and non-Indigenous detainees has declined.

Figure 3: Number of people by Indigenous status aged 10-17 in detention, Victoria, 2017-18 to 2022-23[22]



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[22] Australian Institute of Health and Welfare (AIHW) (2024) *Data tables: Characteristics of young people in detention: S72 to S125a*, Canberra.

Figure 4 compares the proportion of offenders by Indigenous status in detention aged between 10 and 17 for Australia and each state. Victoria's rate of incarceration is lower than all other states except the ACT.

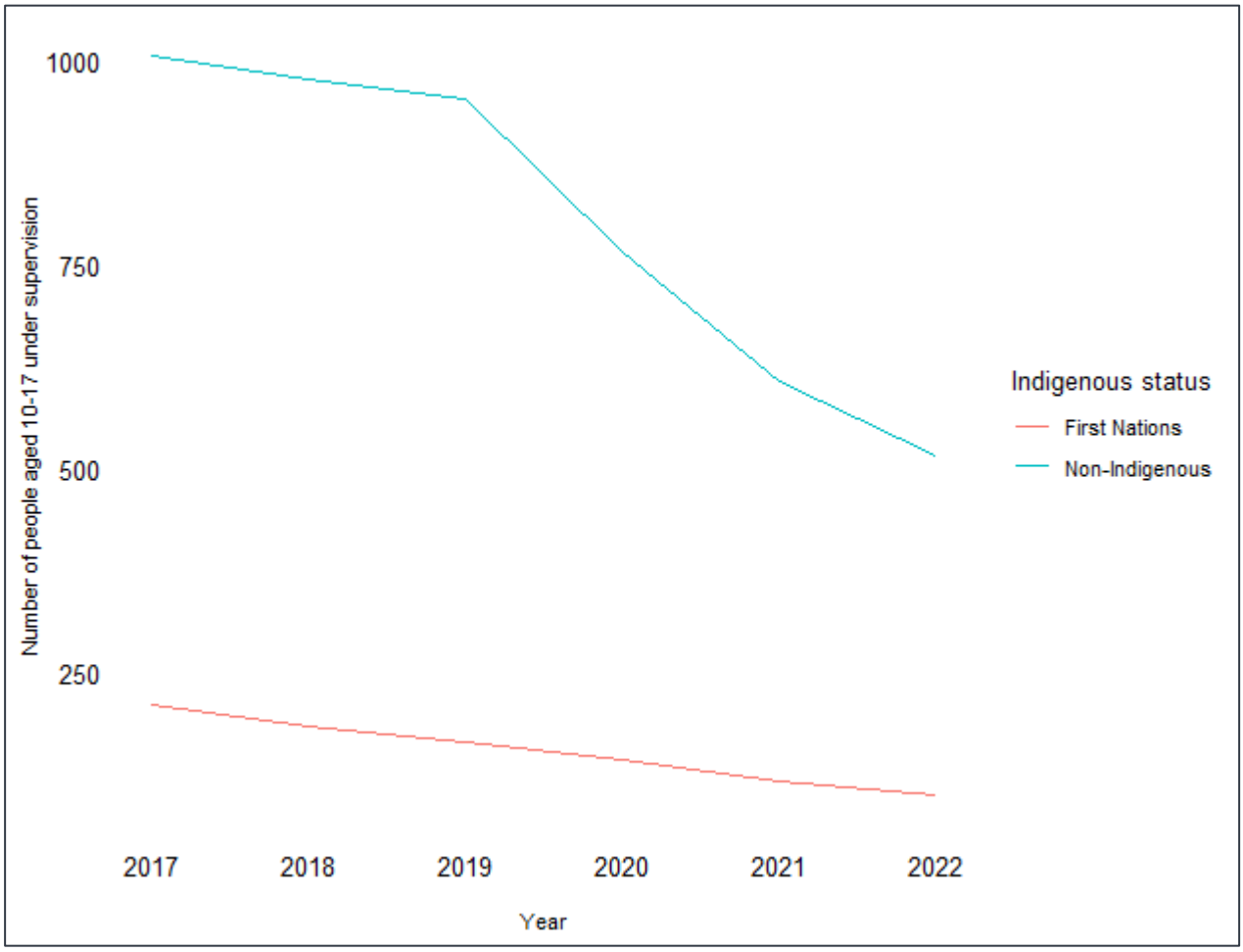
Figure 4: Proportion of offenders by Indigenous status in detention aged between 10-17 for Australia and by state[23]

Click for interactive

[23] ibid. Data not available for the ACT and Tasmania before 2019.

Likewise, Figures 5 and 6 present the counts of young people under supervision between 2017–18 and 2022–23. The number of both Indigenous and non-Indigenous detainees has declined.

Figure 5: Number of people by Indigenous status aged 10-17 under supervision in Victoria, 2017-18 to 2022-23[24]



Click for interactive

[24] ibid.

Figure 6: Proportion of offenders by Indigenous status under supervision aged between 10-17 for Australia and by state[25]

Click for interactive

Further detail is available under 'Impact of diversions' in this paper's 'Key themes of the Bill' section. Figure 7 in that section compares the proportion of offenders by Indigenous status in detention aged between 10 and 17 for Australia and each state. Again, the number under supervision in Victoria is lower than in all other states except the ACT. With the introduction of the youth diversion program, 'youth diversion' increased to over 54 per cent of sentences, while probation decreased from 20.6 to 6.8 per cent of case sentences.

2 | Second reading speech

The Youth Justice Bill 2024 was second read by the Minister for Police, Anthony Carbines, on 19 June 2024. He said the Bill responded to a need for a new youth justice framework in Victoria that is 'clear and strong' and more effective in maintaining community safety. The existing legislation had not been reviewed since 1989 and was out of date, and he argued that the proposed standalone 'Youth Justice Act' would address youth offending by enabling a 'broader and more effective range of responses to both ends of the offending spectrum'.[26]

The minister highlighted that several Victorian youth crime statistics are already favourable in comparison to other states. Victoria has the nation's lowest rates of 10- to 17-year-olds under youth justice supervision, 10- to 17-year-olds under community supervision and Aboriginal 10- to 17-year-olds under supervision.[27] Yet the second reading speech acknowledged a recent increase in recorded offending and several areas in the system requiring reform.

With the Bill spanning nearly 1000 pages, the second reading speech focused on some major themes: raising the minimum age of criminal responsibility; the introduction of electronic monitoring; diversionary measures and restorative justice; and advancement of Aboriginal

[25] ibid.
[26] A. Carbines, Minister for Police (2024) 'Second reading speech: Youth Justice Bill 2024', *Debates*, Victoria, Legislative Assembly, 19 June, p. 2305.
[27] ibid.

self-determination. The Minister made a statement following the speech detailing amendments which seek to alter the powers and jurisdiction of the Supreme Court of Victoria under section 85 of the Constitution.

Raising the age of criminal responsibility

The proposal to raise the minimum age of criminal responsibility from 10 to 12 years would make Victoria the first Australian state to do so and change a law that was originally legislated 40 years ago. While the minister indicated there were no 10- or 11-year-olds in custody as recently as 2022–23, the change would ensure that 'children receive the supports they need to turn their lives around' without being exposed to the criminal justice system.[28]

The reforms highlighted a number of measures and mechanisms that would replace current provisions relating to these age brackets. A new transport power, whereby police will be able to 'safely transport a 10- and 11-year-old child to a suitable person or appropriate health or welfare agency', seeks to ensure police will be able to 'respond to dynamic situations involving harmful and unsafe behaviour by children'.[29] Other measures highlighted by the minister include:

- reducing the ability of criminals to exploit 10- and 11-year-old children 'to do their dirty work';[30]
- expanding the scope of the Victims' Charter Act 2006 to ensure victims of crimes committed by children for whom doli incapax applies can still have 'access to relevant information, supports and financial assistance';[31]
- updating of safeguards that intend to prevent childhood spent convictions from influencing law enforcement and character assessments, among other processes; and
- codifying doli incapax for 12- and 13-year-olds to ensure 'all justice system actors understand it and apply it more consistently'.[32]

Electronic monitoring for youth offenders

Highlighting 'higher rates of disengagement' and the activity of a 'subset of young people' who are 'increasingly persistent', the second reading speech stated that 'electronically monitored bail for children aged 14 and over' will be 'an additional option to help young people comply with their bail conditions', rather than a punitive measure.[33] The minister justified this amendment of the Bail Act by arguing that monitoring will 'help keep young people engaged in education, employment programs and other initiatives' and that any non-compliance will be 'detected more quickly' and responded to appropriately.[34] This reform targets serious repeat offenders.

Aboriginal self-determination

The government collaborated with the Aboriginal Justice Caucus in designing the Bill, which focuses on 'supporting Aboriginal self-determination and reducing Aboriginal over-representation in youth justice'.[35] The Bill sets out several 'practical steps', such as: enshrining 'Aboriginal-specific guiding youth justice principles'; requiring the Secretary to the Department of Justice and Community Safety (DJCS) to seek to form partnerships with Aboriginal communities; and the basis for a future 'Aboriginal-controlled youth justice

[28] ibid., p. 2306.
[29] ibid.
[30] ibid.
[31] ibid., p. 2307
[32] ibid.
[33] ibid.
[34] ibid.
[35] ibid., p. 2309.

system'.[36] The minister described the approach taken as 'enabling and flexible' so as not to pre-empt the state's work on Treaty.[37]

A new youth justice framework

The second reading speech advocated for the benefits of 'diversion and rehabilitation services' in helping young offenders to 'turn their lives around', noting that most respond well.[38] However, the Bill also acknowledges that there is a small group committing serious offences and more often, with 5.6 per cent of children and young people in the system being 'high volume recidivist offenders recorded with ten or more alleged incidents'.[39] The Bill implements a 'tiered diversionary framework' to introduce options for 'pre charge' diversion that can provide 'opportunities to build on a child's empathy for victims and accountability'.[40] The victim-focused approach is supported by the involvement of victims in diversion mechanisms and parole decisions, as well as the addition of community representatives with 'relevant experience, knowledge or skills' to the Youth Parole Board.[41]

The speech also stated that while most children do not offend, the small proportion that do require a framework that responds to their needs, and that the current CYF Act 'does not sufficiently prioritise the need to reduce youth offending'.[42] The framework proposed by the Bill aims to make the community safer by 'holding all children and young people accountable for their actions in ways that are evidence-based, developmentally appropriate and proportionate to their levels of risks and needs'.[43] Within Victoria's unique 'dual track' system—wherein certain young offenders may serve their sentence in either a youth or adult justice setting—the minister also noted the importance to young people's rehabilitation of maintaining '[s]afe and stable custodial environments with a safe and stable workforce'.[44]

3 | The Bill

The Bill's provisions are extensive and follow a significant lead-in time for consultation and preparation. Much of the existing youth justice system framework contained within the CYF Act would be repealed in division 1 of part 23.5 of the Bill to make way for a new framework within a standalone Youth Justice Act.[45] The new Act would introduce a range of new features to Victoria's youth justice system while re-enacting many of the existing CYF Act provisions.

This section provides a high-level overview of the major features of the Bill. Extra detail on broad-scale changes proposed by the Bill regarding diversionary and restorative justice and Aboriginal self-determination is explored in the 'Bill highlights' chapter.

Criminal responsibility and guiding youth justice principles

Minimum age of criminal responsibility

Chapter 1 introduces the foundational provisions for the new youth justice framework. One key aspect is the codification of the presumption of *doli incapax* (that a child of that age

[36] ibid.
[37] ibid.
[38] ibid., p. 2306.
[39] ibid.
[40] ibid., p. 2308.
[41] ibid., p. 2309.
[42] ibid., p. 2308.
[43] ibid.
[44] ibid.
[45] Youth Justice Bill 2024, part 23.5, div 1.

cannot commit an offence) for those under 12 years of age. The *doli incapax* presumption for those aged 12 and 13 would also be also codified, but a prosecutor will still have the opportunity to prove 'beyond reasonable doubt that the child knew at the time of the alleged commission of the offence that the child's conduct was seriously wrong'.[46] Where there is inconsistency between this law and common law presumptions relating to criminal responsibility, this law 'prevails to the extent of the inconsistency'.[47]

Clause 12 outlines the matters a police officer must consider when considering a proceeding against a 12- or 13-year-old. They must establish whether enough admissible evidence exists to prove criminal intent beyond reasonable doubt, including consideration of the child's age and maturity, whether they have a disability or mental illness, and any prior court decisions on potential criminal activity. A report must be submitted to the court at the start of a proceeding along with the charge sheet.[48]

Clause 13 stipulates that if a proceeding is commenced against a 12- or 13-year-old, the prosecutor (all except the Director of Public Prosecutions) must review the charge to assess if there is enough admissible evidence to prove criminal intent and constitute a 'reasonable prospect' of a conviction. These actions should, 'if practicable', be done within 21 days after a proceeding's commencement. If it appears that evidence is not sufficient, they must consider whether a withdrawal of the charge is necessary. Accordingly, clause 14 stipulates that the prosecution must advise the child or their representation of a review's result.[49]

Guiding youth justice principles

A set of 'guiding youth justice principles' is set out in division 2 of part 1.3 of the Bill. These seek to 'promote community safety', 'minimise and reduce' youth offending, and support their rehabilitation and development.[50] While those exercising powers, performing functions or making decisions under the new Act will have to consider the principles 'to the fullest extent possible',[51] the principles do not apply to the courts (see 'Sentencing principles'). Those with responsibility would have to ascertain whether a child is an Aboriginal person before taking any action detailed in clause 17(1).[52] The principles are detailed in Table 5.

[46] ibid., cl 11.
[47] ibid., cl 11(4).
[48] ibid., cl 12; see the Explanatory Memorandum for more information.
[49] ibid., cls 13–14.
[50] ibid., cls 16.
[51] ibid., cl 17(1).
[52] ibid., cl 17(4).

Table 5: Guiding youth justice principles[53]

Treatment of children and young people	This includes recognition of young people's developmental life stage, their dependency on family and wider support networks, as well as their capacity for rehabilitation. However, they need to 'be responded to as individuals' such that the underlying causes of offending are addressed, their human rights and personal strengths are promoted, and opportunities for recovery are supported, among other considerations.
Prevention, diversion and minimum intervention	This principle seeks to ensure 'deprivation of liberty' is employed only as a last resort, priority is given to intervening actions that 'address the causes of offending behaviour', and alternative means to criminal proceedings are used where appropriate.
Rights of victims and the importance of restoration	This principle highlights the role of restorative processes involving victims in helping to recognise the harm done to various parties by children or young people.
Importance of parents and family	This principle recognises the role of these close connections in helping young people to rehabilitate and engages them to help support a child to 'positively develop'.
Promotion of partnership and collaboration with agencies and other entities	This principle engages a range of bodies, including public agencies and non-government organisations, in taking joint responsibility for the prevention, diversion and minimum intervention priorities.

Aboriginal self-determination

Division 3 of part 2.3 introduces guiding youth justice principles specific to Aboriginal children and young people. A 'statement of recognition' recognises the over-representation of Aboriginal children and young people in the justice system and highlights the causative effects of colonisation and laws, policies and systems enabling and prolonging systemic injustice.[54] To address these factors, the proposed Act prioritises Aboriginal cultural and self-determination rights.

Self-determination would be driven by placing Indigenous youth justice under Aboriginal people's control. This includes encouraging the participation of children's families and kin and Elders in diversion and rehabilitation and recognising the role of kin, family, Elders and ties to Country in children's development, together with cultural rights.[55] The principles also compel the secretary to work with Aboriginal communities to develop partnerships as well as establish performance standards and an Aboriginal-led early diversion group conference model—the end goal of gradually transferring control to an Aboriginal-controlled system.[56] The Bill also introduces provisions enabling the registration of Aboriginal youth justice agencies with the Secretary's approval.[57] Further context and detail is provided in the section 'Aboriginal self-determination'.

[53] ibid., cls 18–22.
[54] ibid., cl 23.
[55] ibid., cl 24.
[56] ibid., cls 25-26.
[57] ibid., part 2.3, divisions 1–2.

Transport provision for 10- and 11-year-olds

With the age of criminal responsibility rising to 12, chapter 3 of the Bill introduces a new police power to account for children aged 10 or 11 exhibiting behaviour that police believe constitutes a risk of serious harm. Table 6 includes a number of definitions created to enable these provisions. In the following section, references to 'a child' refer only to those aged 10 or 11 years old.

Table 6: Key definitions introduced to enable the transport power's operation

Suitable person	A person whom a police officer, who has taken a child into care and control, believes is capable of caring for the child and who consents to doing so.[58]
Transport power	The power of a police officer, when believing a child to be at risk of doing serious harm to themselves or others, to: • take them into care and control; • transport them to a suitable person or appropriate health or welfare agency; • keep them at a police station (if a suitable person or health or welfare agency cannot be contacted).[59]
Transport power report	A report prepared by the Commissioner for Children and Young People that identifies a systemic issue or matter concerning the safety or wellbeing of a child or group of children and that the commissioner believes would help in improving the use of the power.[60]

Transport power

Part 3.2 proposes a transport power allowing a police officer to 'take a child into care and control' if they believe that the child's behaviour poses a risk of serious harm to the child and/or others. The Bill outlines a series of factors a police officer would have to consider before, during and after using the transport power.

Before exercising such power, the police officer must take reasonable steps to minimise the risk of serious harm to the child and/or others, such as asking the child to leave the area, offering them a transport option or warning them about the transport power.[61] If taken into care and control, the child cannot be charged with an offence and is not under arrest, and this must be communicated to the child.[62]

A police officer should arrange for a 'suitable person' to take the child into care and control, and they may consider the child's view about a person's suitability. If that is not possible, a police officer should arrange for an appropriate health or welfare agency to take the child into their care. A child may be temporarily transported to a police station if those avenues are not possible. They cannot be held in a gaol or cell, and the police officer must continue to seek a suitable person or agency.[63] A child cannot be interviewed during any stage of the transport power.[64]

Before using the transport power, an officer must ask if the child is Aboriginal or Torres Strait Islander, as there are additional considerations in that situation. An Aboriginal

[58] ibid., cl 69(1)
[59] ibid., cls 68–70, 72.
[60] ibid., cl 85(1).
[61] ibid., cl 68(2).
[62] ibid., cl 68(3).
[63] ibid., cl 69.
[64] ibid., cls 68(3)(b), 71–72.

organisation, not the officer, should determine who is a suitable person or an appropriate health or welfare agency (as well as subsequent reporting obligations).

A police officer may deem use of force to be required in taking a child into care, conducting a search or seizing an item, but only after 'all other de-escalation techniques' have been exhausted, together with an 'oral warning' and 'reasonable time' for the child to comply. Any force must be proportionate, cease as soon as it is no longer necessary, be applied for the 'shortest possible time' and be 'continuously assessed' and 'modified' as required. An officer is not allowed to restrict or inhibit 'the child's respiratory or digestive functions' or use techniques meant to inflict pain. Further, in endeavouring to avoid causing pain, injury or fear, the officer must take into consideration a range of prescribed factors, including the child's age, gender and cultural background.[65]

Clause 75 details the process for conducting a pat-down search of a child. There must be reasonable grounds to believe the child carries something that presents a danger to themselves or others, and the police officer must inform the child about the authority to conduct the pat-down search. If practicable, a police officer of the same sex or gender identity nominated by the child must conduct the search, or else an officer of the same sex or gender identity as the child.[66]

The Chief Commissioner of Police must keep a written record of all instances of the transport power's use, including information about the child and the circumstances in which the power was used. These records must be provided every three months to the Commission for Children and Young People (CCYP). The child and their parent must also be provided with that same information and informed of their right to make a complaint to Victoria Police or IBAC. An officer who believes informing the parent would constitute a risk to the child's safety has the option to not provide the report to that person.[67]

Transport power report

The CCYP would be required to monitor and report on Victoria Police's use of the transport power, providing annual updates to the relevant minister. The commission would have access to required documents and information, as well as audiovisual records obtained during the power's exercise. The commissioner can request assisting information from relevant professionals such as health practitioners, welfare practitioners and educators.[68]

These CCYP reports must be provided to the Attorney-General and any other responsible minister (and associated departmental secretaries). The CCYP may also provide a report to Parliament or the Chief Commissioner of Police. If the Chief Commissioner receives a report, the Commissioner must respond within 45 days. A report provided to Parliament cannot contain identifying information. Reports to Parliament must also be published online by the CCYP and are 'absolutely privileged'.[69]

The CCYP must account for the use of the transport power in annual reporting. The commission must notify IBAC if it suspects any police misconduct but should avoid prejudicing legal proceedings or the work of IBAC and the Victorian Inspectorate (soon to be Integrity Oversight Victoria).[70]

Trial of electronic monitoring conditions

This section outlines amendments enabling a trial of electronic monitoring of children. The trial would run for two years, and bail decisions for which monitoring can be considered will be limited to those where: the accused is aged over 14 and under 18 at the time of the decision (or was 18 at the time of the decision but was under 18 at the time of offending);

[65] ibid., cl 73.
[66] ibid., cl 75.
[67] ibid., cls 77–78.
[68] ibid., cls 80–81, 83.
[69] ibid., cls 85, 87, 88.
[70] ibid., cls 89–91.

and the bail decision maker is a Children's Court in a prescribed region within Victoria or the Supreme Court.[71]

Suitability report

Under proposed amendments to the Bail Act, only the Children's Court or the Supreme Court may consider the suitability of imposing electronic monitoring conditions on an accused seeking bail. A bail decision maker may order a suitability report be provided. A suitability is defined as a report prepared by the Secretary of DJCS to assist a court in determining the appropriateness of an electronic monitoring condition. It sets out an opinion on whether an accused is suitable for electronic monitoring and whether the resources are available to implement it. A bail decision maker may adjourn proceedings to allow for the creation of a suitability report. Consideration of electronic monitoring can occur only after the production of a report.[72]

Electronic monitoring conditions

Electronic monitoring for eligible bailed youth offenders will require an accused to wear an electronic monitoring device 24 hours a day without tampering, damaging, disabling or removing it, and also to comply with necessary directions from the Secretary of DJCS. Electronic monitoring conditions (EMCs) must be imposed only to assist an accused to comply with one or both of the following conduct conditions: a curfew and/or a geographical exclusion zone. If these conduct conditions are revoked, the EMC must also be withdrawn.[73]

While only a Children's Court or the Supreme Court may impose EMCs, other types of bail decision makers may extend bail for an accused—and with it, any existing EMCs. However, they may not add on such EMCs. Such conditions may also continue even after the accused turns 18 or 19.[74]

Electronic monitoring equipment will be removed if, for instance, bail or an EMC is revoked or the relevant legal matter is resolved. Only 'authorised officers' may remove the equipment. A device may also be removed if the wearer is arrested. Privacy provisions restrict the use of data and information collected from electronic monitoring.[75] The Governor in Council will be able to make regulations in respect of the trial's operation.[76]

Youth justice systemic reform

While many of the provisions in the Bill are inherited from the CYF Act, the Bill seeks to introduce a range of changes across the system.

Diversion and restorative justice

For the lower end of offending, chapter 4 establishes a framework for diverting children away from the justice system at an early stage. It lists the following hierarchy of diversionary responses:

- youth warnings—an immediate response to alleged offending.
- youth cautions—a response to alleged offending 'with the support of persons significant to the child, and in a culturally appropriate manner'.
- early diversion group conferences—a response that seeks to 'provide a safe, supportive and solution-focussed process' that helps a child to repair damage done to victims and various parties, self-reflect and restore relationships, among other purposes.[77]

[71] ibid., cl 903, new section 17D
[72] ibid., cl 903, new sections 17F–H.
[73] ibid., cl 903, new sections 17E, 17J.
[74] ibid., cl 903, new sections 17I–K.
[75] ibid., cl 903, new sections 17L–N.
[76] ibid., cl 903, new section 17P.
[77] ibid., cls 94, 102, 116.

Part 4.5 also sets out the requirements for the Secretary of DJCS to establish an Aboriginal-led early diversion group conference model.[78] See 'Aboriginal self-determination' in the 'Key themes of the Bill' section for more detail.

Additional provisions provide greater opportunities for restorative justice throughout the diversionary stage. These include the option for a victim to attend an early diversion group conference and/or provide a statement.[79] See 'Diversions and restorative justice' in 'Key themes of the Bill' section for more detail on how the Bill responds to recent reviews.

Sentencing

The Bill proposes several reforms for the sentencing framework. Part 7.1 re-enacts some existing principles while creating several new ones (Table 7). The courts must consider these principles along with the common law principle; they must not take into account the guiding youth justice principles (outlined in chapter 1 of the Bill).[80] The Bill also codifies the principle that 'general deterrence is excluded from consideration due to the direct conflict that this would create with the Court's obligation to "minimise the stigma to the child"'.[81]

Additional sentencing principles are in place if a child is Aboriginal. A sentence should, among other things:

- strengthen connections to 'family, kin, community, culture, Country and Elders';
- support Aboriginal self-determination; and
- recognise both the personal circumstances of the child and the broader historical and systemic factors that have led to Aboriginal children's disadvantage.[82]

[78] ibid., part 4.5.
[79] ibid., cls 127–28.
[80] ibid., cl 202.
[81] Explanatory Memorandum, Youth Justice Bill 2024, pp. 109–10.
[82] Youth Justice Bill 2024, cl 210.

Table 7: Sentencing principles[83]

Rehabilitation and positive development	This principle is the 'highest priority', including a focus on familial relationships, living arrangements, social and emotional wellbeing, education, training, work and other activities, minimisation of stigma and the roles different organisations can play to support the child.
Protection of the community from reoffending	This is a new principle to 'overtly express the nexus between a child's rehabilitation and community safety'.[84]
Individual characteristics and vulnerabilities	This principle ensures that a court tailors sentencing to the needs of the child, taking into account their vulnerabilities and strengths and avoiding 'unnecessarily criminalising children from disadvantaged backgrounds'.[85]
Responsibility for action	Re-enacted from the CYF Act, this principle recognises the court's role in ensuring the child bears responsibility for their actions.
Impact on victims	This is a new principle to ensure any sentencing decision will need to ensure the child can recognise the harm caused, have an opportunity for restore any harm and take these restorative efforts into account
Minimum intervention	This principle seeks to 'ensure that a more restrictive sentence is not imposed in circumstances where a less restrictive option is available'.[86]
Deterrence from committing offences in youth justice custodial centre	This principle is re-enacted from the CYF Act.

Regarding the sentencing hierarchy, some of the sentences available in the CYF Act would no longer be available (a dismissal with an undertaking, an accountable undertaking, a youth attendance order, a youth residential centre order). The new hierarchy of options follows:

- dismiss the charge without a formal warning
- dismiss the charge with a formal warning
- impose a fine or make a good behaviour order (same level of the hierarchy)
- make a community service order
- make a probation order
- make a youth supervision and support order
- make a youth control order
- make a youth justice custodial order[87]

Custodial system

Part 10.1 establishes custodial principles to guide decision making by the relevant secretary, the Commissioner for Youth Justice, the Youth Parole Board, youth justice custodial officers and others in respect of any child or young person held in a youth justice custodial environment. These principles do not apply to visitors to these centres, including parents, legal representatives, community or religious representatives, and Elders.[88] They include the following themes: safety, stability and security; positive development; individual responses;

[83] ibid., cls 203–209.
[84] Explanatory Memorandum, Youth Justice Bill 2024, p. 110.
[85] ibid., pp. 110–11.
[86] ibid., pp. 111.
[87] ibid., pp. 122–23.
[88] Youth Justice Bill 2024, cl 437.

children's and young persons' voices; families and community; and collaboration. There are additional guiding custodial principles specific to Aboriginal children and young persons.[89]

Division 1 of part 10.2 sets out the custodial rights and responsibilities of children and young people in these settings, including mental and physical health, being informed, legal representation and external support.[90] The Bill also includes a 'strengthened' power for the Youth Parole Board to limit the possibility of young people who have been transferred from a youth facility to an adult prison bouncing between youth and adult contexts.[91]

Finally, the Bill introduces new suitability criteria for courts to consider that would ensure only 'appropriate young adults' serve a sentence in a youth justice custodial centre.[92] These amendments span the Bail Act, *Criminal Procedure Act 2009* and *Sentencing Act 1991*.[93]

Parole

The Bill broadens the Youth Parole Board's membership to include people with relevant 'experience, knowledge or skills', which seeks to 'ensure membership includes representatives from communities over-represented in the youth justice system'.[94]

Part 12.4 establishes a Youth Justice Victims Register, which is intended to 'provide a clear, transparent and improved process for victims to receive information from, and provide information to, the [Youth Parole] Board'.[95] The Bill introduces eligibility requirements for registrants to receive information relating to the board's deliberations, while also allowing registrants to give information to the Youth Parole Board for their consideration.[96]

4 | Key themes of the Bill

Raising the minimum age of criminal responsibility

Raising the minimum age of criminal responsibility from 10 to 12 is a key component of the Bill. It follows years of campaigning, published research and discussion between state and federal policymakers and relevant stakeholders. On one hand, advocates for raising the minimum age of criminal responsibility from 10 years of age argue that children at this age are incapable of being fully aware of the seriousness of their actions and that the cost of early experience of the criminal justice system outweighs any community safety benefits. On the other, advocates against raising the minimum age of criminal responsibility highlight the need to prioritise community safety and the wellbeing of potential victims of crimes committed by alleged offenders aged 10 and 11.

The Bill introduces a provision stating it is 'conclusively presumed' that a child under 12 years of age cannot commit an offence.[97] Additionally, the Bill states that it is presumed that a child between 12 and 13 years of age cannot commit an offence. However, this can be rebutted if the prosecution can prove beyond reasonable doubt that 'the child knew at the time of the alleged commission of the offence that the child's conduct was seriously wrong'.[98]

[89] ibid., cls 438–444.
[90] ibid., cls 447–456.
[91] ibid., cl. 667; A. Carbines, Minister for Police (2024) 'Statement of compatibility: Youth Justice Bill 2024', *Debates*, Victoria, Legislative Assembly, 19 June, pp. 2290–91.
[92] Carbines (2024) 'Second reading: Youth Justice Bill 2024', op. cit., p. 2309.
[93] Carbines (2024) 'Statement of compatibility: Youth Justice Bill 2024', op. cit., pp. 2304–05.
[94] Youth Justice Bill 2024, cl 592; Explanatory Memorandum, Youth Justice Bill, p. 269.
[95] Explanatory Memorandum, Youth Justice Bill, p. 283.
[96] ibid., pp. 285, 287.
[97] Youth Justice Bill 2024, cl 10.
[98] ibid., cl 11.2.

In 'conclusively presum[ing]' that a child under 12 cannot commit an offence, the Bill codifies the common law presumption of *doli incapax*. *Doli incapax* is a legal presumption that 'a child aged under 14 years is not sufficiently intellectually and morally developed to appreciate the difference between right and wrong and thus lacks the capacity' to know whether the alleged offence was wrong.[99] However, in common law, *doli incapax* is rebuttable if the child is aged between seven and 14 years.

A SCAG working group report on the age of criminal responsibility drew attention to evidence suggesting that *doli incapax* does not always work as intended in the legal process, as it can be inconsistently applied and is not always informed by a psychological assessment of the child.[100] Similar arguments were presented at the Legislative Council Legal and Social Issues Committee (LCLSIC) inquiry into Victoria's criminal justice system.[101]

Additionally, even if *doli incapax* was successfully upheld, the child may still be exposed to the criminal justice system while the legal process runs its course.[102] This could include being arrested, being taken into custody or placed on remand, and undergoing psychological assessment.

Ultimately, the SCAG report noted that jurisdictions looking to raise the minimum age of criminal responsibility will need to consider the 'initial crisis response' to ensure the child's and the community's safety, along with the provision of services to address longer-term needs, underlying causes of behaviour, and the impact on victims and their ability to access support.[103]

In his second reading speech for the Bill, Minister Carbines said the current minimum age of criminal responsibility has been set to 10 years old for four decades, and significant research in that time has advanced our understanding of adolescent brain development:

> Accepted medical evidence clearly shows that very young children lack the cognitive maturity to form criminal intent. The data tells the same story—in recent years, only around 2 per cent of children aged 10 or 11 charged with an offence have had their criminal intent proven in court. In 2022–23, there were no 10- and 11-year-olds under youth justice supervision (either community or custody) and none remanded into custody.[104]

For police to commence proceedings for an alleged offence against a child aged 12 or 13, they 'must have regard to whether it appears that there is admissible evidence to prove beyond reasonable doubt' the child knew at the time of the alleged offence that the conduct was seriously wrong.[105] If police choose to commence proceedings, they must record the reasons why it appears there is admissible evidence to prove beyond reasonable doubt that the child knew their conduct was seriously wrong at the time of the alleged offence, any information that the police officer considered, and any other prescribed information.[106]

The government had announced its intention to introduce legislation to raise the age of criminal responsibility in April 2024, though the Bill was introduced into parliament later than initially anticipated.[107] The government also intends to raise the age of criminal

[99] See RP v The Queen [2016] HCA 53, 8
[100] Standing Council of Attorneys-General (2023) *Age of Criminal Responsibility Working Group Report*, September, Canberra, p. 73; United Nations Committee on the Rights of the Child (2007) *General Comment No. 10*, CRC/C/GC/10, 25 April, 30.
[101] Amnesty International Australia (2021) 'Submission to the Inquiry into Victoria's Justice System', September, Melbourne, Legislative Council Legal and Social Issues Committee, p. 13.
[102] ibid.; Uniting Church in Australia Synod of Victoria and Tasmania (2021) 'Uniting Church in Australia, Synod of Victoria and Tasmania submission to the Inquiry into Victoria's Criminal Justice System', September, Melbourne, Legislative Council Legal and Social Issues Committee, p. 10; Victoria Legal Aid (2021) 'Towards a fairer and more effective criminal justice system for Victoria: Submission to the Inquiry into Victoria's Criminal Justice System', September, Melbourne, Legislative Council Legal and Social Issues Committee, p. 20.
[103] Standing Council of Attorneys-General (2023), op. cit., p. 6.
[104] Carbines (2024) 'Second reading speech: Youth Justice Bill 2024', op. cit., p. 2306.
[105] Youth Justice Bill 2024, cl 12.1.
[106] ibid., cl 12.3.
[107] R. Willingham (2023) 'Victoria to move to raise the age of criminal responsibility to 14 within four years', *ABC News*, 26 April.

responsibility from 12 to 14 by 2027.[108] At the time of announcing the proposed increase in criminal age of responsibility, stakeholders including the Change the Record advocacy group, the Commissioner for Children and Young People and the First People's Assembly said the minimum age of criminal responsibility should be raised to 14 sooner (see 'Stakeholder responses').[109] Raising the age of criminal responsibility to 14 prior to 2027 was also a recommendation of the *Yoorrook for Justice* report, delivered in August 2023.[110]

Diversions and restorative justice

Diversion

Diverting young people from the youth justice system is part of one of the guiding principles for youth justice outlined in the Bill. Clause 19 outlines the principle of 'prevention, diversion and minimum intervention', which places an emphasis on using deprivations of liberty only as a last resort and focusing on the causes of offending behaviour.

Diverting children from the justice system has been identified as a central goal of a rights-focused youth justice system by the UN Convention on the Rights of the Child and echoed in the DJCS statement on diversion from youth justice.[111]

Substantial evidence shows that time spent in custody increases a person's likelihood to reoffend.[112] Diverting young people from the justice system has therefore been identified as a method of reducing recidivism. The LCLSIC inquiry into the criminal justice system found that the earlier the intervention to prevent a young person moving into the system, the more likely it is to prevent further engagement with the system in the long term.[113] This is echoed by a study by the Sentencing Advisory Council, which found that the earlier a child or young person comes into contact with the justice system the more likely they are to reoffend and enter the adult system.[114] This is significantly higher for Aboriginal and Torres Strait Islander children.[115]

Before the passing of the Youth Justice Reform Act in 2017, the state's youth diversion program was considered patchy and geographically limited, and issues were particularly raised regarding police discretion to apply pre-trial diversionary options.[116] The Youth Justice Reform Act created a state-wide approach to youth diversion programs and legislated the court diversion options.[117] This allowed for a pre-plea diversion scheme to operate in the criminal division of the Children's Court and in the Children's Koori Court.[118] However pre-charge diversion options remain largely at the discretion of police, and most often require the consent of prosecutors.[119] The Yoorrook Justice Commission, for example, recommended

[108] ibid.

[109] ibid.; R. Willingham (2023) 'Victoria to raise the age of criminal responsibility to 12, youth advocates push for 14', *ABC News*, 21 April.

[110] Yoorrook Justice Commission (2023) *Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems*, August, Melbourne, YJC, pp. 20-21.

[111] United Nations (1989) Convention on the Rights of the Child, *Treaty Series 1577* (November): 3, New York; Department of Justice and Community Safety (2022) *Diversion: keeping young people out of youth justice to lead successful lives,* April, Melbourne, DJCS.

[112] Sentencing Advisory Council (2016) *Reoffending by Children and Young People in Victoria,* December, Melbourne, SAC.

[113] Legislative Council legal and Social Issues Committee (2022) *Inquiry into Victoria's criminal justice system*, final report, March, Melbourne, The Committee, p. 100.

[114] Sentencing Advisory Council (2016) *Reoffending by Children and Young People in Victoria*, December, Melbourne, SAC.

[115] Commission for Children and Young People (2021) *Our youth, our way: inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system*, June Melbourne, The Commission.

[116] C. Grover (2017) *Youth justice in Victoria*, Parliamentary Library & Information Service, Melbourne, Parliament of Victoria.

[117] Explanatory memorandum, Children and Justice Legislation Amendment (Youth Justice Reform) Bill 2017.

[118] ibid.

[119] Legislative Council legal and Social Issues Committee (2022) op. cit., p. 227.

significant changes to the pre-charge diversion program, including codifying diversionary options in legislation and removing the requirement for the prosecution's consent.[120]

Diversion has been a central part of the government's youth justice reforms for several years. Diversion is the second pillar in the governments *Youth Justice Strategic Plan 2020-2030* and the first area identified in need of reform. [121] It also forms Domain 3 of *Wirkara Kulpa*: 'diverting young people and addressing over representation'.[122] The court-based diversion scheme was also a recommendation of the Royal Commission into Family Violence and the Armytage and Ogloff report, which recommended a scheme based on the risk-needs-responsivity model.[123] This model focuses on justice interventions that target underlying influences on offending, including risk factors, and aim to equip young people with tools to address offending behaviour.[124]

The Yoorrook Justice Commission found that diversion is effective but is often poorly applied and often only available in limited circumstances to young Aboriginal and Torres Strait Islander people.[125] In particular, Yoorrook noted that police discretion in consenting to diversionary programs during court proceedings was often biased against young Indigenous offenders, largely because Victoria Police's 'policies and [decision-making] tools poorly reflect the legislative basis for diversion program and offer vague guidance'.[126]

The Children's Court Youth Diversion program is a key pillar of the government's youth diversion strategy, established in 2017 by the Youth Justice Reform Act. Other diversion options can be applied at different stages of the charging and sentencing process (see the full list below).

Victoria's diversions system

The existing diversions program involves all the services and programs within the existing youth justice framework, at all stages of arrest, charging, hearing and sentencing.

Youth justice programs

- Community Based Aboriginal Youth Justice Program (Stages: All)
- Youth Support Service & Aboriginal Youth Support Service (Stage: Pre-charge/Pre-court)
- Multisystemic Therapy & Functional Family Therapy (Stages: Pre-sentence, Sentenced)
- Youth Justice Community Support Service (Stages: Pre-sentence, Sentenced)
- Children's Court Youth Diversion (Stage: Pre-sentence)
- Youth Justice Group Conferencing (Stage: Pre-sentence)
- Youth Justice bail supervision (Stage: Pre-sentence)
- Housing Programs (Stage: Sentenced)
- Youth Offending Programs (Stage: Sentenced)

Victoria Police early intervention and diversion programs for young people

- The Embedded Youth Outreach Program (Stage: Pre-charge/Pre-court)
- Child Cautions (Stage: Pre-charge/Pre-court)
- Drug Diversion (Stage: Pre-charge/Pre-court)
- Aboriginal Youth Cautioning Program (Stage: Pre-charge/Pre-court)
- Infringement Notice (Stage: Pre-charge/Pre-court)

[120] Yoorrook Justice Commission (2023) op. cit.
[121] Department of Justice and Community Safety (2020) *Youth Justice Strategic Plan 2020-2030*, Melbourne, DJCS, p. 16.
[122] Department of Justice and Community Safety (2022) *Wirkara Kulpa: Aboriginal youth justice strategy 2022–2032*, op. cit., p. 34.
[123] Armytage & Ogloff (2017) op. cit., p 12; Department of Justice and Community Safety (2022) *Review of the* Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017, May, Melbourne, DJCS.
[124] ibid.
[125] Armytage & Ogloff (2017) op. cit.
[126] Yoorrook Justice Commission (2023) op. cit., p. 347.

- Ropes Program (Stage: Pre-charge/Pre-court)

Crime Prevention Grants

- Youth Engagement Grants (Stage: Pre-charge/Pre-court)
- Youth Crime Prevention Grants program (Stage: Pre-charge/Pre-court)

Non-supervisory court outcomes

- Good Behaviour Bond (Stage: Sentenced)
- Fine (Stage: Sentenced)

Multi-agency panels

- Multi-agency panels (Stage: Sentenced)[127]

Review of diversions

The youth justice system faced significant reform in 2017 following the Armytage and Ogloff report (see 'Background'). While the Bill is the most substantial piece of reform recommended by the review, the Youth Justice Reform Act began this process. In 2021 DJCS undertook a legislative review of the *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017*, as required under that Act. The review looked at the policy objectives of the government's *Youth Justice Strategic Plan 2020-2030*[128] and *Wirkara Kulpa – Aboriginal Youth Justice Strategy 2022–2032.*[129]

The aspects of the review relating specifically to court-based youth diversion programs were significantly informed by an internal evaluation of the Children's Court Youth Diversions by DJCS ('the CCYD Evaluation'), the report of which was not released publicly.

The review made 20 recommendations, seven of which related specifically to court-based youth diversion. Key recommendations included:

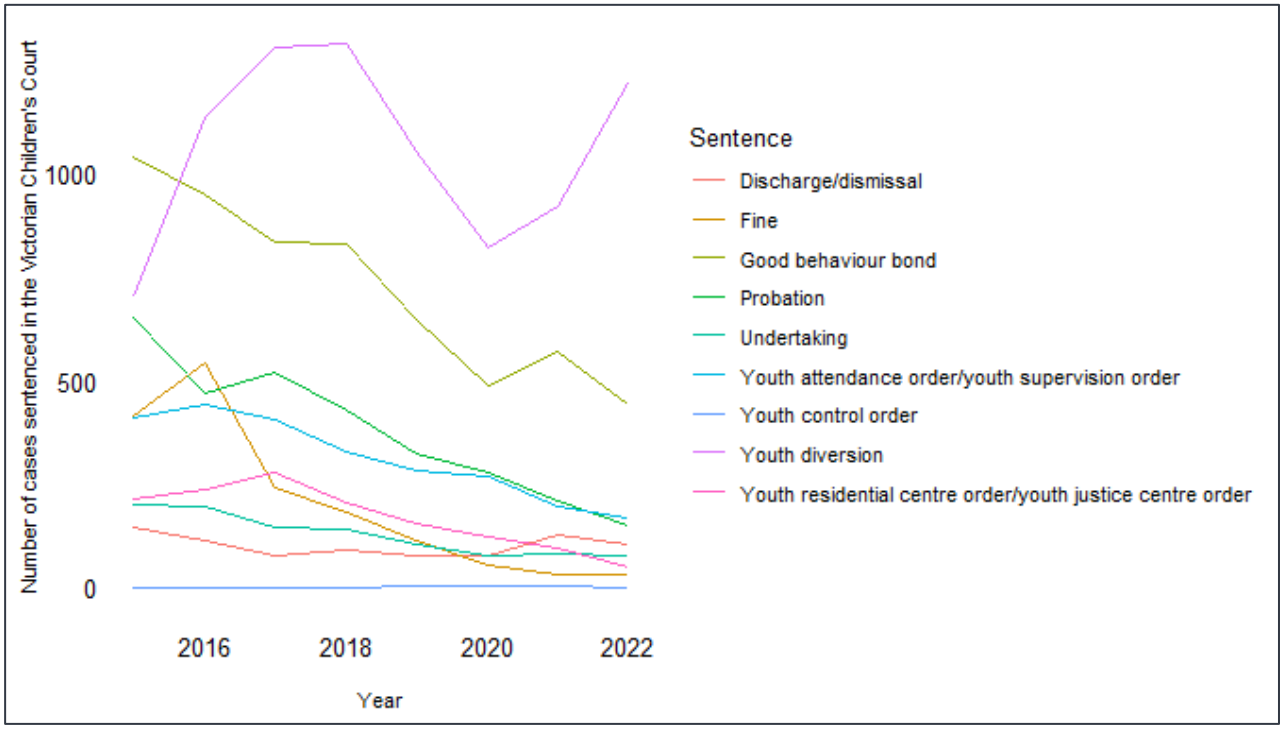
- **Recommendation 4:** That the Government standardise judicial decision-making on youth diversion and seek to repeal the … for the prosecution to consent to diversion before it can be ordered by the Court.
- **Recommendation 5:** That the Government consider how to remove barriers to diversion for young people from groups who are over-represented in the youth justice system. Further consultation should explore options including, but not limited to:
    - reducing the exclusion of certain offences from consideration for diversion, and
    - repealing the requirement … for the accused young person to acknowledge responsibility for the offence to be eligible for diversion
- **Recommendation 6:** That the Government consider how to support and strengthen opportunities for young people from groups who are over-represented in the youth justice system to participate in CCYD.[130]

Impact of diversions

The introduction of the youth diversion program has significantly impacted the operation of the Children's Court. The Sentencing Advisory Council reported that 'youth diversion' as a sentencing alternative in the Children's Court had increased from just 0.6 per cent in 2014 to over 54 per cent of outcomes in 2023. Meanwhile, probation decreased from 20.6 to 6.8 per cent of case sentences, however youth detention orders have remained relatively stable as a sentence.

[127] Department of Justice and Community Safety (2022) *Diversion: keeping young people out of youth justice to lead successful lives*, op. cit.
[128] Department of Justice and Community Safety (date unknown) 'Youth Justice Strategic Plan 2020-2030 - Investing in a skilled, safe and stable Youth Justice system and safe systems of work', DJCS website.
[129] Victorian Aboriginal Justice Agreement (2022) 'Wirkara Kulpa', VAJA website.
[130] Department of Justice and Community Safety (2022) *Review of the* Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017, op. cit., p. 7-8.

Figure 7: Number of cases sentenced in the Victorian Children's Court by sentence type (including youth diversions), 2017-18 to 2022-23[131]



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The CYDD Evaluation found the diversions were associated with reduced offending for 7 per cent of program participants.[132] This means that less than one quarter (23 per cent) of CCYD participants had reoffended within six months of completing their diversion'.[133]

Changes to diversions in the Bill

The Bill outlines details regarding the various youth diversion options, their effects on further or existing criminal proceedings, and reporting requirements. Most of the provisions codify the pre-charge diversions into legislation, while the functions of the CCYD are carried over from the CYF Act.

Pre-trial diversions

The Bill sets out a hierarchy of options available to police officers to respond to youth offending before beginning criminal proceedings, and increases the amount of pre-charge diversionary options available under the current CYF Act.[134]

Clause 92 of the Bill outlines the hierarchy of options available to police officers to respond to offending behaviour by a child (see Figure 8) and 'the factors a police officer needs to consider when determining which intervention to apply'.[135] The hierarchy of options includes:

- to take no action against the child for the alleged offence;
- to give the child a youth warning for the alleged offence;
- to give the child a youth caution of the alleged offence;
- to refer the child to an early diversion group conference for the alleged offence; or

[131] Sentencing Advisory Council (date unknown) 'Sentencing Outcomes in the Children's Court', Melbourne.
[132] Department of Justice and Community Safety (2022) *Review of the* Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017, op. cit., p. 42
[133] ibid.
[134] Explanatory memorandum, Youth Justice Bill 2024, cl 92.
[135] ibid.

- to commence a criminal proceeding against the child for the alleged offence.[136]

Figure 8: Hierarchy of pre-charge diversionary options available to police under the Bill

The police officer must choose the least restrictive intervention to respond to a child's alleged offending, and the Bill outlines the factors the officer must consider when making their decision.[137] The police officer must record their reasoning if they decide to issue a youth warning or youth caution or refer the alleged offender to a group conference.[138]

The Bill states that a youth diversion option must not be recorded on a child's criminal record or form part of their criminal history.[139] No further action or criminal proceeding can be taken if a youth warning or youth caution is given to a child or if an early diversion outcome plan is finalised.[140] Clause 140(2) outlines when these protections will apply to a child who was referred to an early diversion group conference, which depends on whether they were referred by a police officer or the Children's Court.

The Bill outlines the different diversion options, including options for Aboriginal and Torres Strait Islander children who are offered these options. The Bill also requires the Secretary of DJCS to develop an Aboriginal-led early diversion group conference model, which can act as an alternative to the early diversion group conference model available to Aboriginal and Torres Strait Islander children.[141]

Diversions after criminal proceedings have begun

Diversions are also possible after a criminal proceeding has begun. Division 3 of chapter 6 of the Bill details how the Children's Court may refer an alleged offender to an early diversion group conference.[142] This part details how the Children's Court may adjourn a criminal trial for a set period to allow the alleged offender to take part in a diversion program.

Most of these provisions are the reenactment of existing provisions under the CYF Act. The Bill sets out detail on the offences not eligible for referral to the diversion program, the matters the Court must take into account when determining whether to adjourn a trial for a

[136] ibid.
[137] ibid., cl 92(2)
[138] ibid., cl 93
[139] ibid., cl 139
[140] ibid., cl 140
[141] ibid., cl 136.
[142] ibid., cl 161.

diversion, the requirements of an alleged offender to be eligible to participate in the diversion program, and the effect of participating in the program on findings of guilt.

The Bill also allows for group conferencing to be allowed to take place at the parole stage, allowing the Youth Parole Board to refer a child or young person who is serving a custodial sentence.[143] Multi-Agency panels and the High Risk Panel are now embedded in legislation by the Bill.[144]

Restorative justice

Restorative justice is established as a guiding principle for Victoria's youth justice system by the Bill. Restorative justice involves interventions that address the social harm that can arise from criminal wrongdoing, and which foreground the experiences of victims of crime and involve them in the justice process. The LCLSIC inquiry into the justice system outlined the principal ideas of restorative justice:

- because crime causes harm, a core requirement of justice should be to repair that harm
- the people most immediately affected should be supported in their search for reparation.
- members of a broader community (including professionals) may also participate in that search.[145]

Restorative justice has been found to be perceived by victims as 'fairer, more satisfying, more respectful, and more legitimate than what is offered by the traditional criminal justice system'.[146] This was echoed by experts in testimony to the inquiry,[147] while others have stressed the need for 'services to increase their understanding of how experiences of trauma can influence behaviour and the importance of a trauma-informed (rather than punitive) response to behaviour'.[148] The Centre for Innovative Justice identified that consideration of victims should permeate the entire justice system,[149] but the Victims of Crime Commissioner added that the 'conventional criminal justice system…cannot meet the needs of all victims.[150]

Restorative justice programs have been found to be particularly effective with young offenders and with keeping young people out of the criminal justice system. Programs like youth group conferencing that includes victims of offences have been found to reduce the number of offences, reduce recidivism and rehabilitate young people, particularly for young people in out of home care. [151]

The Australian Association for Restorative Justice stated that increased use of restorative justice could provide positive impacts at various stages of the criminal justice system, such as:

- increasing the proportion of cases diverted from court;
- expanding sentencing support in court;
- providing for more post-sentence healing; and
- providing for more effective pre-release planning.[152]

[143] ibid., cl 645.
[144] ibid., cl 685-692.
[145] Legislative Council legal and Social Issues Committee (2022) op. cit., p. 399.
[146] ibid.
[147] ibid., pp. 399-400.
[148] Department of Health and Human Services (2020) *Framework to reduce criminalisation of young people in residential care*, February, Melbourne, DHHS, p. 6.
[149] Legislative Council legal and Social Issues Committee (2022) op. cit., p. 319.
[150] ibid., p. 377.
[151] Legislative Council legal and Social Issues Committee (2022) op. cit., pp. 502, 132; Victoria Legal Aid (2016) *Care not custody: A new approach to keep kids in residential care out of the criminal justice system*, Melbourne, VLA.
[152] Legislative Council legal and Social Issues Committee (2022) op. cit., p. 79.

The inquiry found:

> Restorative justice processes give a greater voice to victims of crime in criminal justice proceedings compared to traditional processes, such as court proceedings. This increased participation can lessen the trauma and dissatisfaction many victims of crime experience navigating the mainstream criminal justice system.[153]

It also recommended the expansion of the Victims Legal Service and several other recommendations relating to improving supports for victims of crime.[154]

The Armytage and Ogloff report found an acute 'lack of consideration of victims of youth crime and restorative justice' in Victoria's youth justice system and recommended the government legislate to expand the use of restorative justice programs to address offender and victim needs.[155]

Victoria introduced a Victim-Centred Restorative Justice Program in 2022 after releasing a restorative justice framework relating to family violence in 2017.[156] The 2017 framework provided principles of victim-centred restorative justice that now underpin the Victim-Centred Restorative Justice Program.

Restorative justice in the Bill

Restorative justice and victim-focus forms a guiding principle of the youth justice system put forward by the Bill: 'recognising the rights of victims and the importance of restoration and acknowledgement of harm'.[157]

Victims would be given the opportunity to participate in pre-charge diversionary options and through the sentencing and parole stages (see above). For example, youth cautions, a pre-charge diversionary option, would also be able to include the requirement for the alleged offender to make a written apology to the victim of their alleged offence, and victims would be able to participate in group conferences at the parole stage. Community members who have been victims of crimes would be able to participate in Youth Parole Boards, and the Bill would establish a victims register, on which the parole boards could draw to inform their decision making.[158]

Victim safety will also be included in considerations for conditions attached to Youth Control Orders, which are currently the most intensive supervised community-based order available in the youth justice sentencing framework.[159]

Electronic monitoring and bail amendments

Current practice in Victoria

Electronic monitoring for youth offenders has been discussed in the Victorian Parliament and the community for several years. Currently in Victoria electronic monitoring is rare and used for adult offenders on parole or subject to community corrections or post-sentence supervision orders.[160] The practice entails wearing a device usually around the ankle that is 'programmed to communicate to a monitoring centre when certain things occur, such as a person going to a place they should not'.[161]

At a recent parliamentary inquiry into the criminal justice system, Dr Natalia Antolak-Saper, from the Australian Centre for Justice Innovation, explains that while electronic monitoring

[153] ibid., p. 402.
[154] ibid., pp. 390, xlii-l.
[155] Armytage & Ogloff (2017) op. cit., pp. 18, 35.
[156] Department of Justice and Community Safety (2024) 'About victim-centred restorative justice', DJCS website; Department of Justice and Regulation (2017) *Restorative Justice for Victim Survivors of Family Violence*, August, Melbourne, DJR.
[157] Explanatory memorandum, Youth Justice Bill 2024, cl 20.
[158] Carbines (2024) 'Second reading speech: Youth Justice Bill 2024', op. cit., p. 2305.
[159] ibid.
[160] Victorian Law Reform Commission (2022) *Stalking: final report*, Melbourne, VLRC, p. 178.
[161] ibid., p. 178.

restricts liberties, the intention behind monitoring is that it 'allows people to still maintain close connections with employment and maintain relationships with family and allow for offenders to address their rehabilitation and go to programs', thereby diverting them from prison's repercussions.[162] The VLRC argues it is a 'controversial' measure that can be seen as punishment for people under such conditions while on bail.[163]

Attitudes and evidence around electronic monitoring

There are mixed reports on the effectiveness of electronic monitoring. In England and Wales, a review of electronic monitoring by Her Majesty's Inspectorate of Probation reported benefits such as generally higher compliance.[164] However, the review also said, with particular reference to young adults, that 'already strained relationships can worsen'. As a result, the authors stressed the importance of decision-makers considering contextual factors before imposing electronic monitoring conditions.[165]

In some contexts, the practice has found support as an option from the Victims of Crime Commissioner and some victim-survivors.[166] However, the VLRC highlighted concerns including: the immediacy of monitoring analysis; technological limitations that might compromise community safety; the possibility of malfunctions creating false alerts; difficulties with establishing and implementing exclusion zones; the risk of creating hypervigilance amongst victim-survivors; and stigmatisation of the wearer.[167]

For youth, in particular, debate surrounds whether monitoring fulfils its purpose of assisting rehabilitation. Kate Weisburd, an American legal expert on the practice in the US, has argued that electronic monitoring 'increases the breadth (the number of youth on electronic monitoring) and the depth (the intensity of court supervision) of court involvement'.[168] She also highlighted the compounded stress monitoring may have on those living with mental illness, disability and/or poverty, along with the possibility of young offenders being managed more remotely (rather than through direct engagement).[169]

Government attempts to introduce electronic monitoring

The 58th Parliament considered a Bill introduced by the Victorian Government seeking to implement an electronic monitoring option. Introduced by then Attorney-General Martin Pakula, the Children, Youth and Families Amendment (Youth Offender Compliance) Bill 2018 would have allowed, under certain conditions, the Youth Parole Board to 'impose electronic monitoring on some young offenders when they are granted parole'.[170] The statement of compatibility acknowledged that the practice of electronic monitoring 'may cause harm from the stigma associated with the device being seen in public' but argued that it was 'beneficial to young offenders' rehabilitation', ensured compliance and lessened the isolation that results from detention.[171] While the Bill lapsed with the 58th Parliament's expiration in late 2018, debate around the issue continued.

Recently, the Queensland Government established an electronic monitoring trial for youth offenders through the *Youth Justice and Other Legislation Amendment Act 2021* (Qld). The

[162] Legislative Council Legal and Social Issues Committee (2021) 'Dr N. Antolak-Saper, Fellow, Australian Centre for Justice Innovation, Monash University', public hearing, Inquiry into the criminal justice system, 6 September, Melbourne, The Committee, p. 48.
[163] Victorian Law Reform Commission (2022) op. cit., p. 178.
[164] A. Hucklesby & E. Holdsworth (2020) *Electronic monitoring in probation practice*, August, London, Her Majesty's Inspectorate of Probation.
[165] ibid., p. 10.
[166] Victorian Law Reform Commission (2022) op. cit., p. 180.
[167] ibid., p. 180–81.
[168] K. Weisburd (2015) 'Monitoring youth: the collision of rights and rehabilitation', *Iowa Law Review*, 101, p. 318 (pp. 297–341).
[169] ibid., p. 327.
[170] M. Pakula, Attorney-General (2018) 'Second reading: Children, Youth and Families Amendment (Youth Offender Compliance) Bill 2018', *Debates*, Victoria, Legislative Assembly, p. 2451.
[171] M. Pakula, Attorney-General (2018) 'Statement of compatibility: Children, Youth and Families Amendment (Youth Offender Compliance) Bill 2018', *Debates*, Victoria, Legislative Assembly, pp. 2447–48.

trial ran between May 2021 and September 2022 and aimed to provide insights into the effectiveness of electronic monitoring in youth justice. As only eight young people enrolled in the trial, a departmental review could not determine whether the trial was effective in deterring offending behaviour or whether there were any changes to offending as a result.[172] Nonetheless, the review found 'electronic monitoring should be accompanied by intensive support and supervision' and 'accompanying interventions provide the best opportunity for behavioural change'.[173]

Recent developments

The issue re-emerged in Victoria in 2024 when, despite a long-term trend downwards, statistics suggested that youth offending had begun to rise again among young people aged between 14 and 17.[174] Electronic monitoring was then deemed unnecessary, with Deputy Premier Ben Carroll saying the Youth Parole Board had 'everything that they need' (noting the lapsed Youth Parole Board reforms from 2018).[175] Former Chief Commissioner of Police Kel Glare suggested that tracking measures were needed to ensure young people released from custody recognised the consequences of their actions and did not see their release as a 'badge of honour'. Youth advocate Les Twentyman said electronic monitoring was favourable over a custodial environment.[176] The opposition condemned what it claimed to be a reversal of a 'promise to protect community safety'.[177]

Members of Parliament tried to amend bail laws for youth offenders. The Bail Amendment (Indictable Offences Whilst on Bail) Bill 2024, a private members bill introduced by Evan Mulholland into the Legislative Council on 20 February 2024, would have reinstated the offence of committing an indictable offence whilst on bail but was defeated.[178]

In March 2024, Attorney-General Jaclyn Symes announced that a trial electronic monitoring would seek to address 'a small number of reoffenders who are driving an increase of serious offences committed by young people'.[179] The Victorian Aboriginal Legal Service called the proposal a 'betrayal', while Liberty Victoria and Jesuit Social Services described it as a 'backflip' on a commitment to overhaul bail laws for youth offenders.[180] In the Bail Amendment Bill 2023, the government had planned to address the number of youth minor offenders being held on remand by removing 'reverse onus' bail tests for children, except for those charged with murder, homicide or terrorism-related offences, but those provisions were omitted from the Bill before its passing.[181]

[172] Youth Justice Research and Evaluation, Department of Children, Youth Justice and Multicultural Affairs (2022) *Electronic monitoring trial*, Brisbane, DCYJMA, p. 28.
[173] ibid., p. 2.
[174] M. Clarke et al. (2024) 'Victorian government's election pledge to monitor young offenders dumped', *Herald Sun*, 10 January.
[175] ibid.
[176] ibid.
[177] ibid.
[178] Bail Amendment (Indictable Offences Whilst on Bail) Bill 2024.
[179] J. Symes, Attorney-General (2024) *Community safety at the core of youth justice plans*, media release, 20 March.
[180] B. Kolovos (2024) ''A betrayal': Victorian Aboriginal Legal Service condemns children's bail law reversal', *The Guardian Australia*, 20 March; Liberty Victoria (2024) *Liberty Victoria statement on the Victorian Government's backflip on bail reforms for children and proposed electronic monitoring Victoria*, media release, 26 March; Jesuit Social Services (2024) *Government backflip on bail reform risks entrenching teens in justice system*, media release, 21 March.
[181] See the Parliamentary Library & Information Service's Bill Brief, *Bail Amendment Bill 2023*, for more detail.

Aboriginal self-determination

In the second reading speech, the minister credited the Aboriginal Justice Caucus with being instrumental in shaping key aspects of the Bill.[182] A significant focus of the Bill is on Aboriginal self-determination and addressing Aboriginal over-representation in youth justice. To address self-determination in a meaningful way, the Bill enshrines Aboriginal-specific guiding principles and introduces an obligation on government to develop strategic partnerships with community.[183]

The following section takes a brief look at self-determination and summarises some of the key observations and recommendations of inquiries and agreements that have led to the proposed legislation. See also Figures 3 to 6 of this paper in 'Background' for relevant data.

What is self-determination?

The right to self-determination is a common article under international conventions, and for First Peoples this includes the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and is accepted by the State of Victoria under the *Victorian Aboriginal Affairs Framework 2018–2023* (VAAF). It is also a stated objective in the letters patent commissioning the Yoorrook Justice Commission.[184]

In Australia, the call for First Peoples self-determination dates back formally to the 1988 Barunga Statement presented to then Prime Minister Bob Hawke by Dr Yunupingu, chairperson of the Northen Land Council. It is also mentioned in the 1991 Royal Commission into Aboriginal Deaths in Custody; the 1993 Eva Valley Statement made in response to the debate on the *Native Title Act 1993* (Cth); the 1999 Vincent Lingiari Memorial Lecture delivered by Patrick Dodson, then Chair of the Council for Aboriginal Reconciliation; and the 2017 Uluru Statement from the Heart.[185]

The UNDRIP describes self-determination as the ability for Indigenous people to freely determine their political status and pursue their economic, social and cultural development. Additionally, it is a collective right, relating to groups of people and not just individuals. The VAAF, however, goes on to state that Aboriginal Victorians must not feel constrained by this definition but should define self-determination for themselves—as this is inherent to self-determination.[186] What was made clear in the *Yoorrook for Justice* report was that self-determination went beyond just consulting or collaboration, but giving First Peoples genuine power, resources and authority over of all systems that affect their lives. For First Peoples, culture and their relationship to Country, land and waters is foundational.[187]

Self-determination and the justice system

To address the over-representation of Aboriginal people in the justice system, the 1991 Royal Commission into Aboriginal Deaths in Custody called for self-determination and self-governance to reverse the impacts of disadvantage and the ongoing legacy of colonisation. In

[182] The Aboriginal Justice Caucus is a self-determining body, established since the first Aboriginal Justice Agreement in 2000, and provides state-wide Aboriginal representation, leadership and a strong voice. Its purpose is to serve a conduit between the Aboriginal community and the justice system. Its membership includes the nine chairs of the Regional Aboriginal Justice Advisory Committees, Aboriginal representatives of Aboriginal peak bodies and some Aboriginal Community Controlled Organisations (ACCOs).
[183] Carbines (2024) 'Second reading speech: Youth Justice Bill 2024', op. cit., p. 2309.
[184] Yoorrook Justice Commission (2023) op. cit., pp. 17, 75; *United Nations Declaration on the Rights of Indigenous People*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007); Department of Premier and Cabinet (2018) *Victorian Aboriginal Affairs Framework, 2018-2023*, Melbourne, DPC, p. 22; Victoria (2021) *Yoorrook Justice Commission Letters Patent*, 21 May, Section 2(g).
[185] Yoorrook Justice Commission (2023) op. cit., p. 76.
[186] Department of Premier and Cabinet (2018) op. cit., p. 22.
[187] Yoorrook Justice Commission (2023) op. cit., p. 17.

Victoria, self-determination has been the key feature of every Aboriginal Justice Agreement and is a foundational principle of the *Wirkara Kulpa: Aboriginal Youth Justice Strategy*.[188]

Professor Larissa Behrendt of the Jumbunna Institute for Indigenous Education and Research sets out the following as to what the exercise of 'self-determination' looks like:

- the recognition of past injustices
- autonomy and decision-making powers
- property rights and compensation
- the protection of cultural practices and customary laws
- equal protection of rights[189]

The recognition of past injustices and the protection of cultural practices have been given statutory recognition in this Bill with the statement acknowledging past injustices, and in the 'guiding principles' that precedes each provision addressing the various stages where Aboriginal children and young people are brought into contact with the youth justice system.

Armytage and Ogloff report

In 2017, Penny Armytage and Professor James Ogloff AM's report, *Youth justice review and strategy: meeting needs and reducing offending,* included an assessment of how the youth justice system functioned in relation to Aboriginal children and young people. They observed:

> Over-representation of Koori young people in youth justice is increasing, with many young offenders affected by intergenerational trauma, broken connection to country and community, loss and grief.
>
> Youth justice services have to be culturally safe to be effective. Proactive engagement with elders and community is required to promote access to diversion and early intervention programs, as well as to guide custodial and community supervisory models.[190]

Ngaga-dji: hear me

In their 2018 report, *Ngaga-dji*, the Koorie Youth Council called on the Victorian Government to actively take steps towards change in the youth justice system, hear the voices of the Aboriginal children and young people, and challenge the narrative that perpetuated the negativity around children and young people who come into contact with the youth justice system.[191]

Our youth, our way

Our youth, our way, a report published in 2021 by the CCYP, made 75 recommendations.[192] The report built on the work of the Koori Youth Justice Taskforce, a partnership between the Commissioner for Aboriginal Children and Young People and the Department of Justice and Community Safety. It included 296 case file reviews of Aboriginal children and young people who had come into contact with the youth justice system between October 2018 and March 2019.[193] The Commission's separate systemic inquiry was based on interviews with Aboriginal children and young people, their families and communities in May 2019.[194]

The commissioners stated:

[188] Department of Justice and Community Safety (2022) *Wirkara Kulpa: Aboriginal Youth Justice Strategy 2022-2023*, op. cit., p. 11.
[189] Yoorrook Justice Commission (2023) op. cit, p. 77; The Aboriginal Justice Caucus worked with Professor Behrendt and the JIIER team to examine Aboriginal self-determination in the context of the Victorian criminal legal system.
[190] Armytage & Ogloff (2017) op. cit., p. 175,
[191] Department of Justice and Community (2022) *Wirkara Kulpa: Aboriginal Youth justice Strategy 2022-2032*, op. cit., p. 7.
[192] Commission for Children and Young People (2021) op. cit.
[193] The Taskforce was a recommendation of the Armytage and Ogloff report.
[194] Commissioners: Justin Mohamed, Commissioner for Aboriginal Children and Young People and Lina Buchanan, Principal Commissioner.

> At its best, the youth justice system has the potential to transform lives: to be responsive to the unique experiences, circumstances and strengths of each child and young person who comes into contact with it, and to provide the supports they need to thrive. For Aboriginal children and young people, this includes enabling them to be strong in their culture and connected to their families, communities and country.[195]

The commissioners went on to say that, despite recent gains, the over-representation of Aboriginal children and young people in the youth justice system persists. They described it as an 'old storyline' where '[n]umerous inquiries and reports have detailed the historical legacies of dispossession and colonisation that underpin it, the structural institutional racism that perpetuates it, and the chronic conditions that Aboriginal children and young people endure in a system that is not fit for purpose'.[196] They added that contact with the youth justice system seriously undermines their health and wellbeing, and that these negative impacts ripple out to communities and across generations. Further, the authors said 'we know the very real harm we inflict when we chose to lock up children as young as 10 and watch them cycle back into the system again and again'.[197]

The report, the commissioners stated, gave voice to Aboriginal children and young people, and their vision for a new way of doing justice. At the heart of that vision is culture.[198]

Burra Lotjpa Dunguludja

Burra Lotjpa Dunguludja ('Senior Leaders Talking Strong'), launched in 2018, is the fourth phase of the Victorian Government's Aboriginal Justice Agreement. It is part of the government's aim to meet its commitments to closing the gap in Aboriginal over-representation in the youth justice system by 2031.[199]

The Aboriginal Justice Caucus emphasised the importance of self-determination, stating that the agreement reflected their long-term vision for an Aboriginal-controlled justice system, requiring greater involvement of Aboriginal communities in decision-making, program design and implementation.[200]

In the foreword of the agreement, the co-chairs of the caucus stated:

> The strategies and opportunities contained in this Agreement are designed to strengthen Aboriginal oversight of justice outcomes for Aboriginal people, and to focus more than ever before on the important roles of family and therapeutic, cultural healing to tackle offending. This is particularly important for young people. The Aboriginal Justice Caucus stands with other concerned groups in the community in calling for national change to the age of criminal responsibility, believing that young offenders, in particular very young offenders should be treated therapeutically as is the case in other countries, rather than through the criminal justice system.[201]

Wirkara Kulpa: Aboriginal Youth Justice Strategy 2022-2032

Published in 2022, the *Wirkara Kulpa* strategy was the first Aboriginal youth justice strategy in Victoria. Developed and led by Aboriginal Justice Caucus, together with the steering committee and the Department of Justice and Community Safety, the strategy addressed 56 of the 75 recommendations of the *Our youth, our way* inquiry report. It is also an important initiative under *Burra Lotjpa Dunguludja*. According to the DJCS:

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[195] Commission for Children and Young People (2021) op. cit., p. 3.
[196] ibid.
[197] ibid.
[198] ibid.
[199] The first Agreement (2000-2006) was signed in 2000, developed in response to the Royal Commission into Aboriginal Deaths in Custody (1991), and the National Ministerial Summit on Indigenous Deaths in Custody (1997). AJA2 (2006-2012) and AJA3 (2013-2018) continued on the commitment to improve Aboriginal justice outcomes and reduce over-representation in the criminal justice system; Department of Justice and Community (2022) *Wirkara Kulpa: Aboriginal Youth justice Strategy 2022-2032*, op. cit., p. 6.
[200] Victorian Aboriginal Justice Agreement (2018) *Burra Lotjpa Dunguludja,* Melbourne, Victorian Government, p. 10.
[201] Victorian Aboriginal Justice Agreement (2018) op. cit., p. 7.

> It is a strategy written for and by Aboriginal children and young people and captures the aspirations and changes Aboriginal children and young people want to see in a culturally safe and responsive youth justice system.[202]

The strategy has a ten-year timeframe and is designed to evolve with other significant Victorian reforms in this space, not least being the work of the Yoorrook Justice Commission. Its aim, ultimately, is to see no Aboriginal children or young people in the youth justice system.[203]

The strategy gives shape to five domains that Aboriginal communities envision will achieve greater self-determination and thereby improve outcomes for Aboriginal children in the youth justice system:

- Empowering Aboriginal young people and families to uphold change—creating a child-centred system, supporting youth participation, and opportunities for education and learning
- Protecting cultural rights and increasing connection to family, community and culture
- Diverting young people and addressing over-representation—creating an age-appropriate system, building pathways out of the youth justice system, and supporting them to transition to community
- Working towards Aboriginal-led justice responses
- A fair and equitable system for Aboriginal children and people—ensuring better experiences and social and emotional wellbeing for young people when entering the youth justice system, and creating a safe custody experience for them.[204]

Wirkara Kulpa and Closing the Gap

Wirkara Kulpa also contributes to the national Partnership Agreement on Closing the Gap Implementation Plan 2019–2029, and covers commitments in the Victorian Closing the Gap Implementation Plan to achieve the national youth justice target.[205] The minister's statement in the foreword of the strategy noted that Victoria had made progress and was ahead of the *Burra Lotjpa Dunguludja* target, having reduced the number of Aboriginal 10- to 17-year-olds under youth justice supervision on an average day by 42 per cent over the previous five years.[206]

Yoorrook for Justice

The Yoorrook Justice Commission made 46 recommendations in its 2023 report *Yoorrook for Justice: report into Victoria's child protection and criminal justice systems*, which looked into Victoria's child protection and criminal justice system. Recommendations 35 and 36 specifically address youth justice:

- Recommendation 35 stated the 'Victorian Government must urgently introduce legislation to raise the minimum age of criminal responsibility in Victoria to 14 years without exceptions and to prohibit the detention of children under 16 years.'
- Recommendation 36 asked that the 'Victorian Government's planned new Youth Justice Act must:
    a) explicitly recognise the paramountcy of human rights, including the distinct cultural rights of First Peoples, in all aspects of the youth justice system
    b) embed these rights in the machinery of the Act, and
    c) require all those involved in the administration of the Act to ensure those rights'[207]

[202] Department of Justice and Community Safety (2022) *Wirkara Kulpa: Aboriginal youth justice strategy 2022–2032*, op. cit., p. 8.
[203] Victorian Government (2022) *Government response to the 'Our Youth, Our Way' inquiry*, February, Melbourne, Victorian Government, p. 3.
[204] ibid., pp. 3-4.
[205] Department of Justice and Community Safety (2022) *Wirkara Kulpa: Aboriginal youth justice strategy 2022–2032*, op. cit., p. 10.
[206] ibid., p. 6.
[207] Yoorrook Justice Commission (2023) op. cit., 37.

On the youth justice system broadly, the report stated:

> The youth justice system is the most significant staging post in the pipeline of First Peoples children and young people from the child protection system to the adult criminal justice system. The youth justice system has long harmed children and continues to do so, inflicting further trauma on the most vulnerable and disadvantage First Peoples children.[208]

The report noted that while Victoria has the lowest youth detention in the country, First People's children were still 11 times more likely to be under youth justice supervision than their non-Aboriginal counterparts and critically, more likely to enter the youth justice system at a younger age.[209]

Yoorrook looked at:

> … the systemic injustices experienced by the Aboriginal children and young people in the youth justice system, … [including] the harmful, traumatising and counterproductive effects of embedding these children and young people in the criminal justice system from a young age.[210]

Examining the causes of over-representation of Aboriginal young people in the system, the commission advocated for the simplest and most urgent reform—'raising the age of criminal responsibility to 14 years now, and with no exceptions'.[211]

Recognising the work of *Wirkara Kulpa*, the Yoorrook Justice Commission acknowledged the various initiatives including changes to police policies that prioritise early intervention and diversion. It considers it critical that these efforts are sustained, building on this early promise.[212]

During the Yoorrook hearings, First Peoples witnesses and organisations spoke of the need for self-determination in the child protection and criminal justice systems. Government witnesses, including ministers, also reiterated that self-determination should underpin or be at the centre of reform.[213] Victoria, the report stated, has the opportunity here to transfer decision-making power, authority, control and resources to First Peoples. In real terms, this includes the power to make decisions about: system design; obtaining and allocating resources; and power of, and appointments to, bodies or institutions. It would ultimately also include the transfer of accountability and oversight functions to Aboriginal-led bodies. Yoorrook flagged this as 'transformative, structural change'.[214]

Government response and the Bill

The Bill addresses Yoorrook's recommendation 36, explicitly embedding guiding principles specific to Aboriginal children and young people in all aspects of the youth justice system. This includes statements recognising over-representation being the result of inequality and structural and institutional racism; supporting the right to self-determination; promoting cultural rights and centring Aboriginal culture; and embedding cultural safety in programs.[215]

These principles also support ties to family, kin, community, Country and Elders, particularly for Aboriginal children and young people who have committed or are alleged to have committed offences. To this end clause 136 of the Bill provides a timeframe for the development of an Aboriginal-led group conference model as part of early diversion programs, with Aboriginal culture being central to the decision-making process.[216]

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[208] ibid., p. 314.
[209] ibid., pp. 315-316.
[210] ibid., p. 314.
[211] ibid., p. 314.
[212] ibid., p. 314; See also 'Diversions and restorative justice' in 'Key themes of the Bill' section.
[213] Witnesses included the Department of Families, Fairness and Housing; Chief Commissioner of Police; Minister for Treaty and First Peoples, Minister for Child Protection and Family Services; Minister for Corrections, Youth Justice and Victim Support; and the Attorney-General; Yoorrook Justice Commission (2023) op. cit., p. 17.
[214] ibid., p. 18.
[215] Carbines (2024) 'Statement of compatibility: Youth Justice Bill 2024', op. cit., 2250.
[216] ibid p. 2257.

For Aboriginal children and young people who are taken into custody, there are specific additional guiding custodial principles and corresponding rights and responsibilities provided in the Bill. Clause 441 includes cultural support, as well as guidance for those who have contact with Aboriginal children and young persons in youth justice custody.[217]

To sustain their connections to culture, family, kin, community and Country, clause 452 provides that each Aboriginal child or young person in custody must be supported to participate in cultural activities and celebrations, and engage regularly with their family, kin, Elders, members of Aboriginal organisations and other members of the Aboriginal community.[218]

Provisions in clauses 40 to 46 of the Bill further progress structural change and provide for the registration of Aboriginal youth justice agencies, enabling the gradual transfer of the Aboriginal youth justice system to Aboriginal-led organisations.[219]

5 | Stakeholder responses to the Bill

Prior to the Bill's introduction, the government had already announced its intention to raise the minimum age of criminal responsibility to 12—and eventually 14—and introduce an electronic monitoring trial. Several groups had campaigned for the minimum age of criminal responsibility to be raised to 14 before the government introduced the Bill. These included the Yoorrook Justice Commission, Amnesty International, the Australian Medical Association, the Victorian Aboriginal Legal Service and the Human Rights Law Centre, among others.[220] In opposition, Victorian Chief Commissioner of Police Shane Patton said he did not support a move to raise the minimum age of criminal responsibility to 14 considering the 'really significant crimes' some 12- and 13-year-olds have been involved in.[221]

In response to the government's March 2024 announcement to trial electronic monitoring, the Koorie Youth Council, Human Rights Law Centre, Victorian Aboriginal Community Controlled Health Organisation, Victorian Aboriginal Legal Service and Liberty Victoria opposed the decision and criticised the effectiveness of electronic monitoring.[222] The Police Association Victoria secretary Wayne Gatt, however, welcomed the trial and described it as a 'positive alternative to jail'.[223]

The following section summarises responses from relevant stakeholders after the Bill was introduced to Parliament.

[217] ibid. p. 2269.
[218] Explanatory memorandum, Youth Justice Bill 2024, p. 200.
[219] Carbines (2024) 'Statement of compatibility: Youth Justice Bill 2024' op. cit., p. 2251.
[220] Yoorrook Justice Commission (2023) op. cit.; Amnesty International Australia (2022) 'Why we need to raise the minimum age of criminal responsibility', AIA website; Australian Medical Association (2022) *Raise the age review finally released to the public*, media release, 15 December; Victorian Aboriginal Legal Service (2022) *More than 65,700 Victorians call on the Andrews government to raise the age*, media release, 16 August; Human Rights Law Centre (2023) *Andrews Government must listen to expert evidence and raise the age to at least 14*, media release, 5 April.
[221] J. Boaz (2024) 'Police commissioner voices concern over plans to raise age of criminality by four years', *ABC News*, 14 March.
[222] Koorie Youth Council (2023) *KYC condemns the decision made by the Victorian Labor Government to implement an electronic monitoring trial, disregarding tireless advocacy of Aboriginal Community and experts in the field*, media release, 25 March; Human Rights Law Centre (2024) *Allan Government's backflip on youth bail laws to needlessly harm children*, media release, 20 March; Victorian Aboriginal Community Controlled Health Organisation (2024) *New monitoring technology a significant setback for bail reform and Aboriginal children*, media release, 20 March; Victorian Aboriginal Legal Service (2024) *Victorian Government betrays Aboriginal children*, media release, 20 March; Liberty Victoria (2024) *Liberty Victoria Statement on the Victorian Government's Backflip on Bail Reforms for Children and Proposed Electronic Monitoring*, media release, 26 March.
[223] ABC News (2024) 'Youths charged with serious crimes to wear monitoring bracelets under Victorian trial', *ABC News*, 20 March.

Liberal-National coalition

The Liberal-National coalition said they would 'carefully consider' the Bill, but also argued the government had weakened bail laws and cut early intervention and youth engagement programs.[224] Shadow Attorney-General Michael O'Brien claimed the Bill will 'remove criminal responsibility from particular age groups and replace it with nothing'.[225]

Prior to the introduction of the Bill into parliament, the coalition had issued several statements and comments on the youth crime 'crisis'. These statements highlighted statistics on youth bail breaches, youth recidivism, Indigenous overrepresentation in the justice system, and the cost of keeping young people under detention-based supervision.[226]

Greens

The Victorian Greens criticised the Bill for only raising the minimum age of criminal responsibility to 12, instead of 14 as advised by the UN Committee on the Rights of the Child.[227] The Greens also opposed the introduction of the electronic monitoring trial (see 'Electronic monitoring and bail amendments'). Greens justice spokesperson Katherine Copsey said the government 'want to slap ankle bracelets on children and expand police powers, meaning that children will be having more unnecessary and unsafe interactions with police'.[228] In a separate statement, Copsey said the reforms in the Bill are a 'knee-jerk law and order' response.[229]

Human Rights Law Centre

The Human Rights Law Centre said raising the minimum age of criminal responsibility to 14 was the 'bare minimum'. They also called for additional measures to remove almost all reverse-onus bail provisions, ban solitary confinement, strip searching and spithooding of children, and cancel the electronic monitoring trial.[230]

'Increasing police powers and pipelining more children into youth prisons is never the answer,' managing lawyer Monique Hurley said in a statement, 'the answer is always building up the community supports needed to help children avoid contact with—and the harms caused by—the criminal legal system in the first place.'[231]

Victoria Aboriginal Legal Service

The Victorian Aboriginal Legal Service (VALS) welcomed the introduction of the Bill and commended the government on 'finally showing leadership and progressing critical reforms

[224] B. Battin, Shadow Minister for Police and M. O'Brien, Shadow Attorney-General (2024), *Labor has no plan to address ongoing rise in violent youth crime*, media release, 17 June.
[225] ibid.
[226] M. O'Brien, Shadow Attorney-General (2024) *Labor in denial over youth crime crisis*, media release, 11 June; B. Battin, Shadow Minister for Police (2024) *Victoria's youth justice system broken under Labor*, media release, 22 January; M. O'Brien, Shadow Attorney-General (2024) *Bail laws set to be weakened as youth offenders commit repeat offences, media release*, 28 February.
[227] K. Copsey, Greens spokesperson for Justice & E. Sandell, Leader of the Victorian Greens (2024) *Labor fail to raise the age of criminal responsibility to 14, plan to shackle children instead*, media release, 18 June; C. Wahlquist (2019) 'Australia urged to follow UN advice and raise age of criminal responsibility by four years', *Guardian*, 26 September.
[228] Copsey (2024) op. cit.
[229] K. Copsey Greens spokesperson for Justice (2024) *Labor capitulating on youth justice won't make the community safer*, media release, 11 July.
[230] Human Rights Law Centre (2024) *Allan Government must seize opportunity to transform Victoria's youth justice system*, media release, 18 June. For more information on bail reform, see A. Wright (2023) *Bail Amendment Bill 2023*, Parliamentary Library & Information Service, Melbourne, Parliament of Victoria.
[231] Human Rights Law Centre (2024) op. cit.

on Youth Justice rather than pandering to the dangerous agenda of conservative newspapers'.[232]

However, VALS expressed concern that the Bill does not raise the minimum age of criminal responsibility to 14 without exceptions, and that there were no further reforms to bail for children. They also opposed the inclusion of an electronic monitoring trial on children, arguing it is ineffective and a waste of public money. VALS chief executive officer Nerita Waight said:

> This is movement towards a legal system that prioritises early intervention, diversion and rehabilitation, and we hoped that the Youth Justice Bill would help us get there. But trialling electronic ankle bracelets on children is a step in the complete wrong direction.[233]

Youth Affairs Council Victoria

The Youth Affairs Council Victoria (YACVic) described the reforms in the Bill as 'long anticipated' but urged the government to take further steps to raise the minimum age of criminal responsibility to 14.[234] YACVic also called for no additional police powers, removing reverse-onus bail provisions and the electronic monitoring trial, and further investment in early intervention measures.

YACVic warned that a punitive approach to youth justice 'leads to the overcriminalisation of children who are Aboriginal or Torres Strait Islander, have disabilities, or who have experienced complex trauma'.[235] YACVic chief executive Mary Nega said:

> The Yoorrook Justice Commission has recommended the Victorian Government raise the age of criminal responsibility to 14. The Government has an opportunity to demonstrate their commitment to Aboriginal justice by taking this clear opportunity to write a safer and more just future..[236]

Centre for Multicultural Youth

The Centre for Multicultural Youth (CMY) welcomed reforms to the youth justice system, while also expressing concerns on some points. The CMY said it has previously been campaigning for the minimum age of criminal responsibility to be raised to 14, and welcomes the government's commitment to reach that milestone by 2027.[237] It also pointed out that the Bill's scheme of warnings, cautions and early diversions would mean less punitive means of dealing with a child's behaviour and, in turn, a reduction in a child's engagement with the legal system.

However, the CMY expressed concerns about the transport powers and their implementation, electronic monitoring, transferring 16-year-olds to the adult justice system, and expanded powers for police to conduct searches without a warrant.

Federation of Community Legal Centres

The Federation of Community Legal Centres (FCLC) described the Bill as 'an opportunity to create systemic changes to children currently funnelled into criminal law systems and

[232] Victorian Aboriginal Legal Service (2024) *Allan government fulfils long-awaited promise on Youth Justice Bill*, media release, 18 June.
[233] ibid.
[234] Youth Affairs Council Victoria (2024) *Victorian Government must fully commit to diverting children from prison and raise the age to 14*, media release, 19 June.
[235] ibid.
[236] ibid.
[237] Centre for Multicultural Youth (2024) *CEO message: Youth Justice Bill – an opportunity for well overdue reform of the Youth Justice System*, media release, 20 June.

prisons' and commended the government for introducing the Bill while also seeking further changes.[238]

The FCLC supports new measures in the Bill that increase diversion from the legal system through warnings and cautions, as opposed to formal charges. However, the FCLC urged the government to remove the electronic monitoring trial and raise the minimum age of criminal responsibility to 14, instead of 12. The FCLC also drew attention to the need to reduce the number of children currently awaiting trial without charge who have been denied access to bail.

FCLC chief executive Louisa Gibbs said that while raising the minimum age of criminal responsibility is a welcome first step, '13- and 14-year-olds should be supported through community-based programs and education—not hauled before courts and locked in prison cells away from their families and friends'.

Victoria Legal Aid

Victoria Legal Aid (VLA), an independent statutory authority, welcomed the Bill, which it said contained 'many evidence-based reforms'.[239] It reiterated its call for the minimum age of criminal responsibility to be raised to 14.

VLA had previously described the electronic monitoring trial as 'deeply disappointing, stigmatising and not supported by evidence'.[240] It also warned of the disproportionate impact the trial can have on Aboriginal and Torres Strait Islander children.

6 | Other jurisdictions

According to the Australian Institute of Health and Welfare (AIHW), while each Australian jurisdiction has its own youth justice legislation, policies and practices, 'the general processes by which young people are charged, and the types of legal orders available to the courts, are similar'.[241]

Youth Justice policy

Youth justice policy is 'determined by state and territory governments and [is] largely implemented by youth justice agencies'.[242] However, as the AIHW explains, policies from other areas—including child protection, housing, education, employment, family services and health—also play a role in young people's experience of the youth justice system.[243]

The youth justice portoflio sits within varying departments across the other Australian juridsictions, ranging from justice, community services, familes and housing, human services, education and youth. Queensland is the only jurisdiction with a dedicated Department of Youth Justice. The state also has a specific minister for youth justice, as does New South Wales. There is a youth justice Act in the Northern Territory, Queensland and Tasmania, while South Australia has a youth justice administration Act; South Australia and Western Australia also both have a young offenders Act.

Queensland has released a youth justice strategy for 2024–28, and Tasmania has released a youth justice blueprint for 2024–34. The ACT had a ten-year youth justice blueprint from 2012–22.

[238] Federation of Community Legal Centres (2024) *Youth Justice Bill promises critical reforms, but should be strengthened*, media release, 20 June.
[239] Victoria Legal Aid (2024) 'Reducing youth offending and reducing harm to children', VLA website.
[240] Victoria Legal Aid (2024) *Children need support and connection, not ankle bracelets*, media release, 20 March; Victoria Legal Aid (2024) 'Raise the age of criminal responsibility to 14', VLA website.
[241] Australian Institute of Health and Welfare (AIHW) (2024) 'Youth justice', AIHW website.
[242] AIHW (2024) 'Youth justice in Australia 2022–23: Introduction', AIHW website.
[243] ibid.

Minimum age of criminal responsibility

Under the federal *Crimes Act 1914*, a child under 10 years old cannot be held liable for an offence against a law of the Commonwealth. A child aged 10 years or over, but under 14 years, can only be held liable for an offence if the child knows that their conduct is wrong.[244]

The minimum age of criminal responsibility across most other Australian states and territories is also currently set at 10 years old—with the exception of the Northern Territory and the Australian Capital Territory, where recent amendments have raised the minimum age to 12 years old,[245] and 14 years old (by 2025),[246] respectively. The Tasmanian Government has also committed to raising the minimum age of criminal responsibility to 14 years.[247]

Supervision

The Youth Justice National Minimum Data Set collects information about young people under youth justice supervision in Australia. A comparison of supervision settings across our jurisdictions is available in Table 1.2 at the AIHW web report, *Youth justice in Australia 2022–23*.[248] According to the data for the 2022–23 period, supervised justice services for **unsentenced** youth included community-based supervision (e.g. bail or similar) and detention (including police-referred detention and remand). In contrast to the other jurisdictions, however, Victoria and the Northern Territory did not permit police-referred detention.[249]

For **sentenced** youth, detention as well as various community-based supervision options were available—these included good behaviour bonds, probation (and similar), community service, suspended detention, home detention, and parole or supervised release from detention. While all jurisdictions offered probation, parole or supervised release from detention, Victoria was the only jurisdiction that did not allow the options of community service or suspended detention. Good behaviour bonds were not available to sentenced youth in Queensland or the Northern Territory, while home detention was only available to sentenced young offenders in South Australia and the Northern Territory.[250]

Additionally, four jurisdictions in Australia allow the use of electronic monitoring for young people in certain conditions—the Northern Territory, Queensland, South Australia and Western Australia.

Restorative justice

A form of restorative justice for young offenders is available in all other states and territories, though is sometimes known under a different term—including youth justice conferencing, family conferencing and community conferencing. In some jurisdictions, the young person is referred to a juvenile justice or community youth justice team specifically.

Across the jurisdictions, sessions are run by convenors, facilitators, youth justice coordinators and specialised teams, and usually include some combination of the young offender, their family and/or a guardian, useful members of their community, the victim and the victim's support people, and sometimes law enforcement.

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[244] *Crimes Act 1914* (Cth), ss 4M–4N.
[245] L. Robinson, S. Brash & C. Allison (2023) 'Age of criminal responsibility is now 12 in NT, so what happens when a young child commits a serious crime?', *ABC News*, 19 August.
[246] ACT Government, Justice and Community Safety Directorate (JCSD) (date unknown) 'Raising the age', JCSD website.
[247] R. Jaensch, Minister for Education, Children and Youth (2023) *Clear pathway to reform Tasmania's youth justice system*, media release, 6 December.
[248] AIHW (2024) 'Youth justice in Australia 2022–23: Introduction', op. cit.
[249] ibid., Table 1.2.
[250] ibid.

Aboriginal and Torres Strait Islander young people

Most other Australian jurisdictions have some form of Aboriginal and Torres Strait Islander strategy in the youth justice space. Specialised approaches are commonly developed in collaboration with First Nations organisations and are often delivered by and/or alongside these groups.

In some cases, this takes the form of an agreement or initiative, and in others it's a dedicated team, forum or support model. The ACT, meanwhile, can access insight from its Aboriginal and Torres Strait Islander Elected Body. In the Northern Territory, recommendations from the Royal Commission into the Protection and Detention of Children also inform the approach there.

Key themes across these strategies include self-determination and culturally safe practices, with a focus on prevention and diversion programs, as well as seeking to eliminate the disproportionate representation of Aboriginal and Torres Strait Islander young people in the criminal justice system.

This information is summarised in the following table. Please note that this summary is not exhaustive.

Table 8: Summary of selected youth justice settings in other Australian states and territories

	Current policy settings	Minimum age of criminal responsibility	Supervision (in 2022–23)	Restorative justice	Aboriginal and Torres Strait Islander young people
ACT	In the ACT, the youth justice portfolio sits within the Community Services Directorate. The territory has a Minister for Corrections and Justice Health.[251] The ACT youth justice framework has previously been set out in the *Blueprint for Youth Justice in the ACT 2012-22*, which focussed on 'early intervention, prevention and diversion with custody used as a measure of last resort'.[252]	Currently, under the ACT's *Criminal Code 2002*, a child under 12 years old is not criminally responsible for an offence (s 25). A child aged 12 years or over, but under 14 years, can only be criminally responsible for an offence if the child knows that their conduct is wrong (s 26). **Note:** In 2023, the ACT Government announced that it would seek to raise the minimum age of criminal responsibility to 14 years, by 1 July 2025.[253]	In the ACT, supervised justice services for unsentenced youth include community-based supervision (e.g. bail) and detention. For sentenced youth, detention and various community-based supervision options are available—though not home detention.[254]	Restorative justice is available for youth offenders in the ACT. Sessions are run by a convenor from the territory's Restorative Justice Unit and involve 'the people harmed, the people responsible, and their family and friends'.[255]	The Yarrabi Bamirr project, delivered by Aboriginal and Torres Strait Islander organisations, is a 'family-centric support model working with Aboriginal and Torres Strait Islander families to improve life outcomes and reduce or prevent contact with the justice system'.[256] The ACT also has its *Aboriginal and Torres Strait Islander Agreement 2019–2028*, a joint initiative of the territory government and the Aboriginal and Torres Strait Islander Elected Body.[257] The Agreement has a focus area on justice, including culturally safe restorative justice, prevention and diversion programs.[258]

[251] ACT Government (date unknown) 'Contact My Minister', ACT Government website.
[252] ACT Government (date unknown) 'Blueprint for Youth Justice', ACT Government website.
[253] S. Rattenbury, Attorney-General, R. Stephen-Smith, Minister for Families and Community Services & E. Davidson, Assistant Minister for Families and Community Services (2023) *The ACT is raising the minimum age of criminal responsibility to 14*, media release, 8 May.
[254] AIHW (2024) 'Youth justice in Australia 2022–23: Introduction', op. cit., Table 1.2.
[255] ACT Government Justice and Community Safety Directorate (date unknown) 'What is RJ?', JCSD website.
[256] ACT Government Justice and Community Safety Directorate (date unknown) 'Yarrabi Bamirr', JCSD website.
[257] ACT Government (date unknown) 'ACT Aboriginal and Torres Strait Islander Agreement', ACT Government website.
[258] ACT Government (date unknown) *ACT Aboriginal and Torres Strait Islander Agreement 2019-2028: Significant Focus Area – Justice*, Canberra, ACT Government, p 1.

	Current policy settings	Minimum age of criminal responsibility	Supervision (in 2022–23)	Restorative justice	Aboriginal and Torres Strait Islander young people
NSW	In NSW, the youth justice portfolio sits within the Department of Communities and Justice.[259] The state has a Minister for Youth Justice.[260] The responsible agency, Youth Justice NSW, helps young people 'who have offended or are at risk of offending',[261] and its work is informed by a range of strategies and action plans.	Under NSW's *Children (Criminal Proceedings) Act 1987*, no child who is under the age of 10 years can be guilty of an offence (s 5). The *doli incapax* presumption for children aged between 10 and 14 years is not enshrined in legislation in NSW.[262]	In NSW, supervised justice services for unsentenced youth include community-based supervision and detention. For sentenced youth, detention and various community-based supervision options are available—though not home detention.[263]	Youth justice conferencing is available in NSW and involves a meeting of the young offender, their victim and other people aware of the offence. The conference is organised by a convenor and is focused on 'repairing the harm caused by the offending behaviour and on restoring relationships within the family and broader community'.[264]	In NSW, 'Aboriginal-led decision making is key in the design and implementation of programs for Aboriginal young people'.[265] Programs tailored for First Nations young people in NSW's youth justice centres and community offices include: a group work program for youth with substance-related offending; an intergenerational violence prevention program, including a specific version for young women; a reintegration and transition support program for young people leaving community supervision or custody; and a program with pathways for Aboriginal employees to embed their cultural practices into

[259] NSW Government (2024) 'Youth Justice resources and policies', NSW Government website.
[260] NSW Government (2024) 'Communities and Justice Ministers', NSW Government website.
[261] NSW Government (2024) 'About Youth Justice NSW', NSW Government website.
[262] C. Davis (2022) *The minimum age of criminal responsibility in Australia: a quick guide*, Parliamentary Library research paper series, Canberra, Parliament of Australia, p. 2.
[263] AIHW (2024) 'Youth justice in Australia 2022–23: Introduction', op. cit., Table 1.2.
[264] NSW Government (2024) 'What is a Youth Justice Conference?', NSW Government website.
[265] AIHW (2024) *Youth justice in Australia 2022–23: Appendix D: State and territory youth justice systems, policies and programs 2022-23*, Canberra, AIHW, p. 6.

	Current policy settings	Minimum age of criminal responsibility	Supervision (in 2022–23)	Restorative justice	Aboriginal and Torres Strait Islander young people
					their work with justice clients.[266]
NT	In the NT, the Department of Territory Families, Housing and Communities is responsible for youth justice policy. There is a Minister for Territory Families who is also the Minister for Youth.[267] The NT has enacted the *Youth Justice Act 2005*. Administration and operation of the Act is monitored and evaluated by the territory's Youth Justice Advisory Committee.[268] In February 2024, the NT Chief Minister announced a review of the Youth Justice Act.[269]	Under the NT's *Criminal Code Act 1983*, a child under 12 years of age is not criminally responsible for an offence (s 38). A child aged 12 or 13 years old can only be criminally responsible for an offence if the child knows that their conduct is wrong (s 38A).	In the NT, supervised justice services for unsentenced youth include community-based supervision and detention (though not police-referred detention). For sentenced youth, detention and various community-based supervision options are available; good behaviour bonds are not available, though home detention is.[270] Electronic monitoring for young offenders began in the NT in 2014.[271] A young person's bail may include electronic monitoring, with or without supervision.[272]	A pre-court youth diversion program is available to young offenders in the NT.[273] The program, through Northern Territory Police, 'operates within a Restorative Justice framework and includes verbal and written warnings, Drug Diversion and Youth Justice Conferencing'.[274]	Following the Royal Commission into the Protection and Detention of Children in the Northern Territory, a Reform Management Office was created to 'coordinate and monitor progress on the implementation of reforms for children and families'.[275] A Children and Families Tripartite Forum—comprising the NT and federal governments, as well as Aboriginal Peak Organisations NT, the NT Council of Social Service and the North Australian Aboriginal Justice Agency—was also

[266] AIHW (2024) *Youth justice in Australia 2022–23: Appendix D: State and territory youth justice systems, policies and programs 2022-23*, op. cit., p. 6.
[267] Legislative Assembly of the Northern Territory (date unknown) 'Ministry – 14th Assembly', Legislative Assembly of the Northern Territory website.
[268] Northern Territory Government Department of Territory Families, Housing and Communities (DTFHC) (2024) 'Youth Justice Advisory Committee', DTFHC website.
[269] F. Walsh (2024) 'NT Chief Minister Eva Lawler announces Youth Justice Act review as she details priorities for the year ahead', *NT News*, 12 February.
[270] AIHW (2024) 'Youth justice in Australia 2022–23: Introduction', op. cit., Table 1.2.
[271] Queensland Government Department of Children, Youth Justice and Multicultural Affairs (DCYJMA) (2022) *Electronic Monitoring Trial*, Brisbane, DCYJMA, p. 16.
[272] Northern Territory Government (2024) 'Young people and going to court', NT Government website.
[273] Northern Territory Government (2024) 'Youth diversion program', NT Government website.
[274] AIHW (2024) *Youth justice in Australia 2022–23: Appendix D: State and territory youth justice systems, policies and programs 2022-23*, op. cit., p. 49.
[275] Northern Territory Government (date unknown) 'Reform Management Office: About', NT Government website.

	Current policy settings	Minimum age of criminal responsibility	Supervision (in 2022–23)	Restorative justice	Aboriginal and Torres Strait Islander young people
					established, and provides advice to the NT and federal governments on 'cooperation, coordination and collaboration in delivering the reform agenda and services for children and young people experiencing vulnerability including those in the youth justice and child protection systems'.[276] The forum has developed a 10-year generational strategy for children and families for 2023–2033,[277] *Kids Safe, Family Together, Community Strong*, which discusses youth justice. The NT Government has also published an *Aboriginal Justice Agreement 2021–2027*, and *Safe, thriving and connected: Generational change for children and families 2018–2023*, its plan to deliver the royal commission's recommendations.

[276] Northern Territory Government (date unknown) 'Children and Families Tripartite Forum', NT Government website.
[277] ibid.

	Current policy settings	Minimum age of criminal responsibility	Supervision (in 2022–23)	Restorative justice	Aboriginal and Torres Strait Islander young people
Qld	The Qld Government has a Department of Youth Justice. There is a Minister for Youth Justice, who is responsible for administering the *Young Offenders (Interstate Transfer) Act 1987* and the *Youth Justice Act 1992*.[278] In 2024, the government released *A Safer Queensland: Queensland Youth Justice Strategy 2024–2028*, which identifies three core areas of prevention, intervention and detention.[279]	Under Qld's *Criminal Code Act 1899*, a person under the age of 10 years is not criminally responsible for any act or omission (s 29(1)). A person under the age of 14 years is only criminally responsible for an act or omission if it is proved that the person had capacity to know that they ought not to do the act or make the omission (s 29(2)).	In Qld, supervised justice services for unsentenced youth include community-based supervision and detention. For sentenced youth, detention and various community-based supervision options are available, with the exception of good behaviour bonds and home detention.[280] From May 2021 to September 2022, an electronic monitoring trial was undertaken in certain Qld postcodes for 'recidivist youth offenders' aged 16 and 17 years old charged with 'prescribed indictable offences'.[281] Amendments in 2023 to Qld's Youth Justice Act expanded the trial of electronic monitoring devices as an available	Restorative justice conferences are used in Qld as a response to offences committed by a child. The format is administered by a 'neutral facilitator' and enables victims to discuss the harm caused by the offending and to ask questions of the child responsible.[283] The Qld Government also makes use of this justice process as a way to 'reduce an overrepresentation of Aboriginal and Torres Strait Islander children in the justice system'.[284]	In Qld, family-led decision making is used to help Aboriginal and Torres Strait Islander young people in the youth justice system tackle challenges and disadvantage. It does this by 'inviting families and community to problem solve, lead discussions, and make decisions as the cultural authority for their young people'.[285] Cultural programs—including Black Chicks Talking and Young, Black and Proud—also exist to help with 'developing and strengthening cultural knowledge, awareness, and identity for Aboriginal and Torres Strait Islander young people engaged in youth justice'.[286]

[278] Queensland Government Department of Youth Justice (DYJ) (2024) 'Governing legislation', DYJ website.
[279] Queensland Government DYJ (2024) 'Youth Justice Strategy', DYJ website.
[280] AIHW (2024) 'Youth justice in Australia 2022–23: Introduction', op. cit., Table 1.2.
[281] Queensland Government DCYJMA (2022) *Electronic Monitoring Trial*, op. cit., p. 1.
[283] Queensland Government (2024) 'About restorative justice conferences', Queensland Government website.
[284] ibid.
[285] Queensland Government DYJ (2024) *A Safer Queensland: Queensland Youth Justice Strategy 2024–2028*, Brisbane, DYJ, p. 21.
[286] ibid., p. 22.

	Current policy settings	Minimum age of criminal responsibility	Supervision (in 2022–23)	Restorative justice	Aboriginal and Torres Strait Islander young people
			bail condition to include eligible 15-year-olds, and extended the trial until 30 April 2025.[282]		The Qld Government is also expanding its *On Country* program with an intensive program for young people in contact with youth justice, designed and delivered by First Nations organisations.[287]
SA	In SA, the Department of Human Services provides youth justice services in line with the state's *Youth Justice Administration Act 2016*. DHS has a youth justice vision and mission,[288] and makes use of a range of youth justice programs. The Minister for Human Services oversees the youth justice portfolio.[289]	Under SA's *Young Offenders Act 1993*, a person under the age of 10 years cannot commit an offence (s 5). The Act does not make specific provision for persons aged between 10 and 14 years.[290]	In SA, supervised justice services for unsentenced youth include community-based supervision and detention. For sentenced youth, detention and various community-based supervision options are available.[291] SA has operated an electronic monitoring program for young offenders since 1995.[292] It can be a condition of a home detention sentence,	Family conferencing is available in SA and is convened by youth justice coordinators.[294] A family conference brings together the young offender, their family and friends, as well as the victim and their supporters, and a police youth officer.[295]	In SA, the Metropolitan Aboriginal Youth and Family Services is 'a dedicated Aboriginal service with a focus on diverting young people away from the justice system and toward improved life outcomes'.[296]

[282] Queensland Government DYJ (2023) 'Changes to the Youth Justice Act 1992', DYJ website.
[287] D. Farmer, Minister for Youth Justice (2024) *New Intensive On Country trial tackles juvenile First Nation offenders*, media release, 21 February.
[288] Government of South Australia Department of Human Services (DHS) (2024) 'About Youth Justice', DHS website.
[289] Government of South Australia DHS (2023) *2022–23 Annual Report*, Adelaide, DHS, p 12.
[290] Davis (2022) op. cit., p. 6.
[291] AIHW (2024) 'Youth justice in Australia 2022–23: Introduction', op. cit., Table 1.2.
[292] Queensland Government DCYJMA (2022) *Electronic Monitoring Trial*, op. cit., p. 16.
[294] Courts Administration Authority of South Australia (CAASA) (2024) 'Family conferences', CAASA website.
[295] ibid.
[296] Government of South Australia DHS (2024) 'Metropolitan Aboriginal Youth and Family Services', DHS website.

	Current policy settings	Minimum age of criminal responsibility	Supervision (in 2022–23)	Restorative justice	Aboriginal and Torres Strait Islander young people
			and may also be ordered 'as a condition of Bail, an Obligation, Suspended Sentence Obligation or temporary or Conditional Release from the Adelaide Youth Training Centre'.[293]		
Tas	In Tasmania, the Department for Education, Children and Young People is responsible for youth justice services, overseen by the Minister for Children and Youth.[297] Tasmania has also enacted the *Youth Justice Act 1997* for the administration of youth justice in the state. In December 2023, the Tasmanian Government released its *Youth Justice Blueprint 2024–2034*, which is underpinned by five strategies and is informed by the previously released *Reforming*	Under Tasmania's *Criminal Code Act 1924*, no act or omission done or made by a person under 10 years of age is an offence (s 18(1)). The Act provides that no act or omission done or made by a person under 14 years of age is an offence, unless the person had sufficient capacity to know that the act or omission ought not to have been done or made (s 18(2)). **Note:** The Tasmanian Government intends to raise the age of criminal	In Tasmania, supervised justice services for unsentenced youth include community-based supervision and detention. For sentenced youth, detention and various community-based supervision options are available—though not home detention.[300]	Community Youth Justice Teams in Tasmania provide community conferencing for young offenders.[301] A young person may be oriented towards the community conferencing system by a police officer and/or by the courts. A conference is led by a facilitator who can invite people to attend, including the youth, their guardian, any relatives or close associations able to usefully participate, and the victim.[302]	The final report of the *Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings* recommended the development of 'an Aboriginal Youth Justice Strategy, created in partnership with Aboriginal communities, that is underpinned by self-determination and focuses on prevention, early intervention and diversion strategies for Aboriginal children and young people'.[303]

[293] Government of South Australia DHS (2024) 'Home Detention', DHS website.
[297] Tasmanian Government Department for Education, Children and Young People (DECYP) (date unknown) 'Ministerial portfolios', DECYP website.
[300] AIHW (2024) 'Youth justice in Australia 2022–23: Introduction', op. cit., Table 1.2.
[301] Tasmanian Government DECYP (2024) 'About youth justice services in Tasmania', DECYP website.
[302] Hobart Community Legal Service (2021) 'Community Conferencing', Hobart Community Legal Service website.
[303] Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings (2023) *Who was looking after me? Prioritising the safety of Tasmanian children, Vol. 1: Summary, recommendations and findings*, Hobart, The Commission, p. 129.

	Current policy settings	Minimum age of criminal responsibility	Supervision (in 2022–23)	Restorative justice	Aboriginal and Torres Strait Islander young people
	Tasmania's Youth Justice System: Discussion Paper.[298]	responsibility to 14 years.[299]			The Tasmanian Government accepted the recommendation to develop a strategy, stating that it will 'consider and address legislative reform to enable recognised Aboriginal organisations to design, administer and supervise elements of the youth justice system for Aboriginal children and young people'.[304]
WA	In WA, the Department of Justice includes the Youth Justice Services division, which is responsible for 'the safety, security and rehabilitation of young offenders'.[305] The state has a *Young Offenders Act 1994* and the Minister for Corrective Services is responsible for the youth justice portfolio.[306]	Under WA's *Criminal Code Act Compilation Act 1913*, a person under the age of 10 years is not criminally responsible for any act or omission (s 29). A person under the age of 14 years is only criminally responsible for an act or omission if it is proved that the person had capacity to know that they ought not to do the	In WA, supervised justice services for unsentenced youth include community-based supervision and detention. For sentenced youth, detention and various community-based supervision options are available—though not home detention.[308] Electronic monitoring devices can be used in WA for sentence cases and as	To divert early and minor young offenders from the justice system, and to deter further offending, police officers have discretionary power to refer a young person to a Juvenile Justice Team.[311] This begins a coordinated consultative process, which in the past has included the young	The WA Government has introduced the *Kimberley Juvenile Justice Strategy*, developed following feedback from young people and leaders across the Kimberley. The Strategy supports 'community-led, place-based initiatives … that improve Aboriginal youth wellbeing and community safety and address the

[298] Tasmanian Government DECYP (2023) 'Youth justice reform in Tasmania', DECYP website.
[299] Jaensch (2023) op. cit.
[304] Tasmanian Government DECYP (2023) *Youth Justice Blueprint 2024–2034: Keeping children and young people out of the youth justice system*, Hobart, DECYP, p. 8.
[305] Government of Western Australia (2024) 'Youth Justice Services', Government of Western Australia website.
[306] Government of Western Australia (2024) 'Department of Justice Organisational Structure', Government of Western Australia website.
[308] AIHW (2024) 'Youth justice in Australia 2022–23: Introduction', op. cit., Table 1.2.
[311] Government of Western Australia (2024) 'Juvenile Justice', Government of Western Australia website.

	Current policy settings	Minimum age of criminal responsibility	Supervision (in 2022–23)	Restorative justice	Aboriginal and Torres Strait Islander young people
	In early 2024, the WA Premier indicated that the government was planning a number of reforms in the youth justice space.[307]	act or make the omission (s 29).	described in the Young Offenders Act, though a device has not been ordered for a young offender since 2003.[309] Electronic monitoring has also previously been linked to curfew provisions for young people in WA.[310]	offender, their family and the victim of the crime.[312]	overrepresentation of Aboriginal young people in the justice system'.[313] The WA Government has also flagged the development of an Aboriginal-led on-country rehab facility to deliver diversionary programs for at-risk youth.[314]

[307] K. Bourke (2024) 'WA Premier Roger Cook's youth justice stance marks a turnaround for the government', *ABC News*, 2 February.
[309] Queensland Government DCYJMA (2022) *Electronic Monitoring Trial*, op. cit., p. 16.
[310] Government of Western Australia Department of Corrective Services (DCS) (2010) *Fact Sheet: Curfews and Electronic Monitoring*, Perth, DCS, p. 1.
[312] Government of Western Australia DCS (2010) *Fact Sheet: Juvenile Justice Teams*, Perth, DCS, p. 2.
[313] Government of Western Australia (2024) 'Kimberley Juvenile Justice Strategy', Government of Western Australia website.
[314] J. Hayes, T. Thompson-Fuller & V. Mills (2022) 'WA government says long-awaited Kimberley youth rehabilitation facility will provide 'alternative' to Banksia Hill', *ABC News*, 22 November.

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Bail Act 1977

Bail Amendment Bill 2023

Bail Amendment (Indictable Offences Whilst on Bail) Bill 2024

Youth Justice Bill 2024

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Crimes Act 1914 (Cth)

Criminal Code 2002 (ACT)

Criminal Code Act 1899 (Qld)

Criminal Code Act 1924 (Tas)

Criminal Code Act 1983 (NT)

Criminal Code Act Compilation Act 1913 (WA)

Young Offenders (Interstate Transfer) Act 1987 (Qld)

Young Offenders Act 1993 (SA)

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Youth Justice Act 1992 (Qld)

Youth Justice Act 1997 (Tas)

Youth Justice Act 2005 (NT)

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