

Working Together

**Smart
Justice**
FOR YOUNG PEOPLE

**Action Plan to end the over-representation
of particular groups of young people in the
criminal justice system**

October 2023

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Glossary of terms

First Nations	On the advice of our First Nations member groups, we generally refer to First Nations people. We do use the terms Aboriginal or Indigenous people when we are drawing from a report or data where First Nations people have been described this way.
Indigenous Data Sovereignty and Indigenous Data Governance	Indigenous Data Sovereignty 'refers to the right of Indigenous people to exercise ownership over Indigenous data' and Indigenous data governance 'refers to the right of Indigenous peoples to autonomously decide what, how and why Indigenous Data are collected, accessed and used'. ¹ It can be contrasted with 'BADDR' data use that is Blaming, Aggregate, Decontextualised, Deficit, Restricted. ²
Māori and Pasifika	Māori and Pasifika is used as a term to describe people who are of Māori and from Pacific Island Nation backgrounds e.g Cook Islands, Samoa, Tonga, Tuvalu.
Multicultural children and young people	This term is used to refer to children and young people who are of refugee and migrant backgrounds, including those born in Australia, and whose cultural, ethnic and racial diversity distinguishes them from those recognised as white people (see definition of 'White people' below).
Over-criminalisation	A person is over or unfairly criminalised if they are subject to police or legal system contact (including stop, question, search, arrest, prosecution, detention) when such contact is inappropriate, unnecessary, unjustified or an alternative non-criminalising response could or should have been made available.
Over-representation	A group of people is over-represented in the criminal legal system if they are more likely to be in contact with the system than their group's proportion in the population would predict.
Racial profiling	The disproportionate and unreasonable use of police investigative (or other such) powers against particular First Nations and racialised groups compared with white people.
Racialised communities	In this report the term 'racialised' is used to draw attention to the process of social construction in which some people are constructed as having a 'race', such as 'white' or 'black'. Racialised communities are communities of people who are constructed as non-white in Australian culture, where 'whiteness' is constructed as unremarkable.
Restorative justice	Restorative justice is a theory of justice that focuses on repairing the harm caused by crime and wrongdoing to the people most immediately affected and the community. It is an alternative to retributive justice which requires authorities to respond to crime with punishment to maintain social order, promote individual and collective deterrence and to denounce the harm.
Under-representation	A group of people are under-represented in housing, education, health or employment if they are less likely to be safely housed, educated, or employed or receive adequate healthcare than their group's proportion in the population would predict.
Young person (up to 25yrs)	Unless noted otherwise, 'young person' refers to a person who is 25 years or younger.
White people	In this report, we use the term 'white' people to refer to people who are racialised as white. We recognise that no terms that describe race, ethnicity or identity are sophisticated enough to capture all nuances.

Executive summary

Victoria's overall youth incarceration rate is falling, but certain young people still come into contact with the justice system at disproportionately high rates. They are over-represented in police contacts and youth detention, and they are under-served by government and community services. Victoria's criminal justice system, and the systems that operate alongside it, are not working for these young people.³

This document contains an Action Plan to end the over-representation of these groups in our criminal justice system. It is based on two years of collective work and reflects our shared practice experience and the current evidence base. The benefits of implementing this Action Plan will extend to *all* Victorians, not just those directly harmed by over-representation.

Every child and young person in Victoria deserves the care, opportunities and support necessary for them and their families to flourish. Right now, however, some Victorian children and young people are not getting this vital government and community support and are instead funnelled into the criminal justice system.

In Victoria, five of the most over-represented groups in the criminal justice system are:

- First Nations children and young people;
- Multicultural children and young people;
- Children who live in out-of-home residential care;
- 18–25 year olds; and
- Girls and young women with complex needs.⁴



The core of the problem

This Action Plan focuses on the common overlapping systemic and structural factors that cause the over-representation of these young people in the criminal justice system. We often talk about preventing 'youth crime' as if young people are the sole problem.

In contrast, this Action Plan focuses on the systems that are not working for these young people (10-25 years) and their families. Youth crime prevention is a necessary by-product of this focus.

We show that the over-representation of particular young people is due to failings in the current capacity of key government agencies, statutory institutions and community organisations to respond to the needs of these young people and their families. These young people are:

- **Over-represented** in police and criminal justice system contact
- **Under-represented** in the provision of essential services (such as access to housing, healthcare, education and employment).

This means that changes to the *criminal justice system alone* will not end over-representation. We need a response that is sufficiently sophisticated to address the entire range of intersecting systemic and structural issues that keep these five cohorts over-represented.

What needs to be done?

To end the over-representation in the criminal justice system of the five identified youth cohorts, we have developed this Action Plan which contains nine (9) whole of government asks and forty (40) asks within six (6) individual portfolio areas.

Figure 1: Whole of government and six portfolio areas of focus in SJ4YP's Action Plan.



The over-representation of these five groups of young people in the criminal justice system is an **urgent problem that requires our immediate attention**. Our Action Plan is the most effective way to enable deep cross-sectoral collaboration; tackle shared systemic drivers; and redirect our efforts and finite resources to prevention and addressing under-representation.

By committing to this Action Plan, we acknowledge the urgency of this problem and the **collective action necessary to end it**.

This Action Plan is a culmination of the diverse practical experience of the members of Smart Justice for Young People (SJ4YP) and our current knowledge about over-representation and its systemic and structural drivers.⁵

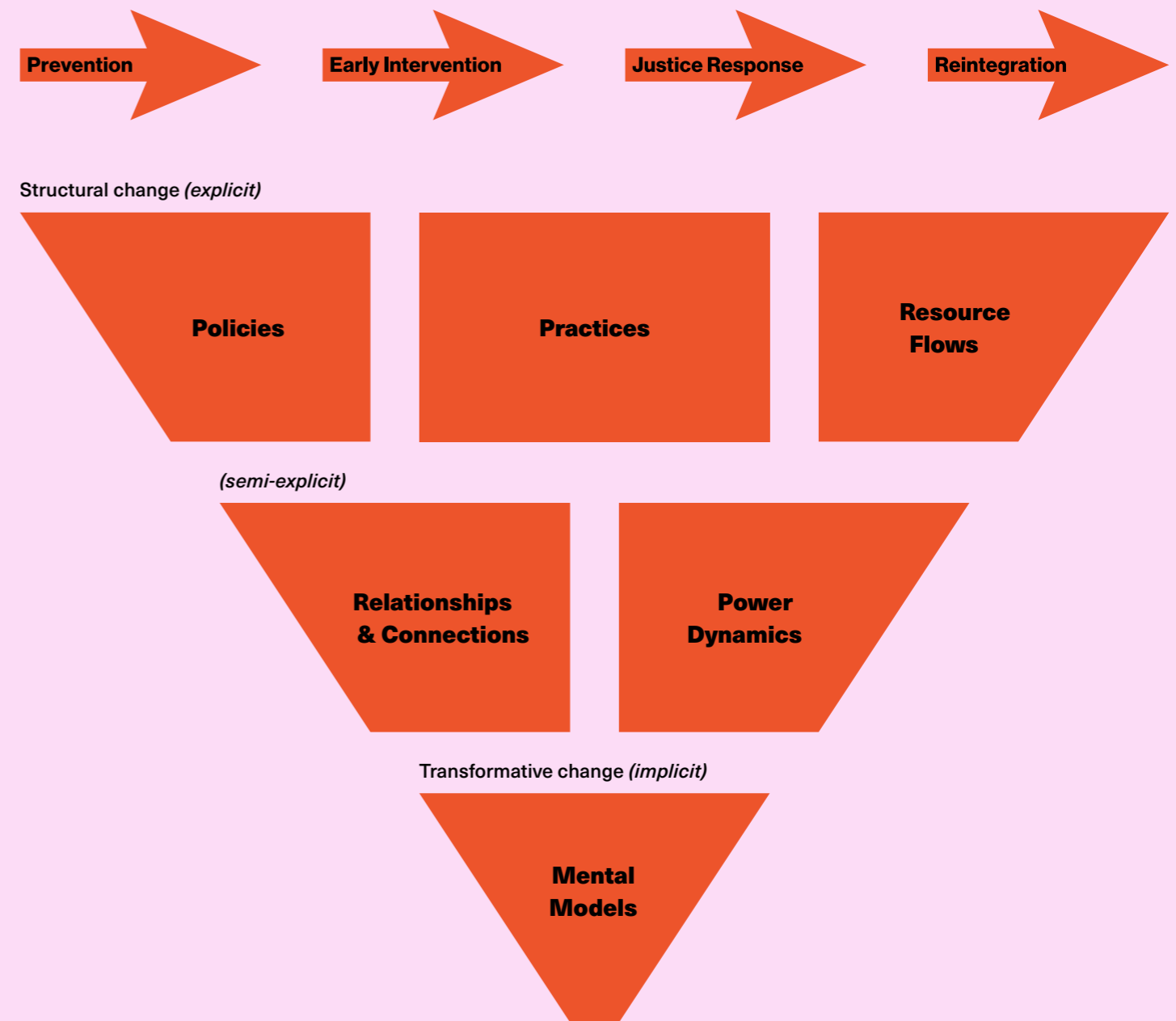
The asks in our Action Plan address the six interdependent systemic and structural conditions that continue to maintain the over-representation of particular young people in the criminal justice system [see Figure 2]⁶ at the key points of:

- crime prevention;
- early intervention;
- the civil and criminal justice response; and
- community reintegration.

They are also underpinned by the following five principles: non-discrimination; the best interests of a child; the right to life, survival and development; children's right to participate in decisions affecting them; and self-determination.



Figure 2: Six interdependent (structural and systemic) conditions that we need to positively shift to end the over-representation of the five youth cohorts in the criminal justice system.





How to read this action plan

This Action Plan builds on crucial work demonstrating the structural, historical and colonial injustices that contribute to over-representation, and localised programming and service solutions.⁷ It also acknowledges the important work already underway in response to these problems within the justice system, for example the Yoorrook Justice Commission, South Sudanese Australian Youth Justice Expert Working Group and Framework to Reduce the Criminalisation of Children in Residential Care.⁸

Based on available evidence, best practice and our experience, we have identified common and overlapping system issues (root causes) that are perpetuating the over-representation of all the five youth cohorts in the criminal justice system including:

- the application of certain criminal and civil justice and correctional laws, policies and practices;
- over-policing;
- the way decision-makers exercise their discretion;
- the way crime prevention and community reintegration are currently dealt with;
- over-reliance on police by community-based institutions to deal with challenging behaviour by young people;
- the way families are supported; and
- government funding to, and service decisions by, community organisations.⁹

Our Action Plan highlights how simultaneously fixing these issues will deepen the impact of key government work underway.

This Action Plan is an unprecedented and collective effort to focus attention on the systemic and cross-sectoral factors underpinning the over-representation (and under-representation) of some children and young people.

This Action Plan is for **all decision-makers involved with children and young people**: government and the government funded community sector. Ending over-representation requires our immediate and sustained collective and coordinated attention.

SJ4YP is a coalition of over fifty leading Victorian social services, health, legal and youth advocacy organisations, calling for evidence-based and effective responses to children and young people involved in the criminal legal system. It is co-convened by Youthlaw and Westjustice. The coalition provides a coordinated and expert voice on

youth justice initiatives and reforms so that children and young people will have the best chance to succeed in life, supported by their families and their communities. Victoria Legal Aid (VLA), the Victorian Human Rights and Equal Opportunity Commission (VEOHRC) and Commission for Children and Young People (CCYP) participate as observers. This Action Plan was created by one of SJ4YP's working groups. Working Group members include: Youthlaw, WestJustice, Victorian Mental Illness Awareness Council, Koorie Youth Council, Police Accountability Project, Inner Melbourne Community Legal Centre, Centre for Excellence in Child and Family Welfare, Centre for Multicultural Youth, Centre for Innovative Justice, Federation on Community Legal Centres (Vic) Inc, Victorian Aboriginal Legal Service, Human Rights Law Centre, Youth Support and Advocacy Service, Youth Affairs Council Victoria, Jesuit Social Services, Justice Reform Initiative, Dr Tamar Hopkins, Victorian Council of Social Services, Dr Nesam McMillan, Associate Professor Diana Johns, and Associate Professor Anne-Marree Fenech. A special thanks to Professor John Tobin from the University of Melbourne as well for his time and expertise as we developed this Action Plan; Eva Lazzaro of SJ4YP; and the School of Social and Political Sciences, University of Melbourne, for research assistance support.

This Action Plan supports the implementation of remaining recommendations contained in the following reports and is designed to work with them:

- CCYP's [Keep Caring, Out of Sight, Our Youth, Our Way](#)¹⁰
- [Parliamentary Inquiry into Victoria's Criminal Justice System](#)
- Royal Commission into Aboriginal Deaths In Custody
- Royal Commission into Victoria's Mental Health System
- Koorie Youth Council's Ngaga-Dji Report
- Finding into the passing of Veronica Nelson
- Finding into the passing of Tanya Day
- Yoorrook Justice Interim Report.

We acknowledge and pay our respects to the custodians of the lands on which we work and recognise that sovereignty was never ceded.

Where do we begin?

Based on recent reforms, strategies, policy platforms and public statements, this Action Plan assumes those working in government, statutory organisations and community organisations, whose work engages with 10–25 year olds and families affected by young people's over-representation in the criminal justice system, share a commitment to:

- Equality and non-discrimination
- Addressing over-representation of First Nations children and young people; multicultural children and young people; children living in residential care homes; 18–25 year olds; and girls and young women with complex needs
- Detention as a last resort
- Minimising re-offending
- Enabling the wellbeing and social integration of children and young people who offend
- The use of evidence to inform policy and practice
- Collaborating with all relevant actors including young people
- Self-determination for First Nations children and young people
- Having a criminal justice system that maintains public safety and uses State resources efficiently.



Action plan: Ending over-representation in the criminal justice system

Whole of Government Asks

ASK ONE:

The Victorian Government develop and implement a cross-ministerial portfolio and cross-departmental Framework to end the over-representation of the five youth cohorts in the criminal justice system.

This Framework would set and coordinate all actions across government, statutory agencies and government-funded organisations and address criminalising processes and systemic over-representation across the following domains:

- Criminal and civil justice systems – understand the systemic drivers of over-representation and prioritise outcomes that work
- Policing – ending policing practices that lead to over-representation
- Children, families and their communities – Enabling families, carers and communities to get the help they need when they need it to support young people
- Housing and material needs – Ensure all children, young people and their families have access to safe, stable, affordable housing
- Health and wellbeing – ending practices which criminalise health and wellbeing issues and recognise and end systemic barriers to accessing meaningful support
- Education – ending education practices that lead to criminalisation and increase school inclusion.

This Framework would coordinate decisions and investments that affect the life course of young people and their families over-represented in the criminal justice system from prevention through to reintegration across these domains.

Responsibility would be spread across the Department of Justice and Community Safety (DJCS), Department of Education (DE), Department of Health (DH), Department of Families, Fairness, Housing (DFFH) and Department of Jobs, Skills, Precincts and Regions (DJSPR). DFFH should lead this response, as it has the expertise coordinating and commissioning social services to support families with complex needs.

The Framework, and action to implement the Framework, should be centred on the following principles:

- Prohibition against all forms of discrimination
- Best interests of the child
- Right to life, survival and development
- Young peoples' right to participate in decisions that affect them
- Aboriginal self-determination.

This Framework would build on reform already underway, based on shared commitment and responsibility across government and service providers under *Wirkara Kulpa 2021–2031* and the *Framework to reduce criminalisation of young people in residential care*.

The Framework would also incorporate and align with other key government policies, including:

- [Our promise, Your future: Victoria's youth strategy 2022–2027](#) | Victorian Government
- [Youth Justice Strategic Plan 2020-2030](#) | Department of Justice and Community Safety Victoria
- [Corporate Plan 2022-26](#) | Department of Justice and Community Safety Victoria
- [Crime Prevention Strategy](#) | Community Crime Prevention Victoria
- [DJPR-Strategic-Plan-2021-25](#)
- [Roadmap for Reform: Strong Families, Safe Children](#) | Department of Families Fairness and Housing Victoria

ASK TWO:

Government develops and adopts outcomes measures to monitor and report on progress towards achieving the proposed Framework in Ask One. These outcomes measures should be linked to the existing Youth Strategy Outcomes Framework and:

- Relate clearly to the decision making principles outlined in Ask One
- Comply with Indigenous Data Sovereignty and Indigenous Data Governance principles
- Legislation should be introduced to mandate regular data collection, analysis and public reporting by the responsible departments and statutory agencies¹¹
- The data collection and reporting process should begin with the establishment of baselines
- Include cost expenditure and avoidance.

ASK THREE:

Regularly assess the impact of proposed law reform, policies, and practices on groups affected by over-representation including genuine consultation and feedback as to the outcomes of those consultations as part of the Framework and adopted outcomes.¹²

ASK FOUR:

Ensure services are adequately funded, over time, to enable deep collaboration and collective impact under the Framework by:

- Including the framework as a key criterion across all government funding and programming in time for the 2024-25 Victorian Budget for new and renewed funding opportunities including but not limited to crime prevention funding, youth justice funding, education and health
- Long-term contracts for government-funded community service organisations. The Productivity Commission recommends 7 years.
- Introducing funding models that support systems change.

ASK FIVE:

Mandate all government and government-funded community delivered services across justice, policing, education, health, housing, child and family services to regularly undertake foundational and booster training on cultural safety, anti-racism, gender inequity, and trauma-informed practice as part of the Framework.¹³

ASK SIX:

Progress implementation of '[Our promise, Your future: Victoria's youth strategy 2022-27](#)' by strengthening the Office for Youth's coordination role and investing in the youth and adjacent sectors to implement the strategy.

ASK SEVEN:

Commit to genuine First Nations self-determination and community control. This means prioritising the actions that First Nations people say will enable self-determination and end over-representation and under-representation, including power, money and resource transfer and sharing.¹⁴

ASK EIGHT:

Develop a whole-of-government Multicultural Youth Justice Strategy, that sits alongside the existing Framework to End the Criminalisation of Young People in Residential Care and *Wirkara Kulpa*.

ASK NINE:

Bring Community Crime Prevention and Community Reintegration Support into the DFFH portfolio for 10-25 year olds. Shared responsibility between DJCS and DFFH will enable the creation of collaborative responses e.g. Youth Justice Community Support Service and Putting Families First.¹⁵

Spotlight: Ask Two

Government develops and adopts outcomes measures to monitor and report on progress towards achieving the proposed Framework in Ask One. *Outcomes measures should include:*

Criminal and civil justice systems¹⁶

Access to diversionary options, access to therapeutic and community-based sentencing options, civil and criminal summary and indictable prosecution outcomes, fine issuance and enforcement outcomes, victims of crime applications and outcomes, family violence and personal safety outcomes, and legal assistance outcomes.

Children, families and their community

Child removal and placement in residential care data; involvement with the community and statutory care and protection system and any intersecting cross-over into the criminal justice system including level of police contact; and, education, health, employment and exit from care outcomes.

Health and wellbeing

Service access and outcome data throughout the health, mental health, alcohol and other drug support systems, self-harm and suicide data.

Housing and material needs

Service access and outcome data relating to homelessness and material needs support.

Policing

Pedestrian and vehicle stops, searches, requests to move-on, arrests, detention in police custody, use of force, family violence call outs, action on family violence breaches, cautions, recommendations for diversion, action on missing person reports, complaints along with perceived racial appearance, First Nations status, gender appearance and child protection status.

Education

Number of, and grounds for, student absenteeism, formal and informal suspensions, and expulsions, to monitor patterns of student groups disengaging, detaching or being removed from school, Parkville College outcomes, TAFE and University course completion.

Domain 1: Criminal and civil justice systems

ASK TEN:

- Raise the age of criminal responsibility to 14 years of age with no exceptions within this term of government.
- Raise the minimum age of detention to at least 16 years, in line with UN recommendations.
- Amend the *Bail Act 1977* (Vic) to implement *Pocum's Law*⁸⁵ beginning with children and young people aged 10-25.⁸⁶
- Raise the jurisdiction of youth justice to 25 years old in line with Victoria's Youth Strategy: *Our Promise, Your Future*.
- Resource proper consultation with affected groups.
- Stage implementation starting with supervised bail and start using Cherry Creek Youth Justice Centre for both remand and sentenced young people over 18 years old.
- Remove the need for police consent for diversion for 10-25-year olds.⁸⁷
- Require police to provide reasons where they have not proceeded by way of summons per s 345 of the Children, Youth and Families Act (CYFA) in the forthcoming Youth Justice Act Bill.
- Repeal the mandatory and presumptive uplift provisions for category A (non homicide offences) and category B offences contained in the CYFA in the forthcoming Youth Justice Act Bill as per recommendation 13 of the May 2022 Youth Justice Statutory Review.
- The forthcoming Youth Justice Bill Act, *Criminal Procedure Act 2009* (Vic), *Sentencing Act 1991* (Vic), and *Bail Act 1977* (Vic) should include formal acknowledgement of the unique systemic factors which lead to the over-representation of particular youth cohorts in the

justice system, and the need for decision makers under these Acts to take active steps wherever possible to redress and reduce this over-representation.

ASK ELEVEN:

- Improve the way youth victims are currently identified and supported to recover (including where they have also offended) and ensure that the system is child-centred, gender, culture and trauma informed and meeting their needs, in particular those who are over-represented in the criminal justice system.
- The CCYP and Commissioner for Aboriginal Children and Young People in conjunction with other key statutory organisations including the Victorian Equal Opportunity and Human Rights Commission (VEOHRC), Victoria Police, Crime Statistics Agency (CSA) and Victims of Crime Commission engage with media outlets on issues of youth crime and the serious harms that can be caused through incomplete and/or inaccurate reporting to Victorians impacted and affected by over-representation in consultation with community organisations.
- Increase the mandate of the Youth Referral and Independent Person Program (YRIPP) to 25 and require that the option of an Independent Person is provided to any young person under 18 years even when a parent/guardian is available. Mandate pre-interview legal assistance and post interview legal and non-legal referrals, considering information sharing and privacy considerations.
- Victorian Government fully implement the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in relation to treatment and conditions in police custody, prison and other places of detention, including

the establishment of a National Preventive Mechanism whose operations, policies, frameworks and governance are culturally appropriate and safe for First Nations people and other criminalised racial groups.

- Youth Justice and Corrections Victoria end solitary confinement for people aged 25 years and under.
- Ensure all children and young people 25 years and under are eligible to apply for parole and able to be represented. The *Charter of Human Rights and Responsibilities Act 2006* (Vic) and rules of natural justice should apply and allow for applicants to be legally represented.
- The Office of Public Prosecutions (OPP) introduce a new Director's Policy regarding the best practice treatment of child and youth victims, witnesses and those who are accused, where they are the prosecuting agency.
- Mandate full physical, mental, language, neurological and cognitive health checks to all young people under 25 entering into custody to ensure proper throughcare (whilst in the criminal justice system) and post care (once they formally depart the criminal justice system).

ASK TWELVE:

Prohibit the imposition of Personal Safety Intervention (PSIO) and Family Violence Intervention Orders (FVIO) and infringement notices against children under 14 years old.

ASK THIRTEEN:

Legislate to implement binding enforcement reviews as advised under Recommendation 17 of the *Fine Reform Advisory Board's* (FRAB) Report.

ASK FOURTEEN:

Victorian Government legislate to expand CAYPINS for 18-25 year olds.

ASK FIFTEEN:

DJCS implement Recommendation 9 of the FRAB report to increase the accessibility and sustainability of the Work and Development Permit (WDP) scheme and resource WDP sponsors, so more financially disadvantaged young people can deal with fines.

ASK SIXTEEN:

DJCS promote and expand the COVID-19 fines concession scheme to all fines to enable financially disadvantaged young people to pay a reduced amount and exit the system.

ASK SEVENTEEN:

The Victorian Government undertake a broad ranging review of the effectiveness (including cost recovery) of the Infringement and Demerit Point System in discouraging anti-social behaviour of 10-25 year olds and promoting safety, fairness and community welfare.⁸⁸

ASK EIGHTEEN:

Implement the recommendations of the PIPA Report⁸⁹ relating to improving where a victim has been incorrectly identified as a perpetrator of family violence and Smart Justice For Women (SJFW) recommendations, particularly its policing recommendations.⁹⁰

ASK NINETEEN:

DFFH, DH and DE develop a whole of school and family approach to addressing underlying safety and wellbeing needs and end the over-reliance on PSIO's in school settings, particularly against children over-represented in the criminal justice system.

In Victoria, criminal justice and correctional law and policy decisions have directly or indirectly contributed to the over-representation of the five groups of young people. The criminal justice system extends from the first contact with police, appearance in court right through to parole and/or transfer to adult prison.



● Case study 4: Mahmud¹⁵⁶

Mahmud (not his real name) is 17, he goes to high school and lives with his family in outer Melbourne.

He was charged with intentionally cause injury in circumstances of gross violence, on a complicity basis for filming a fight that broke out. The circumstances of the incident were serious, but there was no evidence of any agreement, plan or understanding between Mahmud and his co-accuseds, the footage does not depict him intentionally assisting, encouraging or directing the commission of the offence and other people are shown to be filming as well who were not charged. Despite not being alleged to have committed or encouraged any violence, Mahmud was initially refused bail because of the seriousness of the charge. As a result, Mahmud spent 136 days in remand.

Because of the uplift presumption the matter was adjourned to a committal and a summary jurisdiction application was listed. This created delay for time to prepare evidence and disclosure materials, and a complainant examination.

Ultimately a discontinuance was accepted and all the charges were withdrawn. While this is a just outcome for Mahmud, because of the Category A charge influence on the bail decision-maker in the first instance, Mahmud spent 136 days in remand at a young age; because of the uplift process the matter took almost a year to resolve.

We have also seen policy and legislation enacted based on a 'tough on youth crime' rhetoric rather than evidence of what works. Reforms and practices we are most concerned about include:

- The introduction of serious youth offender legislation and new category A and B offences in 2018⁹¹
- Relentless, sensational and at times inaccurate media reporting
- Harsh criminogenic conditions in youth custody (as opposed to rehabilitative) including rolling lockdowns due to staff shortages
- Transfer of children to adult custody
- Lack of awareness/consistency in police bail decision-making discretion at station level
- Non-adherence to the presumption in favour of summons contained in s345 of the *Children, Youth and Families Act 2005* (Vic) (CYFA)
- Need for prosecution consent to diversion and police consent for cautions
- Lack of respect for the presumption of doli incapax⁹²
- Criminalisation of under 14 year olds
- The introduction of strict bails laws in 2013, 2017 and 2018.
- Erosion of the "dual track" system which enables a young person aged 18-21 at the time of their sentence to be detained in a Youth Justice custodial centre, as opposed to adult prison, if assessed as suitable.

The changes to the *Bail Act 1977* (Vic) introduced in 2018 have made it harder for young people to get bail and have disproportionately impacted women, particularly Victorian First Nations women. Young people have borne the burden of a defective bail system, which was still dealing with the compound effect of the 2013 bail changes and then the 2016 reforms which had little time to take effect.⁹³

The problem of the 2018 changes has been well articulated through the Parliamentary Inquiry into the Criminal Justice System, Coronial Inquiry into the death of Veronica Nelson and the Yoorrook Justice Commission.⁹⁴ We welcome the announcement of bail changes by the Victorian Government earlier this year and introduction of the Bail Act Reform Bill.⁹⁵ We also acknowledge the tireless and generous advocacy of Uncle Percy Lovett and Aunty Donna Nelson and the rest of Veronica Nelson's family without whom change in the Bail space may not have occurred.⁹⁶ Often young women are charged with minor crimes, but still are remanded. Minor crimes leading to remand include drug offences, theft and property offences, public nuisance and unlawful assembly. The period of remand can lead to homelessness, separation from children and other vital protective factors. It can also force people into unsupported drug withdrawal leading to their death (e.g. Veronica Nelson). The risks that young women present with during applications

for bail are more likely to be indicators of disadvantage and marginalisation, in particular, housing instability, impoverishment and drug use, rather than risks to community safety.

18-25 year-olds

In recent years, youth crime prevention has been focused on 10-17 year olds. However, young adult offenders (18-25 years-olds) are over-represented in Victoria's criminal justice system. Young adults make up 15 percent of Victoria's adult population but 22 percent of offenders in the Magistrates Court and 25 percent of offenders in the higher courts.⁹⁷ More than half (53 percent) of young adults return to prison within two years. This recidivism rate is more than 8 percent higher than the general population,⁹⁸ suggesting that the current criminal justice system is not adequately responding to the unique developmental needs of young adults. It is well established that brain development continues until at least a person's mid-20s, often up to 30. Young adults are statistically greater risk takers and are more likely to be influenced by peers and less future-oriented than older groups — this has an impact on behaviours and attitudes.⁹⁹

To reduce the over-representation of 18-25 year olds it is essential we take a developmental approach and the most logical and accessible solution is to extend the jurisdiction of Youth Justice to 25 years old. The infrastructure is there and a precedent has been set with Victoria's Youth Strategy covering 12-25 year olds.

With the exception of youth imprisonment to aged 20, most youth justice policy is directed to people under 18.¹⁰⁰ This means young people over the age of 18 miss out on the Youth Justice Group Conferencing and Diversion Programs and other critical programs designed to support young people whose brain development has not reached maturity (25-30 years old).¹⁰¹



There are two areas of concern in the civil justice system that are contributing to the over-representation of these youth cohorts: (1) the fines infringement system; and, (2) misidentification of victim survivors in family violence and personal safety matters as perpetrators.

Fines

In terms of current infringement policies in Victoria, there exists a fine to crime pipeline that disproportionately impacts young people who are experiencing disadvantage.¹⁰² There are three core aspects to consider when evaluating the efficacy and fairness of the Victorian fines system: (1) whether fines are the best way to deter children and young people; (2) the amount of the fine issued in response; (3) the method of prosecuting unpaid fines. In the Children's Court there is the CAYPINS system¹⁰³ which adequately deals with (3) however this system does not exist for 18-25 year olds.

Some infringement offences such as begging and having an open container of liquor explicitly criminalise poverty and homelessness. The one-size-fits-all fines system means most young adults experiencing vulnerability who receive fines are unable to pay them. These young people are then subject to enforcement measures, prosecutions and the risk of imprisonment if their fines remain unpaid. This has generational flow-on impacts. For example, we often see children and young people commit shoplifting offences for food and clothes their family can't afford because their families are trying to pay off fines. By reducing the impact of fines on youth experiencing vulnerability and financial hardship, consequential offending can be prevented. The independent Fines Reform Advisory Board (FRAB) inquiry in 2020 recommended consideration be given to concession-based fines, which would legislate that people, including under 25 year olds on Centrelink and others in significant financial hardship would be fined a smaller amount.¹⁰⁴ The legal assistance sector has recommended between 5 and 20 percent of the full fine amount. This reform would enable people experiencing financial hardship to address their infringements and avoid criminalisation. Keeping people out of the courts will

prevent them entering the recidivist cycle of exposure to the criminal justice system, which sees hardship compounded and reoffending become more likely. This reform was introduced in relation to COVID fines and should be extended to all 10-25 year olds.¹⁰⁵

The FRAB similarly found that improving the accessibility of the *Work and Development Permit* (WDP) Scheme would assist more recipients experiencing vulnerability and made three key recommendations focused on enabling those who shouldn't or can't pay their fines to access a therapeutic, non-financial alternative to payment.¹⁰⁶

Another FRAB recommendation that would reduce reoffending and prosecution is the direction to make enforcement review decisions final and binding. Currently, after Fines Victoria reviews an enforcement agency's decision to issue a fine, the enforcement agency has the power to issue a charge and summons for the underlying offence where the infringement is cancelled by Fines Victoria. Making Fines Victoria's decisions final and binding would again prevent vulnerable Victorians being funnelled into the court system.¹⁰⁷



Anecdotally, we know that police misidentification in Family Violence and Personal Safety matters is a phenomenon disproportionately affecting over-represented children and young people. The challenge is that insufficient data is available, hence our ask for the collection of data as a starting point.

The Royal Commission into Family Violence (RCFV) raised concerns about the misidentification of the predominant aggressor in family violence situations and its associated impact on women.¹⁰⁸ It also recommended programs to prevent the criminalisation of children and young people.¹⁰⁹

A small study conducted by Women's Legal Service Victoria in 2018 revealed that of the 55 female clients named by police as respondents to intervention orders, 32 were incorrectly identified.¹¹⁰ The misidentification of women as the predominant aggressor in family violence situations leads to the criminalisation of family violence victim-survivors, compounding their distress and trauma.¹¹¹ The Centre for Innovative Justice's Positive Intervention for Perpetrators of Adolescent violence in the home (PIPA) Report also found case examples where young victim-survivors had been misidentified during its research and that the Victorian legal response system carries a strong risk of criminalisation of young people.¹¹² The PIPA report demonstrates that the current legal response to family violence is not reducing risk to families and makes young people vulnerable to criminalisation.¹¹³

Conclusion

The five groups of young people that we have focused on in this Action Plan are entitled to equitable outcomes and procedural fairness not just in the criminal justice system but also in the intersecting systems of health, education and child protection.

Ending their under-representation means addressing broader social inequities and determinants of health and wellbeing, including poverty, systemic racism, homophobia, transphobia, ableism, sexism, classism and any other types of discrimination. It means Truth, Voice and Treaty. It means access to education, safety, housing, health and justice not just for them but their families as well. Some of the specific action that this change requires is outside the scope of our Action Plan. However, we hope that our Action Plan takes us a further step closer to ensuring that the children and young people discussed in this document who are over-represented in the criminal justice system are not just free from criminalisation, but have an opportunity to thrive in life, along with all children and young people in Victoria.



References

- 1 Maïam nayri Wingara, 'Maïam nayri Wingara Indigenous Data Sovereignty,' (Web page, accessed on 16 August 2023) <<https://www.maïamnayriwingara.org/definitions>>.
- 2 Maggie Walter et al, 'Indigenous Data Sovereignty in the Era of Big Data and Open Data' (2020) 56(2) *The Australian journal of social issues*, 143.
- 3 See Department of Justice and Community Safety (DJCS), 'Diversion: keeping young people out of youth justice to lead successful lives' (Report, April 2022) p 11; See also Australian Institute of Health and Welfare, 'Youth justice in Australian 2021-22, Victoria' Australian Institute of Health and Welfare (Report, online at 31 March 2023) This report states that over the 5 years to 2021-22, on an average day, in Victoria, the number of all young people under supervision fell by 30 percent (from 1,036 in 2017-18 to 727 in 2021-22) (Table S129a), while the rate fell from 11 to 5.8 per 10,000 young people aged 10-17 (Table S12a); In community-based supervision, the number fell by 27 percent (Table S129b), while the rate fell from 8.7 to 4.6 per 10,000 young people aged 10-17 (Table S45a); In detention, the number fell by 41 percent (Table S129c), while the rate fell from 2.0 to 1.3 per 10,000 young people aged 10-17 (Table S83a); The rate of Indigenous young people aged 10-17 under supervision fell from 111 to 53 per 10,000 (Table S12a). Note though most recent Crime Statistics Agency (CSA) data which says that alleged offender incident data up for 10-17 year olds; Lachlan Abbott, 'Youth crime Victoria: Offences by children aged 10 to 14 increase by more than a third' *The Age* (Online at 15 March 2023) <<https://www.theage.com.au/national/victoria/youth-crime-surge-as-offences-by-children-aged-10-to-14-increase-by-more-than-a-third-20230316-p5c5skw.html>>.
- 4 As recognised in The Victorian Aboriginal Justice Agreement, 'Wirkara Kulpa - Aboriginal Youth Justice Strategy 2022-2032' (Report, 17 February 2023) (Wirkara Kulpa); DJCS, 'Youth Justice Strategic Plan 2020-2030' 'Youth Justice Strategy' (Report, 2 December 2022), p 32; DJCS, 'Crime Prevention Strategy' (Report, 2022) 'Crime Prevention Strategy'; DJCS, 'Review of the Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017' (Report, May 2022) and Sentencing Advisory Council (SAC), 'Rethinking Sentencing for Young Adult Offenders' (Report, December 2019) ('SAC's Rethinking Sentencing for Young Adults Report').
- 5 Each organisation has a vast catalogue of relevant position statements, policy paper, research reports and law reform submissions. This Action Plan builds in particular on SJ4YP's Investing in communities not prisons Report (Report, 2017) accessed online 30.09.23 <<http://youthlaw.asn.au/wp-content/uploads/2017/10/18579-MIS-YouthLaw-Advocacy-Report-2017-WEB.pdf>>.
- 6 See John Kania, Mark Kramer and Peter Senge, 'The Water of Systems Change,' (Report, June 2018), p 3-5 for introduction to the framework and six conditions of change concept.
- 7 Commission for Children and Young People, 'Our Youth, Our Way: Inquiry into the over-Representation of Aboriginal Children and Young People in the Victorian Youth Justice System' (2021 Our Youth, Our Way Report); Felicity Stewart, 'Crossover Kids: Vulnerable Children in the Youth Justice System: Report 1' Sentencing Advisory Council (Report, August 2019); Charis Mentoring, 'Village Response Plan, a Grassroots Response to Reducing Recidivism amongst Pasifika Youth' (Report, 2020); State Government of Victoria, 'Targeted support for at risk South-Sudanese Youth (Media Release, 12 May 2022); Shepherd, Stephane, Bailey, Aisling and Masuka, Godwin, 'The Experiences and Perspectives of African-Australian Community Service Providers Who Work with At-Risk and Justice-Involved Youth', *International Journal of Offender Therapy and Comparative Criminology* (Article, 2022), in particular 1438-1443 (Shepherd, Bailey and Masuka 2022); Shepherd, Stephane and Masuka, Godwin, 'Working With At-Risk Culturally and Linguistically Diverse Young People in Australia: Risk Factors, Programming, and Service Delivery', *Criminal Justice Policy Review* (Article, 2021) (Shepherd and Masuka 2021).
- 8 For example Department of Health and Human Services (DHHS), 'A Framework to reduce criminalisation of young people in residential care' (Report, January 2020) (*Framework to reduce criminalisation of young people in residential care*); Department of Families, Fairness and Housing, 'Roadmap for Reform: Strong Families, Safer Children' (Report, 2021); State Government of Victoria, 'Transforming the System for Our Most Vulnerable Kids' (Media Release, May 2021); Victoria, Royal Commission into Victorian Mental Health System 'Final Report: Summary and Recommendations' (Report, February 2021); DJCS, 'Crime Prevention Strategy' (Report, 2022); Victorian Aboriginal Justice Agreement 'Wirkara Kulpa: Aboriginal Youth Justice Australia 2022-2032' (Report, 17 February 2023); Victorian Aboriginal Justice Agreement 'Burra Lotjpa - The Aboriginal Justice Agreement Phase 4' (Agreement, 2018); State Government of Victoria 'The Victorian Closing the Gap Implementation Plan 2021-2023' (Report DJCS, 'Youth Justice Strategy 2020-2030', (Report, May 2020); notably the establishment of the South Sudanese Australian Youth Justice Expert Working Group; ; State Government of Victoria, Department of Premier and Cabinet 'Victorian African Communities Action Plan' (Report, 2018); Department of Families, Fairness and Housing 'Our Equal State: Victoria's gender equality strategy and action plan 2023-2027' (Report, 2023); State Government of Victoria, 'Safe and strong: A Victorian Gender Equality Strategy' (Report, 2016) and the Victorian Government's establishment of the Anti-Racism Task Force. Note this is not meant to be an exhaustive list.
- 9 See DJCS, 'Review of the Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017' (YJ Statutory Review Report), May 2022, p 40 which confirmed: 'There has been a 287 percent growth in the number of South Sudanese and Sudanese young people under Youth Justice supervision (other than CCYD, including community supervision, remand, and custodial supervision) between 2014-15 and 2020-21. However, this increase has not been matched by an increase in the proportion of this cohort being referred to CCYD;' Department of Families, Fairness and Housing, '*Framework to reduce criminalisation of young people in residential care*' (Report, February 2020) was released in 2020 and signed by DFFH, DJCS, VicPol, CFECW and VACCA. On page 26 it is noted that the release coincides with the commencement of the COVID-19 Pandemic. The Framework included an 18-month review which was delayed due to Pandemic response. According to the 2021-22 Youth Parole Board Report, 31 percent of the young people in custody were previously subject to a previous child protection order but not an open case, 5 percent had an open child protection case with no previous history and 18 percent were subject to a previous child protection and had an open case. DJCS, 'Youth Parole Annual Board Report 2021-2022' (Report, September 2022), p 26 <<http://www.justice.vic.gov.au>>
- 10 2021 Our Youth, Our Way Report, above, n [7].
- 11 See for example Ontario's Race-Based Data Collection Standards <<https://www.ontario.ca/document/data-standards-identification-and-monitoring-systemic-racism/introduction>>
- 12 We can learn from Victoria's Gender Equity Strategy and Action Plan 2023-2027 including the *Gender Equality Act 2022* (Vic) when designing and implementing the Framework and setting and adopting related Outcomes. Design and implementation can learn from the process introduced as part of Victoria's gender equity reforms and provisions in the Gender Equality Act 2020.
- 13 In many cases this will formalise work already underway, see for example: Department of Families, Fairness and Housing, 'Anti-Racism Taskforce'; Victoria Legal Aid, 'Cultural Diversity Anti-Racism Action Plan' (Report, March 2022).
- 14 We note the asks and research of Koorie Youth Council, 'Ngaga-dji' (Report, 2018) and Koorie Youth Council, 'Nuther-mooyoop to the Yoorrook Justice Commission on Systemic Injustice in the Criminal Justice System and Child Protection System' (Submission to the Yoorrook Justice Commission, December 2022) as essential to this ask.
- 15 We note the machinery of government change in 2017 which saw the youth justice system transferred from the Department of Health and Human Services (predecessor to DFFH) to the Department of Justice and Regulation (DOJR).
- 16 Crime Prevention, Victim Services, Support and Reform, Youth Justice, Adult and Youth Parole Boards, Victoria Police, Corrections Victoria, Judicial College of Victoria, Children's Court of Victoria, Magistrates Court of Victoria, Coroners Court, Office of Public Prosecutions, Victoria Legal Aid, Fines Victoria.
- 17 See Victoria Legal Aid, 'Care not Custody: A new approach to keep in kids residential care out of the criminal justice system' (Report, 2016) (VLA's Care Not Custody Report).
- 18 See for example, Community Crime Prevention Program, 'Crime Prevention Strategy' (Report, June 2021), p 7 which noted that only 4 percent of Victorian prisoners have completed secondary school, while 68 percent of young people in custody had been suspended or expelled from school; DJCS, 'Youth Parole Board Annual Report 2018-19' (Report, September 2019) p.29; Corrections Victoria, 'Annual Prisoner Statistical Profile 2006-07 to 2018-19,' (Report, August 2019), Table 1.13, 'All prisoners by sex and highest level of education'; We note as well the NAPLAN results released last Wed 23 August 2023, which showed more than 30 percent of the state's students were below proficiency. Further analysis and potentially data may be required to understand the nature and extent of the intersection with the cohorts over-represented in the criminal justice system.
- 19 See YJ Statutory Review Report above n[9] p 40-42.
- 20 To demonstrate, in their broad ranging review of Victoria's Youth Justice System, Armytage and Ogloff highlighted the factors underlying youth justice involvement, i.e.. mental health, disability, fragmented and problematic contact with education services, unstable accommodation, family dysfunction, poverty/ socioeconomic disadvantage, parents who offend, child protection involvement and exposure to family

- violence. Armytage and Ogloff, 'Meeting Needs and Reducing Offending' (Report, 2017), p8-9 (Armytage and Ogloff 2017 Report).
- 21 Tamar Hopkins, 'Understanding Racial Profiling in Australia' (PhD, UNSW, May 2022).
- 22 Bernard E Harcourt, *Against Prediction, Profiling, Policing and Punishing in an Actuarial Age* (University of Chicago Press, 2007). Note: We welcome Chief Commissioner Patton's acknowledgement at Yoorrook recently (Day 7 Hearing, Block 5, page 496-497) "As a result of systemic racism, racist attitudes and discriminatory actions of police have gone undetected, unchecked, unpunished or without appropriate sanctions, and have caused significant harm across generations of Aboriginal families. For all this, I genuinely and formally apologise as Chief Commissioner and on behalf of Victoria Police. I am sincerely sorry that this has occurred to Aboriginal people. It should not have happened. I cannot undo past actions and decisions of Victoria Police. What I can, and will do, is ensure that we proactively review our policies and processes with community to address systemic racism, unconscious bias or unequal use of discretionary power in outcomes."
- 23 2021 Our Youth, Our Way Report, above, n [7], p 19-21.
- 24 Leanne Weber, *You're Going to Be in the System Forever: Policing, Risk and Belonging in Greater Dandenong* (Monash University, April 2020); Charles R Epp, Steven Maynard-Moody and Donald Haider-Markel, *Pulled over: How Police Stops Define Race and Citizenship* (University of Chicago Press, 2014).
- 25 Above.
- 26 Armytage and Ogloff above n 24 (Part 2) at 81 affirmed the disruptive impact of time in custody for adolescents is undisputed, particularly the detrimental impact of time away from family, social networks, education, employment, recreation and community programs. See also for example online opinion by Baldry and Cunneen OPINION Locking up kids damages their mental health and leads to more disadvantage. Is this what we want?, 21 June 2019 <Locking up kids damages their mental health and leads to more disadvantage. Is this what we want? | UNSW Newsroom>.
- 27 Youth Justice Strategy, above n [2] p 32-33, this cuts across all aspects of the system — from prevention, remand, incarceration and programs designed to prevent re-offending.
- 28 Jesuit Social Services, 'All alone: Young adults in the Victorian justice system' (Report, 2018).
- 29 Sentencing Advisory Council (SAC), 'Rethinking sentencing for young adult offenders', at 6.1, December 2019, and footnote 579. We note as well s 32 of the *Sentencing Act 1991* (Vic) .
- 30 See Sentencing Advisory Council, Long-Term Sentencing Trends in Victoria, 2022; See further Justice Reform Initiative, State of Incarceration: Insights into Imprisonment in Victoria, March 2023, 1-2; IPSOS, Issues Monitor June 2023: The top issues facing Victoria, June 2023 <https://www.ipsos.com/sites/default/files/ct/publication/documents/2023-07/IM_States_Jun23.pdf>
- 31 D. S. Nagin, F. T. Cullen and C. L. Jonson 'Imprisonment and reoffending' (2009) 38(1) *Crime and justice*, 115-200; P. Gendreau, F. T. Cullen, and C. Goggin 'The effects of prison sentences on recidivism' (Ottawa, Ontario: Solicitor General Canada, 1999) p. 4-5
- 32 Productivity Commission, 'Report on Government Services 2023,' (Report, 2023) Chapter 17, 'Youth Justice Services.'
- 33 \$5050 x 365 days.
- 34 Jesuit Social Services, Submission to the Parliamentary Inquiry into the Criminal Justice System, September 2021, p24-25 citing the findings of an independent evaluation conducted by KPMG in 2010.
- 35 Jesuit Social Services, above n [28]
- 36 Victorian Ombudsman, OPCAT in Victoria: A thematic investigation of practices related to solitary confinement of children and young people, September 2019, para 956.
- 37 Above, p8. See further Jesuit Social Services, *All Alone: Young adults in the Victorian justice system*, 2018
- 38 'Our Youth, Our Way', above n [7], p 19.
- 39 Above, p 21.
- 40 The first Aboriginal youth justice strategy launched in February 2022 and is the primary vehicle through which to respond to the Our Youth, Our Way recommendations. We note further the budgetary commitments to resource priority actions in the 20-21, 21-22 and 22-23 budgets, notably in the DJCS, 'Youth Parole Board Annual Report 2021-22' (Report, September 2022), p 28.
- 41 Felicity Stewart, 'Crossover Kids: Vulnerable Children in the Youth Justice System Report 1' Sentencing Advisory Council (SAC) (Report, 27 June 2019) (SAC's Cross-over Kids Report 1); Susan Baidawi and Rubini Ball, 'Multi-system factors impacting youth justice involvement of children in residential out of home care,' (2022) 28(1) *Child and Family Social Work* 53.
- 42 SAC's Cross-over Kids Report 1, above.
- 43 2021-2022 Youth Parole Board Report, above n[9], p 28.; Rachel Eddie, *Charged with throwing a sponge: Residential Care criminalising kids*, data shows, The Age online, September 8, 2023- 5am <Victorian residential care is criminalising children, Victoria Legal Aid data shows (theage.com.au)>

- 44 United Nations Working Group of Experts on People of and African Descent, 'End of Mission Statement by the United Nations Working Group of Experts on People of African Descent, on the Conclusion of Its Official Visit to Australia (12-20 December 2022) Containing Its Preliminary Findings and Recommendations' (United Nations, December 2022) 7.
- 45 'Youth Parole Board Annual Report 2021-22', above n [9].
- 46 United Nations Working Group of Experts on People of and African Descent, above n [44].
- 47 See Westjustice, Systemic Impact Report, January to June 2023, p11 <https://www.westjustice.org.au/media-and-events/systemic-impact-report-january-to-june-2023>; and Prime Minister, Minister for Home Affairs, Minister for Immigration, Citizenship and Multicultural Affairs, Media Release: Direct Pathway to Citizenship for New Zealanders, April 2023 < <https://www.pm.gov.au/media/direct-pathway-australian-citizenship-new-zealanders>>
- 48 DJCS, 'Diversion: Keeping young people out of youth justice to lead successful lives' (Report, April 2022); See above YJ Stat Review caution and diversion data n[9] p 40-42.
- 49 Ogloff and Amytage, above n[19] (Part 2) p 159-160, detailed the needs of young women in custodial settings including higher rates of abuse, substance misuse and mental illness that youth male counterparts and the rates of all forms of disadvantage higher overall.
- 50 Emma Russell, Hui Zhou and Gabriela Franich, 'Gendered Injustice, The Policing and Criminalisation of Victim-Survivors of Domestic and Family Violence' (Fitzroy Legal Service, 2022).
- 51 SAC's Cross-over Kids Report 1 above n[41], p xvii p xviii: 'Of children first sentenced or diverted aged 14 or over, 46 percent of girls and 34 percent of boys were known to child protection.' See also Baidawi and Ball above n[41] at 1.3.
- 52 See Victorian Aboriginal Child Care Agency ('VACCA'), 'Response to the Inquiry into Children of Imprisoned Parents' (Report, April 2022) p 2-3.
- 53 See Smart Justice for Women, 'Smart Justice for Women: Policy Platform 2022-2024' (Report, Version 1:January 2023) p 2 (SJFW Policy Platform 2022-2024), [SJFW_Final_Policy_Platform_2022-2024.pdf](https://www.nationbuilder.com) (nationbuilder.com). Indeed 20 percent of young people in youth detention in 2021-2022 according to the Youth Parole Board identified as having an active cognitive disability in the criminal justice system. See also Law Council of Australia, 'The Justice Project: Final Report; Introduction and Overview'(Report, August 2018), p 20-22. In terms of poverty, according to VCOSS, women comprise a majority of people aged 15 and over who are experiencing poverty- <https://victorianwomenshealthatlas.net.au/reports%2Ffactsheets%2FSocioeconomics%2F-Statewide%2FVWHAAtlas%20Fact%20Sheet%20Socioeconomics%20Statewide.pdf>
- 54 Case study drawn from a member of SJ4YP.
- 55 Case study drawn from SJ4YP member.
- 56 VLA's Care Not Custody Report above, n[17].
- 57 From VLA's Care note Custody Report above n[17].
- 58 NB this figure is from the 2019-2020 Annual report as it is not in the 2021-2022 report.
- 59 Victorian Youth Parole Board Annual Report n[9] p 26.
- 60 NB This figure from the 2017 Youth Parole Board Annual Report as these figures are no longer provided in most current report.
- 61 NB This figure from the 2017 Youth Parole Board Annual Report as these figures are no longer provided in most current report.
- 62 2021-2022 Victorian Youth Parole Board Annual Report n[9] p 26.
- 63 Source: SJ4YP 2022 Sector Survey Responses. Conducted December 2022. Responses from 26 members out of 230 SJ4YP members in total.
- 64 The blue circles reflect our sector knowledge. See also Shepherd, Bailey and Masuka 2022 above n7, 1437-1439 regarding African-Australians and Shepherd and Masuka 2021, above n[7] 471-472.
- 65 Baidawi Susan Dr; Avery, Scott Dr and Kembhavi-Tam, Gayatri Dr et al, 'Research Report- Care criminalisation of children with disability in child protection systems' (May 2023), p 215-234.
- 66 Multicultural young people, particularly targeted racialized young people were at significantly higher risk of being issued with a Covid fine following questioning than their Caucasian counterparts. Statistics demonstrate that people of African/Middle Eastern appearance and people of Māori/Pasifika appearance had a 5.4% 2.8% greater risk of being issued with a fine respectively. (Inner Melbourne Community Legal Centre, 'Policing Covid-19 in Victoria: Exploring the Impact of Perceived Race in the Issuing of Covid-19 Fines During 2020' (Report, June 2023), 32)
- 67 Hopkins, Popovic, Sanchez-Urribarri, Sentas, 'Identifying Racial Profiling in Victoria Police Search without Warrant' forthcoming.
- 68 Above
- 69 Above n [67], 192.
- 70 Targeted multicultural groups 2.8 times higher odds of being stopped before an offence is detected with white people. (pedestrian and bicycle), above n[x], 192.

- 71 Productivity Commission, 'Overcoming Indigenous Disadvantage: Key Indicators 2020' (Report, 2020), 11.19. At State level, from January 20217 to December 2020, the diversion referral rate for First Nations children remained between 12-14 percent of all Children's Court Youth Diversion (CCYD) participants - YJ Statutory Review, above n[9], above, at 5.2.3 (a). This according to the Review reflects the number of First Nations children across the youth justice system for the same period.
- 72 State Government of Victoria, 'Victorian Government Aboriginal Affairs Report 2021' (Report, 2021). 'Victoria has the lowest rate for all children in OOHC [out of home care] (6.4/1000 compared to the national rate of 8.1/1000), but the highest rate for Aboriginal children in out of home care ('OOHC') (103.0/1000, compared to a national rate for Aboriginal children of 57.6/1000) (VACCA, 2022).
- 73 Australian Law Reform Commission, 'Pathways to Justice-Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples' (ALRC Report 133, 2018) cited by Victorian Aboriginal Child Care Agency (VACCA), April 2022, p 9.
- 74 See above n [67].
- 75 See above n [67].
- 76 See above n [67].
- 77 Details from Baidawi et al, above n 40, 1.3
- 78 In 2021-22 there were 8953 young people in out-of-home residential care. 4418 were female and 2,554 (28.5 %) were First Nations young people- Crime Statistics Agency, Family Violence Dashboards: Victorian Child Protection (Web page, Reviewed 11 April 2023) <<https://www.crimestatistics.vic.gov.au/family-violence-data-portal/family-violence-data-dashboard/victorian-child-protection>>
- 79 For example, between 2019 and 2022, 15.5 percent of VLA's child client's living in out-of-home residential care identified as living with disability (intellectual disability and mental health issues the most prevalent). In addition 27.5 percent were aged 14 or younger. VLA, Care not Custody- keeping kids in residential care out of the courts, (Web page, Reviewed August 2023) <<https://www.legalaid.vic.gov.au/care-not-custody-keeping-kids-residential-care-out-courts>>. Taskforce 1000, a systemic inquiry into services provided to Aboriginal children and young people in OOHC in Victoria, also revealed 14 percent of Aboriginal children were identified as having a known disability, cited in VACCA, Response to the Systemic Inquiry into the Educational Experiences of Children and Young People Living in Out-of-Home-Care (Submission, July 2022), p 18.
- 80 Between 2019 and 2022 42 percent of VLA's child client's living in out-of-home residential care accrue criminal charges within 12 months of placement and 51.3 percent accrued criminal charges within 24 months of placement. VLA, Care not Custody- keeping kids in residential care out of the courts, (Web page, Reviewed August 2023) <<https://www.legalaid.vic.gov.au/care-not-custody-keeping-kids-residential-care-out-courts>>
- 81 Young people are also protected by the other six major human rights treaties Australia is a party to: The International Covenant on Civil and Political Rights, The International Covenant on Economic, Social and Cultural Rights, Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, The International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination against Women and Convention on the Rights of Persons with Disabilities. Articles (2), (3), (6) and (12). The Committee of the Rights of the Child has stressed states must 'take all necessary measures to ensure that children in conflict with the law are treated equally. This requires the state to prohibit both direct and indirect discrimination and take positive measures to address the needs of especially vulnerable groups of children repeatedly in conflict with the law. Domestically, the *Charter of Human Rights and Responsibilities Act 2006* (Vic) protects the rights of families and children section 17(1) and (2) and specifically children in the criminal process while the *Equal Opportunity Act 2010* (Vic) also protects children and young people from discrimination due to any protected attribute including, age, race and disability.
- 82 Article 3, United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
- 83 Kania, Kramer and Senge above n[6].
- 84 ARACY referred to by Collaboration For Impact - 2022
- 85 Victorian Aboriginal Legal Service, 'Pocum's Law: The Blueprint for Bail Reform' (Media Release, 22 March 2023).
- 86 We acknowledge at the time of final production the introduction of the Bail Amendment Bill 2023 (Vic) into Parliament on 15 August 2023.
- 87 YJ Statutory Review Report above n[9], p 7.
- 88 See Fines Reform Advisory Board, 'FRAB Summary Report on the Delivery of Fines Reform', (Report, April 2020), p. 14 which recommends 'Improved access and outcomes for vulnerable people through a reformulated nexus test' (Recommendation 7) and 'A better balance between fairness to fine recipients and road safety' (Recommendation 8).

- 89 Elena Campbell et al. 'The PIPA project: Positive Interventions for Perpetrators of Adolescent violence in the home (AVITH)' (Report Issue 4, March 2020), p 163-164; SJFW: Policy Platform 2022-2024' above n[53], in particular Recommendation 3, 4, 5, 6, 7, 10, 11, 12, 13, 14.
- 90 SJFW Policy Platform 2022-2024 above n[53], p 10.
- 91 *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017* (Vic) (YJ Reform Act).
- 92 The legal principle that children aged 10-13 are incapable of crime, unless proven otherwise. If applied correctly, *doli incapax* could avoid the unnecessary incarceration of children- Australian Human Rights Commission, 'The Minimum Age of Criminal Responsibility, 2021.
- 93 To highlight, DJCS, 'Youth Parole Board Annual Report 2021-22' (Report, September 2022) p. 33-34, reported that for the year to 30 June 2022, for 10 to 17-year-olds, 1 individual Youth Justice Residential Centre (YRC) Order was made, and 105 Youth Justice Centre (YJC) Orders were made, whereas 52 YRC remand orders were made and 311 YJC remand orders.
- 94 Change this to SJFW Policy Platform 2022-2024 above n[53], p 14.
- 95 Bail Amendment Bill 2023 (Vic).
- 96 Uncle Percy Lovett and Nerita Waight, Statements: Uncle Percy Lovett and Nerita Waight on bail reform in Victoria, July 31 2023 (online) < <https://www.vals.org.au/statements-uncle-percy-lovett-and-nerita-waight-on-bail-reform-in-victoria/>>
- 97 See 'Rethinking Sentencing for Young Adult Offenders', above n [4], p xi.
- 98 Above at xii.
- 99 Above.
- 100 *Sentencing Act 1991* (Vic) s 32.
- 101 DJCS, 'Children's Court Youth Diversion Service' (Web page, online at 19 July 2023) <<https://www.justice.vic.gov.au/justice-system/childrens-court-youth-diversion-service>>.
- 102 'FRAB Summary Report', above n [87], p 6 The Fines Reform Advisory Board draws on the typology of fine recipients developed by the Sentencing Advisory Council in a report prepared in 2014 on the imposition and enforcement of court fines and infringement penalties to show how the payment, management and enforcement of fines require different approaches based on the type of fine recipient involved. These five types are: fine recipients who will or might pay their fines and require incentives or behavioural nudges to do so; those who won't pay their fines and require strong enforcement mechanisms; those who shouldn't pay their fines but rather should be diverted from the criminal justice system as early as possible; and those who can't pay their fines and should have a wider range of options to expiate their fines. Our concern is with the latter two categories.
- 103 The CAYPINS system is more appropriate for young people who incur fines, as CAYPINS enforcement orders and any other related warrants expire after 3 years. While CAYPINS fines do carry a Court risk, you cannot get a criminal record for a finding of guilt relating to a CAYPINS offence. Further, in practice, CAYPINS fines are rarely enforced by the Sheriff.
- 104 See FRAB Summary Report above n[87], Recommendation 15, p 9.
- 105 We note that for children's fines that are unenforceable, they should be removed from the system altogether as opposed to remaining on their record for 3 years.
- 106 FRAB Summary Report, above n [87], p. 14-15. Recommendations 9-11 focus on the further resourcing and expansion of the Work and Development Permit scheme, a key social justice initiative introduced by the 2014 Fines Reform.
- 107 This is especially important given the abolition of the Special Circumstances List in 2019, which means that fines that have been deregistered as a result of a person's special circumstances are referred to the court closest to where the offending occurred. As a result, there are frequently multiple hearings for related matters across different courts, which are difficult to consolidate. Furthermore, exposure to the court system increases the risk of reoffending. Working with young people, we have witnessed the disastrous impact of non-binding enforcement reviews firsthand, particularly in circumstances where clients experiencing homelessness, family violence, addiction or mental illness are being referred to court by Victoria Police. For these young people, going to court is a profoundly stressful experience, and one that can lead to serious declines in mental health presentation and even relapses in substance use.
- 108 Royal Commission into Family Violence: Report and Recommendations (Report, March 2016) vol 3, p 37; Our colleagues at Smart Justice for Women echo these concerns in their SJFW Policy Platform 2022-2024 above n[53], p 32.
- 109 'The PIPA project' above n [88], p 58.
- 110 Women's Legal Service Victoria, 'Snapshot of police family violence intervention order applications,' (Report, January – May 2018), p 1.
- 111 See SJFW Policy Platform n [53], p. 32 citing C. Caruana, E. Campbell, T. Bissett and K. Ogilvie, 'Leaving custody behind: Foundations for safer

communities and a gender-informed criminal justice systems' (Centre for Innovative Justice, RMIT University, July 2021) p 21.

112 The PIPA Project, above n [88], Chapter 10.

113 Above, p 17.

114 Tamar Hopkins, above n [67].

115 Above. Note the research controlled for age, gender, LGBTIQ+ and disability status.

116 Above.

117 Above n[66].

118 Victorian Aboriginal Legal Service, 'Victorian Aboriginal Legal Service Nuther-Mooyoop to the Yoorrook Justice Commission: Criminal Legal System' (Victorian Aboriginal Legal Service, November 2022) 31.

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145 Commission for Children and Young People, 'Out of sight: systemic inquiry into children and young people who are absent or missing from residential care' (Report, 2021) p 3.

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149 'Youth Parole Board Annual Report 2021-22', above n [9]; SAC's Crossover Kids Report 1 above n [41].

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152 Police records are not always made in response to actual crimes, but for example 'fear of crime' such as responses to reports of 'youth congregating'. Furthermore, crime reports tell us about who is being processed by the system and who has been labelled as an offender. These are discretionary figures that tell us more about who the police are focussed on than the true level of victimisation, as indicated in Ben Bowling and Coretta Phillips, Racism, Crime and Justice (Longman, 2002) 84-91.

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155 Ward, Krohn and Gibson, above n [44]; Victor M Rios, 'The Hyper-Criminalization of Black and Latino Male Youth in the Era of Mass Incarceration' (2006) 8(2) Souls 40; Stephanie A Wiley and Finn-Aage Esbensen, 'The Effect of Police Contact' (2013) 62(3) Crime & Delinquency 283.

156 VLA, 'Youth Justice Reform Act Statutory Review' (Submission, April 2022).

157 Refer to *Framework to reduce criminalisation of young people in residential care*, above n[8], p 20; relates as well to Alternative Service Model discussions currently being held as part of the Raise the Age reform; Please note too Legislative Council Legal and Social Issues Committee, 'Inquiry into Victoria's Criminal Justice System' (Melbourne, 21 September 2021) p 21, comments made by Sergeant Wayne Gatt in the context of mental health, "Effectively it is about getting upstream with mental health intervention. We agree with and support the royal commission's findings into mental health reform that is required. But if you want to look at the police intervention and the freeing up of those resources, then it simply is trying to minimise those handover processes that exist in hospitals, enable police to quickly and expediently deliver people to places where they can receive care, but to invest and solidly invest in in-community and peer care in terms of mental health, to ensure that police are not the people being called to help people in a health crisis, but clinicians are being called—and I will say not to people in crisis but in-community care and support is provided to people with mental health conditions, to help them manage it before they are in crisis. The only reason police are called is because we have let it go too long or because the system has failed them and they are falling into crisis..."

158 See Yoorrook Justice Commission Transcript, Hearing Block 5 Day 7 at p 496-497.

159 Case study from Hopkins n[21].

160 Marta Pascual Juanola and Chris Vedalago, 'We cannot arrest our way out of this: A new plan to prevent youth crime' The Age (online) (online at 5 May 2023) <<https://www.theage.com.au/national/victoria/we-cannot-arrest-our-way-out-of-this-a-new-plan-to-prevent-youth-crime-20230313-p5crrq.html>>.

161 Victoria, Royal Commission into Victoria's Mental Health System, Final Report (2021), In particular we highlight the importance of implementing recommendations 17, 18, 19, 20,23, 24, 25, 26, 28, 29, 36, 37, 38, 39, 42, 44, 45, 46 & 47.

162 2021-2022 Youth Parole Board Report above n [9], p 26.

163 'VACCA's Response', above n [136], p 10-12; 'Balit Murrup', above n [137], p 20.

164 'Royal Commission into Victoria's Mental Health System', above n [158], p 13.

165 The year-to-date data to May 2023 for Victoria show that between January and April 2023, there was an increase in suspected suicide deaths among young people aged under 18 years, with 17 deaths recorded to 30 April (CCOV 2023c). This is notably

higher than the number of suspected or confirmed suicide deaths recorded during this period for this age group in previous years (2 in 2022, 7 in 2021, 9 in 2020 and 2 in 2019) (CCOV 2023c). The number of suspected suicides reported for young people aged under 18 years in Victoria remained unchanged at 17 in May 2023 (CCOV 2023e). The increase in young people under 18 years between January and April 2023 was seen in both males and females (CCOV 2023c): For males in this age group, there were 10 suspected deaths by suicide in the first 4 months of 2023, compared with none during the same period in 2022, 3 in 2021, 7 in 2020 and 1 in 2019. For females in this age group, there were 7 suspected suicides between January and April 2023, compared with 2 in this period in 2022, 4 in 2021, 2 in 2020 and 1 in 2019 from the Australian Institute of Health and Welfare (AIHW), Suicide and Self-Harm Monitoring Data (Data Download)p 31 <<https://www.aihw.gov.au/getmedia/fe61104-dbe5-4f91-bdb2-fc50f7c55177/Suicide-self-harm-monitoring-Data.pdf.aspx?inline=true>>

- 166 'Youth Parole Board Annual Report 2021-22', above n [9], p 26.
- 167 YACVIC, 'Youth sector welcomes \$50 million investment for youth housing in the Big Housing Build' (Media Release, Advocacy, 8 December 2021) <<https://www.yacvic.org.au/advocacy/youth-big-housing-build/>>.
- 168 YACVIC, 'Ending Youth Homelessness: Solutions from Young People,' (Report, March 2020) p 4.
- 169 Above, p 10.
- 170 See Recommendation 4, Legislative Council Legal and Social Issues Committee Parliament of Victoria, 'Inquiry into Victoria's Criminal Justice System' (Report, 2022).
- 171 This involves harmonisation and integration with other relevant key reforms underway eg. Mental Health and Family Violence. See also compatible recommendations from SJFW's Policy Platform above n[53], at 11 regarding the Support System for women at risk of criminalisation.
- 172 'Youth Parole Board Annual Report 2021-22', above n [9], p 26.
- 173 We should learn from the collaboration work being done by VEOHRC and VicHealth for example 'Bigger than This' project as part of VicHealth's Future Healthy initiative <<https://www.humanrights.vic.gov.au/education/reducing-racism-hub/bigger-than-this/>>
- 174 DJCS, 'Youth Parole Board Annual Report 2018-2019' (Report, September 2019) p 5.

- 175 As explored in detail in Ellen Broad, *Made by Humans: The AI Condition* (Melbourne University Press, 2018); See also Kristina K. Childs, Jennifer H. Peck, Caitlin M. Brady 'Predictive Bias in Juvenile Risk Assessment: Considering Race/Ethnicity and Sex' (2022) *Crime and Delinquency*, which examines the way algorithmic bias systemically disadvantages young people of colour.

Working Together

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