

Victoria Youth Justice Bill response – June 2024

The Centre for Excellence in Child and Family Welfare welcomes the tabling of the State Government's Youth Justice Bill, while also having some concerns about its implications. As the peak body for child and family services in Victoria, our members work closely with children and young people who are already in the youth justice system, or at risk of being so. They see firsthand the factors contributing to a child's youth justice trajectory, the policies and programs which could prevent this, and what is needed to support a child and their family when they exit the justice system. This Bill is one part of a complex youth justice response that requires a whole of community approach to reduce youth offending in Victoria. The Centre believes a trauma-informed response to youth justice issues – keeping children safe from immersion in criminal behaviours – can also keep communities safe; these are not mutually exclusive approaches.

Elements of the Bill the Centre supports

Diversion, early intervention and support for families reduces interaction with the criminal justice system

The Youth Justice Bill emphasises the guiding principles of prevention, diversion and minimum intervention when a child or young person enters, or is at risk of entering, the youth justice system. The Centre welcomes the Allan government's commitment to the Youth Crime Prevention and Early Intervention Project with an investment of \$6.6 million over 4 years. It is important that the Victorian Government continue to invest in diversionary programs which address underlying risk factors for children and young people and prevent reoffending.

Victoria already has in place successful programs such as Multisystemic Therapy (MST) and Functioning Family Therapy (FFT) which have successfully diverted young people from immersion in the youth justice system through a family-based approach rather than a coercive or punitive one. Similarly, the successful Youth Support Service and Embedded Youth Outreach Program run by YSAS in collaboration with Victoria Police uses a strengths- and resilience- based approach to connecting young people into supportive services and opportunities.

Section 205 (25) (ii) of the Youth Justice Bill states that in sentencing a child, the following individual characteristics must be considered: "any relevant experiences including abuse, trauma, neglect, loss, family violence or child protection involvement, including removal from family or placement in out of home care". Early intervention responses from the justice system need to be individually tailored to each child, especially those at risk of becoming serial offenders and we welcome the focus on diversion and active rehabilitation in the Act.

Children belong at home, in schools, and in their communities

Children as young as 10 years old in Victoria have been charged and held in the youth justice system. There is a strong body of international research which shows the harm that can be done to children's development and life trajectories – and the social and economic cost to the community – when the threshold for criminalisation is so low. We welcome the Allan Government's commitment to raising the age of criminal responsibility to 12 years of age while recognising this is only a first step in making sure our state approach is consistent with the evidence on child criminalisation.

Child and family services in Victoria already provide wrap-around supports, including employment, housing, and referrals to therapeutic support services, to reduce the likelihood of a child or young person coming into contact with the youth justice system. They also work with the young person and their families to prevent reoffending. Victoria's LOOKOUT Centres and Navigator programs provide support for children at risk of disengagement from mainstream education. Programs like MST and FFT which are being implemented by several child and family service providers take evidence-based approaches to diversion. The Raising Expectations program run by the Centre and funded by the state government provides support for young people who have been in the child protection system to keep them connected to mentors and educational opportunities. Justice reinvestment approaches which include community-led, place-based programs suited

to local circumstances in keeping young people out of the justice system have proven to be effective.¹ There are plenty of examples already in Victoria which could be scaled up or invested in to achieve the government aims of diversion, early intervention and support for children and young people at risk of youth justice involvement.

Elements of the Bill the Centre is concerned about

Raising the age of criminal responsibility in Victoria from 10 to 14 years, without exemption

Raising the age of criminal responsibility to 12 years old is a critical first step in reducing the harm caused by criminalising children and young people with complex vulnerabilities. Consistent with the evidence, the custody and criminalisation of children should be a last resort for severe offenses only. The use of spit hooding, solitary confinement, isolation, strip searching and the detention of children in adult prisons is not supported by the literature.

In line with international standards and the recommendations of the United Nations, the minimum age of criminal responsibility for a child should be over 14, and should continue to be increased.² The UN Committee Against Torture has recommended Australia raise the age and prohibit the use of physical restraints and solitary confinement for children across all jurisdictions.³

All children and young people under the age of 18 should continue to be protected by the youth justice system and be provided with appropriate supports. Raising the age of criminal responsibility to 14 with appropriate evidence-based and evidence-informed supports in place is more likely to be effective in keeping young people and their communities safe than criminalising children and incarcerating them.⁴

New police powers

The Youth Justice Bill does include 'doli incapax', which is the legal presumption against criminal responsibility for children under the age of 12. It is presumed that a child 12 or 13 years of age cannot commit a criminal offense, but it will now be for the prosecution to determine beyond reasonable doubt that a child understands their actions to be morally wrong or not. Section 30 (3) of the Bill gives an officer of Victoria Police powers to commence proceedings for an offense allegedly committed by a child of 12 or 13 years of age if they believe beyond reasonable doubt that the child knew the actions were seriously wrong. This is problematic as it allows for police interpretation of 'fact' contributing to the belief of a child's presumed guilt or innocence. The Centre was a signatory to the Open Letter sent to the then Victorian Premier and relevant government ministers in July 2023 advocating against any increase in police powers in relation to children, and arguing for a cross-sectoral health, education and wellbeing model for responding to children engaging in harmful behaviours. The Centre does not support the increase in police powers to presume a child's motives for offending.

Children's rights must be at centre of youth justice reform

The Youth Justice Bill clearly outlines the rights of children and young people in contact with the youth justice system. Consistent with Australia's international human rights obligations, particularly under the Convention on the Rights of the Child and the Charter of Human Rights and Responsibilities, this Bill should have been written with children's rights at the centre of each legislative principle. A rights-based approach requires that the best interests of the child are a primary consideration in all decision making and actions concerning children, including those undertaken by social welfare institutions, courts, administrative

¹ Willis, M. & Kapira, M. (2018). Justice reinvestment in Australia: A review of the literature. Australian Institute of Criminology. https://www.aic.gov.au/sites/default/files/2020-05/rr09_justice_reinvestment_in_australia_160518_0.pdf

² UNICEF (2024), Legal Minimum Ages and the Realization of Adolescent's Rights, <https://www.unicef.org/lac/media/2771/file/PDF%20Minimum%20age%20for%20criminal%20responsibility.pdf>

³ United Nations Human Rights, Office of the High Commissioner (2022), UN Committee against Torture publishes findings on Australia, Chad, El Salvador, Malawi, Nicaragua, Somalia and Uganda, <https://www.ohchr.org/en/press-releases/2022/11/un-committee-against-torture-publishes-findings-australia-chad-el-salvador>

⁴ Victoria Legal Aid (2024), Reducing youth offending and reducing harm to children, <https://www.legalaid.vic.gov.au/reducing-youth-offending-and-reducing-harm-children>

authorities and legislative bodies. This is to ensure that the age, development and unique circumstances of each child are recognised and considered in all decision making.

Children in the youth justice system are especially vulnerable to unfair treatment.⁵ The new Bail conditions as set out in the Youth Justice Bill, including the intensive supervision orders and electronic monitoring of children, is not consistent with a child rights approach to justice. These forms of surveillance are harmful, ethically fraught, and evidence suggested unlikely to be successful – there is no evidence that electronic monitoring programs in other states and overseas have been effective.⁶ This form of surveillance, under the new Bill amendments, can be used for a child who has not been found guilty of an offence. Some studies have shown that because electronic monitoring is so restrictive and intense, it ends up being another form of incarceration rather than an alternative to incarceration.⁷ For children already alienated from their communities, this Bail amendment has the potential to further stigmatise and isolate them. It will also disproportionately impact First Nations children, and children from culturally and linguistically diverse backgrounds, further entrenching systemic racism and bias.⁸

Recommendations for consideration

The Centre asks that the Victorian Government consider the following in its approach to reducing the number of children ending up in the youth justice system and keeping communities safe:

- Continue to invest in proven and promising prevention, early intervention, and diversionary programs that support self-determination, engage with local communities and are informed by the lived experience of young people.
- Ensure that all responses to issues relating to youth justice are trauma-informed, with each young person's unique experiences considered and approached in a strengths-based way.
- Listen to what children and young people have to say about what works and what does not work by making sure young people's views are reflected in the design and delivery of programs aimed at diversion and reduced recidivism.
- Build on local communities' capacity to adopt place-based justice reinvestment approaches which address the interconnected issues of causation and recidivism.
- Invest further in the existing child and family services platform where organisations are already using proven and promising approaches to support children at the earliest possible signs of disengaging, using whole-of-family approaches and working with a network of community supports to connect children and young people into positive influences and opportunities.
- Consistent with international evidence, raise the minimum age of criminal responsibility to 14 years now rather than delaying this and put the necessary supports around each child to address the complex reasons for engaging in harmful behaviours

⁵ Victorian Equal Opportunity and Human Rights Commission, (2024) <https://www.humanrights.vic.gov.au/news/human-rights-must-be-at-the-centre-of-proposed-youth-justice-reforms/>

⁶ Victorian Legal Aid (2024), Children need support and connection, not ankle bracelets, <https://www.legalaid.vic.gov.au/children-need-support-and-connection-not-ankle-bracelets>

⁷ Victorian Aboriginal Legal Service (2024), Victorian Government Betrays Aboriginal Children, <https://www.vals.org.au/victorian-government-betrays-aboriginal-children/>

⁸ Ibid