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**Isolation, separation and lockdowns in youth justice centres**

**A submission to the inquiry by the Commission for Children and Young People,**

**from Youth Affairs Council Victoria**

**November 2016**

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**About YACVic**

Youth Affairs Council Victoria (YACVic) is the peak body and leading policy advocate on young people’s issues in Victoria. YACVic’s vision is that young Victorians have their rights upheld and are valued as active participants in their communities.

YACVic is an independent, not-for-profit, member driven organisation that represents young people (aged 12-25 years) and the sector that works with them. Through our research, advocacy and services, we:

* lead policy responses on issues affecting young people
* represent the youth sector and elevate young people’s voices to government
* resource high-quality youth work practice.

We are driven by our members and prioritise their needs and concerns.

Youth Affairs Council Victoria

Level 3, 180 Flinders St

Melbourne, VIC 3000

T: (03) 9267 3722

E: [policy@yacvic.org.au](mailto:policy@yacvic.org.au)

Author: Dr Jessie Mitchell, Policy Manger, Youth Affairs Council Victoria

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YACVic is the state peak body for young people aged 12-25 and the services that support them. In 2015-16 we had 313 members – approximately half of them young people, the others comprising local governments, community and health services and research bodies. Our vision is that young Victorians have their rights upheld and are valued as active participants in their communities.

**A timely investigation**

YACVic welcomes the decision by the Commission for Children and Young People to inquire into the use of isolation, separation and lockdowns in youth justice centres.

The investigation is timely, in light of escalating incidents of violence and property damage in several youth justice settings. In particular, it is our understanding that several dozen young people have been moved out of the Melbourne Youth Justice Centre following the recent riots. At the time of writing, the Victorian Government had announced their intention to move 40 of these young people into a segregated unit at the maximum-security Barwon Prison.[[1]](#endnote-1)

We recognise that the youth justice system is under considerable practical strain, and that options for housing the young people are limited. We welcome the Victorian Government’s statement that the young people will be kept from contact with adult prisoners in Barwon, and that they will be provided with ‘the usual range of support programs’.[[2]](#endnote-2)

However, past experience points to the dangers of keeping underage young people in adult prisons. If they mix with adult prisoners, there is a danger of serious exploitation and abuse. We are also concerned about the potential for increased use of various forms of isolation (including solitary confinement, as has occurred in the past) if staff do not have the capacity to house these young people adequately and prevent and address destructive behaviours through other means.

We are also concerned that the use of various forms of isolation in youth-specific justice settings may potentially increase, too. These facilities, such as Malmsbury, will presumably be under significant pressure in coming months, while the Victorian Government considers the options for rebuilding or moving the Parkville facility.

As such, this inquiry is especially pertinent. The Commission has set out to:

1. To determine whether the management of isolation and safety separation management plans are in accordance with section 488 of the Children, Youth and Families Act 2005 and relevant operational policy.
2. To examine the extent and causes of, and risks associated with, lockdowns in Victoria’s youth justice centres.
3. To recommend any changes to policy or practice to maximise compliance with relevant legislation, and to ensure harm to children and young people is minimised and the rights of children and young people are protected.

Given the short timelines, YACVic will focus our submission primarily on the third objective. We also refer the reader to the relevant advocacy of Smart Justice for Young People, Youthlaw , the Victorian Council of Social Service, and Jesuit Social Services.

**A strong youth justice system**

In many respects, Victoria has developed an effective system for preventing and addressing youth crime. Our young offender rate is significantly lower than the national average, and over the past five years the annual number of unique offenders aged under 25 has been decreasing. In 2014-15, Victoria had the lowest rate of young people aged 10-17 on supervision on an average day of all the states and territories.[[3]](#endnote-3)

A 2016 report by the Australian Children’s Commissioners and Guardians held up Victoria’s youth justice system as an example of overall best practice for its strong emphasis on non-custodial interventions and effective engagement and coordination of multiple key stakeholders and support services.[[4]](#endnote-4)

Recently, the Victorian Government has launched several positive new initiatives to divert young people away from a life of crime. Notably, they have continued to support diversion pilots in the Dandenong, Broadmeadows, Sunshine, Werribee, Ballarat, Ararat and Stawell courts, and committed to $5.6 million over two years towards a state-wide pre-plea youth diversion program in the Children’s Court. They have also expanded the Youth Justice Bail Supervision program, which helps young people on bail to stay in the community, connected to education, employment and family life. New measures introduced under the Bail Amendment Act in 2016 have exempted children aged 10-17 from the automatic breach of bail condition offence and introduced a requirement that courts must consider all other options for before remanding a child in custody.

YACVic has welcomed these moves to intervene early and divert young people away from crime, before they can become acclimatised to prison environments and involved in cycles of more serious offending. Victoria’s approaches are delivering good results for many young people and helping to build a safer community. It is important that the behaviour of a small number of young people in youth justice centres does not detract from these broader, effective interventions by the Victorian Government.

However, we recognise that the recent events in youth justice centres do present significant dangers to the people involved, both staff and clients, and that the system is under great pressure. It is becoming clear (for example, through the recent work of the Crime Statistics Agency) that while the number of young people committing offences is decreasing, there is a small cohort of young people who are offending more frequently and more seriously.[[5]](#endnote-5)

Targeted responses are needed to change this behaviour – and in a pressurised environment, it is important to be vigilant to ensure that dangerous and damaging practices, such as serious forms of isolation, are not being resorted to. As we will discuss, such approaches tend to exacerbate problems such as mental illness and anti-social behaviour, rather than reducing them.

**An ethical approach to working with young people**

All of YACVic’s work is guided by the *Code of Ethical Practice for the Victorian Youth Sector*. The *Code* is a voluntary document which all qualified youth workers are urged to adopt. It was developed by YACVic following extensive consultation with youth workers, youth services, youth work educators and young people.

We also encourage all other professionals working with young people – including in justice settings – to embrace the principles and practice responsibilities outlined in the *Code*.

The principles for working with young people within the *Code* include:

* The safety of young people
* Respect for young people’s human dignity and worth
* Positive health and wellbeing outcomes for young people
* Young people’s connectedness to important people in their lives, such as family and community.

The *Code’s* practice responsibilities for working with young people include ‘Duty of Care’, which is defined as acting in the best interests of young people, avoiding exposing them to physical, psychological or emotional harm or injury, and upholding the principle of ‘do no harm’. (This includes making sure activities, referrals and programs are safe in general and for any particular young person, and that involvement will not result in harm. Risk assessment and management must be thorough, equipment must be well maintained, and staff must be properly trained.)[[6]](#endnote-6)

In light of these principles and responsibilities, we are deeply concerned about any coercive use of isolation to control young people. There is a high risk of harm to their safety, wellbeing, dignity and connections to other people, especially if the young person has high levels of existing vulnerability, as is often the case in youth justice settings. We utterly oppose the use of solitary confinement.

In our assessment of these issues, we refer to international findings around the human rights of young people. The *Code of Ethical Practice* is based on a human rights framework, and it urges professionals working with young people to refer back to the United Nations *Convention on the Rights of the Child*, other relevant UN declarations including the *Declaration of Human Rights* and *Declaration on the Rights of Indigenous Peoples*, and the Victorian *Charter of Human Rights and Responsibilities*.

**Isolation and human rights**

Isolation of detainees may take different forms and last varying lengths of time. Of greatest concern is the practice of solitary confinement.

The UN Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, defines solitary confinement as the physical and social isolation (except from guards) of individuals who are confined to their cells for at least 22 hours a day. Prolonged solitary confinement – which he defines as any period in excess of 15 days – is of particular concern.

Méndez’s 2011 report to the United Nations General Assembly warned that even a few days of solitary confinement can induce harmful and abnormal neurological and emotional symptoms, and that health risks rise with each additional day spent in such conditions. The combination of social isolation and minimal environmental stimulation – as well as the unhealthy living conditions and heightened risk of other abuses which are associated with solitary confinement – can induce or worsen aspects of mental illness including anxiety, depression, paranoia, psychosis and self-harm. Some detainees show ongoing health problems as a result, even after they are released, including sleep disturbances, depression, anxiety, phobias, confusion, impaired memory and intolerance of social interaction.

The Special Rapporteur holds the view that the imposition of solitary confinement of any duration on juveniles under the age of 18 is cruel, inhuman or degrading treatment and violates article 7 of the International Covenant on Civil and Political Rights and article 16 of the Convention against Torture. He recommends that states abolish the use of solitary confinement of any duration for juveniles.[[7]](#endnote-7)

The 1990 UN *Rules for the Protection of Juveniles Deprived of their Liberty* provides ‘fundamental perspectives’ on the treatment of young people under the age of 18 in correctional settings. These include:

* Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.
* All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose.
* The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities.
* Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities.

We urge that the living conditions of young people in Victorian youth justice settings should adhere to these principles.

**Isolation of young detainees in Victoria**

Victoria’s *Charter of Human Rights and Responsibilities Act 2006* specifies ‘A child who has been convicted of an offence must be treated in a way that is appropriate for his or her age.’ However, this has been subject to varying interpretations.

Victoria’s *Children, Youth and Families Act 2005* allows for the isolation of a young person in a youth justice setting (defined as the placing of the person in a locked room separate from others and from the normal routine of the prison) if ‘all other reasonable steps have been taken to prevent the person from harming himself or herself or any other person or from damaging property’ and if ‘the person’s behaviour presents an immediate threat to his or her safety or the safety of any other person or to property.’ The period of isolation must be approved by the Secretary of the Department of Health and Human Services (DHHS).[[8]](#endnote-8)

A 2016 report by the Australian Children’s Commissioners and Guardians noted that within the Victorian youth justice system, isolation of an individual young person is intended to be an intervention of last resort. According to the guidelines, it requires a minimum of Unit Manager approval, with additional authorisation needed for every additional hour a young person is isolated, and with observation required every five minutes. Staff may also direct a young person to remove themselves into an unlocked space to recover from behaviours of concern, to re-join the others when they are calm.[[9]](#endnote-9)

Confinement is not supposed to be used as a disciplinary measure. However, the commissioners and guardians found this practice did occur in youth justice settings in all Australian states and territories. Confinement of an individual may involve use of force or restraint to isolate a young person who is exhibiting behaviours of concern. In its milder forms, this is sometimes called ‘time out’ and involves the young person being prevented from leaving their cell or another room for a set period. However, if seclusion continues for a prolonged period it can become solitary confinement. A more common practice is that of ‘lockdowns’, typically used as part of a safety and security management regime to restore order, e.g. after an incident. Lockdowns involve keeping large numbers of young people in their cells for extended periods of time. While these forms of isolation differ, they all involve the involuntary placement of a young person in a room which they cannot leave.[[10]](#endnote-10)

The commissioners and guardians warned:

*‘It is almost impossible to reconcile seclusion with the “best interests” of the child as it serves no integrative or rehabilitative objective. Children in detention are particularly susceptible to medical, social and psychological problems which can be seriously exacerbated by the use of seclusion cells or being left alone in their own cells for extended periods of time … In cases involving children with indicators of self-harm, mental-illness or related vulnerabilities, isolation should never be used for disciplinary purposes. Further, children with developmental disabilities or psychosocial problems should not be isolated; they may respond in unpredictable ways and be unable to convey how a period in isolation is affecting them.’*[[11]](#endnote-11)

Solitary confinement, the most severe form of isolation, is rarely used in youth justice settings in Victoria. Nonetheless, there have been reported cases, as we will discuss. We find it concerning that the definition of permissible isolation provided under the *Children, Youth and Families Act* does not explicitly preclude solitary confinement, and that the *Act* places no time limit on the use of isolation on a young person. Nor does the *Act* specify what level of property damage is severe enough to warrant isolation or what constitutes ‘other reasonable steps’ to remedy the young person’s behaviour. Furthermore, the *Act* does not make mention of the cohorts of young people who are at particular risk of harm from some forms of isolation, notably young people with mental illness and/or pre-existing trauma. We submit that it may be technically possible for a justice centre to remain within the confines of the *Act* while still causing harm to a young person through the use of isolation.

We were deeply concerned by the allegations that a young person under the age of 18 spent ten days in solitary confinement in Malmsbury Youth Justice Centre during the past year. Even more concerning were the findings of the Victorian Ombudsman (2013) that five young people under 18 were transferred to Port Phillip Prison in 2012, where they were kept in solitary confinement for several months. These young people were transferred to the adult prison after they had engaged in violent and destructive behaviours at Parkville Youth Justice Precinct, including assaulting staff and destroying property. As these young people were judged too violent to be placed in the youth unit at Port Phillip prison, and as it was unsafe to mix them with adult prisoners, the only accommodation made available was solitary confinement.[[12]](#endnote-12)

Given the recent announcement of the transfer of dozens of young people from Parkville to Barwon Prison, it is especially important to put plans in place now to avoid any repeat of the events of 2012.

The Ombudsman found that the five young people transferred to Port Phillip Prison in 2012 were kept in their cells for 23 hours a day. They ate in their cells, had no access to education programs, and were permitted one hour a day alone in the exercise yard, during which time they were kept in handcuffs. Three of the young people were kept in solitary for 84-99 days each; the other two were kept there for between 76-79 days.[[13]](#endnote-13)

When advising against the transfer of another young detainee to Port Phillip, the Chief Practitioner, Child Protection and Youth Justice, stated:

*‘I am unequivocal in my view that three months in a tiny cell where there is no space to exercise, for 23 hours 4 days per week and 22 hours for 3 days per week, behind a heavy clad door with a small rectangular slot (the size of a post box opening) through which his meals are delivered and eaten alone, simply cannot continue. Within this tiny space which has the stench of a urinal, the only relief is the television. His one hour where he can walk, is in the “run out” … an empty space with a urinal in the corner. He is handcuffed every day during this hour in the “run out” and at any other time he is moved from his cell … Otherwise for the rest of the 23 hours the sounds he hears are the muffled calls from other prisoners who are in high security because of the nature of their crimes. For a developmentally compromised boy this is simply unacceptable.*’[[14]](#endnote-14)

It is crucial to be guided by the Ombudsman’s findings now, following the recent escalating violence at Parkville Youth Justice Centre and the removal of dozens of young people to Barwon Prison as a result. For the safety of the young people concerned, and in order to encourage their rehabilitation, it would seem highly undesirable and dangerous to house them with adult prisoners. However, the alternative must not be solitary confinement or any similar system which subjects young people to regular or prolonged isolation, close confinement and deprivation.

We are concerned that unless there is significant change of capacity within adult prisons, any move to house the young people there may carry the risk of increased use of isolation.

**Vulnerable groups of young people**

Being kept in isolation and close confinement has the potential to harm any young person. However, the young people involved in the justice system are disproportionately likely to have existing issues of poor health, disability and trauma, which may elevate their risk of harm if kept isolated or in close confinement.

Young people who are disproportionately vulnerable include:

* Current or former clients of the child protection system. In 2015-16, 45% of young people in custody had been subject to a previous child protection order, and 19% were subject to a current order. Amongst the younger age group (15 and under), *two-thirds* of the young people in custody had been on a previous protection order.[[15]](#endnote-15) These young people have been victims of neglect and/or abuse, and are especially vulnerable to being re-traumatised in custodial settings.[[16]](#endnote-16)
* Young people who present with mental health problems. Research indicates that solitary confinement can result in severe exacerbation of an existing mental health condition.[[17]](#endnote-17) According to the Victorian Youth Parole Board, young people with mental health problems comprised an estimated 30% of clients of Youth Residential Centre and Youth Justice Centres during 2015-16.[[18]](#endnote-18)
* Children under the age of 12. There is a small but growing number of young children presenting for crimes serious enough to be given a custodial sentence. In 2015-16 there were 418 alleged offender incidents involving children aged 10-11, a 19% increase on the previous year. These children tend to have experienced high rates of neglect and abuse – according to Jesuit Social Services, more than three quarters of them are known to child protection – and they present with high and complex needs. Their social, emotional and decision-making skills are at a very early stage of development (and may have been damaged by trauma or neglect), and they can be very susceptible to negative peer influences. As Jesuit Social Services have argued, a prison environment does not seem a suitable place to address the behaviours of children so young, who are not ready to assume full and meaningful criminal responsibility. The United Nations rules that age 12 is an absolute minimum for jurisdictions to hold children criminally responsible, and most developed countries have a minimum criminal age of 12 or older.[[19]](#endnote-19)
* Aboriginal young people. These young people are more likely than their peers to become involved in the justice system at the age of 13 or younger, and more likely to have been affected by disadvantage and intergenerational trauma.[[20]](#endnote-20) They experience higher than average rates of psychological distress and disability – for example, Aboriginal Australians experience psychological distress at twice the rate of their non-indigenous peers, and over a third of Aboriginal Australians aged 15-24 has some form of disability.[[21]](#endnote-21) In a justice setting where isolation is used to control challenging behaviours or ‘protect’ people who seem vulnerable, Aboriginal detainees would therefore seem to be at elevated risk of being isolated. In 2015-16, the Victorian Youth Parole Board stated that 16% of young people placed on Youth Residential Centre and Youth Justice Centre orders were Aboriginal.[[22]](#endnote-22)
* Young people with disabilities. A 2014 report by the Australian Human Rights Commission found that people with disabilities were disproportionately vulnerable to a range of harmful practices within the justice system, including prolonged seclusion and segregation.[[23]](#endnote-23) This can reflect discrimination or lack of disability competence. It may also reflect higher rates of distress and challenging behaviours amongst detainees with disabilities, who are more likely than their peers to have been victims of crime themselves, and who tend to have had more intensive contact with the justice system from a younger age.[[24]](#endnote-24) In 2015-16, the Youth Parole Board reported that 11% of young people on residential and justice centre orders were registered with Disability Services.[[25]](#endnote-25) (As disability is not always adequately identified within the justice system, it is possible the true figure is higher.)

For all the above groups (and others), trauma can be a significant factor in driving problem behaviours. Here, tailored responses are needed. The research into the impacts of trauma children suggests that warnings and ‘last chances’ do not always work for young people who have grown up in chaotic, unpredictable and violent households, and that the use of isolation (including ‘time out’ or school suspension) is often ineffective and can make problem behaviours worse. This is because the young person experiences the isolation as just another form of rejection by the adults around them. Research conducted by Berry Street and Victoria’s Child Safety Commission has found that traumatised children can be reached better through ‘time in’; by bringing them closer to the influence of responsible and supportive adults.[[26]](#endnote-26)

**Young people on remand**

Youth justice centres are facing particular challenges in relation to young people aged under 18 who being held in justice centres on remand. The vast majority (approximately 80%) of young people in Victorian youth justice centres fall into this category.[[27]](#endnote-27)

During 2014-15 the number of young people under 18 held on remand increased significantly (by 37% from the previous year). This was driven mainly by the 2013 reforms to the Bail Act, which imposed the same bail conditions on children as were applied to adults. In particular, there was a significant increase in remand of young people under 15 and Aboriginal young people.[[28]](#endnote-28) The youth sector viewed this with concern. Remand is not a rehabilitative tool, and if most of the young people involved do not go on to serve a custodial sentence, this implies the system is not working as it was intended.

Despite recent amendments to bail laws with respect to children, the Youth Parole Board (2015-16) reports that remand figures remain very high.[[29]](#endnote-29) We are told that the centre at Parkville has been operating at 100% capacity. This is presumably one factor in the increased tensions and aggressions there, and we are told it has been one reason for an increased use of lockdowns. The large remand numbers must be seen one reason for this.

Being held on remand is associated with negative results for young people, including disruptive and harmful behaviours. The Youth Parole Board has observed *‘custodial progress reports to the Board show a pattern of unsettled behaviour on remand but improved, more compliant behaviour after and on sentence*.’[[30]](#endnote-30)

Young people on remand have been removed from any support networks or educational engagement they may have had. They have lost the chance to demonstrate improved behaviours to a court before trial, and live with great uncertainty and frustration as regards their future. For those young people with complex cognitive or developmental needs, a long period of time between their offence and the legal outcome can serve to diminish their sense of responsibility and minimise their understanding of how their behaviour has affected others and themselves. Meanwhile, being held on remand arguably cements young people’s sense of themselves as young offenders, by acclimatising them to a prison environment and mixing them with other young people involved in criminal behaviours. And while there are a range of formal support programs for young people who have been sentenced, and for young people who are living in the community on diversion orders, there are very few formal supports for remandees. This is a significant gap in the system.[[31]](#endnote-31)

One causal factor for the high remand numbers appears to be the shortage of expert support and advocacy for young people arrested for a criminal offence who may be facing remand. Victoria has a Central After Hours Assessment and Bail Placement Service (CAHABPS), which advocates in favour of bail for young people and provides them with supports to remain in the community – however, this service is currently only available in metropolitan Melbourne with limited operational hours. This is a problem, since youth crime rates can be significant in rural and regional areas, and since the majority of arrests of young people happen outside of the normal business hours of youth support services, and 11% of youth arrests happen outside the operational hours of CAHABPS.[[32]](#endnote-32)

**Addressing the drivers of youth crime**

Ultimately, the best way to reduce the number of young people at risk of isolation in youth justice centres is to intervene early to reduce and prevent youth offending. We echo the messages of Smart Justice for Young People, VCOSS and Jesuit Social Services[[33]](#endnote-33) that such an approach should include:

* High quality, well-evaluated youth diversion programs, available state-wide.
* Consistent police practice around bail for young people, pursuant to the changes to the Bail Act in May 2016.
* Expansion of bail supervision programs to a state-wide level, with 24 hour coverage.
* Intensive case-management (including family work and after-hours support) with the small group of young people committing high volumes of offences.
* Adequate, culturally appropriate interventions targeted at Aboriginal children and their families who become involved with the justice system.
* Raising the age of criminal responsibility to 12 years, in keeping with United Nations standards and in recognition of the inexperience and vulnerability of children aged 10-12 who become involved in crime. Age-appropriate and therapeutic responses are needed instead.

Within youth justice centres, further steps could also be taken to prevent and de-escalate situations which might otherwise lead to a young person being placed in some form of isolation. These should include:

* Appropriate resourcing and training of youth justice centre staff, including in trauma-informed practice, mental health competency and the *Code of Ethical Practice*.
* More tailored, therapeutic, trauma-informed and rehabilitative supports for young detainees, including those being held on remand.

**Listening to the voices of young people**

To develop and deliver effective policies and practices as regards the use of isolation, it is also important to listen to the voices of young people who have been through the justice system, including those who have experienced isolation and those who have experienced alternative approaches. (The Commission’s Independent Visitor Program for Youth Justice Centres might provide one means through which these experiences could be documented.)

However, some systemic changes may be needed to enable young people to voice their experiences and ideas to inform the development of policies and practices.

Many researchers have observed the increasing difficulties they are experiencing when seeking to engage, consult and represent highly vulnerable young people, notably those in the child protection system. Some of these observations may also prove relevant to working with young people in the justice system (indeed, many young people in the youth justice system are also child protection clients). The Centre for Excellence in Child and Family Welfare and the CREATE Foundation have observed that highly vulnerable young people are often invisible in Australian research and policy / program development, due to ethical and legal barriers to working with them. While there are vital imperatives to protect the privacy and safety of young people and those around them, it is very concerning that some research projects and inquiries designed to enhance the safety, dignity and capacities of vulnerable young people are effectively unable to communicate with them. The CREATE report commented *‘as ethics regulation directs research away from “difficult” populations, topics, and methods, it creates systematic areas of ignorance about social conditions*’ (Dingwall, 2016) … *‘ethical review of research is so heavily focused on minimising risk [that] … young people’s right to participate in discussion is often overlooked’* (Daley, 2015).[[34]](#endnote-34)

**Recommendations**

We recommend that the Commission for Children and Young People work with the Victorian Government and other stakeholders to advocate for the following:

1. Amend the *Children, Youth and Families Act 2005* and relevant operational policies to explicitly prohibit the use of solitary confinement (as defined by the UN Special Rapporteur on Torture) against young people under the age of 18, for any reason and for any period of time.
2. Amend the *Children, Youth and Families Act 2005* and relevant operational procedures to align them explicitly with the fundamental perspectives of the 1990 UN Rules for the Protection of Juveniles Deprived of their Liberty.
3. Impose clear maximum time limits on the use of any other form of isolation against a young person under the age of 18. Time limits (and other limits) on isolation should be guided by expert evidence from the fields of youth mental health, trauma-informed practice and disability competence, and informed by the experiences of young people.
4. Ensure the Commission’s Independent Visitor Program for Youth Justice Centres is extended to reach any young people under the age of 18 who are now being held in adult prisons.
5. Bring remandee matters before the courts in a timely fashion, in recognition of the high numbers of young remandees and the undesirability of this situation.
6. Increase expert, evidence-based therapeutic and behaviour-change programs for young people held in youth justice centres on remand, to an equivalent level to those supports provided to young people who have been sentenced.
7. Support staff in youth justice centres (and relevant court and police settings) to adopt other methods of addressing trauma-related behaviours as an alternative to isolation. Adequate resources, infrastructure, staffing, training and reporting requirements must be in place to enable this. Here, we especially note the work done on trauma-informed practice with young people, conducted through the Berry Street Education Model and Calmer Classrooms. These models support school staff to educate children who present with challenging trauma-related behaviours. It is worth investigating whether such supports might be developed and adapted for use in youth justice settings. Such an approach might include providing youth justice staff with structured, tailored professional development with qualified instructors, tools and resources relevant to their working environment, and additional mentoring as needed.
8. Use evaluated good practices in working with trauma-affected young people to inform the physical design and redevelopment of youth justice centres.
9. Ensure youth justice settings have sufficient infrastructure, resourcing and expertise to keep any use of lockdowns to a minimum, in recognition of the risks this practice can pose to the wellbeing of vulnerable young people.
10. Ensure that policy development and operational guidelines in relation to the use of isolation are informed by the input of young people who have been through the justice system, including those who have experienced isolation and those who have experienced other approaches to safety and behavioural management.
11. In order to facilitate this, further work may be needed with DHHS, Department of Justice, research bodies and youth support services to review the processes concerning legal and ethics clearance for conducting research with vulnerable young people. Here, the aim should be to ensure that adequate expert supports are in place to enable young people to take part in safe, ethical, age-appropriate and timely consultations concerning their experiences of the justice system and the community services system, if they wish to do so.
12. Ensure adequate resources are in place to enable the Independent Visitors Program and appropriate youth support services to capture the voices and views of young people about their experiences of custody.
13. Ensure that all workers with young people in the justice system are familiar with the *Code of Ethical Practice for the Victorian Youth Sector*, and that they receive adequate levels of high-quality training in cultural competence, disability competence and mental health competence.
14. Develop and strengthen therapeutic interventions in youth justice settings for children aged 10-14, young people who are current or former clients of child protection, and Aboriginal young people. Approaches should be culturally appropriate and informed by awareness of the relevance of gender to children’s experiences of trauma and crime. For further details, see Mendes, Baidawi and Snow (2014) *Good Practice in Reducing the Over-Representation of Care Leavers in the Youth Justice System*.
15. Build on the findings of the diversion pilots currently being trialled in Dandenong, Broadmeadows, Werribee, Sunshine, Ballarat, Ararat and Stawell. Commit to make youth diversion a long-term commitment, available to young people state-wide and enshrined in legislation.
16. Maintain the dual track system which allows young people up to the age of 21 who have been deemed suitable by the courts to serve their custodial sentence in a youth facility rather than an adult prison.
17. Raise the minimum age at which a child can be charged with a criminal offence from 10 to 12 years of age, in line with United Nations standards, and in recognition of the inexperience and high vulnerability of this cohort.
18. Introduce more age-appropriate and therapeutic interventions for children aged 10 and 11 who become involved in crime, and their families. These approaches should be evidence-based and may include restorative justice and intensive case management. They should address issues of family dysfunction, trauma and neglect, and ensure the child is accessing adequate supports for issues such as disability, school engagement and cultural strengthening.
19. Provide adequate levels of intensive case-management for the small group of young people committing high volumes of offences, when they are still living in the community. Tailored, wrap-around supports are needed, including after hours and on weekends. These supports should include family work, re-engagement with education and employment, building social and cultural connections, and addressing issues such as alcohol and other drug use and mental illness. This initiative should build on the work undertaken through the Youth Justice Community Support Service.
20. Expand the Central After Hours Assessment and Bail Placement Service (CAHABPS) to ensure it is available to young people state-wide and 24 / 7. Ensure CAHABPS has adequate resources in place to broker emergency housing, AOD services and outreach for young people where necessary, to ensure they are not detained due to lack of adequate supports in the community.
21. Ensure bail training for Victoria Police to includes an adequate focus on the provisions of the current legislation as regards young people and bail, and on the vulnerabilities of young people under the age of 18.
22. Ensure adequate access to culturally appropriate, evidence-based, well-evaluated interventions to support Aboriginal children and their families involved in the justice system. Strengthening young people’s positive connections to culture and community is vital. We refer the reader to the recommendations of the Aboriginal young people who took part in the Koorie Youth Council’s 2015 *Yarning Justice* youth workshop, in conjunction with the Aboriginal Justice Forum.[[35]](#endnote-35)
23. As recommended by the Australian Human Rights Commission (2014), develop a holistic, overarching response to the inequitable treatment of people with disabilities within the justice system, through a Disability Justice Strategy. This strategy should focus on the following outcomes for people with disabilities: safety and freedom from violence; effective access to justice; non-discrimination; respect for inherent dignity and the individual’s freedom to make their own decisions; and full community participation.[[36]](#endnote-36)

1. ABC News, 'Melbourne Youth Justice Centre: Riot-prone jail to be “fortified”, might move to new facility,' 15 November 2016; The Age, 'Forty teenage juvenile prisoners to be sent to adult jail,' 15 November 2016; SBS News, 'Melbourne teen prison to be rebuilt after riot,' 14 November 2016 [↑](#endnote-ref-1)
2. Victorian Government media release, 'Young Offenders To Be Put In Adult Prison,' 17 November 2016 [↑](#endnote-ref-2)
3. Australian Institute of Health and Welfare, *Youth detention population in Australia, 2015*, Bulletin 131, December 2015; Crime Statistics Agency, ‘In Fact,’ 1 March 2016; Australian Bureau of Statistics, *4519.0 - Recorded Crime - Offenders*, 2014-15, http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4519.0~2014-

   15~Main%20Features~Youth%20Offenders~4 [↑](#endnote-ref-3)
4. Australian Children's Commissioners and Guardians, *Human rights standards in youth detention facilities in Australia: the use of restraint, disciplinary regimes and other specified practices*, April 2016 [↑](#endnote-ref-4)
5. Crime Statistics Agency, ‘In Fact’, Number 1, March 2016’ [↑](#endnote-ref-5)
6. YACVic, *Code of Ethical Practice – A First Step for the Victorian Youth Sector*, Melbourne, 2007 [↑](#endnote-ref-6)
7. Juan E. Méndez, Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, in accordance with General Assembly resolution 65/205, *Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment*, United Nations General Assembly, Sixty-sixth session, 5 August 2011; Juan E. Méndez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Human Rights Council Twenty-eighth session, Agenda item 3, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, 5 March 2015; UN News Centre, ‘Solitary confinement should be banned in most cases, UN expert says’, 18 October 2011 [↑](#endnote-ref-7)
8. Victorian Government, *Children, Youth and Families Act 2005*, Act No.96/2005, 488 – Isolation [↑](#endnote-ref-8)
9. Australian Children's Commissioners and Guardians, *Human rights standards in youth detention facilities* [↑](#endnote-ref-9)
10. Australian Children's Commissioners and Guardians, *Human rights standards in youth detention facilities* [↑](#endnote-ref-10)
11. Australian Children's Commissioners and Guardians, *Human rights standards in youth detention facilities* [↑](#endnote-ref-11)
12. *ABC News*, ‘Teen held in isolation for up to 10 days in Victorian juvenile justice centre, records show,’ 27 July 2016; *ABC News*, ‘Violence at Malmsbury Youth Justice Centre prompts Government “crackdown” on rioting teens,’ 24 October 2016; *The Age*, ‘Broken limb and 10 days in solitary: Victorian youth prisons probed,’ 27 July 2016 [↑](#endnote-ref-12)
13. Victorian Ombudsman, *Investigation into children transferred from the youth justice system to the adult prison system*, December 2013 [↑](#endnote-ref-13)
14. Victorian Ombudsman, *Investigation into children transferred from the youth justice system to the adult prison system* [↑](#endnote-ref-14)
15. Youth Parole Board *Annual Report 2015–16,* Department of Health and Human Services August, 2016 [↑](#endnote-ref-15)
16. P. Mendes, S. Baidawi and P.C. Snow, *Good Practice in Reducing the Over-Representation of Care Leavers in the Youth Justice System*, Leaving Care and Youth Justice – Phase Three Report, Melbourne, Monash University, 2014 [↑](#endnote-ref-16)
17. Méndez, *Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment*, 5 August 2011 [↑](#endnote-ref-17)
18. Youth Parole Board *Annual Report 2015–16* [↑](#endnote-ref-18)
19. Jesuit Social Services, *Submission to the 2017/2018 Victorian State Budget*, October 2016; Jesuit Social Services, *Too much too young: Raise the age of criminal responsibility to 12*, October 2015 [↑](#endnote-ref-19)
20. Jesuit Social Services, *Submission to the 2017/2018 Victorian State Budget* [↑](#endnote-ref-20)
21. Australian Bureau of Statistics, 4704.0 *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples*, 2010, released February 2011 [↑](#endnote-ref-21)
22. Youth Parole Board *Annual Report 2015–16* [↑](#endnote-ref-22)
23. Australian Human Rights Commission, *Equal Before the Law: Towards Disability Justice Strategies* – February 2014 [↑](#endnote-ref-23)
24. Professor Eileen Baldry, Dr Leanne Dowse and Ms Melissa Clarence, *People with intellectual and other cognitive disability in the criminal justice system: Report for NSW Family and Community Services Ageing, Disability and Home Care*, December 2012; Ruth McCausland, Sarah Johnson, Eileen Baldry, Anna Cohen, *People with mental health disorders and cognitive impairment in the criminal justice system: Cost-benefit analysis of early support and diversion*, UNSW, August 2013 [↑](#endnote-ref-24)
25. Youth Parole Board *Annual Report 2015–16* [↑](#endnote-ref-25)
26. Berry Street Childhood Institute, *Berry Street Education Model*, 2016, http://www.childhoodinstitute.org.au/EducationModel; Child Safety Commissioner, *Calmer Classrooms: A guide to working with traumatised children*, written by Laurel Downey, Manager, Practice Development and Training, Take Two, Berry Street Victoria, Melbourne, 2007; Helen Stokes and Malcolm Turnbull, *Evaluation of the Berry Street Education Model: Trauma informed positive education enacted in mainstream schools*, Research Report 45, University of Melbourne, April 2016 [↑](#endnote-ref-26)
27. Youth Parole Board *Annual Report 2015–16* [↑](#endnote-ref-27)
28. Jesuit Social Services, ‘An escalating problem: Responding to the increased remand of children in Victoria,’ 1 October 2015 ; Victorian Council of Social Service (VCOSS), *2016-17 Budget Submission*, Melbourne, 2016; Youth Parole Board, *Annual Report 2014–15*, Melbourne, 2015, p.25 [↑](#endnote-ref-28)
29. Youth Parole Board, *Annual Report 2015–16* [↑](#endnote-ref-29)
30. Youth Parole Board, *Annual Report 2015–16* [↑](#endnote-ref-30)
31. Jesuit Social Services, ‘An escalating problem: Responding to the increased remand of children in Victoria,’ 1 October 2015 [↑](#endnote-ref-31)
32. Jesuit Social Services, SUBMISSION TO THE 2017/2018 VICTORIAN STATE BUDGET October 2016 [↑](#endnote-ref-32)
33. Jesuit Social Services, Submission To The 2017/2018 Victorian State Budget, October 2016; JESUIT SOCIAL SERVICES’ RESPONSE: Victorian Government’s What’s Important to YOUth? discussion paper November 2015; Jesuit Social Services, 'An escalating problem: Responding to the increased remand of children in Victoria,' 1st October, 2015; JSS, Too much too young: Raise the age of criminal responsibility to 12, October 2015; Smart Justice for Young People, ‘Youth advocates warn against transferring young people into adult prison,’ 15 November 2016; VCOSS 2016-17 Budget submission [↑](#endnote-ref-33)
34. Centre for Excellence in Child and Family Welfare, Their Voice: Involving Children and Young People in Decisions, Services and Systems, Melbourne, 2011; Dr Joseph J. McDowall for CREATE Foundation, Go Your Own Way: CREATE's resource for young people transitioning from care in Australia: An evaluation, Sydney, 2016; K. Daley, 'The wrongs of protection: Balancing protection and participation in research with marginalised young people,’ Journal of Sociology, 51(2), 2015, pp.121–138; R. Dingwall, ‘The social costs of ethics regulation,’ in W. C. van den Hoonaard & A. Hamilton (eds.), The ethics rupture, Toronto: University of Toronto Press, 2016 [↑](#endnote-ref-34)
35. Koorie Youth Council, Yarning Justice Youth Workshop, Melbourne, 2015, http://www.yacvic.org.au/policy-publications/publications-listed-by-policy-area/30-indigenous-issues/632-yarning-justice-youth-workshop [↑](#endnote-ref-35)
36. Australian Human Rights Commission, *Equal Before the Law* [↑](#endnote-ref-36)