Statutory review of the *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017*

April 2022

Victoria Legal Aid

Acknowledgement of country

This submission was written on the land of the Wurundjeri and Boon Wurrung people of the Kulin Nation. We acknowledge and pay our respects to Aboriginal and Torres Strait Islander peoples and Traditional Custodians throughout Victoria, including Elders past and present.

We also acknowledge the strength and resilience of all First Nations people who today are still arrested and imprisoned at rates far higher than other Australians.

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Overview

Thank you for providing Victoria Legal Aid (**VLA**) with an opportunity to provide feedback on the impact and operation of the *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017*, as part of the Statutory Review consultation process.

Our feedback is informed by our young clients' experiences of the youth justice system and the practice experience of VLA youth crime lawyers.

The key areas that we draw to the Statutory Review's attention are:

1. Category A and B provisions – these reduce access to bail and create undue delays for children's matters, and should be repealed.
2. Diversion – we continue to support diversion as an essential measure to keep children and young people out of the criminal justice system however, the requirement for the prosecution to consent to diversion should be removed, ensuring that the magistrate always has the final decision to decide if diversion is appropriate.
3. Policy objectives behind the YJR Act – the 2017 objectives have been superseded by a better understanding of the harms of the system on children, and this Review is an opportunity to reorient youth justice objectives towards rehabilitation and reintegration.
4. Necessary legislative reform – Bail reform is a key piece of the youth justice system framework, as is raising the minimum age for criminal responsibility.

We commend Youth Justice on the significant reductions in the rates of young people in custody in recent years, and the work of Victoria Police in improving access to cautions and diversions. Yet despite the reduction in overall numbers of children in the youth justice system, First Nations children, children from recently arrived communities and children in state care continue to be overrepresented at all stages of the system. Addressing systemic racism and bias, as well as other drivers of over-representation in the criminal justice system is foundational. Furthermore, improving youth justice inputs and outcomes relies on addressing the way in which the net of the criminal justice system is cast too wide due to police responses and practices.

VLA continues to support the implementation of the YJR Act reforms. We sought a further renewal of that lapsing funding through the 2022/23 ERC process (and in relation to the anticipated Youth Justice Bill) and will require ongoing funding to support any continued operation of the provisions.

Given the short timeframe for providing a response, this submission will be targeted to the reforms of concern and will not respond to every question in the consultation paper. Should you require further clarification on any of the issues covered in this submission, please do not hesitate to contact Prita Jobling-Baker, Manager of Strategic Advocacy and Policy, Criminal Law on 03 9269 0671 or prita.joblingbaker@vla.vic.gov.au.

About Victoria legal Aid

Victoria Legal Aid's (VLA) is a statutory authority established under the *Legal Aid Act 1978* (Vic). Our vision is for a fair and just society where rights and responsibilities are upheld.

In 2020–21, VLA provided assistance to over 71,670 unique clients from our 15 offices across Victoria. This was a 16 per cent reduction in the number of people we usually help each year due to the COVID-19 restrictions and courts adjourning matters.

Legal assistance ensures fairness and helps ordinary people understand and participate in the legal system. It also helps to address the reasons people are in the justice system and works to address underlying causes to prevent recidivism.

Our clients are diverse and experience high levels of disadvantage. These circumstances increase the likelihood and severity of legal problems and make it more difficult for people to navigate the system without help.

Victoria Legal Aid (**VLA**) is the only legal practice in Victoria with specialised youth crime and child protection services that operate across the state, including:

- our specialist and statewide Youth Crime service provides duty lawyer services and legal representation for children up to 18 years of age, and youth justice centre outreach when permitted;
- our Youth Crime lawyers provide telephone advice to children in custody, as part of the Youth Referral and Independent Person Program (**YRIPP**), 24 hours a day;
- our Family, Youth and Children's Law Program provides duty lawyer, legal advice, representation and information services to children and parents in the Children's and Magistrates' Courts across Victoria, in child protection, family violence, parenting disputes and child support;
- our Summary Crime and Indictable Crime programs provide duty lawyer services and legal representation for young people in the adult jurisdiction (18-25 years);
- our Legal Help service responds to telephone inquiries from young people;
- our Community Legal Education team provide outreach services to schools and education material for young people in efforts to avert contact with the justice system.

The extent and breadth of our work with children and young people gives VLA a unique understanding of the youth justice system and its impacts.

1. Relevance of the policy objectives of the YJR Act

Recommendation 1. **Reorient the youth justice system towards therapeutic person-centred approaches in which the child is supported, recognising that community safety is best served through rehabilitation, recovery and reintegration.**

Recommendation 2. **Explicitly acknowledge the systemic background factors which lead to the overrepresentation of vulnerable cohorts of children in the youth justice system, including First Nations children, children from culturally and linguistically diverse backgrounds and children involved in the child protection system.**

***Questions**:*

Are the policy objectives of the YJ Reform Act as set out in the second reading speech still relevant? Why/why not?

How have the amendments made by the YJ Reform Act supported the stated policy objectives? What other ways of achieving the policy objectives would you recommend?

What other/different policy objectives would you prioritise at this point in time? Why?

This statutory review of the 2017-2018 Youth Justice reforms provides a timely opportunity to reorient treatment of children and young people in contact with the criminal justice system towards more therapeutic and rehabilitative approaches.

As set out in the second reading speech, the policy objectives of the Act were to "increase the consequences for young offenders aged 16 years or older who commit serious offences", "address community concerns about crimes committed by children and young people" and "make clear that this kind of serious violent offending will not be tolerated".

The YJ Reform Act was developed in a time of heightened concern about youth crime. Since the development of the Act, several research reports and reviews have consistently found that children are harmed by punitive responses within the criminal justice system and there is a need for specialist and tailored responses.[1] These findings reflect our practice experience that punitive criminal justice responses increase, rather than decrease, the likelihood of a child re-offending and becoming entrenched in the system.

As the Victorian Government now acknowledges, intervening early and addressing the drivers of offending - disadvantage, victimisation, trauma, cognitive impairment, mental health issues and substance dependence - is the most effective way to protect the community against youth offending and prevent children becoming adult offenders.

VLA submits that the policy objectives of the YJ Reform Act and the punitive measures introduced are no longer consistent with current strategies and are harmful. The Youth Justice Strategic Plan 2020-2030 emphasises supporting young people to rehabilitate through access to housing, an education, health care, mental health care, a job and through an enriched life of purpose, and aims to tackle the underlying causes of their offending, rehabilitate those young people or divert them from criminal behaviour.[2]

[1] Sentencing Advisory Council (SAC) *Children Held in Remand in Victoria* (Report, 2020) https://www.sentencingcouncil.vic.gov.au/publications/children-held-on-remand-in-victoria; Commission for Children and Young People, *Our youth, our way: Inquiry into the overrepresentation of Aboriginal children and young people in the Victorian youth justice system* (Report, 2021); P Armytage and Prof J Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending* (Report, 2017), https://www.justice.vic.gov.au/justice-system/youth-justice/youth-justice-review-and-strategy-meeting-needs-and-reducing-offending.

[2] *Youth Justice Strategic Plan 2020-2030*; https://files.justice.vic.gov.au/2021-06/Youth%20Justice%20Strategic%20Plan_0.pdf

Similarly, Wirkara Kulpa prioritises diverting Aboriginal children and young people away from the youth justice system, empowering change, protecting cultural rights, increasing connection to family community and culture, supporting healing and rehabilitation, and working toward Aboriginal led justice responses and creating a fair youth justice system.[3]

The YJ Reform Act Serious Youth Offender regime should be replaced with rehabilitative and reintegrative options which enable person-focused and individualised approaches in which the child is supported to take responsibility for their actions where capable of doing so. Similarly, while we support the availability of YCOs, further consideration should be given to suitability/eligibility requirements, conditions and supports to make them more tailored to the needs of children and young people.

Systemic background factors which lead to the overrepresentation of vulnerable cohorts of children in the youth justice system should also be explicitly acknowledged, including First Nations children, children from culturally and linguistically diverse backgrounds and children in state care.

2. Category A and B offences and presumptions

Recommendation 3. **Repeal the Serious Youth Offender regime, including the uplift provisions and mandatory minimum sentences, recognising that children and young people have reduced cognitive development and the need for specialised rehabilitative responses.**

***Questions**:*

What impacts do you consider the Serious Youth Offender regime has had?

Are there specific elements of the Serious Youth Offender scheme (e.g. uplift, mandatory parole conditions, restrictions on dual track) that you consider have had a significant impact?

VLA recommends the removal of the Serious Youth Offender regime, including the Category A and B lists of offences and uplift presumptions, returning to the previous position where higher courts were only required to hear matters relating to fatal offences.

Our practice experience is that Serious Youth Offender categories, in combination with a police culture of overcharging (that is, charging with more serious and a greater number of offences than are appropriate for the alleged conduct) and delayed brief disclosure practices, results in reduced access to bail and undue delays in resolving children's matters.[4] These delays extend the time that children are in the system, can result in unfair outcomes, add to complainants' stress, cost justice system stakeholders significantly more, and do not improve deterrence or reduce reoffending.

Reduced access to bail

Our lawyers see children being refused bail because the offence is a category A or B offence. These children then spend extensive time on remand because it takes longer to resolve their matter once it is uplifted to the adult jurisdiction. This is illustrated by Mahmud's experience.

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

[3] *Wirkara Kulpa*, the first Aboriginal Youth Justice Strategy; https://www.aboriginaljustice.vic.gov.au/Aboriginal-youth-justice-strategy.

[4] See, for examples, the findings and recommendations of the VLRC Committals review.

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.

Delays in finalisation

The presumption in favour of uplift to the committal stream significantly extends the time to resolve these children's matters, due to the longer committal stream timeframes (for example, for the service of the hand up brief), the need to make a summary jurisdiction application for every relevant matter, and prosecution time restraints which limits their capacity to consider the evidence and so limits early resolution of matters. Our experience is that children in the committal stream are not prioritised by the OPP, and reaching resolution often takes as long as for adult accused in the indictable stream.

Furthermore, in our experience police often charge with serious offences that are not reflective of the seriousness of the events or conduct. The interaction of overcharging practices, the adult jurisdiction extended timelines and OPP constraints results in children remaining in custody for extended periods while their matter takes many months to progress in the indictable stream, only to have the charges ultimately downgraded. As well as Mahmud's experience, the experiences of Luke, Kareem, and Gabriel illustrate this:

Luke (not his real name) is 17 and works full-time in a factory. His family migrated from overseas when Luke was very young.

With a group of friends he robbed the complainant's house. Although the circumstances of the matter could have been appropriately dealt with in the Children's Court, he was charged with the new offence of aggravated home invasion, which is Category A and was subject to the uplift presumption. The matter was then subject to adult jurisdiction timelines and was adjourned for months for the police to serve the brief.

By the committal mention the OPP had had to opportunity to review the evidence and brief and the head charge was withdrawn. The matter was then referred back to Victoria Police and negotiations started again with a new prosecutor.

Ultimately Luke received a **diversion**, after a protracted period in the Children's Court where he was facing the presumption of uplift. If there were no presumption to uplift, then the matter would stay in the Children's Court and be resolved significantly faster.

Kareem (not his real name) is a young tradesman and lives with family. Kareem was 17 years old when he was charged with the Cat A offence of aggravated car-jacking.

Because of the Category A presumption to uplift to the County Court, Kareem's summary jurisdiction application was refused; the matter went through the adult committal process. When the OPP prosecutor was able to fully consider the evidence against Kareem at the Directions Hearing, the head charge was withdrawn, with an armed robbery instead proceeding; an application to remit the matter to the Children's Court was granted. Kareem received a **supervisory order** in the Children's Court.

This matter took 12 months to resolve. If the matter had not been uplifted to the Children's Court the same (appropriate) outcome would have been reached much earlier.

Gabriel (not his real name) lives with his grandfather. He has an intellectual disability, attends school and likes to play cricket with his friends.

Gabriel has only a limited prior history, but was charged with intentionally cause serious injury in circumstances of gross violence, for offending that occurred with a group of friends. The matter was uplifted to the adult jurisdiction because it was a Category A charge. As a result it took 8 months for the matter to progress and resolve to a charge of intentionally cause serious injury, return to the Children's Court, and finalise with a **good behaviour bond with a disability justice plan**.

The Category A and B lists and uplift provisions should be removed. They are at odds with the aim of treating children differently to adults and unduly extend their time in the criminal justice system. Even in their late teens, children's cognitive, psychological and emotional development is still occurring, and those who commit even serious offences should be subject to processes which take account of their age and stage of development. Children and young people require responses which focus primarily on rehabilitation. The current Children's Court of Victoria is appropriately placed to deal with serious offending while providing this tailored response. Treating young people like adults in the criminal justice system will simply entrench them in the system and make them more likely to enter the adult correctional system.

Mandatory minimum sentences

VLA recommends excluding children from the operation of mandatory minimum sentences, including those for assaulting a youth justice custodial worker. We acknowledge that there are genuine challenges for Youth Justice custodial staff, however the specialist Children's Court should retain full discretion to determine the appropriate sentence based on the individual circumstances of the child and the conduct.

3. Youth diversion

Recommendation 4. **Remove the requirement for prosecution to consent to diversion.**

***Questions**:*

What feedback do you have on the operation of the legislative provisions relating to the Children's Court Youth Diversion service

VLA supports diversion as essential for keeping children out of the justice system. We commend the Government's recently released Youth Justice Diversion Statement and acknowledge the success of the Children's Court Youth Diversion (CCYD) program to date.

VLA recommends removing the requirement for prosecution to consent to diversion, to increase consistency and access to diversion.

There is evidence that use of diversions in Victoria has steadily decreased by 50 per cent over the past ten years.[5] VLA's practice experience is that the requirement for police to consent to diversion is a significant barrier to consistent and timely access to diversion, instead children can be in the system for many months. Our experience is that often police will require more referrals and interventions than the CCYD co-ordinator recommends upon their assessment of the young person's needs. The CCYD co-ordinator is much better placed to make an appropriate assessment than police. This results in delay and disproportionate interventions, both of which increase rather than decrease the risk of future offending.

Tom (not his real name) is a teenager with an intellectual disability, he likes to watch the footy with his family and recently started working. He also has a sibling with a disability who requires around the clock care. His first encounter with police was for a family violence incident driven by alcohol, where he was arrested and brought to the police station. His family supported him and no further action was taken, however he continued to struggle with alcohol and was charged with property and driving offences (theft, stolen goods, unregistered scooter and driving without a licence). Police cited the family violence incident as being a reason that he's not considered a 'first time offender' and repeatedly refused to consent to diversion.

Ultimately Tom was able to get diversion, however despite his youth, intellectual disability and family support, the consent took several months and required multiple court adjournments for Tom's lawyer to coordinate several referrals; during this time Tom was on onerous bail conditions.

Daniel (not his real name) is a proud Wurundjeri kid, however he has a history of severe trauma and victimisation, and was relinquished from his birth parent's care due to their own struggles with mental health issues. When Daniel was 14 years old his participation in offending was heavily correlated with being a victim of family violence at home. He thought if he didn't participate in the group offending, his peers "would turn on him". He was charged with participating in group acts of kidnapping and armed robbery.

5 Cowan, D, Strang, H, Sherman, L et al, 'Reducing Repeat Offending Through Less Prosecution in Victoria, Australia: Opportunities for Increased Diversion of Offenders' *Cambridge Journal of Evidence Based Policing* (2019) 3 109–117.

Despite Daniel's history of trauma, vulnerability and mental health issues, diversion was repeatedly refused by police. After close to a year, a prosecutor sitting in the Children's Koori Court consented to diversion. This example illustrates how important it is to address the overrepresentation of aboriginal children in the justice system, for the diversion decision to sit with the specialist Children's Koori Court magistrate, rather than with the prosecution.

Removing the requirement for prosecution consent ensures maximum judicial discretion for the court to assess the suitability for diversion, as with any other sentencing outcome, and avoids children being caught up in the system for longer than necessary.

We also recommend clarifying in the legislation that vehicle impoundment offences are not precluded from diversion. Brendan's example highlights the unfairness of having hard restrictions on types of offending eligible for diversion.

Brendan (not his real name) is 16 years old. He lives with his girlfriend's mother after his father was sent to prison and his mother left the state to escape his violent father. Brendan loves riding dirt bikes and one day when he was 15, police found him riding a modified mountain bike which had a petrol engine fitted to it. Brendan immediately pulled over when the police flashed their blue and red lights and provided his name and address.

The bike was impounded and Brendan was charged with driving a motor vehicle without a licence, using an unregistered motorcycle, riding without a helmet, and using an unroadworthy vehicle. Brendan had never previously been charged by police and has no prior convictions.

Given the relatively minor nature of the conduct he should have received a diversion and avoided a criminal record at his young age. However, Victoria Police refused to consent to a diversion because of internal police policy, which provides that police may not consent to diversion where a person's charges have resulted in a vehicle being impounded. As a result, Brendan will receive a criminal record.

4. Youth control orders

Recommendation 5. **Improve the effectiveness and success of YCO's through:**

- **Reducing the intensity of the work requirements and reducing the use of restrictive conditions**
- **Enabling a greater focus on therapeutic and flexible supports**
- **Enabling tailored responses to breach by removing the presumption of detention and the mandatory revocation for certain reoffending, which currently includes minor offences such as theft.**

Questions:

What feedback do you have on the operation of YCO's? You may wish to give feedback on the YCO as a whole or on specific elements of the YCO (e.g. the consent requirement, judicial monitoring, consequences of breaching a YCO, etc)?

VLA supports Youth control orders (YCO's) being available in the youth sentencing hierarchy, noting that the target group is young offenders who are committing serious offences but who have the

potential to be rehabilitated with intensive support and therefore are given the opportunity to serve a community sentence. However, YCOs could be improved to address the low participation and low completion rates highlighted in the Consultation Paper data.

Our practice experience is that this order is extremely intensive and requires compliance with numerous mandatory conditions, and that the low completion rate and high revocation rate reflects young people's difficulty in complying with the conditions.

Eligibility

VLA's practice experience is that Youth Justice's operational threshold for YCO eligibility excludes too many children. The majority of children that come to the point of being subject to a term of imprisonment have histories of disengagement or non-compliance, and excluding children for those reasons does not align with the reality of their difficult lives. This is illustrated by Kauri's experience:

> **Kauri** (not his real name) likes drumming and music and was described by the Malmsbury unit coordinator as a natural leader with a positive attitude. His difficulties started at home when he was 16, he used alcohol and drugs with friends. He had several charges for breaching family violence intervention orders which resulted in custodial sentences. Kauri became estranged from family and was homeless for long periods.
>
> Kauri had started engaging with support services but relapsed and re-offended and was remanded on adult matters upon turning 18. His VLA lawyer thought that a YCO was a good opportunity for him to engage with rehabilitative supports, work and stay out of adult custody. However, many of the support services were highly resistant, and instead tried to persuade Kauri that he would fail and was better off doing 'straight time'. Youth Justice did little to develop a practical plan and give him assistance with addressing the underlying causes of his offending (i.e., support appointments and developing housing options), and this made it difficult for Kauri to believe that a YCO was not a waste of time.
>
> Despite the challenges, he participated well in the YCO assessment and planning process and was reported as contributing extremely positively and displayed leadership for other younger people in the system, and being a conscientious member of Parkville College. Despite this praise, Kauri **did not get placed on a YCO**.
>
> A reason given was that he was not accepted due to previous failures to comply with court orders.

VLA recommends that Youth Justice review the operation of the YCO suitability assessments, with a view to enabling more children to access YCO's.

Conditions

The low YCO completion rate data set out in the paper aligns with our anecdotal experience. VLA's experience is that the work and education requirements are highly intensive for young people with histories of difficulties with engagement. We see 25 hours a week of work being routinely imposed, and some of our clients say they would rather enter custody than complete the requirements.

Restrictive conditions including curfews, non-contact and social media conditions are also routinely imposed, perceived by many magistrates to be simple and effective. However, for young people with chaotic lives, such conditions can be isolating and highly stigmatising and in the case of a YCO will

last for a significant time. In combination with the intensive work and education requirements, this can set young people up young people to fail.

We support a presumption against the use of restrictive conditions in all supervised community orders (including the youth control order), as recommended by Our Youth Our Way.[6] Training for magistrates in the use of such conditions may address some of these concerns.

If the YCO is to succeed, young people need to be engaged in as many pro-social activities as possible, and to be supported to make good choices about the people they associate with.

Supports

In our experience young people would benefit from a greater focus on therapeutic and flexible supports. Examples are brokerage being made available to provide outreach support, support to get to appointments, private mental health practitioners and pro-social and sporting activities.

Revocation

VLA's experience is that children's journeys out of the justice system are typically not linear, they may need several chances. Enabling further opportunity to stay on the YCO and out of custody will improve their rehabilitation and reduce the criminogenic impacts of a custodial sentence.

VLA supports giving magistrates greater discretion to respond to breaches, taking into account the circumstances of the individual. Removing the presumption of detention in the event of breach and removing the requirement that the court revoke the order if the child commits an offence punishable by 5 years or more imprisonment (which includes minor offences such as theft), would allow young people to stay in the community where appropriate.

5. Dual track

Recommendation 6. **Remove the restrictions on dual-track orders, and expand eligibility to young people up to 25 years old.**

Questions*:*

What feedback do you have on the operation of the Serious Youth Offender regime's restrictions on the dual track system? (Considering both how the dual track system has been used and the alternative experience of potential candidates who did not meet the amended eligibility requirements).

What do you consider are the specific impacts of the reforms on the individual 18 to 21 year olds in the category of people no longer eligible to serve their sentence in a YJ facility?

VLA supports access to Youth Justice detention for young people who committed offences as a child and are now aged 18 years or over. The dual track system means access to the provision of specialised, supportive and rehabilitative interventions, increased access to educational opportunities as well as youth justice transition planning support which is more comprehensive than the supports provided in the adult prison system.

VLA recommends removing the restrictions on access to the dual track system, and further expanding eligibility for Youth Justice Centre custody up to 25 years old, as recommended by the Sentencing Advisory Council.

[6] CCYP, above n 1, Recommendation 67.

6. Other legislative, administrative or policy reform necessary to improve the operation of Victoria's youth justice system

Recommendation 7. **VLA recommends:**

- **Bail and summary offences reform**
- **Raising the minimum age of criminal responsibility.**

***Questions**: Additional reforms*

In the context of the focus of the Review, do you consider that any additional legislative, administrative or policy reform is necessary to improve the operation of Victoria's youth justice system? Is there anything else you would like to raise in relation to this Review?

Bail reform

In our view, children should be excluded from the reverse onus tests in the Bail Act and always have a presumption in favour of bail.

As a result of the 2018 bail reforms, there has been a significant increase in the number of children admitted to remand. VLA sees more children are being held on remand and for longer as a result of the reverse onus, even for minor offending.

This is largely because children are being propelled into the *compelling reasons* or *exceptional circumstances* categories for bail, even where they do not pose a significant risk of serious offending. Our practice experience is that children are still being put on bail for minor matters instead of summonsed, then charged with further low-level offending while on bail (such as a shop theft) and being remanded due to the reverse onus position under the Bail Act. This happens despite the presumption of summons in the CYFA.

The minimum age of criminal responsibility

Raising the age of criminal responsibility has wide support from across the social services sector. While we note the national process that is underway, Victoria should take the lead on this transformative reform piece to raise the minimum age of criminal responsibility to 14 years, reflecting scientific research about a child's evolving maturity and abstract decision-making capacity.[7]

VLA's experience is that young children are harmed by the criminal justice system, and evidence shows children who have contact with the criminal justice system between the ages of 10 and 14 are far more likely to experience sentenced detention in their later years than children who are first supervised at an older age.[8]

VLA's experience is that in practice, the presumption of doli incapax does not operate to protect young children from entering the criminal justice system, and is therefore not a suitable substitute. The child may spend many months in the criminal justice system, even in custody, before charges can be withdrawn or dismissed due to *doli incapax*. This period in the system permanently impacts the development and rehabilitation of children and is in itself criminogenic.

[7] UN Committee on the Rights of the Child *General Comment No. 24* on children's rights in the child justice system (2019), para 22.

[8] Chris Cunneen, *Criminalisation, young people and the minimum age of criminal responsibility,* UNSW Sydney; para 3 of the media release at https://newsroom.unsw.edu.au/news/social-affairs/aspc-australia-should-raise-minimum-age-criminal-responsibility.

Victoria has the social support service infrastructure and policy settings in place for an alternative to the youth justice system for this age group. This includes the child protection system,[9] the education system, the youth mental and physical health systems alongside the NDIS. The existing framework for children under 10 years who are exhibiting anti-social or risky behaviour can be extended to 10-13 year olds, and integrated with education and mental health systems. For the very few children who pose considerable risk, restorative conferencing should be combined with intensive wrap-around therapeutic support and supervision, provided by trauma-informed and multi-disciplinary staff.

[9] For example, therapeutic residential care, secure welfare where at immediate risk of harm and Therapeutic Treatment Order for children who are exhibiting sexualised behaviours.

Our clients

Service snapshot

The number of clients we worked with and services we delivered reduced overall in 2020–21 due to COVID-19 restrictions, courts adjourning matters and the challenges of providing services remotely.

74,670
total number of unique clients
16% down on 2019–20

40,486
number of grants of legal assistance
11% down on 2019–20

In-house
5,787 – 14% of total services delivered
Private Practitioners
34,086 – 84% of total services delivered
Community Legal Centres
643 – 2% of total services delivered

57,049
number duty lawyer services
45% down on 2019–20

Inhouse
36,499 – 64% of total services delivered
Private Practitioners
8,697 – 15% of total services delivered
Community Legal Centres
11,853 – 21% of total services delivered

Family Dispute Resolution Service

1,245 conferences in 2020–21
26% increase on 2019–20

Supporting remote service delivery

To provide continuity of services while working remotely and reduce the need for staff and clients to attend the office, we continued our transition to digital file management and digital service records.

Digital mail room

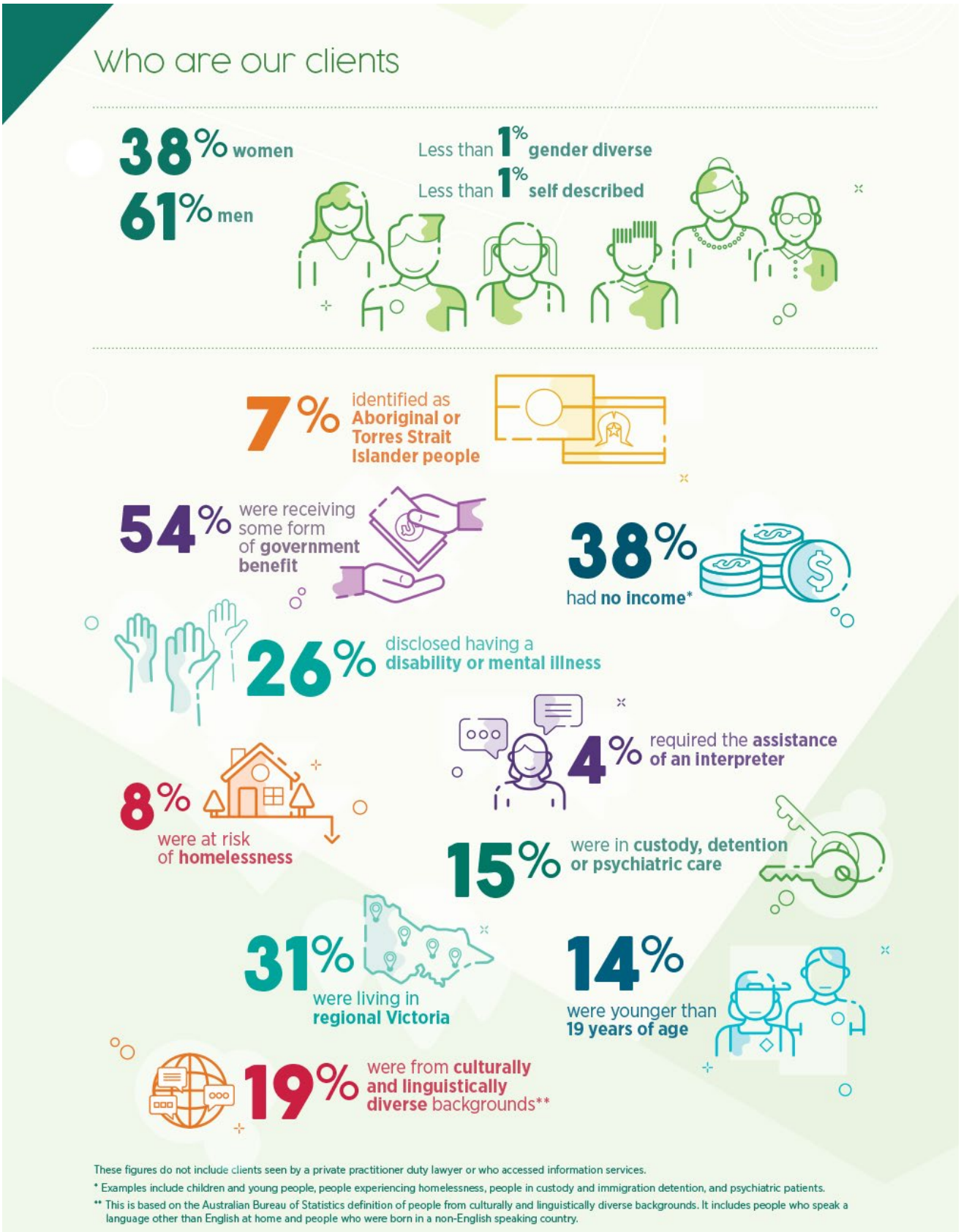
15,785 documents digitised in 2020–21
157,906 pages digitised

Legal Help

112,939 total requests for help responded to
41,267 number of webchat services
54% increase on 2019–20
46,211 number of webchat requests answered, or
89% of incoming requests
147,631 number of incoming calls
6% decrease on 2019–20
71,672 number of calls answered, or
49% of incoming calls

Family violence priority channels

3,395 number of webchats answered, or
90% of the **3,791** total incoming
6,804 number of calls answered, or
59% of the **11,470** total incoming


Who are our clients
38% women
61% men
Less than 1% gender diverse
Less than 1% self described
7% identified as Aboriginal or Torres Strait Islander people
54% were receiving some form of government benefit
38% had no income*
26% disclosed having a disability or mental illness
4% required the assistance of an interpreter
8% were at risk of homelessness
15% were in custody, detention or psychiatric care
31% were living in regional Victoria
14% were younger than 19 years of age
19% were from culturally and linguistically diverse backgrounds**
These figures do not include clients seen by a private practitioner duty lawyer or who accessed information services.
* Examples include children and young people, people experiencing homelessness, people in custody and immigration detention, and psychiatric patients.
** This is based on the Australian Bureau of Statistics definition of people from culturally and linguistically diverse backgrounds. It includes people who speak a language other than English at home and people who were born in a non-English speaking country.