



The Hon. Fiona Patten MP
Chair, Legislative Council Legal and Social Issues Committee
Parliament of Victoria

By email: justiceinquiry@parliament.vic.gov.au

Dear Ms Patten

Inquiry into Victoria's criminal justice system

The Commission for Children and Young People (the Commission) provides this response to the Legal and Social Issues Committee (the Committee) call for submissions to the *Inquiry into Victoria's criminal justice system*.

In summary, the Commission urges the Committee to consider the evidence, findings and recommendations in our recently tabled report, *Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the youth justice system*, which has relevance to terms of reference 1, 2 and 3.

A copy of the summary and report are available at: <https://ccyp.vic.gov.au/upholding-childrens-rights/systemic-inquiries/our-youth-our-way/>.

The report is relevant to understanding the drivers and contributing factors to the over-representation of Aboriginal men and women in the criminal justice system in Victoria, tragically too often due to early youth justice system contact and adverse experiences in childhood.

The Victorian Sentencing Advisory Council, consistent with other research, has found 'that the younger children were at their first sentence, the more likely they were to reoffend generally, reoffend violently, continue offending into the adult criminal jurisdiction, and be sentenced to imprisonment in an adult court before their 22nd birthday. Each additional year in age at entry into the criminal courts was associated with an 18% decline in the likelihood of reoffending. These findings may not be surprising in light of studies showing that the youngest offenders are more likely to have been exposed to violence, abuse, neglect, and chaotic, dysfunctional lifestyles'.¹ This research has important implications for reducing the over-representation of Aboriginal children and young people, who are likely to be younger at first sentence or diversion than non-Aboriginal children.²

The factors contributing to over-representation are numerous, complex and inter-related. For this reason, the *Our youth, our way* inquiry looked at not only the youth justice system but also the child protection system, education, housing, mental health, drug use and wellbeing.

The report makes 41 findings and 75 recommendations across these areas. While predominantly focussed on reducing the over-representation of Aboriginal children and young people, many of the findings and recommendations are relevant to reducing the contact of all children and young people with the youth justice system.

Key findings include:

- The youth justice system is disproportionately focused on late, crisis-driven, punitive responses to offending behaviour, at the expense of effective community based early interventions and supports.
- Government agencies often fail to act in a collaborative, coordinated and integrated way to provide support to Aboriginal children and young people involved in the youth justice system. This limits positive outcomes and compounds disadvantage.
- Aboriginal children and young people in contact with the youth justice system experience a significant level of unmet need. For example, most Aboriginal children and young people in contact with the youth justice system experience substance misuse and most have experienced disengagement and exclusion from education.
- Connection to culture can be transformative and instrumental in supporting Aboriginal children and young people to avoid contact with the youth justice system. However, the youth justice system does not facilitate meaningful connections to culture for most Aboriginal children and young people.
- Victoria's low minimum age of criminal responsibility disproportionately harms Aboriginal children.

Recommendations include:

- increasing the minimum age of criminal responsibility in Victoria to 14 years, without any exceptions
- amending the *Bail Act 1977* to exclude children and young people from the operation of the 2017 and 2018 amendments, including the requirement to show exceptional circumstances or compelling reasons
- prioritising early intervention and diversionary processes at all points on the youth justice system continuum
- authorising Aboriginal communities to design, administer and supervise elements of the youth justice system.

The Commissioner for Aboriginal Children and Young People would welcome an opportunity to present the most relevant findings and recommendations to the Committee, most likely alongside members of the Commission's Youth Council.

If this would be of assistance, please contact Shahleena Musk, Manager Koori Advisory and Engagement, on 0405 314 755 or at Shahleena.Musk@ccyp.vic.gov.au.

Yours sincerely



Justin Mohamed
**Commissioner for Aboriginal
Children and Young People**

19 August 2021



Liana Buchanan
Principal Commissioner

22 August 2021

¹ Sentencing Advisory Council, *Reoffending by children and young people in Victoria*, pp xiii, 52.

² Data from the Department of Justice and Community Safety (DJCS) shows that Aboriginal children made up 30% of children aged 10 to 13 years who received a court order that placed them under the supervision of Youth Justice from 2010 to 2019.