Our kids deserve futures, not life sentences

Statement of Advice on the *Justice Legislation Amendment (Community Safety) Bill 2025*

This is a Statement of Advice from Victorian community legal centres to the Victorian Government on their proposed "Youth Justice Sentencing Reforms". We stand strongly opposed to these harmful reforms. By introducing the *Justice Legislation Amendment (Community Safety) Bill 2025*, the Victorian government is actively removing fundamental tenets of the justice system for our children. If we actually want to reduce future harm and improve community safety for all Victorians, **this Bill must be withdrawn**.

This Bill is so harmful to our kids because it:

- Shifts Victoria away from having a child-centred, human rights-based youth justice system by deleting the evidence-based focus on our children's rehabilitation and removing imprisonment as a last resort. This means our children's development, wellbeing and future potential are no longer being safeguarded.
- Harms children who are already being harmed and failed by State systems. This includes children in out-of-home care, living with disability, experiencing homelessness, trauma and family violence. The Bill will push these children deeper into damaging legal systems instead of supporting them to get out of it.
- Exposes Victorian children to clear and avoidable human rights breaches that will harm them even more. This Bill directly conflicts with Victoria's human rights protections under the Victorian Charter of Human Rights and Responsibilities (*Charter*) and Australia's binding human rights obligations under international law, including the UN Convention on the Rights of the Child (*UNCRC*).
- Rejects evidence-based effective approaches for children that prioritise their rehabilitation, connection to family and culture, education, mental health care and stable housing – things which consistently deliver better outcomes for children and for community safety.

While we oppose the Bill and do not want the government to pass it, the Government has signalled their intention to push it through parliament as soon as possible. We have identified three areas that must be fixed urgently. They do not replace our wider concerns; they are the bare minimum changes needed to stop the Bill from having the most serious and lasting damage to our children and to community safety.

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Changes to lessen the harm to our children

We have drafted the following amendments that are needed to lessen the inevitable harms this Bill will have on children experiencing disadvantage and systems failures, especially First Nations children, children with disabilities, children in out-of-home care, and children who have experienced trauma and family violence.

The amendments we recommend are divided into two categories: critical amendments and other priority amendments.

Critical amendments

1. Retain principles of 'imprisonment as a last resort and for the minimum period necessary'; and that 'rehabilitation and positive development are the most effective ways to reduce reoffending'
2. Amend the tests for uplifting designated offences to reflect a child's age and have consideration for delay and disadvantage where matters are uplifted
3. Narrow the scope of the new knife offence to reduce risk of upcharging and overcriminalisation

Other priority amendments

4. Delay commencement of the Bill until 30 September 2026, which is when all remaining provisions of Youth Justice Act 2024 will commence
5. Legislate de novo appeals to ensure children whose matters are uplifted to the County Court retain their right to de novo appeal

Critical amendments

1. **Retain principles of imprisonment as a last resort and for the minimum period necessary, and that rehabilitation and positive development are the most effective ways to reduce reoffending**

   Clause 12 of the Bill removes the important sentencing principle that "efforts to support rehabilitation and positive development are the most effective to reduce reoffending" from section 204 of the Youth Justice Act. Inclusion of this principle in the Youth Justice Act is based on proven, empirical evidence and social science. Ignoring this evidence represents a deep failure of policymaking and is an insult to the extensive consultation and advocacy of the community and legal sector who helped draft the Youth Justice Act. It is also dangerous to use children and their lives as political collateral. Removing these protective and evidence-based principles will impact how judges decide appropriate sentences and responses to children's offending behaviours.

Clause 13 removes "custodial sentence as a last resort and for the minimum period appropriate and necessary" from section 208 of the Youth Justice Act. Enshrinement of the principle of detention as a last resort for children is evidence-based and is the bare minimum required under international human rights law. Removing this principle is contrary to Australia's binding obligations under article 37(b) of the *United Nations Convention on the Rights of the Child*. Removing this principle also contravenes rule 19 of the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*.

There are also significant concerns that removing this principle is incompatible with the following rights in the Charter:

- Right of a child to legal proceedings which accounts for their age and promotes their rehabilitation in section 25;
- Right of a child who has been convicted of an offence to age-appropriate treatment in section 23;
- Right of a child to protection in their best interest in section 17; and
- Right to liberty and security of the person in section 21.

Additionally, subjecting more children to incarceration for longer periods of time exposes them to breaches of:

- Right to humane treatment when deprived of liberty in section 22; and
- Right to be protected from cruel, inhuman or degrading treatment in s10.

2. Amend the tests for uplifting designated offences

Clauses 14 and 20 of the Bill provide the circumstances under which a 'designated offence' could be heard summarily. We recommend broadening the matters in consideration for uplifting offences and establishing a separate test for 14-year-olds.

There must be a separate test for 14-year-olds

The proposed test to determine if a 'designated offence' can be heard summarily is the same for 14-year-olds children as it is for children aged 15 years or over. This test follows the existing formulation in section 356(6) of the *Children Youth and Families Act 2005*, which currently applies to children 16 years and over charged with Category A offences (like murder, offences causing death, aggravated home invasion).

It is absurd that the test at Clauses 14 and 20 is proposed to apply to 14-year-olds for the less serious 'designated offences'. It is important that the test is amended to reflect the child's age and development. Failing to provide a separate test ignores scientific evidence that children of different ages require different court approaches and environments due to their stages of development.

It should be possible for a 14-year-old's matter to remain in the Children's Court jurisdiction, to reflect their stage of development, lower level of maturity and greater need for a therapeutic

approach. This would also better uphold the right of 14-year-old children under the Charter to legal proceedings which accounts for their age and promotes their rehabilitation section 25, and to protection in their best interests in section 17.

Broader considerations in the interests of prompt resolution of matters

The test at Clauses 14 and 20 should be amended to include travel and court capacity considerations in determining the appropriateness of uplift. Pushing matters from being heard summarily in the Children's Court to the County Court will inevitably lead to delays due to increased demand on the County Court. As there are only 11 regional County Courts with limited sitting days, compared to 23 regional Children's Court locations, this will worsen issues of regional disadvantage, court availability, postcode justice, and prolonged incarceration in police cells in the regions where children on remand are required to attend County Court in person.

3. **Narrow the scope of the new knife offence**

We recommend removing *assault* and *threaten to assault* from the list of relevant offences in Clause 9. The new knife offence established by Clause 9 of the Bill will have significant unintended consequences outside of the children's jurisdiction. The offence will be charged in addition to the other listed relevant offences, therefore increasing the number of charges laid in these circumstances.

Based on police charging practices routinely observed by our legal services, we note it is likely that police are going to lay inappropriate charges in an alleged incident (a practice known as "upcharging") to one of the relevant offences in order to also charge the new offence. This is not what the Bill is meant to do.

We are particularly concerned about including *assault* and *threaten to assault* in the relevant offences, as this will disproportionately impact people with mental health issues, intellectual disabilities and homeless people. It is common that people are charged with *threaten to assault* for incidents related to use of verbal language that is related to their mental health issues. In addition, many homeless people carry items like cooking knives, shaving implements and other sharp objects simply because of their homelessness; they have no other options for safe storage and must conduct their cooking and personal hygiene activities in public. It is a serious risk that the new knife offence could be inappropriately applied in these circumstances.

This new knife offence will further criminalise and entrench disadvantage for these groups and will only make it more likely they spend longer periods in prison away from the supports they need.

Other priority amendments required to minimise harm of this Bill

4. **Delayed commencement**

   The date when this new Bill commences should not be sooner than 30 September 2026. This time is needed to allow for the significant operational, procedural, workforce, training, safeguarding, and inter-agency coordination changes within courts to minimise the harm of these reforms. Right now the Bill's latest possible commencement date is 27 February 2026, which is simply too soon for these systems to be ready to safely manage the influx of children being incarcerated and uplifted to adult courts.

5. **Legislate de novo appeals**

   We are concerned that children whose matters are uplifted to the County Court will no longer be able to bring a de novo appeal – losing a right they had in the Children's Court. This will drastically diminish the ability to seek appeal against sentence. Children's right to appeal is a fundamental aspect of access to justice and should not be diminished.

   The de novo appeal gives people the ability to a have their case heard afresh in a new court. On a de novo appeal, the higher court has no regard to what happened in the initial lower court, and the accused is not bound to their plea or evidence as it was presented in the initial case.

   To uphold this right, we strongly recommend that de novo appeals should be legislated for any County Court matters where the accused person is a child. The appeal should be heard by the Supreme Court.

Stories of our children

Here are some real-life stories of our children, who are also clients of the Victorian Aboriginal Legal Studies (VALS). These stories highlight how the systems have failed our children time-and-time again, and how responsive, supportive and holistic responses are a much better way to reduce offending and improve community safety.

**names have been changed to protect the children's privacy*

Lily*

Balit Ngulu (VALS' Youth Legal Practice) assisted a young client who was charged with aggravated burglary and aggravated home invasion. Lily was charged with these offences despite only having played a secondary role, being the 'look out' at the time of the offending. Lily was particularly vulnerable, as many young children in contact with the youth justice system are.

Balit Ngulu lawyers strongly advocated for Lily and to keep her out of youth detention. The charges were ultimately reduced to reflect the actual nature of her involvement, and she received a non-custodial sentence. The holistic legal and social supports provided by Balit Ngulu meant that Lily received a sentence that was appropriate in the context of the offending behaviour, and she was diverted from the criminal legal system.

Lily has not had any further contact with the criminal legal system since.

Under the proposed amendments of the Bill, both of these charges would have put Lily in the County Court where she would be facing a life sentence at her young age, despite having no prior convictions. Lily would have been committed to the County Court, exposed to the adult jurisdiction which lacks the understanding and protective factors of the children's jurisdiction. She would have undoubtedly been exposed to the harms that exist for children in custody, and been further entrenched within the criminal legal system.

Oscar*

At the time Oscar came into contact with the criminal legal system he was already living with significant trauma – something no child should have to navigate alone. Through Balit Ngulu (VALS Youth Legal Practice), Oscar received holistic legal and social support and he has not had any further contact with the criminal legal system since.

As a young child, Oscar was removed from their parents care and taken away from their family home. During this time, the state intervened and Oscar was placed in out-of-home care which we know causes further harm to young people. Kids in residential care experience criminalisation at the hands of the state. The government knows this and that is reflected in the Framework to Reduce the Criminalisation in Care.

Oscar experienced displacement and instability, moving between foster homes before finally being placed with their current carers who have provided them with a safe, supportive and stable home environment – something all kids should experience. Oscar was charged with offences including aggravated carjacking and aggravated burglary. Balit Ngulu made an application to have Oscars matters remain in the Children's Court, which was granted. This reflects the fact that the young person is just that – a child.

The court process was extremely traumatic for Oscar, and sending matters to the County Court would have caused far more distress and trauma. The Children's Court has had the appropriate therapeutic effect. Oscar received a sentence that was reflective of their circumstances and experiences, and the fact that they are a child. Oscar is now doing well and has not had any further contact with the criminal legal system.

Had Oscar been subjected to the jurisdiction of the County Court their future could have been a very different story, forgoing the opportunity to be a teenager and pursuing their love for sport.

This Statement of Advice has been prepared by:

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