

Submissions to the Yoorrook Justice Commission Regarding the Criminal Justice System

Westjustice acknowledges the Peoples of the Kulin Nation as the Traditional Owners of the lands and waters of our region. We acknowledge the Kulin Peoples' ongoing connection to Country, and we pay our respects to Elders past and present. As we work to achieve a just and fair society, we acknowledge the fundamental role of First Peoples in the life of this region, as Custodians of the world's oldest living Culture.

In line with the Yoorrook Letters Patent, Westjustice will use the term 'First Peoples' to include all Traditional Owners of a place in the state of Victoria (including family and clan groups) and their ancestors, as well as Aboriginal and/or Torres Strait Islander persons who are living or have lived in Victoria before or since the start of colonisation, except where a separate term is widely used (for instance, in reference to Koori Courts).

1. Our Role in the Inquiry

- 1.1 Westjustice is grateful for the privilege and opportunity to provide this submission to the Yoorrook Justice Commission and evidence at the Inquiry.
- 1.2 Westjustice is a community legal centre (CLC), funded to service the Local Government Areas (LGAs) of Maribyrnong, Hobsons Bay and Wyndham, but in practice we offer our services across the Brimbank and Melton LGAs as well, alongside the Brimbank Melton CLC – meaning we cover an area of nearly a million people. Westjustice provides free legal and financial advice, representation, education, community development, advocacy, and policy advocacy across four impact areas:
 - People experiencing economic injustice.
 - Young people.
 - People experiencing family and gender-based violence.
 - Culturally and linguistically diverse (CALD) communities.
- 1.3 A large portion of our Western Suburbs clients experience cyclic disadvantage and are overrepresented on many metrics, including justice issues. As a result, our approach is increasingly to focus on the underlying causes of complex systemic problems and create impactful community centred solutions through collective and collaborative multi-sector and cross-community partnerships.
- 1.4 The Wyndham City LGA has the fastest growing First Peoples population in metropolitan Melbourne, as of the 2021 Australian Census. As such, we are committed to understanding how systemic injustices occur and recur for First Peoples communities. We also recognise our need for organisational introspection across cultural safety and inclusion and launched our first Reconciliation Action Plan (RAP) in 2021. We are currently drafting our second RAP and an organisation wide Anti-Racism Strategy. We are fostering strong relationships with First Peoples organisations and advocating alongside them for greater presence in the Western Suburbs. These commitments are enduring, and our learning is ongoing.
- 1.5 However, we remain aware of the shortage of opportunities for self-determination by First Peoples to lead the necessary disruption and transformation of broken systems which directly, or indirectly, affect First Peoples. In addition, the current deficit in funding for First Peoples organisations, programs, and services in the West compromise positive life outcomes for First Peoples families and the availability of culturally safe and appropriate responses. Both self-determination and these deficits in funding must be addressed as a matter of urgency.

1.6 As such, we defer to, and are led by, the Victorian Aboriginal Legal Service (VALS), Djirra and other First Peoples organisations and leaders in relation to the impact of cyclic disadvantage and complex social and justice issues on First Peoples.

1.7 Our Submissions are predominantly based on:

- Our practice experience in the West with young people and their families; and
- Our focus on addressing the underlying causes of legal and related problems and their impacts.

1.8 Noting the Terms of Reference contained in the Letters Patent and our area of expertise, we have addressed clauses (e) and (b)(i):

How ongoing systemic injustice can be addressed, and/or redressed including recommended reform to existing institutions, law, policy and practice and considering how the State of Victoria can be held accountable for addressing these injustices and preventing further injustices.

Ongoing Systemic Injustice perpetrated by State Entities and Non-State Entities against First Peoples, including but not limited to the areas of:

- (i) *Policing, youth and criminal justice, incarceration, detention, and the broader legal system.*

1.9 We provide an overview of some of the problems across these topics, along with suggested recommendations and details of proposed solutions.

2. Clause E: Systemic Injustices and Cyclic Disadvantage

The Problems

Social Determinants of Health and Relationship to the Law

2.1 Social determinants of health are well established and researched¹. Poorer people generally live shorter lives and suffer more ill health than the rich². Therefore, under resourcing social and economic support services results in greater likelihood that people will get sick and have shorter life expectancies³. Social inequities also lead to greater likelihood of other problems, such as workplace exploitation, drug and alcohol dependency, and engagement with the criminal justice system. These, in turn, compound unwellness⁴.

2.2 The development and ongoing evolution of the Health Justice Partnership movement over the past 20 years evidenced the correlation between health and justice. Legal problems – like housing insecurity, debt, and employment – can impact on health outcomes. The corollary is also true; chronic health issues and complex mental health problems can increase the likelihood of fines, debt, and criminal proceedings⁵.

2.3 Therefore, given the interrelatedness between social determinants of health and the potential flow on effects into overrepresentation in the justice systems, the places where First Peoples are born, grow, work, live and age are critical considerations.

¹ Australian Institute of Health and Welfare, *Social Determinants of Health*, (Webpage, 7 July 2022) – link [here](#).

² Australian Institute of Health and Welfare, *Health Across Socioeconomic Group*, (Webpage, 7 July 2022) – link [here](#).

³ Victorian Department of Health, *Social Determinants of Health*, (Webpage, 4 August 2022) – link [here](#).

⁴ Australian Institute of Health and Welfare, *Health Across Socioeconomic Group*, (Webpage, 7 July 2022) – link [here](#).

⁵ Health Justice Australia, *Health Justice Partnerships Addressing Determinants of Health*, (Webpage, 12 September 2018) – link [here](#).

Post Code Poverty – Infrastructure and Access to Services

2.4 Melbourne's West is a dynamic area of Melbourne covering five LGAs; Wyndham, Hobsons Bay, Maribyrnong, Brimbank and Melton. As of the 2021 Australian Census, Wyndham City LGA is:

- Australia's fastest growing municipality⁶;
- Home to five of the top ten of Australia's most multicultural suburbs⁷;
- Home to Australia's highest proportion of young people (about 30 percent of the population, or nearly 90,000 young people)⁸;
- Seeing 110 babies born every week⁹; and
- Home to Metropolitan Melbourne's fastest growing First Peoples community¹⁰.

2.5 Whilst dynamic and enriched by cultural diversity and strong communities, Melbourne's West is in crisis by many metrics. Many suburbs, including Wyndham Vale, Werribee, Tarneit and Hoppers Crossing, are significantly disadvantaged based on Socio-Economic Indexes for Areas ratings¹¹. The Outer West also has higher than average youth offending rates¹², family violence rates¹³, rental and mortgage stress¹⁴, and casualised workers¹⁵. A significant portion of the community is reliant (at least in part) on social security payments to survive. Homelessness and housing insecurity are high¹⁶, and many tenanted properties are not fit to inhabit or built poorly and therefore difficult to maintain and sustain.

2.6 In addition, the Outer West has fewer public schools, libraries, hospitals, and pools and a dearth of public transport when compared with the rest of Melbourne¹⁷. The public transport that does exist is often unreliable and not fit for purpose. Many suburbs are serviced by regional, V-Line trains that operate less frequently than the electrified rail. The train stations are over-crowded – Tarneit's V-Line station became the second busiest in Victoria outside of Melbourne's Southern Cross the day it opened.

2.7 Western Suburbs communities were also some of the hardest hit by the health and economic impacts of the pandemic and Melbourne's six lockdowns. Our observation is that very few of our clients had the chance to recover financially before this current cost of living crisis hit – compounded by interest rate rises, and a decrease in wages and pension in real terms relative to inflation.

2.8 We also note concerns expressed by the First Peoples at the West Metro Aboriginal Community Forum on 23 June 2022 and Joint Secretaries Response, highlighting the lack of resources and culturally safe support services for First Peoples in the West, along with historical lack of engagement with First Peoples¹⁸.

⁶ Annika Burgess and Jason Fang, 'Census 2021 data reveals Australia's most multicultural suburbs and growing diversity', *ABC News*, (Melbourne, 7 July 2022) – link [here](#).

⁷ *Ibid*.

⁸ Liam Beatty, 'Wyndham City Community Patrols: Residents rally to tackle youth crime plaguing streets', *Herald Sun* (Melbourne, 19 September 2022) – link [here](#).

⁹ Liam Beatty, 'Babies Born in Cars Across Wyndham Amid Catastrophic Hospital Bed Shortage', *Herald Sun*, (Melbourne, 24 March 2022) – link [here](#).

¹⁰ Australian Bureau of Statistics, *Victoria: Aboriginal and Torres Strait Islander population summary*, (Web Page) <link [here](#)>.

¹¹ .idcommunity (2021), *City of Wyndham – SEIFA by Profile Area*, link [here](#)

¹² Crime Statistics Agency 2022, *LGA Criminal Incidents Year Ending March 2022*, Melbourne, Victoria – link [here](#).

¹³ *Ibid*.

¹⁴ Jim Malo and Tawar Razaghi, 'The Melbourne suburbs where homeowners can't pay their mortgage', *The Age* (Melbourne, 5 February 2023) – link [here](#).

¹⁵ Barnes, T, Doidge, S 2021, *Scarring Effects of the Pandemic Economy*, Australian Catholic University, Melbourne, Victoria – link [here](#).

¹⁶ AAP, 'Homelessness greatest in cities, suburbs', *SBS News* (Melbourne, 30 May 2019) – link [here](#).

¹⁷ Infrastructure Victoria, *Social Infrastructure in Melbourne's Growth Areas* (December 2020) – link [here](#).

¹⁸ West Metro Aboriginal Community Forum, *Joint Secretaries' Statement*, 23 June 2022, Melbourne, Victoria – link [here](#).

2.9 Wyndham alone is home to approximately 90,000 young people, and the Cherry Creek Youth Justice Centre (the largest youth prison in the state). Construction has also begun on the new Wyndham Courts Precinct (soon to be the second largest in the state). Cherry Creek, the new Wyndham Courts and the new Wyndham Police Station represent (at a base level) \$736 million in funding at the wrong end of the problem. Therefore, we are eager to ensure that our young people enter the 'right door'. This becomes significantly harder if the social, health and wellbeing supports are not available to act as an interceptor. A whole of place approach is therefore essential.

2.10 While new schools are being built, a lack of cohesive, cross-portfolio planning is leading to traffic, parking and transport issues just to access schools. In addition, schools in the West are experiencing shortages in teachers and support staff, only exacerbated by the pandemic.

2.11 Finally, through our placed-based clinics, we regularly see systemic injustices and the cyclic nature of disadvantage which drive people into contact with the criminal justice system. For example, nearly 60 percent of the Wyndham working population leave the LGA to work¹⁹. Limited public transport in the area forces people to drive and make the choice between paying for petrol, insurance, registration, or road tolls. This inevitably attracts unaffordable fines, effectively criminalising people for having no money in the first place (or what is termed "the criminalisation of poverty"). Similarly, when families cannot afford train or bus fare for their children to get to school, these children are punished with fare evasion fines, again criminalising them for their financial disadvantage. Fines for driving an unregistered car are often more than the registration fee itself, and fines for fare evasion are more than a low range speeding fine (\$277 vs \$231).

Recommended Solutions

First Peoples' Seat at The Table

RECOMMENDATION 1: Ensure a deliberate and effective role for self-determined and community-controlled organisations to lead policy development, planning, design, and implementation of solutions, supported by organisations with local knowledge.

2.12 CLCs have a long and proud history of working closely with their local communities and stakeholders. For 50 years, CLCs have specialised in responding to, preventing, and intervening early in justice, financial, social, and related issues from a place-based perspective. The larger, and more removed an entity is from the ground level, the harder it is to develop the requisite degree of understanding of the unique and specific issues. Yet, CLCs rarely get a seat at the policy design and decision-making tables.

2.13 Therefore, when it comes to First Peoples and justice issues, we recommend that these are led by First Peoples CLCs and other ACCOs from the initial policy and planning stages rights through to implementation and evaluation²⁰. This will ensure that problems (and related issues) are properly understood, and solutions are informed by First Peoples. This, in turn, can be supported by other mainstream local services with community knowledge (where welcome and appropriate), such as suburban and mainstream community services (legal, health, housing, family violence etc).

2.14 In addition, we support the recommendation of VALS for a Justice Treaty with ACCOs to increase power, control, and accountability²¹.

¹⁹ .idcommunity (2021), *City of Wyndham – Residents' place of work*, link [here](#)

²⁰ West Metro Aboriginal Community Forum, *Joint Secretaries' Statement*, 23 June 2022, Melbourne, Victoria (see commitment 2) – link [here](#).

²¹ Victorian Aboriginal Legal Service, *VALS Urges Victorian Government to Overhaul Justice System for Aboriginal People*, (Webpage, 20 December 2022) – link [here](#).

Address the Causes Through Justice Reinvestment

RECOMMENDATION 2: Victorian Government commit to a justice reinvestment approach for the Western Suburbs.

2.15 There is an overemphasis of crime and punishment funding in the West, instead of focusing on addressing the causes of interaction with the justice system. Reinvestment of a portion of crime and punishment dollars into early intervention and prevention opportunities is critical. This will not only improve life outcomes but also enable government to avoid the mounting costs of incarceration, justice, and policing systems along with emergency and crisis services.

2.16 The Victorian Government's Early Intervention and Investment Framework (EIIF) and Partners Addressing Disadvantage (PAD) are positive initiatives in encouraging early intervention funding and cross-departmental collaboration to implement it. We recommend a similar and dedicated approach be implemented for the Western Suburbs, to support the fast-growing community to stay in pro-social spaces like schools and jobs, and not in the new Courts or Cherry Creek.

Change Funding Cycles

RECOMMENDATION 3: Change funding cycles and guidelines to promote the development of holistic, collaborative initiatives which allow for multi-partnering and larger, longer-term funding structures that address issues at their core.

2.17 We recommend opportunities and initiatives to understand the *causes of the causes*. This requires movement away from siloed approaches to problem solving. At its core are *whole of person, whole of family, whole of community* frameworks and architecture. From our experience, to effect real and lasting change requires multidisciplinary, multi-partnering, long term collective impact projects. This takes time and requires significant investment from government and the philanthropic community. It also means that organisations need longer-term funding cycles and guidelines to provide more certainty and the necessary time to implement, monitor and even scale up programs.

2.18 The Victorian Government pilot project, *Putting Families First*, is an important move toward a more integrated, family centred approach. However, this project focuses on children and women already caught in the criminal justice system. In contrast, the Wyndham Vale Child and Family Hub (integrated partnership model involving the Murdoch Children's Institute, IPC Health and Health Justice Australia) focuses on the early years of a child's life and development. Multidisciplinary health, legal, and other services are offered to the family to prevent, or at least intervene early, when issues arise. See also TARGET ZERO below.

3. Clause B: Policing, Youth and Criminal Justice, Incarceration, Detention, and the Broader Legal System

The Problems

Over Criminalisation of Children and Young People in the West

3.1 Westjustice's Youth Law Program provides civil and criminal legal advice, representation and community legal education to young people aged 10-25 years living in, or connected with Melbourne's West.

3.2 Compounding the socio-economic and health inequities experienced by our clients and the criminalisation of poverty, is the fact that Western Suburbs young people are overrepresented²² in the criminal justice system.

High Rates of Youth Remand

3.3 Victoria's youth remand population more than doubled over the eight-year period to 2019²³. During 2020–2021, 81 percent of young people aged between 10–17 years in detention were on remand, compared with 21 percent in 2012²⁴.

3.4 A significant proportion of the youth remand population are from Melbourne's West²⁵.

3.5 It is our submission that the growing youth detention population over the past decade, particularly in Melbourne's west, has been due to a cumulative impact of factors, including:

- The introduction of serious youth offender legislation and new category A and B offences in 2018;
- The residual impacts of the 'youth crime crisis' and tough on crime policy responses;
- Harsh criminogenic conditions in youth custody (as opposed to rehabilitative) including rolling lockdowns due to staff shortages;
- Lack of awareness/consistency in police bail decision-making discretion at station level;
- Non-adherence to the presumption in favour of summons contained in s345 of the *Children Youth and Families Act 2005*;
- Youth policing tactics including increased surveillance and offender management;
- The dearth of support services, and infrastructure in Melbourne's western suburbs, as addressed above; and
- The introduction of strict bails laws in 2013, 2017 and 2018.

3.6 The impacts of the COVID 19 Pandemic on Melbourne's youth remand population were revealing and illustrate (in some part) the connection between the social determinants of health and the interplay with the justice system.

3.7 While the restriction of movement and the increase in parent/guardian supervision saw remand numbers reduce for a majority of the youth population, this was not true for the youth population already overrepresented in remand prior to the pandemic²⁶. Their disproportionate rate of detention continued, including those from the Western metropolitan region of Melbourne.

3.8 The latest Youth Parole Board²⁷ annual youth survey results confirm the socio-economic disadvantage, infrastructure and access to service challenges experienced by youth in custody:

- 13.8 percent of the children in custody were on a child protection order;
- 66.2 percent had a history of trauma, abuse or neglect;
- 43.4 percent had experienced family violence;
- 89.77 percent had a history of use/misuse of drugs;

²² We define overrepresentation as the higher rate of contact with the justice system and in particular custody of these cohorts as opposed to their youth counterparts aged 10-25 years old.

²³ Sentencing Advisory Council, *Inquiry into Victoria's Criminal Justice System: Submission 017*, April 2021, Melbourne, Victoria – link [here](#).

²⁴ Ibid.

²⁵ Data available upon request.

²⁶ In Victoria, on an average day, approximately 18 percent of children and young people (aged 10-24) under youth justice supervision identify as Aboriginal and Torres Strait Islander according to the [Youth Justice Strategic Plan 2020-2030](#). This Strategy also confirmed the overrepresentation of culturally and linguistically diverse children in youth justice, in particular South Sudanese Victorian children and Māori and Pasifika Victorian children. Alongside these groups, other overrepresented young people include those in residential care and girls and young women with complex needs.

²⁷ Department of Justice and Community Safety, *Youth Parole Board Annual Report 2020-21*, Melbourne, Victoria – link [here](#).

- 55.9 percent committed an offence under the influence of drugs and/or alcohol;
- 25.5 percent had history of self-harm or suicidal ideation;
- 46.9 percent accessing mental health support;
- 20 percent had active cognitive disability; and
- And in 2019/20, 68 percent were recorded as being suspended or expelled from school.

Impact of Bail Laws and Overcriminalisation of Western Suburbs Youth

3.9 While the 2018 changes to Victorian bail laws were originally intended for violent, adult male offenders, they have unintentionally resulted in unjust outcomes for many children and young people and an increase in youth remand rates. The net effect of the 2018 bail changes has been to:

- propel children and young people facing compelling reasons or exceptional circumstances categories for bail, even where there is no significant risk of serious offending;
- dramatically increase the number of short sentences served by children and young people through time on remand²⁸;
- child and youth clients telling us that it is better and safer for them to stay on remand in custody than on bail and supervised because if they ‘muck up’ or can’t follow their bail conditions despite best efforts they will be back in there anyway; and
- from experience we also know that some children charged with serious youth offences and remanded end up with the charges resolving to lesser offences but, having already spent such lengthy times in remand, the damage is done.

3.10 The Sentencing Advisory Council’s seminal 2020 Report on Children Held on Remand has since confirmed what we have been seeing in practice, that youth remand itself is criminogenic²⁹.

3.11 We note the devastating impact these bail laws are having on First Peoples women and release of Coroner McGregor’s findings into the tragic death of Veronica Nelson in custody. We welcome the Victorian Government’s acknowledgement and commitment to changes in the space³⁰.

3.12 Based on our practise experience, client stories and evidenced based research findings, we suggest the following solutions, including immediate changes that could start to reverse the overrepresentation and overcriminalisation³¹ of children and young people in Melbourne’s West.

Young Adult Offenders Are Over-Represented in the Justice System

3.13 Young adult offenders (18-25 years old) are over-represented in Victoria’s criminal justice system³². Young adults make up 15 percent of Victoria’s adult population but

²⁸ Note the 2018 bail changes compounded the impact of the 2013 changes made by the Baillieu Government that criminalised breach of bail including for children and young adults that resulted in an increase in the remand population.

²⁹ Sentencing Advisory Council, *Children Held in Remand in Victoria: A Report on Sentencing Outcomes*, September 2020, Melbourne, Victoria – link [here](#).

³⁰ Westjustice is a member of Smart Justice for Women and commends the [Final Policy Platform 2022](#) to the Commission.

³¹ We define over criminalisation as including but not limited to over policing and prosecuting of these communities.

³² Sentencing Advisory Council, *Rethinking Sentencing for Young Adult Offenders*, December 2019, Melbourne, Victoria – link [here](#).

constituted 22 percent of sentenced offenders in Victoria's courts in the five years to 30 June 2018. 53 percent of young adults return to prison within two years, which is more than eight per cent higher than for the general population³³. Offenders in this age group have relatively low compliance and completion rates on community sentencing orders, and they also reoffend at higher rates than older offenders³⁴.

- 3.14 This high rate of recidivism suggests that the current criminal justice system is not adequately responding to the unique developmental needs of young adults, compared to older adults. It is well established that brain development continues until somebody is in their mid-20s, even up to 30. Young adults are greater risk takers, more likely to be influenced by peers and less future oriented than older groups and this has an impact on behaviours and attitudes³⁵.

Recommended Solutions

Place-Based Collaboration to Support Early Intervention and Prevention Initiatives for Young People

RECOMMENDATION 4: That the Commission note Westjustice's Youth Crime Prevention and Early Intervention Program (YCPEIP) and TARGET ZERO

YCPEIP

- 3.15 Westjustice has been working with Victoria Police (Wyndham and Brimbank Police Service Areas) to deliver stage 1 of the YCPEIP along with our partners; Victoria Legal Aid, Youth Now, Youth Support and Advocacy Service (YSAS), Centre for Multicultural Youth (CMY), Youth Junction, relevant Magistrates' Courts and Children's Court, the various Prosecution Units, Youth Justice, Headspace and Orygen Youth Health, Jesuit Social Services. The Western Regional Aboriginal Justice Advisory Committee sits on our steering committee.
- 3.16 From experience, YCPEIP represents an unprecedented level of cooperation and coordination amongst cross-sector partner agencies in relation to supporting young people involved in the criminal justice system³⁶.
- 3.17 Our shared goal is to reduce the rate of offending and re-offending amongst children and young people (10-24 years old) in the West. YCPEIP is supported through a Crime Prevention grant provided for by the Department of Justice and Community Safety and is currently being independently evaluated. YCPEIP is intended to complement the Aboriginal Youth Cautioning Pilot. A full summary of the YCPEIP is at [Attachment 1](#).

TARGET ZERO

- 3.18 In addition, Westjustice and the Centre for Multicultural Youth have conceived an ambitious collective impact child and youth crime prevention model, known as TARGET ZERO. The project now has the support of 19 partners³⁷.

³³ Ibid.

³⁴ Sentencing Advisory Council, *Inquiry into Victoria's Criminal Justice System: Submission 017*, April 2021, Melbourne, Victoria – link [here](#).

³⁵ Sentencing Advisory Council, *Rethinking Sentencing for Young Adult Offenders*, December 2019, Melbourne, Victoria – link [here](#).

³⁶ YCPEIP is governed by a Steering Committee co-chaired by Westjustice and Victoria Police and a working group. Members at both levels comprise: VLA, Youth Junction, CMY, YSAS, NW Justice Services, Western RAJAC, Youth Now, Headspace, Principal of The Grange, Police Prosecutions, representatives from Brimbank and Wyndham Police Service Areas.

³⁷ Current TARGET ZERO partners are: Westjustice, CMY, Junubi Wyndham and Wyndham CEC, Co-Health, Jesuit Social Services, Whitelion, Orygen Youth Mental Health, Western Regional Aboriginal Justice Advisory Committee, Youth and Family

- 3.19 Target ZERO is designed to eliminate over the next ten years:
- Youth criminalisation in the Wyndham, Melton and Brimbank LGAs; and
 - The overrepresentation in the criminal justice system of: children in care; First Peoples children and youth; and, multicultural youth.
- 3.20 To succeed, Target ZERO needs everyone who lives, works, trades and studies in these three LGAs, in particular those most impacted by overrepresentation and criminalisation, to work together across all domains of a child and their family's life.
- 3.21 TARGET ZERO aims to do this by:
- Taking a 4 phased approach (1. building readiness; 2. building foundations; 3. creating a shared vision for change; and 4. scaling up for systems change);
 - Drawing together the collective experience of impacted communities, youth with lived experience, the service sector, all levels of government and business who all share the same worry about the criminalisation and overrepresentation of young people from Melbourne's West in the criminal legal system;
 - Prioritising the action that First Peoples communities in the West's say will enable self-determination.
- 3.39. A full overview of the program is at [Attachment 2](#).

Amend Victoria's Current Bail Laws

RECOMMENDATION 5: Immediately reform the Bail Act 1977.

- 3.22 Immediate amendment of Victoria's bail laws will reduce youth remand and prison populations and the disproportionate impact these laws are having on women and children, particularly from a First Peoples perspective.
- 3.23 Amendments should include:
- repeal of the reverse-onus provisions, particularly the "show compelling reason" and "exceptional circumstances" provisions (sections 4AA, 4A, 4C, 4D and Schedules 1 and 2) and replace with a single, unacceptable risk test.
 - Create a presumption in favour of bail for all offences except where there is a specific and immediate risk to the physical safety of another person or the person posing a demonstrable flight risk. This should be accompanied by an explicit requirement in the Act that a person may not be remanded for an offence that is unlikely to result in a sentence of imprisonment.
 - Repeal the offences of committing an indictable offence while on bail (section 30B), breaching bail conditions (section 30A) and failure to answer bail (section 30).
 - Adopt a gendered and culturally appropriate approach to assessing and determining risk to community safety that considers the specific disadvantage and marginalisation experienced by women and young adults (aged 25 and under).
 - Consider introduction of presumption in favour of summons for young adults (aged 25 years and under).
 - Introduce a guiding principle into the Bail Act that acknowledges the unique systemic and background factors which lead to the overrepresentation of vulnerable cohorts of children and young adults in the criminal justice system, and that remand should be a last resort. This includes First Peoples, children and young people involved in the

child protection system, especially in out of home care, as well as children from culturally and linguistically diverse backgrounds, especially refugee and newly settled ones.

- Introduce a requirement for police to always provide reasons when refusing to grant bail at the station level and or proceed by way of summons for children.

RECOMMENDATION 6: Repeal the Category A and B mandatory uplift provisions in the *Children, Youth and Families Act 2005* for non-homicide related youth offences, introduced in 2018.

3.24 In line with recommendation 13 of the 2022 Review of the Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017³⁸, and the Youth Parole Board's Annual Report 2021-22³⁹, we urge the Victorian Government to revise the criteria for uplift of matters from the Children's Court to a superior Court, including repeal of Category A and B provisions. This will reduce the number of young people on remand, and flow on impacts relating to parole planning.

Introduce Essential Youth Justice Reforms

In addition, there are four interrelated law reforms that we urge the Commission to consider adopting to reduce the overcriminalisation and overrepresentation of Western Suburbs youth:

- raising the minimum age of criminal responsibility to 14;
- raising the minimum age of youth detention to 16;
- raising the jurisdiction of youth justice to 25 years old; and
- rethinking how we police children and young people.

RECOMMENDATION 7: Raise the age of criminal responsibility to 14.

3.25 We strongly echo the calls made at this Commission to raise the age of criminal responsibility to at least 14 years, with no exceptions.

3.26 The evidence is that that 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 age⁴⁰. In addition, the younger a child is when they have their first contact with the criminal justice system, the higher the chance of future offending and the more likely they are to have long term involvement in crime⁴¹.

RECOMMENDATION 8: Raise the minimum age of youth detention to 16.

3.27 Further, we support calls by the Commission for Children and Young People⁴² to prohibit the Children's Court and adult courts from sentencing a child under the age of 16

³⁸ Department of Justice and Community Safety, *Review of the Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017*, May 2022, Melbourne, Victoria – link [here](#).

³⁹ Department of Justice and Community Safety, *Youth Parole Board Annual Report 2020-21*, Melbourne, Victoria – link [here](#).

⁴⁰ Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria*, December 2016, Melbourne, Victoria – link [here](#).

⁴¹ Smart Justice 4 Young People, *Response to Inquiry into Victoria's Criminal Justice System*, September 2020, Melbourne, Victoria.

⁴² Commission for Children and Young People, *Our Youth, Our Way: Systemic Inquiry into the Over-representation of Aboriginal Children and Young People in the Victorian Youth Justice System*, June 2021, Melbourne, Victoria – link [here](#).

to youth justice custody in line with the General comment No. 24 (2019) on children's rights in the child justice system⁴³.

RECOMMENDATION 9: Raise the jurisdiction of youth justice to 25 years old.

RECOMMENDATION 10: Explore the feasibility and merit of increasing the jurisdiction of youth justice to 25 years, starting with consideration of Cherry Creek Youth Justice Centre holding both remand and sentenced young people over 18 years old.

RECOMMENDATION 11: Invest in, and expand diversion options for 18-to-25-year-olds and remove the requirement of police prosecution consent for children and young people to court ordered diversion.

3.28 Westjustice supports the campaigns by Smart Justice 4 Young People (SJ4YP)⁴⁴ and their Election Priorities 2022 ([Attachment 3](#)), the Sentencing Advisory Council and Jesuit Social Services to expand the dual track system to include young adults aged 21 to 25 (or even to 30). Westjustice recommends it include community supervision (bail and sentencing) as well. Victoria's dual-track sentencing system allows adult courts to sentence young adults aged 18 to 20 years to serve a custodial sentence in a Youth Justice centre rather than an adult prison if the young person is particularly impressionable, immature, or likely to be subject to undesirable influences in adult prison⁴⁵.

3.29 Expanding the jurisdiction of youth justice to 25 years old would bring the criminal justice system in line with all young adult services providers whose jurisdiction reaches to at least 25 years old (and in some cases 30 years old)⁴⁶.

RECOMMENDATION 12: Review and rethink how we police children and young people.

To begin with and help inform this process:

RECOMMENDATION 13: Design and implement a three-year trial of a racial profiling monitoring scheme.

RECOMMENDATION 14: Establish a fully independent Police Ombudsman to investigate all complaints about police misconduct.

RECOMMENDATION 15: Develop a Police Manual dedicated to youth policing.

3.30 We recognise and commend genuine efforts by Victoria Police in Melbourne's West to reduce the overrepresentation of First Peoples and CALD youth in the justice system through increased diversions and earlier referrals to support services.

3.31 To support efforts at a local level, it is our submission that a whole scale review and rethink of how and why children and young people are policed is required. There should

⁴³ Ibid.

⁴⁴ SJ4YP is a coalition of leading Victorian social services, health, legal and youth advocacy organisations, calling for evidenced-based and effective responses to justice involved children and young people. The coalition provides a coordinated and expert voice on youth justice initiatives and reforms so that children and young people will have the best chance to succeed in life, supported by their families and in their communities. SJ4YP members include: Westjustice, Victorian Mental Illness Awareness Council, Koori Youth Council, Youth Activating Youth, Police Accountability Project, Centre for Excellence in Child and Family Welfare, Victorian Mental Illness Awareness Council, Centre for Multicultural Youth, Youth Junction, Victorian Aboriginal Child Care Agency, Victorian Aboriginal Legal Service, Youth Support and Advocacy Service, Jesuit Social Services, Justice Reform Initiative, Youthlaw, Melbourne University, Swinburne University.

⁴⁵ Commission for Children and Young People, *Our Youth, Our Way: Systemic Inquiry into the Over-representation of Aboriginal Children and Young People in the Victorian Youth Justice System*, June 2021, Melbourne, Victoria – link [here](#).

⁴⁶ Indeed we note that the new [Victorian Whole of Government Youth Strategy](#) spans the ages 12-25 years old.

be an explicit acknowledgement of and commitment to ending the overrepresentation and overcriminalisation of First Peoples and other impacted cohorts.

- 3.32 The policing of all youth from the point of first contact through to management of youth offenders requires a dedicated response, differentiated from the current approach to adults, in recognition of the potential for further criminalisation. This includes the exercise of police discretion. We note for example, the head of the Police Association's evidence before the Inquiry into the Criminal Justice System and concerns about the "taskforce approach" to policing and proactively pushing people into the system⁴⁷.
- 3.51 Further, we note the emphasis on proactive policing and the role of Proactive Policing Units (PPU). The suggested review and rethink should actively consider whether the approach adopted by the PPU should become the overall approach to policing children and young people. The review should also consider whether there are parts of the role that should be transferred to the community or to other essential service providers, for example, public schools. Police are not youth workers or counsellors and cannot be relied on by young people in the same way. We need to ensure that the most appropriate services are immediately available to produce the best outcomes for children and young people. This way, Victoria Police's interactions with children and young people can be kept to law enforcement and ensure members are accountable for fair, professional conduct within the scope of their roles.
- 3.52 As such, we recommend the wholesale review of how and why young people are policed be supported by the introduction of a fully independent Police Ombudsman established to investigate all complaints about Police misconduct, and the Development of a Police Manual dedicated to youth policing (offender, witness, victim). This Manual should cover everything from contact to investigation, processing and management and includes a presumption in favour of the least punitive action at every stage of the policing process for 10–25-year-olds.
- 3.53 Based on our practise experience and what clients tell us, we are also wary of proactive policing and predictive policing technologies that rely on technology-based data collection and analysis. While intended to make Police responses quicker and more effective, these technologies have the propensity to produce biased, discriminatory and racialised effects. In allocating police resources to interventions with non-offending youth and prioritisation intelligence gathering, police interactions with young people perpetuate further contact with police and entrenchment into the criminal justice system.
- 3.54 As such, we recommend the wholesale review also be supported by a three-year trial of a racial profile monitoring scheme, encompassing the routine collection and public release of deidentified data on who Victoria Police stop, question and search, and for what reasons (in line with Recommendation 20 of the Inquiry into Victoria's Criminal Justice System⁴⁸). The trial/s should occur in areas/LGAs with higher proportions of First Peoples and/or multicultural communities.

The Benefits of Collaboration

RECOMMENDATION 16: That the Commission note the drafting and pending publication of SJ4YP's *Ending the Criminalisation And Over-Representation Of Certain Young People in the Justice System: A Guide*.

⁴⁷ Legislative Council Legal and Social Issues Committee, *Transcript: Inquiry into Victoria's Criminal Justice System*, 21 September 2021, Melbourne Victoria – link [here](#).

⁴⁸ Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System, Volume 1*, March 2022, Melbourne, Victoria – link [here](#).

- 3.33 Westjustice co-convenes SJ4YP (along with Youthlaw) and its Working Group to end the criminalisation and overrepresentation in the justice system of First Peoples children and young people; multicultural children and young people; children in residential care; and girls and young women with complex needs.
- 3.34 Comprised of subject matter experts including VALS and the Victorian Aboriginal Child Care Agency, the Working Group is currently drafting a Guide that sets out the problem of over-representation and identifies the whole-of-system and specific domains in which a transformative response is necessary. We identify five key domains of action: **community and social inclusion, health and well-being, education, policing and the justice system**. This Guide is designed to enable all decision-makers involved with children and young people, including government and non-government organisations, services and professionals, to work towards ending over-representation and its drivers.
- 3.35 Further, we commend to this Commission, SJ4YP's election priorities for consideration of its benefit to First Peoples, either specifically or indirectly, and adoption in part or in full if appropriate (Attachment 3).