

Rethinking Sentencing for Young Adult Offenders

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- conduct research and disseminate information on sentencing matters
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- consult on sentencing matters
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Rethinking Sentencing for Young Adult Offenders

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Abbreviations

ARC List	Assessment and Referral Court List
CCO	community correction order
CISP	Court Integrated Services Program
DTO	drug treatment order
TAFE	Technical and Further Education
VCE	Victorian Certificate of Education
VCAL	Victorian Certificate of Applied Learning
VET	Vocational Education and Training
YJCO	youth justice centre order

Glossary of key terms

Accused	A person who is charged with a criminal offence.
Age–crime curve	The phenomenon that offending patterns are related to age: children and young people begin and stop offending for reasons related to maturity and life situation.
Aggregate sentence	A single sentence imposed on multiple charges in one case. The value of an aggregate sentence (for example, length of imprisonment term or fine amount) relates to at least two charges sentenced in the same case. The individual sentence for each charge is not specified.
Case	A collection of one or more proven charges against a person sentenced at one hearing.
Charge	In this report, a single proven count of an offence.
Community correction order	A sentencing order, available since 16 January 2012, that may require the offender to comply with a range of conditions, including unpaid community work, treatment, supervision, curfews and restrictions on the offender's movements and associates (<i>Sentencing Act 1991</i> (Vic) pt 3A).
Criminal justice system	The system of laws and rulings that protect the community and their property.
Custody	In this report, a general term for a sentence that deprives an offender of their liberty by holding them in a facility.
Dual track	The system that allows certain offenders who are under the age of 21 at the time of sentencing to receive a youth justice centre order rather than a sentence of imprisonment in certain circumstances.
Higher courts	In this report, the County Court of Victoria and the Supreme Court of Victoria.
Immediate custodial sentence	A sentence that an offender must serve immediately in custody, including imprisonment and a youth justice centre order.
Index sentence	In this report, the first youth justice centre order or term of imprisonment an offender received in the financial year 2014–15 (see Chapter 4).
Judiciary	The arm of government comprising the system of courts that interprets and applies the law. Distinguished from the legislature and the executive, the judiciary in Victoria comprises all judicial officers appointed to the various Victorian courts.
Justice system	The broad system of justice in Victoria that incorporates courts and tribunals, corrections, dispute resolution, law reform, legal assistance, parole, penalties and fines, policing, policymaking, prisons and victim support.

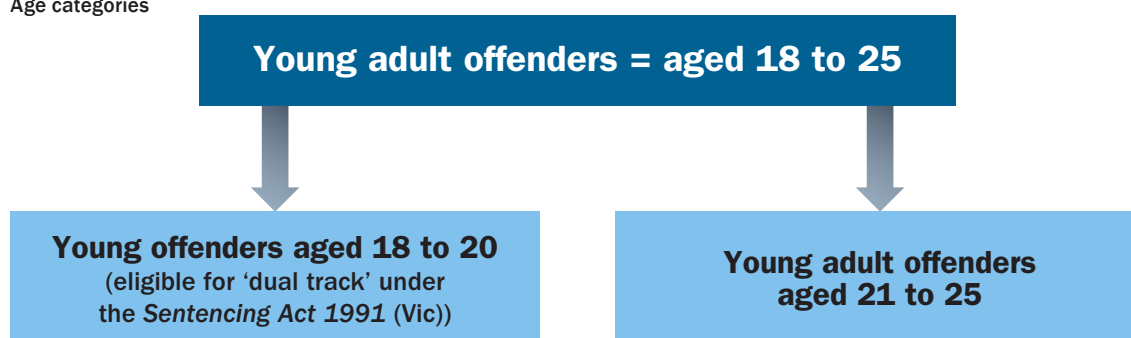
Legislature	The arm of government with the authority to make laws. Distinguished from the executive and the judiciary, the legislature in Victoria is the Parliament of Victoria.
Offender	A person who has been found guilty of a criminal offence.
Principal proven offence	The most serious offence for which an offender is sentenced at the one hearing.
Psychobiological development	In this report, a general term used to describe the development of a person's psychological, neurological and physical functioning from adolescence to adulthood.
Reference period	In this report, the five years from 1 July 2013 to 30 June 2018.
Remand	The holding of an alleged offender in custody before trial or between trial and sentence.
Victorian Certificate of Applied Learning	A practical education option for Victorian students in Years 11 and 12.
Victorian Certificate of Education	The certificate that most Victorian students receive upon completing Year 12, providing pathways to further study including university and TAFE.
Vocational Education and Training	Practical qualifications that can be undertaken as part of VCE or VCAL, as part of an apprenticeship or traineeship or through TAFE. Some schools also offer VET courses as an alternative to VCE.
Young adult	In this report, a person aged 18 to 25 (inclusive).
Young adult offender	In this report, an offender aged 18 to 25 (inclusive) at the time of sentencing.
Young adult prisoner	A prisoner who is aged 18 to 25 (inclusive).
Young offender	In Victoria, an offender aged 18 to 20 (inclusive) at the time of sentencing who may be eligible for a youth justice centre order in certain circumstances.
Youth justice centre	A centre that holds young people sentenced to a youth justice centre order. Victoria currently has two youth justice centres, at Malmsbury and Parkville. Malmsbury houses all male young offenders (and some male children aged 15 to 18) on youth justice centre orders, and Parkville houses all female young offenders aged 18 to 20 on youth justice centre orders (and children of all genders aged under 18).
Youth justice centre order	A sentence requiring an offender aged 15 to 20 at the time of sentencing to be detained in a youth justice centre. A youth justice centre order may be imposed for a maximum of two years in the Magistrates' Court or four years in the County and Supreme Courts.
Youth justice system	Processes and practices used to manage children and young people who have committed an offence.

Executive summary

Offending by young adult offenders in Victoria

This report examines the options available to judicial officers when sentencing young adult offenders aged 18 to 25 in Victoria. Collectively, this group is referred to as 'young adult offenders'.

Age categories

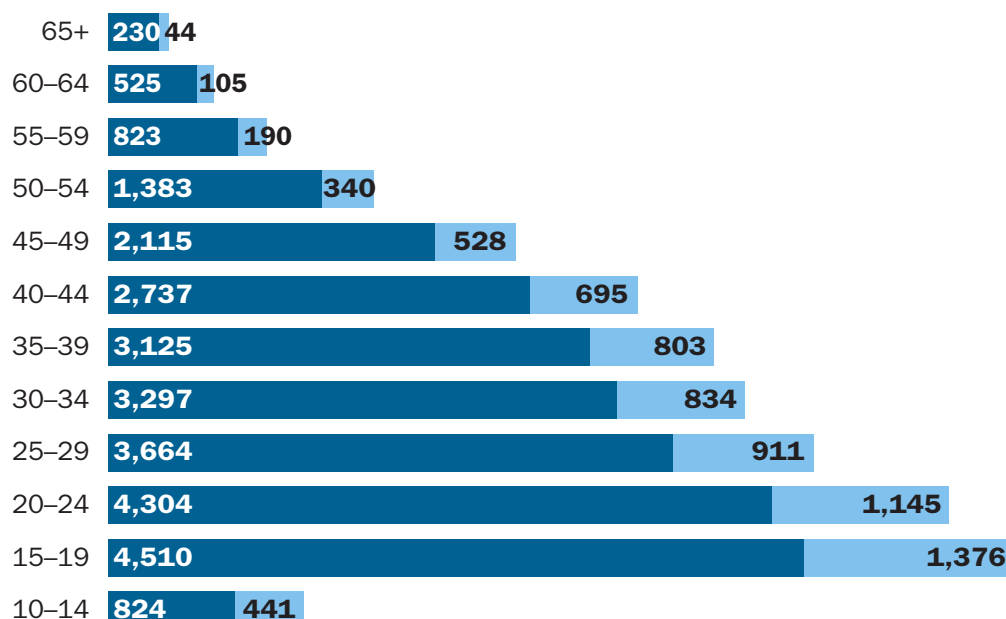


A subset of this group, young offenders aged 18 to 20 at the time of sentencing, are eligible for dual track in Victoria. Dual track allows a court to sentence young offenders to detention in a youth justice centre, rather than an adult prison, providing they satisfy the eligibility criteria.

Young adults offend at higher rates than older adults. As shown below, a large number of alleged offenders in Victoria are aged 15 to 24. The rate declines significantly for alleged offenders aged 25 to 29. This does not take into account the relative seriousness of the offences with which the alleged offenders have been charged nor the frequency of those offences. However, it is clear that young adults commit a disproportionate amount of crime.

Alleged offender rate, by gender and age, Victoria, 2016–17

Age group ■ Male ■ Female

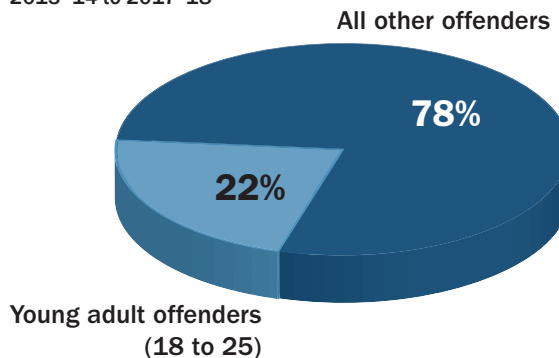


Of the general Victorian population aged 18 and over in 2018, 15% were young adults (aged 18 to 25), but this group comprised 22% of sentenced offenders in the Magistrates' Court and 25% of sentenced offenders in the higher courts between 2013–14 and 2017–18.

Although the number of young adult offenders sentenced in Victorian courts declined between 2013–14 and 2017–18, they still account for a significant proportion of sentenced offenders.

In the Magistrates' Court, the majority of offences committed by young adult offenders are regulatory offences, such as driving offences; crimes against the person, such as assault; and property offences, such as theft. In the higher courts, the majority of offences committed by young adult offenders are crimes against the person, such as robbery; drug offences; and property offences, such as burglary.

Proportion of cases involving young adult offenders (aged 18 to 25) sentenced in the Magistrates' Court and higher courts, 2013–14 to 2017–18

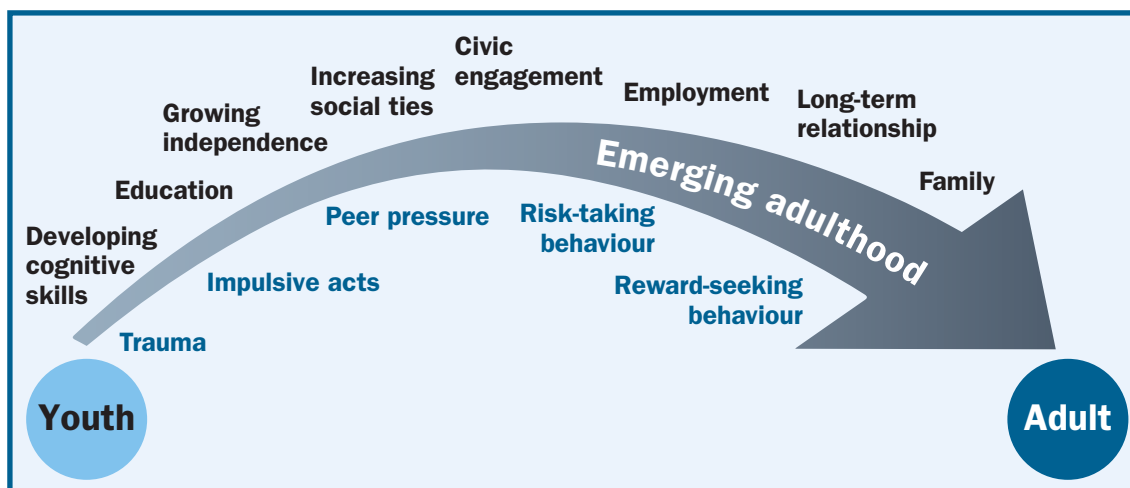


How are young adult offenders different from older adult offenders?

The immaturity of adults in their late teens and early twenties is characterised by incomplete neurological development and psychological limitations that include impaired understanding of consequences, impulsiveness, disproportionate emotional arousal and disproportionate reward sensitivity. These limitations can lead to offending behavioural patterns that are typical of young people: opportunistic, public and often group-related.

There is mounting scientific evidence that young adults aged 18 to 25 are developmentally distinct from older adults and should be treated as such by the justice system. Research in neurology and developmental psychology has demonstrated that cognitive skills and emotional intelligence continue to develop into a person's mid-20s, and even beyond.

Developmental factors and milestones in transition to adulthood (adapted from Columbia Justice Lab)



In addition, sociological research reveals that key milestones signalling the transition from adolescence to adulthood – such as completing education, engaging in employment, living independently and establishing long-term stable interpersonal relationships – are occurring later in an individual's life course in most developed societies than they did for previous generations.

Young adults have relatively low compliance and completion rates on community sentencing orders, and they reoffend at higher rates than older offenders. Over half (52.7%) of Victorian prisoners aged under 25 return to prison within two years of release, compared with 44.1% of the general adult prison population. This raises questions about the approach to sentencing young adult offenders in Victoria, and whether there are distinct, more developmentally appropriate responses that might better meet young adults' developmental needs and improve outcomes.

Research shows that young adult offenders generally reduce their offending behaviour as they mature into adulthood, and most will eventually stop. This natural desistance, along with the fact that behaviour patterns are not as firmly entrenched in young adults as in older adults, means that young adult offenders can be more responsive to rehabilitative interventions than older adults. There is potential to improve outcomes for both society and young adult offenders if they can be supported into this reduction in offending behaviour as early as possible. Criminogenic environments, including prison, can be counterproductive to this process, as they can entrench patterns of offending behaviour.

Sentencing young adult offenders in Victoria

In Victoria, maturity-related considerations are relevant to all aspects of sentencing a young adult, including the decision regarding which sanction to apply, the term of the sentence, the judge's assessment of how serious a combination of offences is in totality, and the imposition and length of any non-parole period.

Victoria's Court of Appeal recognises that, for young adult offenders, rehabilitation is usually far more important as a purpose of sentencing than general deterrence, because young adults have greater capacity to change their behaviour. Investing in a young adult's rehabilitation (where appropriate) is seen as being in the community's best overall interests in many cases involving young adult offenders.

The fact that young adult offenders are impressionable is also relevant to considering a sentence of imprisonment. Young adult offenders in prison may be vulnerable in two senses: in the straightforward sense that they may be harmed, and also in the sense that they may be pushed into further negative patterns by the people they meet and the habits they form while incarcerated. A young adult offender is not to be sent to an adult prison unless that is unavoidable, especially if they are beginning to appreciate the effect of their past criminality. When a young adult offender is sent to adult prison, a shorter sentence may be justified.

Victoria's dual track system recognises the potential vulnerability of young adult offenders within the adult prison system. The dual track system is intended to prevent immature and vulnerable offenders aged under 21 from entering the adult prison system by allowing the court to sentence them to detention in a youth justice centre instead, providing they satisfy the eligibility criteria.

To make a youth justice centre order (YJCO) in respect of a young offender, the court must receive a pre-sentence report and be satisfied that there are 'reasonable prospects for the rehabilitation of the young offender' or that the 'young offender is particularly impressionable, immature or likely to be subjected to undesirable influences in an adult prison'.

YJCOs are not available to offenders aged 21 and over at the time of sentencing. Analysis of sentencing remarks suggests that there are offenders aged 21 to 25 who, but for the age limit, could be candidates for a YJCO.

For young adult offenders who are sentenced to imprisonment within the adult prison system, the options for addressing age- and maturity-related needs within prison are limited. While there are a few specialist units within prisons, the cohorts served by those units are small and often subject to strict eligibility criteria. Young adult offenders outside the specialist units may have a large degree of interaction with older prisoners and may have reduced educational opportunities compared with young offenders aged 18 to 20 in a youth justice centre. No specialist young adult facilities or programs are available for female offenders in Victoria.

There are no specialist community-based sentencing options for young adult offenders in Victoria. Community correction orders (CCOs) are potentially flexible enough to meet the needs of young adult offenders if designed and delivered in a developmentally appropriate manner. However, there are no specialist programs nor specialist approaches to service delivery for young adult offenders on CCOs. In addition, CCOs are not available for the many serious offences in Victoria, such as culpable driving causing death, unless certain special circumstances exist.

What sentences are young adult offenders receiving?

As most offences heard in the Magistrates' Court are relatively minor, most young adult offenders are receiving less serious dispositions that do not require ongoing supervision, such as fines, dismissals and diversion. Fines are the most common sentence for young adult offenders. This is consistent with sentencing trends generally in that jurisdiction.

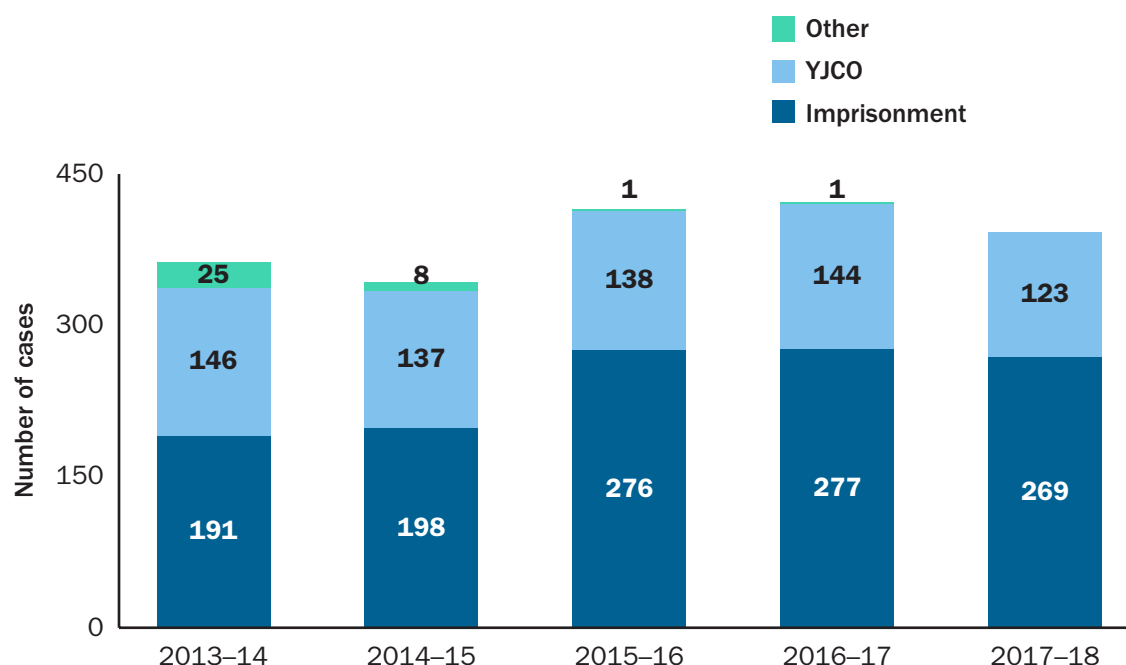
Most sentences imposed on young adult offenders in the higher courts are custodial, which is consistent with overall sentencing trends for the higher courts. Young offenders aged 18 to 20 receive custodial sentences in the higher courts less frequently than older offenders. Of the young offenders who were sentenced to an immediate custodial sentence in the higher courts, 42% received a YJCO. This proportion was lower (34%) in the Magistrates' Court.

What proportion of young offenders receive a youth justice centre order versus imprisonment?

In the 2014–15 financial year (the 'index year'), 335 cases involving young offenders aged 18 to 20 received a YJCO or imprisonment as a principal sentence in either the Magistrates' Court or the higher courts. Of these, 198 received a sentence of adult imprisonment, and 137 received a YJCO. This represents 40% of young offenders aged 18 to 20 who received an immediate custodial sentence in the 2014–15 financial year. The proportion of immediate custodial sentences for this group that were YJCOs declined from 40% in 2013–14 to 31% in 2017–18.

The Sentencing Advisory Council ('the Council') undertook a comparative study of young adult offenders aged 18 to 20 who were sentenced to either a YJCO or imprisonment in the 2014–15 financial year. The study examined their prior and subsequent sentences for three years before and after the index sentence, but it did not track each young adult offender's 'time at risk' in the follow-up period. Because a proportion of young adult offenders would have been detained for all or part of the follow-up period, the findings are likely to underestimate their reappearance rates.

Number of cases involving young offenders aged 18 to 20 sentenced to an immediate custodial sentence in the Magistrates' Court and higher courts, by sentence type, 2013–14 to 2017–18



Of the young offenders aged 18 to 20 who received a sentence of imprisonment in the index year, 25% had no prior sentences in the preceding three years. A further 19% had only one prior sentence within this period. Of all young offenders aged 18 to 20 sentenced to either a YJCO or imprisonment in the index year, 22% had no prior sentences. This suggests that these young offenders were committing serious offences warranting a custodial sentence after having surprisingly limited prior contact with the criminal justice system.

A key difference between young offenders aged 18 to 20 who received imprisonment and those who received a YJCO was that those who received imprisonment during the index year more often had no prior sentences or had four or more prior sentences within the study period. In addition, those who had received a YJCO as their index sentence were more often sentenced to a further YJCO as a principal sentence than those who had received a sentence of imprisonment.

What alternatives are possible?

There is evidence that young adults' disproportionate involvement with the criminal justice system is, at least in part, a result of their developmental limitations. Despite this, the Victorian system offers few developmentally appropriate responses. In contrast, many international jurisdictions have invested in dedicated, specialist criminal justice responses for young adult cohorts. The international responses may be culturally dependent; therefore, it cannot be assumed that they provide a model that could simply be replicated in Victoria. However, they do provide demonstrations of what might be possible, with sufficient customisation and planning. They are also illustrative of a growing movement towards differential treatment of young adult offenders in recognition of the science on their maturity and offending patterns. To enhance community safety, consideration should be given to adjusting the response of the criminal justice system to assist young adult offenders to mature out of, rather than into, further offending.

Based on a review of the international literature and consultation with Victorian stakeholders, possible options to better address the particular needs and risks of the 18 to 25 age group in the Victorian sentencing process include:

- introducing sentencing principles in the *Sentencing Act 1991* (Vic) that specifically address young adult offenders, including making the age and/or psychobiological development of an offender a specific sentencing consideration;
- introducing changes to community-based sentencing options for young adult offenders, such as a specialist approach to engaging with, and making programs available to, young adult offenders on non-custodial orders. This could be achieved through making changes to the existing CCO or by allowing young adult offenders access to non-custodial options available under the *Children, Youth and Families Act 2005* (Vic);
- expanding the availability and/or scope of dual track to offenders aged 21 to 25;
- introducing or extending units or facilities specifically for young adult offenders within the adult correctional system; and/or
- introducing a specialist young adult court or a specialist list to address the needs of young adult offenders at sentencing.

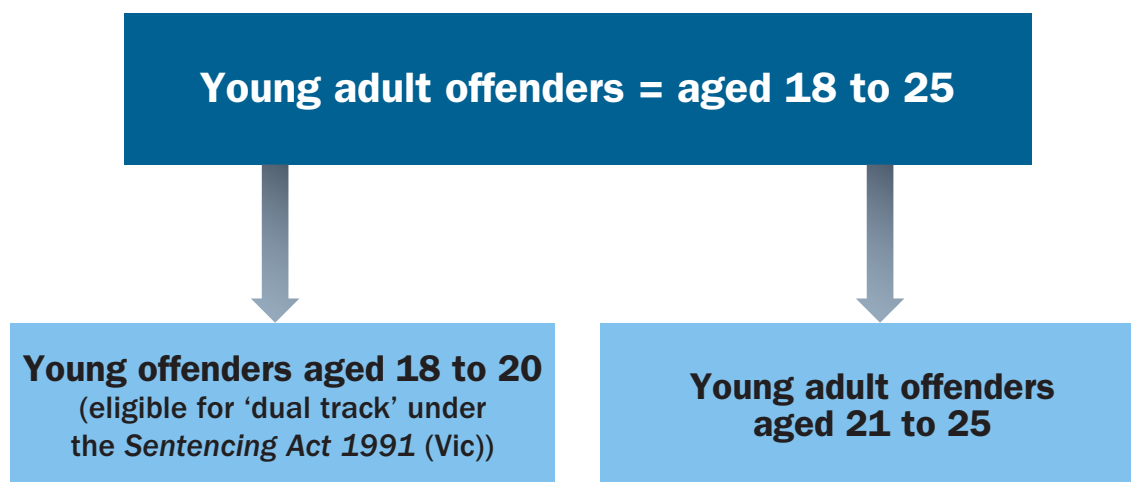
Beyond sentencing, other avenues for improving the criminal justice system's ability to respond to the particular needs of young adults aged 18 to 25 include extending or introducing programs available to young adults on bail or remand prior to sentence, or extending cautioning or diversionary programs. These approaches are not mutually exclusive. In fact, the introduction of multiple new responses at stages ranging from first contact with the criminal justice system (such as police diversion) to custody could help enable a flexible response to young adults' different circumstances and offending behaviours.

Any reform to the Victorian system should be based on strong evidence of the effectiveness of the intervention for this age group, as well as consideration of the appropriateness of the model within the Victorian social context and sentencing framework. Importantly, the options proposed are not mutually exclusive: a range of evidence-based, developmentally appropriate options are available at various points in the criminal justice system to enhance the efficacy of its response to the young adult cohort and, ultimately, to improve community safety.

1. Introduction

- I.1 A large number of criminal offences are committed by people aged 18 to 25.¹ Crime committed by young people often generates controversy as well as media attention.² Commentators, experts and the public disagree on the extent of, and the appropriate response to, youth crime: some call for tougher penalties to deter and punish, while others see the underlying problem as one of insufficient support for young people facing trauma, disadvantage or psychosocial obstacles, and call for increased social support, treatment and rehabilitation.³
- I.2 This report examines sentencing options available to judicial officers sentencing young adult offenders aged 18 to 25 in Victoria. Collectively, this group is referred to as 'young adult offenders' in this report (see Figure 1).
- I.3 A subset of this group, young offenders aged 18 to 20 at the time of sentencing, has access to Victoria's dual track system. The dual track system enables young offenders aged 18 to 20 to receive a youth justice centre order (YJCO) rather than a sentence of imprisonment in certain circumstances.⁴ Young adult offenders aged 21 and over do not have access to youth-specific sentencing options; instead, they are dealt with in the adult criminal justice system.

Figure 1: Age categories in this report



1. See Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria* (2016) 4–5; Australian Bureau of Statistics, *Recorded Crime – Offenders*, cat. no. 4519.0 (2018) Table 3.

2. See for example, Andrea Hamblin, 'Victoria Police Taskforce Watches Every Move of Our 64 Worst Teen Thugs', *Herald Sun* (Melbourne) 14 May 2018 <<https://www.heraldsun.com.au/news/law-order/victoria-police-taskforce-watches-every-move-of-our-64-worst-teen-thugs/news-story/9eaac1563a2a237f270003ab510baf5f>> at 3 October 2019; Remy Varga, 'Victoria Police Hunt Three Teens over Melbourne Crime Rampage', *The Australian* (Melbourne) 30 May 2019 <<https://www.theaustralian.com.au/nation/victoria-police-hunt-three-teens-over-melbourne-crime-rampage/news-story/50423e31edb3fac7f22e11bfb2228a0d>> at 2 October 2019. (In this case, two of the accused persons were aged over 18 but under 20.)

3. See for example, Debbie Kilroy, 'Imagining Abolition' *Griffith Review* 60 (2018); Andrew Bushnell, 'Public Safety Must Always Be the Priority' (ipa.org.au, 2018) Institute of Public Affairs <<https://ipa.org.au/publications-ipa/public-safety-must-always-priority>> at 3 October 2019.

4. To be eligible for a YJCO, a young offender must not have reached their 21st birthday: *Sentencing Act 1991* (Vic) ss 3, 32.

- 1.4 Legally, the age of 18 marks the beginning of adulthood. However, in terms of psychological, neurological and social development, this age lies only partway along a continuum that extends well into a person's twenties. Young adulthood is a time of transition towards full maturity. During this time, significant neurological, psychological and social development continues to take place against a background of social and educational transition, which can involve great disruption in personal circumstances.
- 1.5 In the same way that adolescence was gradually recognised as a distinct developmental stage during the twentieth century, young adulthood is increasingly being recognised as a distinct life phase. A number of studies have found that psychobiological immaturity, along with the turbulent nature of young adulthood itself, contributes to young adult offending and hence over-representation in the criminal justice system.⁵ As such, some human services systems – such as healthcare services and supports for young people leaving care – increasingly recognise young adults as a distinct cohort with particular needs.⁶

Recent reviews of youth justice

- 1.6 A number of reviews have examined the operation of Victoria's youth justice system. Significant recent reviews include:
- the 2017 *Youth Justice Review and Strategy: Meeting Needs and Reducing Offending* by Penny Armytage and Professor James Ogloff AM ('the Armytage and Ogloff Youth Justice Review');⁷
 - the 2017 *Report on Youth Justice Facilities at the Grevillea Unit of Barwon Prison, Malmsbury and Parkville* by the Victorian Ombudsman;⁸
 - the 2017 *The Same Four Walls: Inquiry into the Use of Isolation, Separation and Lockdowns in the Victorian Youth Justice System* by the Victorian Commission for Children and Young People;⁹
 - the 2018 *Inquiry into Youth Justice Centres in Victoria* of the Victorian Parliament's Legislative and Social Issues Committee;¹⁰
 - the 2018 *Aboriginal Cultural Rights in Youth Justice Centres* report by the Victorian Equal Opportunity and Human Rights Commission and the Commission for Children and Young People.¹¹

5. See for example, Claire Bryan-Hancock and Sharon Casey, 'Young People and the Justice System: Consideration of Maturity in Criminal Responsibility' (2011) 18(1) *Psychiatry, Psychology and Law* 69, 75; Jennifer L. Skeem et al., 'Justice Policy Reform for High-Risk Juveniles: Using Science to Achieve Large-Scale Crime Reduction' (2014) 10 *Annual Review of Clinical Psychology* 709, 732; Laurence Steinberg, 'A Social Neuroscience Perspective on Adolescent Risk-Taking' (2008) 28 *Developmental Review* 78, 79; Stefan Luebbers and James R. P. Ogloff, '"Boys Will Be Boys" or Budding Criminal: Differentiating Youthful Offenders' (2011) 18(4) *Psychiatry, Psychology and Law* 557, 557.

6. The Victorian government has recently extended the 'Home Stretch' program for care leavers. This program provides funding to allow young people in foster care to remain with their carer until the age of 21. Premier of Victoria, 'Helping Vulnerable Young People on the Home Stretch', Media Release (25 September 2018) <<https://www.premier.vic.gov.au/helping-vulnerable-young-people-on-the-home-stretch>> at 3 October 2019; Rebecca O'Dwyer, 'Extended Foster Care: "It Just Makes Sense"' (thehomestretch.org.au, 2018) <<http://thehomestretch.org.au/news/extended-foster-care-just-makes-sense/>> at 3 October 2019. VicHealth defines young people as those aged 12 to 25 and has released a strategy aimed at this cohort as it is a critical period for 'individual development': VicHealth, *Young People, Health and Wellbeing Strategy* (2017) 4. Headspace delivers specialist, subsidised mental health services for the same age group: Headspace, 'Who We Are' (headspace.org.au, 2019) <<https://headspace.org.au/about-us/who-we-are/>> at 3 October 2019.

7. Penny Armytage and James Ogloff, *Youth Justice Review and Strategy: Meeting Needs and Reducing Offending* (2017).

8. Victorian Ombudsman, *Report on Youth Justice Facilities at the Grevillea Unit of Barwon Prison, Malmsbury and Parkville* (2017).

9. Commission for Children and Young People, *The Same Four Walls: Inquiry into the Use of Isolation, Separation and Lockdowns in the Victorian Youth Justice System* (2017).

10. Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into a Legislated Spent Convictions Scheme: A Controlled Disclosure of Criminal Record Information Framework for Victoria* (2019).

11. Victorian Equal Opportunity and Human Rights Commission and Commission for Children and Young People, *Aboriginal Cultural Rights in Youth Justice Centres* (2018).

- the 2018 *Managing Rehabilitation Services in Youth Detention* report by the Victorian Auditor-General;¹² and
 - the 2019 *OPCAT in Victoria: A Thematic Investigation of Practices Related to Solitary Confinement of Children and Young People* by the Victorian Ombudsman.¹³
- I.7 With the exception of the Victorian Ombudsman's report on the OPCAT in Victoria and the 2017 Armytage and Ogloff Youth Justice Review, these reports focus on youth detention primarily as it relates to child offenders aged under 18. Several of these reviews considered or discussed Victoria's dual track system, although they did not consider sentencing options more broadly for young adult offenders over the age of 18.¹⁴ The Armytage and Ogloff Youth Justice Review strongly endorsed the use of dual track as a specialist option for vulnerable young adults aged 18 to 24.¹⁵
- I.8 At the national level, the Australian Children's Commissioner expressed concerns in 2016 regarding the high numbers of persons aged 18 to 25 in prison, and recommended that the Australian Government commission research that investigates the 'pathways, experiences and needs of young people aged 18–25 years in the prison system'.¹⁶

Scope of this report

- I.9 This report reviews criminological and other relevant literature that seeks to answer questions such as these: Why are young adults different from older adults? What evidence exists about young adult offenders' offending trajectories? What factors are relevant to sentencing this age group? What approaches have been effective?
- I.10 This report also provides an overview of the current legal framework for sentencing young adult offenders, as well as data on sentencing trends for young adult offenders in Victoria in the five years to 30 June 2018. The analysis examines outcomes for young offenders aged 18 to 20 (who are eligible for a YJCO under the dual track system – see from [3.52]) separately from outcomes for young adult offenders aged 21 to 25.
- I.11 The analysis presents:
- an overview of the principal offence classifications for young adult offenders sentenced in the Magistrates' Court and higher courts;
 - an overview of principal sentences for young adult offenders sentenced in the Magistrates' Court and higher courts; and
 - a comparative study of the prior and subsequent sentences of young offenders aged 18 to 20 who received a YJCO or imprisonment in an adult court during the 2014–15 financial year.

12. Victorian Auditor-General's Office, *Managing Rehabilitation Services in Youth Detention* (2018).

13. Victorian Ombudsman, *OPCAT in Victoria: A Thematic Investigation of Practices Related to Solitary Confinement of Children and Young People* (2019).

14. The Victorian Parliament's Legislative and Social Issues Committee's *Inquiry into Youth Justice Centres in Victoria* considered the dual track system and the evidence on the neurobiology of young offenders, recommending that the Department of Justice and Regulation consider developing an intake system within the youth justice system that takes into account other additional factors along with chronological age, such as developmental age and cognitive development: Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Youth Justice Centres in Victoria: Final Report* (2018) 10–11 (Recommendation 1).

15. Armytage and Ogloff (2017), above n 7, Executive Summary: 16.

16. Australian Human Rights Commission, *Children's Rights Report 2016* (2016) 185–186.

- I.12 The report then examines alternative approaches to sentencing young adult offenders. Comparisons are drawn with other jurisdictions' sentencing practices in order to inform a discussion about reducing young adult offenders' offending and maximising their chances of treatment and rehabilitation.

2. Why are young adults different from older adults?

- 2.1 This chapter explains the key research findings on the differences in the neurological and psychological development between young adults and older adults. It also presents findings on the particular offending patterns and needs of young adult offenders compared with older adult offenders, as well as research on the most effective rehabilitative interventions for young adult offenders.
- 2.2 Broadly, the research concludes that young adults aged under 25 years display many characteristics similar to juvenile offenders, although to a lesser degree. These characteristics explain much of their problematic offending behaviour and tend to diminish as they age. Those who take longer to reduce their offending often have multiple serious disadvantages to overcome. Nonetheless, most will eventually mature out of criminal offending. This process may be accelerated if young adults are provided with appropriate supports, and exposure to criminogenic influences is limited wherever possible.

Neurological and psychological development is incomplete

- 2.3 A growing body of research has found that a young person's psychobiological development continues well beyond the age of 18: typically, it extends until at least the age of 25. These findings are leading to a recognition by experts and policymakers that young adulthood is a distinct stage of development, in the same way that adolescence came to be recognised as a distinct developmental phase in the early twentieth century.¹⁷
- 2.4 Like adolescence, young adulthood is a time of significant neurological, psychological and social development.¹⁸ Together, this report refers to neurological, psychological and social development as 'psychobiological development'.¹⁹ Development in each of these areas contributes to a person's growing maturity.
- 2.5 Neurological, psychiatric and psychological research, although focused on different aspects of a person's development, tends to reach similar conclusions with respect to the psychobiological maturity of 18- to 25-year-olds.²⁰ This establishes that, while maturity varies significantly from person to person, significant psychobiological development is generally still occurring until the age of 25, if not beyond.²¹

17. See for example, David Prior et al., *Maturity, Young Adults and Criminal Justice: A Literature Review* (2011) 3–4.

18. Lisa Somerville, 'Searching for Signatures of Brain Maturity: What Are We Searching For?' (2016) 92 *Neuron* 1164, 1164, 1166.

19. This term combines neurological or biological development, terms used in neuroscience research and 'psychosocial development', a term used in psychological and psychiatric research: see for example, Steinberg (2008), above n 5, 95.

20. See for example, *ibid* 78; Somerville (2016), above n 18, 1164; Thomas Grisso et al., 'Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants' (2003) 27(4) *Law and Human Behaviour* 333, 333; Laurence Steinberg et al., 'Age Differences in Future Orientation and Delay Discounting' (2009) 80(1) *Child Development* 28, 39–41; Laurence Steinberg and Elizabeth Cauffman, 'Maturity of Judgment in Adolescence: Psychosocial Factors in Adolescent Decision Making' (1996) 20(3) *Law and Human Behavior* 249, 249.

21. See for example, Somerville (2016), above n 18, 1166–1167; Prior et al. (2011), above n 17, 3–22.

2.6 Compared with older adults, young adults display the following neurological characteristics:

- *Incomplete development of the prefrontal cortex.* This is marked by the ongoing replacement of cortical grey matter with white matter.²² The prefrontal cortex is the 'logic' centre of the brain, responsible for higher reasoning and behaviour regulation.²³ This development may continue, for some regions, beyond the age of 25 and potentially into the 30s.²⁴
- *Brain connectivity that displays a higher level of local connections and a lower level of distributed connections compared with older adults.* This occurs both within similar segments of the brain and across brain regions.²⁵ This includes lower levels of connections between areas of the brain responsible for emotional regulation and cortical control, and areas responsible for lower functions.²⁶ Development of distributed networks appears to settle, on average, around the age of 22, but with significant variation from person to person.²⁷ Young adults' localised brain structures may make them less likely to consider the appropriateness of their actions beyond the immediate situation they are in.²⁸
- *Significant neurochemical and hormonal shifts.* This includes shifts in levels of dopamine, which is a neurotransmitter associated with reward perception and risk-taking, and oxytocin, which is associated with social bonding.²⁹

2.7 Young adults also display psychological characteristics that mirror their neurological deficiencies and have significant implications for their ability to make considered decisions.

Compared with older adults, young adults display the following psychological characteristics:

- *Disproportionate responses to emotional arousal.* This occurs even if the exposure to emotional arousal is mild and/or brief, which can affect young adults' ability to perform cognitive tasks that, in a neutral environment, would be easily accomplished.³⁰ This may have implications for young adults' ability to consider the consequences of their actions in emotionally charged situations.³¹
- *Disproportionate increases in risk-taking when peers are present.* Young adults tend to take significantly more risks when they are in a group of their peers, whereas the presence of peers does not significantly increase risk-taking behaviour in older adults.³²
- *Disproportionate reward sensitivity.* Young adults respond more strongly to rewards than older adults; they also tend to perceive social approval as a reward.³³ This may explain their increased risk-taking in the presence of peers.³⁴
- *Different perceptions of time.* Young adults are less able than older adults to sacrifice a smaller short-term reward to obtain a larger long-term reward. This is partly considered to be related to their impulse control and partly to a perception that the future is irrelevant, or that time appears to pass more slowly when a person is younger.³⁵

22. Somerville (2016), above n 18, 1164.

23. Nico U. F. Dosenbach et al., 'Prediction of Individual Brain Maturity Using fMRI' (2010) 329 *Science* 1358, 1360–1361.

24. Somerville (2016), above n 18, 1164–1165.

25. Ibid 1165; Steinberg (2008), above n 5, 93–95; Dosenbach et al. (2010), above n 23, 1360–1361.

26. Steinberg (2008), above n 5, 95–98.

27. Dosenbach et al. (2010), above n 23, 1359–1360.

28. Steinberg (2008), above n 5, 97.

29. Ibid 92–93.

30. Alexandra O. Cohen et al., 'When Is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Nonemotional Contexts' (2016) 27(4) *Psychological Science* 549, 549; Marc D. Rudolph et al., 'At Risk of Being Risky: The Relationship between "Brain Age" under Emotional States and Risk Preference' (2017) 24 *Developmental Cognitive Neuroscience* 93, 93.

31. Cohen et al. (2016), above n 30, 560.

32. Rudolph et al. (2017), above n 30, 93; Steinberg (2008), above n 5, 90–91. In a driving simulator, the presence of peers doubled risk-taking in youths (mean age 20 years) but had no effect on adults (mean age 34 years).

33. Rudolph et al. (2017), above n 30, 102; Steinberg (2008), above n 5, 83–85.

34. Steinberg (2008), above n 5, 83–84.

35. Steinberg et al. (2009), above n 20, 28.

- 2.8 Although the ability to assess risks and predict consequences usually develops before the age of 18,³⁶ the ability to exercise these decision-making skills in real-life situations can vary between individuals. Young adults tend to have greater difficulty than older adults in delaying gratification, considering longer-term consequences and placing their actions in appropriate perspective.³⁷
- 2.9 A young person might reach maturity in each of these psychological characteristics at different points, so that one domain may be at an adult level of development while another remains relatively immature. The point at which any individual reaches maturity in any area of psychological development will vary for each individual.³⁸ Some of this ongoing brain development is suggestive of developmental neuroplasticity, particularly in relation to the ongoing changes in grey and white matter levels and changes to brain connectivity networks.³⁹ This suggests that young adults have greater potential to change behaviour patterns before they become embedded.⁴⁰
- 2.10 One expert summarised adolescents' psychosocial functioning as follows:
- [T]hey score lower on measures of self-reliance and other aspects of personal responsibility, they have more difficulty seeing things in long-term perspective, they are less likely to look at things from the perspective of others, and they have more difficulty restraining their aggressive impulses.⁴¹
- 2.11 Experts in the relevant fields tend to agree that any strict demarcation between childhood and adulthood, or immaturity and maturity, is not supported by science.⁴² Because development occurs along a continuum, and neurological changes continue to occur throughout a person's lifetime (albeit at a slower rate), assigning any one value as a marker of 'adulthood' is inherently arbitrary.⁴³
- 2.12 Crucially, there is also significant variation from person to person. For example, one study found that, in terms of grey and white matter volumes, some eight-year-old brains displayed greater apparent maturation than some 25-year-old brains.⁴⁴ Another found that a psychosocially mature 13-year-old might score lower on a survey predicting antisocial behaviour than a psychosocially immature adult.⁴⁵ This wide variation in maturity is also reflected in young adults' ability to stand trial: some operate on an adult level in their ability to understand and take part in court proceedings, while others operate more like children.⁴⁶
- 2.13 The variation between different brain areas and different individuals means that it is difficult to definitively state when a given individual is 'mature', although there are stages at which it is possible to definitively state that an individual is 'immature'. For most people, psychobiological development slows down significantly between middle to late teens and young adulthood, and it is substantially complete by approximately 25 years.⁴⁷

36. Rudolph et al. (2017), above n 30, 93; Steinberg et al. (2009), above n 20, 39.

37. Steinberg and Cauffman (1996), above n 20, 249; Steinberg et al. (2009), above n 20, 39–41.

38. Somerville (2016), above n 18, 1166; Steinberg (2008), above n 5, 99.

39. Somerville (2016), above n 18, 1164; Laurence Steinberg, *Age of Opportunity: Lessons from the New Science of Adolescence* (2014) 26–27.

40. Steinberg (2014), above n 39, 22–45.

41. Elizabeth Cauffman and Laurence Steinberg, '(Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults' (2000) 18 *Behavioral Sciences and the Law* 741, 759.

42. Somerville (2016), above n 18, 1164; Cohen et al. (2016), above n 30, 559–560.

43. Somerville (2016), above n 18, 1164–1167.

44. Dosenbach et al. (2010), above n 23, 1359.

45. Cauffman and Steinberg (2000), above n 41, 757.

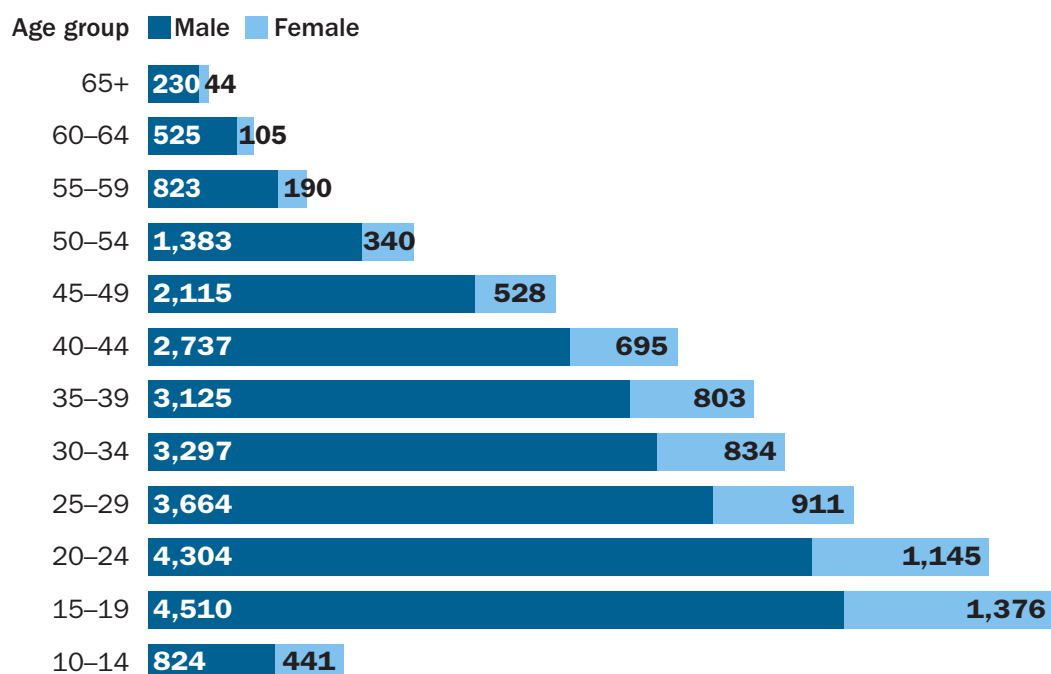
46. Thomas Grisso et al., 'Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants', (2003) 27(4) *Law and Human Behaviour* 333, 333–363, discussed in Bryan-Hancock and Casey (2011), above n 5, 72. This study used a sample of participants aged up to 24 years.

47. One neurologist noted, 'Let's imagine considering a brain mature when every index of brain structure, function, and connectivity hits an asymptote. When would an average brain reach this threshold of maturity? ... [T]he answer might lie sometime between "the 30s" and "never": Somerville (2016), above n 18, 1166.

Young adults offend and reoffend at higher rates than older adults, and in different ways

- 2.14 Young adults aged under 25 offend and reoffend at higher rates than older age groups. The fact that offending tends to increase initially as a young person ages, and then drops off with increasing maturity, is known as the *age–crime curve*.⁴⁸ This holds true in Victoria: young adults aged under 25 offend at higher rates than older adults, even though they make up a relatively small proportion of the prison population.⁴⁹
- 2.15 Figure 2 shows alleged offenders by age group in Victoria in the 2016–17 financial year.⁵⁰

Figure 2: Alleged offender rate by gender and age, Victoria, 2016–17⁵¹



- 2.16 Figure 2 shows that a large proportion of alleged offenders are aged 15 to 24 and that the offender rate declines substantially for alleged offenders aged 25 to 29. This does not indicate the relative seriousness of the offences with which the alleged offenders have been charged.⁵²
- 2.17 Young adults also have higher rates of recidivism than older adults: over half (52.7%) of Victorian prisoners aged under 25 return to prison within two years after release, compared with 44.1% of the general adult prison population.⁵³

48. David P. Farrington, 'Age and Crime' (1986) 7 *Crime and Justice* 189, 191.

49. Victorian Ombudsman, *Investigation into the Rehabilitation and Reintegration of Prisoners in Victoria* (2015) 7; Sentencing Advisory Council (2016), above n 1, 3–5.

50. Crime Statistics Agency, 'Alleged Offender Incidents' (crimestatistics.vic.gov.au, 2019) <<https://www.crimestatistics.vic.gov.au/alleged-offender-incidents>> at 8 October 2019; Australian Bureau of Statistics, *Recorded Crime – Offenders*, cat. no. 4519.0 (2017) Table 15.

51. 'Rate per 100,000 persons aged 10 and over for Victoria': Australian Bureau of Statistics (2017), above n 50, Table 15.

52. Some recent Victorian statistics have suggested that the expected drop-off in offending may be following a slightly different pattern from that observed previously. For example, Crime Statistics Agency data for 2018 suggests that, in the year to December 2018, there were more offender incidents for the 25 to 29 age group than for the 20 to 24 age group: Crime Statistics Agency (2019), above n 50. This may be because the Crime Statistics Agency data looks at incidents and may therefore count a single individual more than once. In addition, it is not a rate standardised to the population, unlike the Australian Bureau of Statistics data shown in Figure 2.

53. Victorian Ombudsman (2015), above n 49, 97. A report by the Sentencing Advisory Council using a longer study period of nine years found that reoffending rates were highest for children aged 10 to 14, but this declined sharply for young people aged 15 to 17 and again for young people aged 18 to 21. The rate then held steady for offenders aged 18 to 21, 22 to 24 and 25 to 34, before declining again: Sentencing Advisory Council, *Reoffending Following Sentence in Victoria: A Statistical Overview* (2015) 18–19.

2.18 Figures 3 and 4 show the rate of convictions for select offences among the total Australian population (including non-offenders) in that age group. Figure 3 shows six common offences, and Figure 4 shows seven less common offences; as such, the scales of the graphs are different. Because the data comes from the Australian Bureau of Statistics, neither the age categories nor the offence categories precisely match the Victorian data explored in Chapter 4. The categories discussed here in the context of young adults include some children (persons aged under 18). Nonetheless, these graphs demonstrate how young adults' offending fits into the picture of criminal offending overall.

Figure 3: Rate of convictions in Australia for six common offence types, by principal offence groups and age group, 2017–18⁵⁴

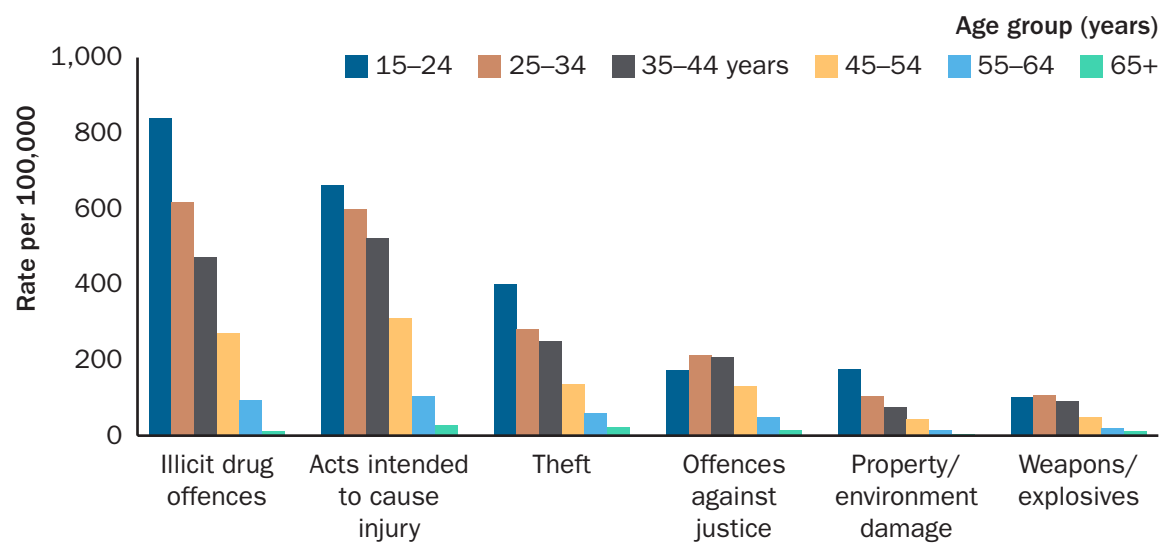
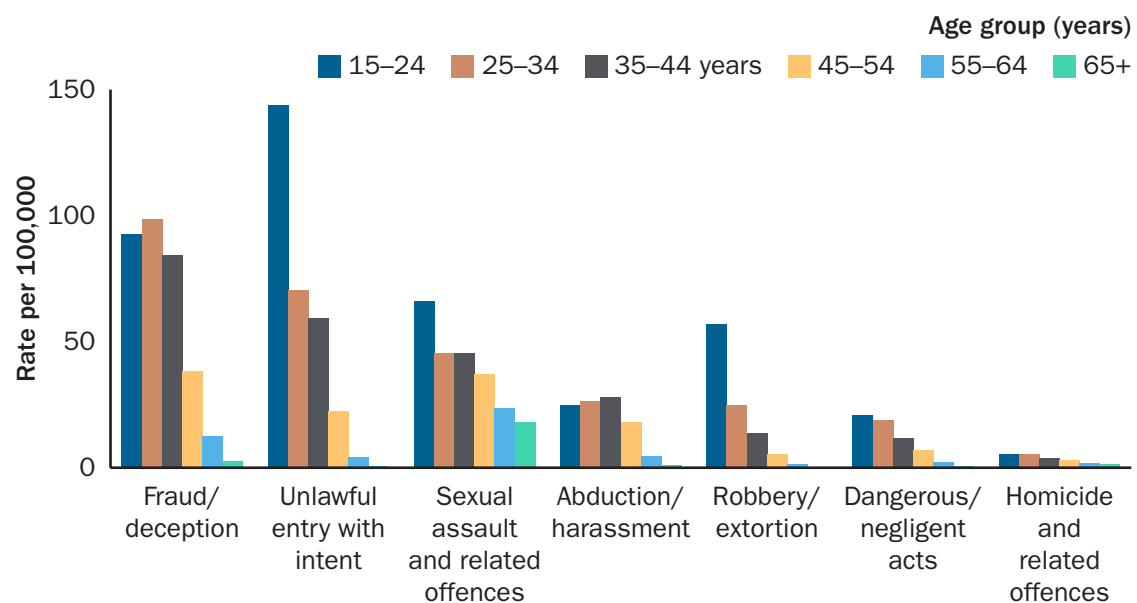


Figure 4: Rate of convictions in Australia for seven less common offence types, by principal offence groups and age group, 2017–18⁵⁵

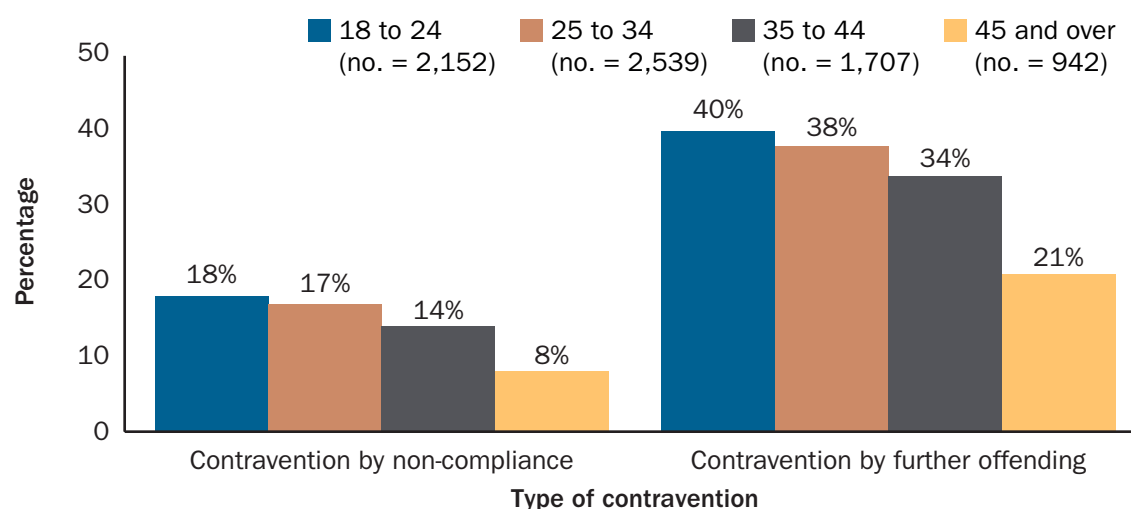


54. 'Rate per 100,000 persons aged 15 and over for Australia': Australian Bureau of Statistics (2018), above n 1, Tables 6, 15.

55. Ibid.

- 2.19 The rate of conviction of children and young adults aged 15 to 24 was higher than for older age groups for almost all categories of offences presented. For the offences in Figure 3 (page 9), children and young adults aged 15 to 24 are convicted of drug offending at higher rates than older age groups.⁵⁶ Stakeholders noted that this was unsurprising for this 15 to 24 age group.⁵⁷ Similarly, stakeholders commented that the prevalence of unlawful entry with intent (including burglary and aggravated burglary) and robbery was consistent with their observations of the offending patterns for this age group.⁵⁸
- 2.20 Children and young adults aged 15 to 24 are also convicted at notably higher rates than older age groups for unlawful entry with intent and robbery/extortion, as well as offence types that involve crimes against the person, such as acts intended to cause injury and sexual assault and related offences. They are also convicted at higher rates of theft and property/environment damage offences.⁵⁹
- 2.21 Stakeholders noted that the rates of conviction for offences against justice among children and young adults aged 15 to 24 were lower than for older adults aged 25 to 34 and 35 to 44.⁶⁰ This is interesting because young adult offenders are more likely to breach their non-custodial orders than older offenders. The Council's 2017 *Contravention of Community Correction Orders* report found that young adult offenders (defined in that report as offenders aged 18 to 24) were substantially more likely than older offenders to contravene their community correction orders (CCOs). Looking at CCOs imposed in all courts from 1 July 2012 to 30 June 2013, young adult offenders were almost twice as likely as their older counterparts to contravene their CCO by further offending to 30 June 2016 (Figure 5).⁶¹

Figure 5: Contravention rates by age group of offender and contravention type, Magistrates' Court, people sentenced to a CCO from 1 July 2012 to 30 June 2013 who contravened their CCO by 30 June 2016



56. Ibid.

57. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019); Meeting with Dr Karen Hart, CEO, The Youth Junction Inc. (21 August 2019).

58. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019); Meeting with Dr Karen Hart, CEO, The Youth Junction Inc. (21 August 2019).

59. Given the age category includes some children aged under 18, it is relevant that the use of criminal charging in care settings may contribute to this: see Sentencing Advisory Council, *'Crossover Kids': Vulnerable Children in the Youth Justice System: Report 1: Children Who Are Known to Child Protection among Sentenced and Diverted Children in the Victorian Children's Court* (2019) 74. However, this category also includes other offending typical of young adults, such as graffiti-related offences.

60. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

61. Sentencing Advisory Council, *Contravention of Community Correction Orders* (2017) 78. The disparity may be explained by the fact that many charges of contravention of orders are likely to be secondary charges and are therefore not captured by the Council's analysis of principal offences in this report.

- 2.22 Young adult offenders with prior convictions were particularly likely to contravene their CCO by further offending (49% or 640 of 1,318 young adult offenders contravened their CCO by further offending, compared with 28% or 2,065 of 6,327 offenders aged 25 and over).⁶²

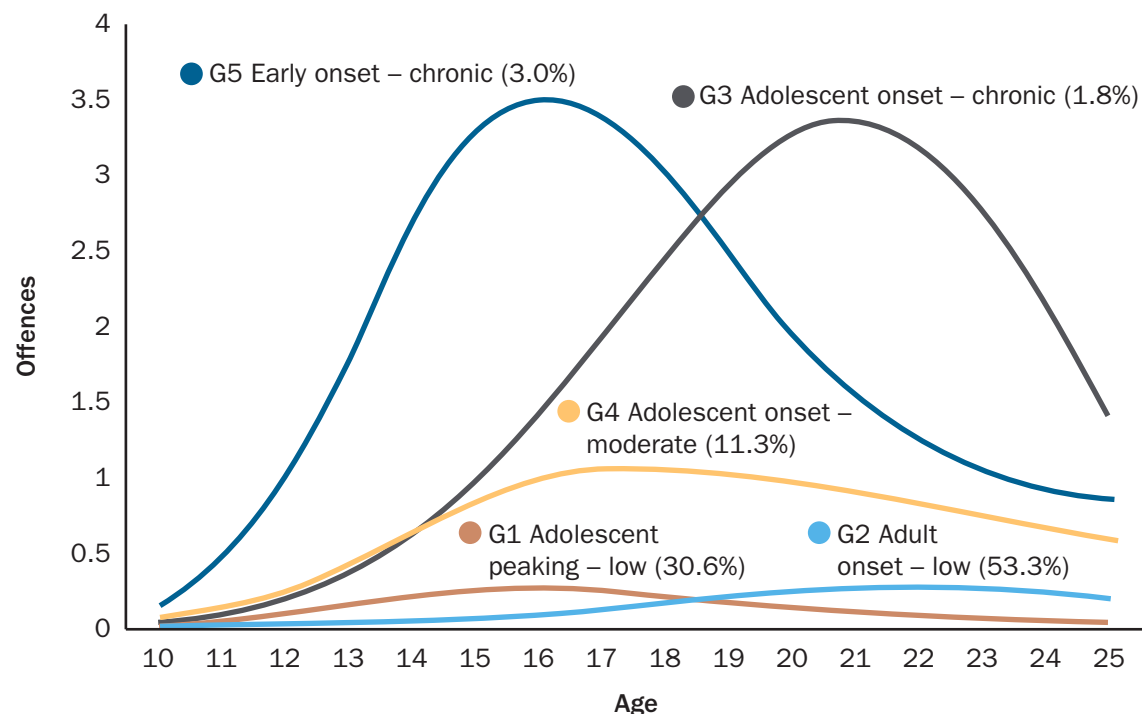
Multiple, related types of offending trajectories for young adult offenders

- 2.23 Criminological research has identified trends in the offending pathways of young adult offenders. This section summarises this research and presents recent Australian data on young adult offenders' offending trajectories.

Australian data on young adult offenders' offending trajectories

- 2.24 Figure 6 shows the results of a study that examined the offending trajectories of young people born in Queensland in 1990. It found a number of different offender groups, all of whom displayed peaks in offending behaviour during adolescence or young adulthood. It also found a significant decline in offending across all offender groups as the group moved towards their mid-twenties, including groups associated with higher numbers of offences (described in the study as 'chronic' offenders).⁶³

Figure 6: Offending trajectories of young people born in Queensland in 1990

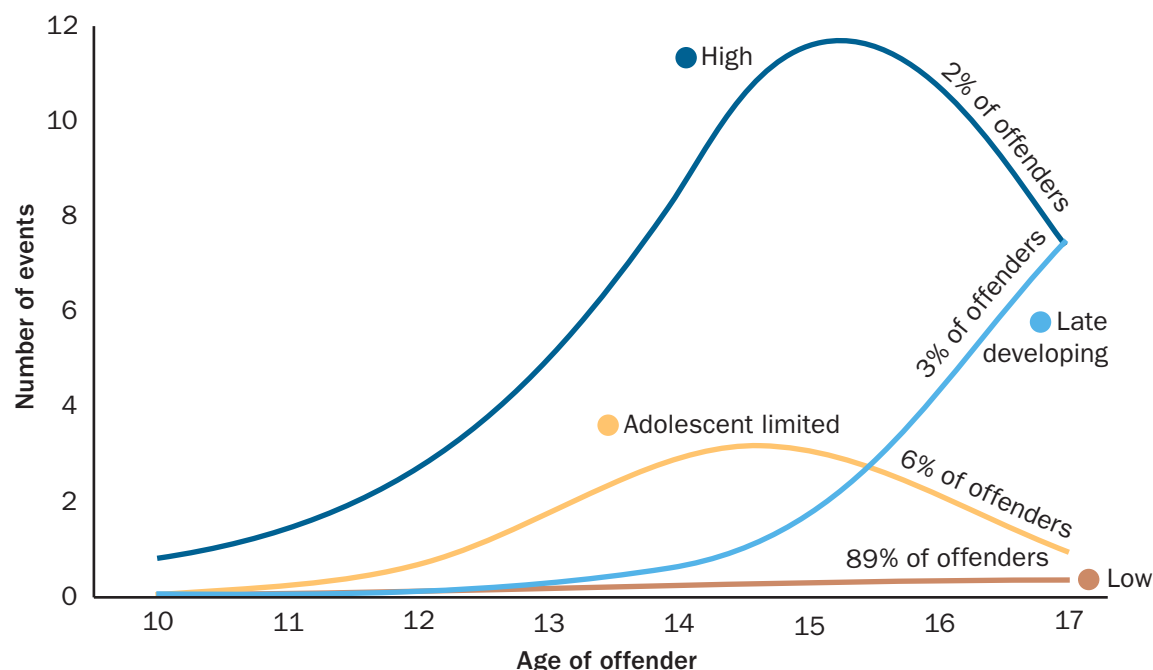


62. Ibid xv. It is possible that the comparatively low rate of offences against justice seen in Figure 3 is due to a lower number of orders imposed on offenders aged 15 to 24, rather than a proportionally low rate of breaches when an order is imposed.

63. Troy Allard et al., 'Integrating Criminal Careers and Ecological Research: The Importance of Geographic Location for Targeting Interventions Toward Chronic and Costly Offenders' (2017) 63(4) *Crime & Delinquency* 468, 478. This graph splits the 'low trajectory' group into two, and it divides the late-onset and high-trajectory groups differently.

2.25 Figure 7 shows the offending rates to the age of 17 among a group of Victorian young people born between 1996 and 1998.

Figure 7: Offending trajectories of young people born in Victoria between 1996 and 1998⁶⁴



2.26 As these young people are not yet aged 25 years, no data is currently available as to this group's behaviour in young adulthood. However, based on what has been observed elsewhere, the offending of adolescence-limited and high-trajectory offenders can be expected to continue to diminish during their twenties, while the offending of late-developing offenders can be expected to level off.⁶⁵

2.27 A limitation of these studies in a criminal justice context is that it is difficult to predict in advance with any degree of accuracy whether a young person will fall into any of these offender groups. Studies that draw these types of distinctions tend to do so retrospectively.⁶⁶ This means that, by definition, 'chronic' or 'high' offender groups appear to have no prospects of recovery. Other studies take a forward-looking approach to test the accuracy of these groupings. However, criminologists attempting to use diagnoses, histories and theories of offending to forecast future convictions have found that any forward-looking prediction comes at the cost of a high false-positive rate.⁶⁷

2.28 Further, as Figures 6 and 7 show, even the most serious offender groups show improvement with age. A key aim of rehabilitation for young adults is to support the process of moving towards desistance from offending. This is done by helping the young adult to reduce or stop their offending and by providing this support to enough young adult offenders to promote earlier desistance from offending behaviour for each offender group.⁶⁸

64. Paul Sutherland and Melanie Millsteed, *Patterns of Recorded Offending Behaviour Amongst Young Victorian Offenders*, In Brief no. 6 (2016) 5.

65. See for example, David P. Farrington et al., 'Development of Adolescence-Limited, Late-Onset, and Persistent Offenders from Age 8 to Age 48' (2009) 35(2) *Aggressive Behavior* 150, 150; Terrie E. Moffitt et al., 'Males on the Life-Course-Persistent and Adolescence-Limited Antisocial Pathways: Follow-up at Age 26 Years' (2002) 14(1) *Development and Psychopathology* 179, 180; Lisa M. Broidy et al., 'Developmental Trajectories of Childhood Disruptive Behaviors and Adolescent Delinquency: A Six-Site, Cross-National Study' (2003) 39(2) *Developmental Psychology* 222, 235; Allard et al. (2017), above n 63, 477–479.

66. See for example, Candice L. Odgers et al., 'Female and Male Antisocial Trajectories: From Childhood Origins to Adult Outcomes' (2008) 20(2) *Development and Psychopathology* 673, 673.

67. Joseph Murray et al., 'Very Early Predictors of Conduct Problems and Crime: Results from a National Cohort Study' (2010) 51(11) *Journal of Child Psychology and Psychiatry* 1198, 1205.

68. Carol A. Schubert et al., 'Differentiating Serious Adolescent Offenders Who Exit the Justice System from Those Who Do Not' (2016) 54(1) *Criminology* 56, 56–68.

Young adult offenders' offending trajectories: research conclusions

Low-trajectory offenders

- 2.29 The overwhelming majority of young adult offenders primarily commit very minor property crime on a sporadic basis, and have minimal contact with the criminal justice system.⁶⁹ These are known as 'low-trajectory offenders'. The offending of children and young adults in this group may not be detected because it is so minor and occurs at such a low rate. If their offending is detected, this group is unlikely to have prior convictions. This means that they may be more likely to fit criteria for diversion, including programs in which police give cautions, rather than prosecute, for a first offence.⁷⁰ They tend to have low levels of social disadvantage and other limitations that affect other offenders, and they tend to enjoy positive outcomes later in life.⁷¹

Adolescent-limited offenders

- 2.30 A significantly smaller group is composed of 'adolescent-limited offenders'.⁷² This group offends for a relatively brief period, usually beginning in mid- to late adolescence, and the majority of members of this group commit only relatively minor crimes, tending more towards property and disorder offences rather than serious violence.⁷³ Rates of offending then drop off in late adolescence to early adulthood, as the offenders mature and commit less crime or stop offending entirely.⁷⁴ The beginning of this change is represented in Figure 7. However, some adolescent-limited offenders commit more serious crimes and/or do not desist entirely from crime until much later, if at all, although their offending rates do tend to decrease with age.⁷⁵

Life-course persistent offenders

- 2.31 A much smaller group is commonly known as life-course persistent offenders,⁷⁶ labelled 'high' in Figure 7 and roughly corresponding to 'adolescent onset – chronic' in Figure 6. This group exhibits antisocial behaviour from an early age, tends to begin offending earlier and continues offending for a longer period, often beyond the mid-twenties.⁷⁷ Life-course persistent offenders tend to commit a disproportionately large amount of crime, including more serious offences.⁷⁸ Some estimates have suggested that life-course persistent offenders are responsible for around half of all violent crime.⁷⁹

69. Luebbers and Ogloff (2011), above n 5, 557–558.

70. For example, Victoria operates a number of drug diversion programs through Victoria Police or the court system, most of which are open only to first- or second-time offenders: health.vic, 'Forensic Services' (health.vic.gov.au, 2019) <<https://www2.health.vic.gov.au/alcohol-and-drugs/aod-treatment-services/forensic-aod-services>> at 14 October 2019. Court diversion is available in some cases for adult offenders: *Criminal Procedure Act 2009* (Vic) s 59. Police can issue an official caution for offenders aged 18 and over for a shopsteal offence or for minor drug offences, such as use and possession offences. For offenders under 18 years of age, a caution may be issued if it is appropriate in the circumstances: Victims of Crime, 'Alternatives to Court' (victimsofcrime.vic.gov.au, 2018) <<https://www.victimsofcrime.vic.gov.au/charges-laid/alternatives-to-court>> at 14 October 2019; Victoria Police, *Victoria Police Manual* (2019) ('Procedures and Guidelines: Disposition of Offenders', 'Policy Rules: Disposition of Offenders').

71. Moffitt et al. (2002), above n 65, 195–196; Farrington et al. (2009), above n 65, 154–162.

72. Adolescent-limited offenders are sometimes referred to as 'adolescence-limited' offenders. See for example, Moffitt et al. (2002), above n 65, 179; Farrington et al. (2009), above n 65, 150. Newer research has also suggested that another group approximately the size of the adolescent-limited group displays antisocial behaviour in childhood and desists entirely between mid- and late adolescence; this group is referred to as the childhood-limited group: see Odgers et al. (2008), above n 66, 673.

73. Moffitt et al. (2002), above n 65, 181; Farrington et al. (2009), above n 65, 161; Odgers et al. (2008), above n 66, 707–708.

74. Luebbers and Ogloff (2011), above n 5, 558; Chi Meng Chu and James R. P. Ogloff, 'Sentencing of Adolescent Offenders in Victoria: A Review of Empirical Evidence and Practice' (2011) 19(3) *Psychiatry, Psychology and Law* 325, 335.

75. Luebbers and Ogloff (2011), above n 5, 558; Odgers et al. (2008), above n 66, 707–710.

76. Luebbers and Ogloff (2011), above n 5, 558.

77. Ibid.

78. Terrie E. Moffitt, 'Adolescence-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy' (1993) 100(4) *Psychological Review* 674, 679–685; Moffitt et al. (2002), above n 65, 180.

79. Moffitt (1993), above n 78, 676.

- 2.32 The offending rates of life-course persistent offenders drop off as they mature (the beginning of this process is represented in Figures 6 and 7). Despite the name, many life-course persistent offenders stop offending relatively early in their lives.⁸⁰ However, research has found that those who stop offending entirely tend to do so later than adolescent-limited offenders. One major longitudinal study has found that two in three people in this group stop offending by their forties, recording no further convictions in the five years before they turn 48, but a significant minority continues to offend even into middle age.⁸¹

Late-onset offenders

- 2.33 Finally, another small group, known as 'late-onset offenders', displays late-onset offending that is similar in character to life-course persistent offending, but offending begins in the late teens or twenties.⁸² This group is labelled 'late developing' in Figure 7. Some researchers suggest that this is in fact a subset of the life-course persistent group, whose behaviour has been regulated or who have been protected from earlier contact with the criminal justice system by a stable and supportive family environment.⁸³ Although this group tends to both begin and stop offending relatively late compared with other groups, most late-onset offenders do eventually stop offending, one study finding only around one in four are still offending in the five years before they turn 48.⁸⁴

The most serious and prolific offenders are also the most vulnerable

- 2.34 A number of studies have demonstrated a clear relationship between a person's age at first sentence and the rate and seriousness of their reoffending.⁸⁵ The Council has previously undertaken a study of over 5,000 children who were sentenced for at least one charge in the Children's Court of Victoria in 2008–09. This study found that 52% of these children progressed to the adult criminal jurisdiction within six years.⁸⁶ In addition, it was found that the younger an individual is at first sentence, the more likely they are to reoffend as an adult. Three-quarters of offenders aged 10 to 12 at first sentence went on to reoffend and be sentenced in an adult court, whereas the rate was 42% for those who received their first sentence at the age of 18.⁸⁷
- 2.35 There is significant evidence that those who begin offending earliest (and those who proceed to have the most interaction with the criminal justice system) are vulnerable in multiple ways. Compared with the general population, they have significantly higher rates of:
- cognitive impairment and/or developmental issues, including intellectual disability and language and communication delays;⁸⁸

80. Farrington et al. (2009), above n 65, 156.

81. Ibid 156–157.

82. See for example, ibid 150; Georgia Zara and David P. Farrington, 'A Longitudinal Analysis of Early Risk Factors for Adult-Onset Offending: What Predicts a Delayed Criminal Career?' (2010) 20(4) *Criminal Behaviour and Mental Health* 257, 257.

83. See for example, Farrington et al. (2009), above n 65, 150, citing Terence P. Thornberry and Marvin D. Krohn, 'Applying Interactional Theory to the Explanation of Continuity and Change in Antisocial Behavior', in David P. Farrington (ed.), *Integrated Developmental and Life-Course Theories of Offending* (2005) 183–210.

84. Farrington et al. (2009), above n 65, 157.

85. See for example, Shuling Chen et al., *The Transition from Juvenile to Adult Criminal Careers*, New South Wales Crime and Justice Bulletin no. 86 (2005).

86. Sentencing Advisory Council (2016), above n 1, 24.

87. Ibid 29–31.

88. Armytage and Ogloff (2017), above n 7, Part 1: 138, 156–158; Part 2: 125–126. In a study aiming to establish fetal alcohol spectrum disorder (FASD) in a sample of juveniles in detention in Western Australia, Bower et al. 'identified a high level of severe neurodevelopmental impairment

- mental health issues,⁸⁹ which often occur for the first time in late adolescence and young adulthood;⁹⁰
- acquired brain injury, which is associated with aggression, violence and lack of inhibition;⁹¹
- fetal alcohol spectrum disorder;⁹²
- childhood abuse;⁹³
- involvement with the child protection system, including experience of out-of-home care;⁹⁴
- family conflict;⁹⁵
- exposure to criminal activity committed by close family members;⁹⁶
- drug and alcohol issues;⁹⁷
- unstable accommodation and homelessness;⁹⁸
- literacy issues and disrupted education;⁹⁹
- socioeconomic disadvantage;¹⁰⁰
- caregiver status;¹⁰¹ and
- intergenerational trauma.¹⁰²

in participants, with only 11% of young people without at least one domain of severe neurodevelopmental impairment, regardless of a diagnosis of FASD', including a prevalence of intellectual disability of 24%: Carol Bower et al., 'Fetal Alcohol Spectrum Disorder and Youth Justice: a Prevalence Study Among Young People Sentenced to Detention in Western Australia' (2018) *BMJ Open* (DOI:10.1136/bmjopen-2017-019605) 1, 8 <<https://bmjopen.bmj.com/content/bmjopen/8/2/e019605.full.pdf>> at 22 October 2019. This analysis did not account for mental health issues, which Ogloff and Armytage suggest affect over 50% of young offenders: Armytage and Ogloff (2017), above n 7, Part 1: 156–157.

89. Armytage and Ogloff (2017), above n 7, Part 1: 138, 156–158; Part 2: 125–126.
90. Giovanni De Girolamo et al., 'Age of Onset of Mental Disorders and Use of Mental Health Services: Needs, Opportunities and Obstacles' (2012) 21(1) *Epidemiology and Psychiatric Sciences* 47, 47.
91. Martin Jackson et al., *Acquired Brain Injury in the Victorian Prison System*, Corrections Research Paper Series no. 04 (2011) 9; Thomas J. Farrer et al., 'Prevalence of Traumatic Brain Injury in Juvenile Offenders: A Meta-Analysis' (2013) 19(3) *Child Neuropsychology* 225, 225; Nathan Hughes et al., 'The Prevalence of Traumatic Brain Injury Among Young Offenders in Custody: A Systematic Review' (2015) 30(2) *Journal of Head Trauma Rehabilitation* 94, 94. Definitions and counting methods vary, but broadly there is strong, consistent evidence across numerous studies and countries that incarcerated young people have a higher rate of acquired brain injury than the general population, with the disparity increasing for more severe acquired brain injuries. The meta-analysis by Farrer et al. found that, when comparing the juvenile offenders to the control groups, the pooled odds ratio for a traumatic brain injury was 3.38. The investigation by Jackson et al., for Corrections Victoria, found that 42% of male prisoners and 33% of female prisoners had an acquired brain injury, compared with 2% of the general Australian population.
92. Bower et al. (2018), above n 88, 1. Numerous studies suggest FASD occurs in young offender populations at over twice the rate seen in the general population (up to 5% versus up to 12%), while the Bower study found an overall prevalence of 36% in a sample of juveniles in detention in Western Australia, with particularly high rates (47%) of FASD prevalence for Aboriginal children in detention. This is the highest reported prevalence of FASD in this type of population anywhere in the world, despite a number of limitations that may have led to under-reporting.
93. Sentencing Advisory Council (2019), above n 59, 37–38; Armytage and Ogloff (2017), above n 7, Part 1: 138; Part 2: 21.
94. Sentencing Advisory Council (2019), above n 59, 37–39, 45–84; Armytage and Ogloff (2017), above n 7, Part 1: 165; Part 2: 21. Almost 50% of young offenders aged 10 to 20 and sentenced to a youth justice facility had child protection substantiation. More intensive contact with the child protection system is associated with a greater likelihood of contact with the criminal justice system, as well as more intensive sentencing outcomes: Sentencing Advisory Council (2019), above n 59, xxi, 93–94.
95. Armytage and Ogloff (2017), above n 7, Part 1: 164–165.
96. As at 2015–16, 25.1% of young people in custody had a family member with past involvement in the criminal justice system, although the data was not universally collected and therefore may understate the true prevalence: *ibid* Part 1: 164–165. In interviews with young people with family members in prison, some young people expressed a desire to be transferred to adult prison to be with their relatives.
97. In 2015–16 at least 46% of the 1,548 young people receiving youth justice orders (across community and custody) had received alcohol and drug services: *ibid* Part 1: 160–161.
98. *Ibid* Part 1: 156; Part 2: 21. Department of Health and Human Services data indicated that 16.9% of offenders sentenced in youth justice did not have access to stable accommodation. A risk and needs inventory for offenders aged 10 to 20 who were sentenced to youth justice orders found that 25.1% of these offenders admitted to custody in 2015–16 did not have access to stable accommodation.
99. *Ibid* Part 1: 138, 162; Part 2: 21. Among young people aged 13 to 17 years, 93.8% of those serving a custodial sentence recorded truancy in the past year, and 76.9% recorded low academic achievement. A risk and needs inventory for offenders aged 10 to 20 years who were sentenced to youth justice orders found that 42.2% of these offenders admitted to custody in 2015–16 had literacy concerns.
100. *Ibid* Part 1: 138, 146, 164.
101. *Ibid* Part 2: 21. A risk and needs inventory for offenders aged 10 to 20 years who were sentenced to youth justice orders found that 8.4% of these offenders admitted to custody in 2015–16 were parents.
102. Many of the other risk factors, including care history, are also closely linked with intergenerational trauma: *ibid* Part 1: 164, 174–175, 191–193.

- 2.36 These issues can affect a young adult's maturity. They may also permanently damage their ability to function at what would be considered an 'adult' level in a healthy individual without a traumatic background.¹⁰³
- 2.37 Children and young adults from culturally and linguistically diverse or Aboriginal and Torres Strait Islander backgrounds are also over-represented in the youth justice system and, in particular, they are over-represented among those with a low age at first sentence.¹⁰⁴ Additionally, half of all high-trajectory offenders come from the most socioeconomically disadvantaged postcodes.¹⁰⁵
- 2.38 Children and young adults interacting with the criminal justice system are often affected by a constellation of major risk factors, rather than just one. For example, a study of young offenders in detention in Western Australia found 89% of the participants had severe neurodevelopmental impairment in at least one domain.¹⁰⁶ This study did not look at non-neurological issues such as mental illness, homelessness, care history or drug and alcohol abuse. Another study, which focused on behaviour trajectories from childhood to age 26, found that two-thirds of life-course persistent male offenders had three or more out of 10 'problems in adult adjustment' at age 26, and that male life-course persistent offenders made up 70% of those experiencing seven to 10 problems, such as a conviction for a violent offence or a psychiatric diagnosis.¹⁰⁷
- 2.39 The presence of one risk factor can cause or exacerbate others. When this occurs, the difficulties that a young person experiences may be compounded. For example, repeated experiences of family violence may lead to trauma, an acquired brain injury and placement in out-of-home care.¹⁰⁸ This combination can then exacerbate existing difficulties such as mental illness.
- 2.40 Many of the risk factors discussed above will pre-date a young person's first contact with the criminal justice system. Indeed, many such risk factors will have been present from early childhood or birth. Longitudinal studies have found that these factors can predict, in a statistically significant way, that children may go on to offend.¹⁰⁹
- 2.41 Serious offenders who continue to offend over a longer period of time tend to exhibit more of these factors than other groups.¹¹⁰ Some of these risk factors are also present for offenders who commit some serious offences but desist early; however, this group tends to experience fewer factors in combination, or to experience less serious versions of the same factors.¹¹¹ In summary, it appears that trauma, disadvantage and cognitive differences contribute significantly to the commencement and continuation of offending.

103. Ibid Part I: 137–178; Jackson et al. (2011), above n 91, 7; Nathan Hughes et al., *Nobody Made the Connection: The Prevalence of Neurodisability in Young People Who Offend* (2012) 14–16.

104. Armytage and Ogloff (2017), above n 7, Part I: 172–173; Sentencing Advisory Council (2019), above n 59, xxiv.

105. Sutherland and Millstead (2016), above n 64, 7 (49.5% of high-trajectory offenders came from postcodes in the three most disadvantaged deciles).

106. Bower et al. (2018), above n 88, 5–7.

107. The issues addressed were violent conviction record, non-violent conviction record, substance-dependence diagnosis, psychiatric diagnosis, partner abuse, child abuse, no high school qualification, unmarried fatherhood, government welfare benefits, and long-term unemployment for more than six months. In contrast, two-thirds of adolescent-limited men had two or fewer problems: Moffitt et al. (2002), above n 65, 195.

108. In some cases, a care history seems to directly precipitate contact with the criminal justice system, for example, when a child is charged with criminal damage following an incident in a residential care setting (such as a child smashing a mug). If the same incident had occurred in a family home it would be unlikely to result in the involvement of police or a criminal charge: Sentencing Advisory Council (2019), above n 59, 37–40. The existence of an initial conviction may have further flow-on effects in terms of employment, housing and treatment at sentencing for any subsequent offences.

109. This does not, however, imply that a reliable prediction can be made for any individual child; see [2.27]. Farrington et al. (2009), above n 65, 158; Moffitt et al. (2002), above n 65, 179; Odgers et al. (2008), above n 66, 673; Broidy et al. (2003), above n 65, 235.

110. See for example, Farrington et al. (2009), above n 65, 158; Odgers et al. (2008), above n 66, 678; Broidy et al. (2003), above n 65, 235.

111. See for example, Farrington et al. (2009), above n 65, 158; Moffitt et al. (2002), above n 65, 195; Odgers et al. (2008), above n 66, 673; Broidy et al. (2003), above n 65, 235.

- 2.42 However, the fact that most children and young adults with convictions experience these risk factors does not necessarily imply that most children who experience such issues will go on to commit crimes. For example, approximately 49% of people who are sentenced to imprisonment while under the age of 18 have experienced the child protection system, but the relationship does not work in reverse: only a small proportion of those with contact with the child protection system are sentenced to imprisonment while under the age of 18.¹¹²

Young adults are more amenable to rehabilitation than older adults

- 2.43 There is limited research on the effect of rehabilitative interventions on young adult offenders' offending trajectories, as most of the research in this area has focused on adults or on children and young people under the age of 18.¹¹³ The research discussed in this section includes some studies focusing solely on young adults, and others focusing on adolescents as well as young adults but specifically analysing the effects for young adults.
- 2.44 Overall, the evidence on young adults suggests that:
- young adults are more amenable to rehabilitation than older adults,¹¹⁴ although this can be a process that requires more than one rehabilitative intervention and may not be evident in studies that measure reoffending in binary terms;¹¹⁵
 - supportive or therapeutic approaches (including counselling, cognitive behavioural therapy, education, restorative justice and the provision of wrap-around services) can increase the likelihood of rehabilitation;¹¹⁶
 - deterrent or control-based approaches (such as 'scared straight' programs that aim to confront offenders with the consequences of crime, and some forms of intense supervision) are not as effective. In fact, there is evidence that they may actually increase recidivism rates;¹¹⁷
 - interventions tend to be more effective when provided to high-risk offenders;¹¹⁸ and
 - imprisonment can increase the risk that a young adult will reoffend.¹¹⁹
- 2.45 As discussed at [2.14], most children who commit crimes begin to desist in their mid- to late teens or early twenties. More recently, some studies have found this reduction in crime occurring later, during the late 20s.¹²⁰ Adolescent-limited offenders tend to reduce and stop offending in their mid- to late teens, whereas the change occurs later for life-course persistent offenders.¹²¹

112. Armytage and Ogloff (2017), above n 7, Part I: 166. See also Sentencing Advisory Council (2019), above n 59, 36.

113. See for example, Ashli J. Sheidow et al., 'Multisystemic Therapy for Emerging Adults with Serious Mental Illness and Justice Involvement' (2016) 23(3) *Cognitive and Behavioural Practice* 356, 356; Mark W. Lipsey, 'The Primary Factors that Characterize Effective Interventions with Juvenile Offenders: A Meta-Analytic Overview' (2009) 4(4) *Victims and Offenders* 124, 124.

114. See Office of the Inspector of Custodial Services, *Recidivism Rates and the Impact of Treatment Programs* (2014) 12; Chrissy James, 'Beyond Detention: The Effectiveness of Aftercare for Juvenile and Young Adult Offenders' (PhD Thesis, University of Amsterdam, 2015) 35–36.

115. Lipsey (2009), above n 113, 129; Kelly Hannah-Moffat, 'A Conceptual Kaleidoscope: Contemplating "Dynamic Structural Risk" and an Uncoupling of Risk from Need' (2016) 22(1) *Psychology, Crime and Law* 33, 38–41.

116. Lipsey (2009), above n 113, 139, 143–145; Skeem et al. (2014), above n 5, 725–726.

117. Lipsey (2009), above n 113, 137–145; Skeem et al. (2014), above n 5, 725–730; Friedrich Lösel, 'What Works in Correctional Treatment and Rehabilitation for Young Adults?', in Friedrich Lösel et al. (eds), *Young Adult Offenders: Lost in Transition?* (2012) 86–88.

118. Christopher T. Lowenkamp et al., 'The Risk Principle in Action: What Have We Learned from 13,676 Offenders and 97 Correctional Programs?' (2006) 52(1) *Crime and Delinquency* 77, 88–89; Lipsey (2009), above n 113, 143–145.

119. See Sentencing Advisory Council, *Does Imprisonment Deter? A Review of the Evidence* (2011) 21–22; Francis T. Cullen et al., 'Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science' (2011) 91(3) *The Prison Journal* 48S, 48S; Daniel S. Nagin et al., 'Imprisonment and Reoffending' (2009) 38(1) *Crime and Justice* 115, 115; Don Weatherburn, *The Effect of Prison on Adult Re-Offending*, Crime and Justice Bulletin no. 143 (2010) 10. See also Armytage and Ogloff (2017), above n 7, Part I: 209–211.

120. Allard et al. (2017), above n 63, 468; Sutherland and Millstead (2016), above n 64; Moffitt et al. (2002), above n 65, 179.

121. Moffitt et al. (2002), above n 65, 195; Allard et al. (2017), above n 63, 478; Sutherland and Millstead (2016), above n 64, 5.

This can distort the apparent effects of rehabilitation measures for young adults: interventions taking place before young people go through this age-related change can appear to have no effect, while interventions taking place after this change begins may correlate with reductions in offending that those interventions did not actually cause.¹²²

- 2.46 Similar distortions can be caused by a narrow assessment of reoffending. Many studies of rehabilitation programs measure reoffending in a binary way: did the person reoffend within the study period or not?¹²³ This type of measure fails to capture decreases in the seriousness or frequency of offending and therefore misses some effects of the intervention. This can give a false impression that young people who have reduced their offending are continuing to reoffend at very high rates and, by implication, that effective rehabilitation programs are unsuccessful.¹²⁴

Custodial sentences, especially in adult facilities, can be counterproductive

- 2.47 The evidence suggests that custodial sentences served in prison, or in youth justice centres without sufficient specialised services, are unlikely to be effective interventions, and although imprisonment will in some cases be necessary, it should be a last resort.¹²⁵
- 2.48 Custodial sentences tend not to address most of the underlying vulnerabilities that can contribute to a young adult's offending behaviour and may contribute to instability in offenders' lives, including in ways that may be criminogenic. In particular, imprisonment appears to increase the risk of homelessness, which affects prisoners' ability to successfully transition out of a custodial environment.¹²⁶ Custodial sentences are also, by their nature, disruptive to other aspects of a person's living situation, including employment and supportive relationships.¹²⁷ Even if interventions that do address underlying issues are offered, there is some evidence that, at least for some offenders, the prison environment can make interventions less effective because offenders have difficulty transferring their skills and habits from that environment into the community on release.¹²⁸
- 2.49 Further, imprisonment itself may actually make a person more likely to reoffend. Australian and international research has found that prison sentences may have a criminogenic effect, because they expose offenders who may be engaging in lower levels of criminality to offenders with very entrenched offending behaviour patterns.¹²⁹ In addition, imprisonment can reinforce criminal identity, leading young adult offenders to both see themselves and be perceived as criminals who are unlikely to change or are unworthy of help.¹³⁰

122. James (2015), above n 114, 35–36.

123. See for example, Lipsey (2009), above n 113, 129; Hannah-Moffat (2016), above n 115, 38–41.

124. James (2015), above n 114, 38–39; Schubert et al. (2016), above n 68, 62; Skeem et al. (2014), above n 5, 723.

125. See Sentencing Advisory Council (2011), above n 119, 23; Cullen et al. (2011), above n 119, 48S; Nagin et al. (2009), above n 119, 115; Armytage and Ogloff (2017), above n 7, Part 1: 209–211.

126. Lucy Adams and Samantha Sowerwine, *Debt and Tenancy Legal Help for Prisoners: Twelve Month Project Report* (2016) 11, 18–20. Interviews with some Victorian offenders suggest that the prospect of homelessness makes imprisonment seem like a preferable option: Victorian Ombudsman (2015), above n 49, 104. Employment appears to be particularly associated with juvenile adolescent offenders progressing out of the criminal justice system as they reach adulthood: Schubert et al. (2016), above n 68, 76.

127. Lowenkamp et al. (2006), above n 118, 89: disruption of prosocial structures and networks increases recidivism risk.

128. James (2015), above n 114, 25–27. Programs offered in prison also tend to be more oriented to deterrence or control rather than therapeutic approaches, which tend to be more effective interventions: Skeem et al. (2014), above n 5, 727. Therapeutic programs offered in prison can still be effective despite this: Lipsey (2009), above n 113, 143–145.

129. See Sentencing Advisory Council (2011), above n 119, 23; Cullen et al. (2011), above n 119, 48S; Nagin et al. (2009), above n 119, 116; Weatherburn (2010), above n 119, 10.

130. See Sentencing Advisory Council (2011), above n 119, 23; Cullen et al. (2011), above n 119, 60S; Nagin et al. (2009), above n 119, 116. See also Armytage and Ogloff (2017), above n 7, 209–211.

- 2.50 As discussed at [2.7], young adults are more susceptible to peer influence than older adults, and they are also less likely to have formed deeply entrenched behavioural patterns due to their age. Although research on the issue is limited, this suggests that young adult offenders may be more susceptible to the criminogenic effects of imprisonment than older adult offenders.¹³¹ Further, a transition from youth justice services to adult prison can be destabilising and can diminish or sever positive social ties or activities, such as employment or education.¹³²
- 2.51 Finally, young adult offenders in adult prisons are at significant risk of experiencing trauma and injury within the prison itself. The Victorian Ombudsman, in her 2015 investigation of prisoner rehabilitation, noted that young adult offenders in adult prisons 'are at significant risk of post-traumatic stress disorder arising from the conditions of their detention, and at high risk of rape and assault from older prisoners'.¹³³ The potential harms to young adults of being in contact with adult offenders raise issues regarding the state's duty of care to detained persons.¹³⁴
- 2.52 Although this report focuses on sentencing, many of the risks of imprisonment also apply to young adult offenders on remand. In fact, the risks can sometimes even be greater where young adults are held on remand. Remandees have access to a very limited range of rehabilitation and transition programs. Further, young adults awaiting trials at which they may be found not guilty or convicted of relatively minor offences mix with older adults who have been sentenced for serious crimes.¹³⁵ The effects of a period in remand can have a significant effect on the wellbeing and prospects of young people.¹³⁶

High-risk young adult offenders' multiple vulnerabilities mean there are opportunities for intervention

- 2.53 Young adult offenders' psychobiological immaturity can increase the likelihood that they will commit crime, but it can also mean that rehabilitative interventions have greater potential to promote long-term change.¹³⁷ Similarly, the fact that young adult offenders tend to have multiple significant needs suggests that there may be potential for progress if a number of those needs are met, particularly among those who are the most vulnerable. As discussed from [2.34], this group also tends to be the highest risk. Corrections Victoria described the position of young adult offenders as follows:

As young offenders are generally neither fully developed nor entrenched within the criminal justice system, interventions have the potential to impact upon them to help foster their desistance from crime. Conversely, the potential exists for a great deal of harm to be done to young offenders if ineffective or unsuitable interventions are applied.¹³⁸

131. This effect has been shown for young offenders under the age of 18. As with much research on young offenders under the age of 18, the findings are likely to be relevant to the young adult cohort. Some studies of this effect on young offenders have included young adults aged between 18 and 21: Holly A. Wilson and Robert D. Hoge, 'The Effect of Youth Diversion Programs on Recidivism: A Meta-Analytic Review' (2013) 40(5) *Criminal Justice and Behaviour* 497, 499. Armitage and Ogloff (2017), above n 7, Part I: 209–211.

132. House of Commons Justice Committee, *The Treatment of Young Adults in the Criminal Justice System* (2016) 33–36.

133. Victorian Ombudsman (2015), above n 49, 98.

134. See generally, *New South Wales v Bujdos* [2005] HCA 76 (8 December 2005).

135. See Victorian Ombudsman (2015), above n 49, 49–50.

136. See *ibid* 49–50; Jesuit Social Services, *Thinking Outside: Alternatives to Remand for Children* (2013) 13–14.

137. See Office of the Inspector of Custodial Services (2014), above n 114, 12; James (2015), above n 114, 35–36. However, achieving rehabilitation can be a process that takes more than one attempt, and some studies that focus on the effectiveness of a single rehabilitation program may not show improved outcomes for young adult offenders: Lipsey (2009), above n 113, 143–145; Hannah-Moffat (2016), above n 115, 38–41; Skeem et al. (2014), above n 5, 719, 723–724.

138. Corrections Victoria, *Young Offenders Policy Framework* (2014), cited in Victorian Ombudsman (2015), above n 49, 97.

- 2.54 Rehabilitation programs are often delivered according to what is known as the risk–need–responsivity model.¹³⁹ This model involves targeting rehabilitation to offenders' risk factors and needs, using methods and settings that are responsive to the offender's personality and situation in order to increase the likelihood that the offender, in turn, will respond to the intervention.¹⁴⁰
- 2.55 The 'risk principle' (discussed at [2.58]) is an important component of the model. This provides that high-risk offenders should be targeted most intensely for rehabilitation,¹⁴¹ while low-risk offenders should be targeted less intensely.¹⁴² As discussed above, the research suggests that an intensive intervention may be most effective if that means providing intensive support. In contrast, a low intensity intervention could be as minimal as a decision not to intervene at all, for example, by diverting less serious offenders away from the criminal justice system.¹⁴³
- 2.56 There is significant interrelationship between the different offender profiles outlined at [2.29]–[2.33]. Indeed, offenders can often only be categorised retrospectively. Many studies that draw a clear distinction between groups are able to do so because they are analysing a criminal history that has already occurred: their analyses of the data describe what has occurred, rather than predicting offender's trajectories.¹⁴⁴ This can create a false impression that those individuals retrospectively classified into 'life-course persistent offender' or analogous groups, or those with risk factors that appear characteristic of that group, are somehow incorrigible. In fact, even among offender groups who appear to have the highest levels of risk and recidivism, there is a wide range of potential life trajectories and outcomes,¹⁴⁵ and attempts to predict which group an offender belongs to can do so only at the cost of a high rate of false positives.¹⁴⁶
- 2.57 The earlier an offender stops offending, the more they are likely to attain similar outcomes on measures of life success (such as education and employment) to persons who have not had criminal histories.¹⁴⁷ Similarly, the longer it has been since a person's last offence, the more likely they are to have comparable outcomes to non-offenders on measures of life success.¹⁴⁸ This underlines the importance of supporting offenders into desistance as early as possible.

139. The risk–need–responsivity model has received criticism. The UK has moved away from its previous ASSET risk management framework, which was based on the risk–need–responsivity model: Gov.UK, '[Withdrawn] Young Offenders: Assessment using "Asset"' (gov.uk, 2014) <<https://www.gov.uk/government/publications/asset-documents>> at 14 October 2019. The framework was replaced in 2014 with AssetPlus, a more holistic approach that 'focuses on professional judgement of practitioners': Youth Justice Board for England and Wales, 'AssetPlus: Assessment and Planning in the Youth Justice System' (gov.uk, 2014) <<https://www.gov.uk/government/publications/assetplus-assessment-and-planning-in-the-youth-justice-system/assetplus-assessment-and-planning-in-the-youth-justice-system>> at 14 October 2019. See particularly the embedded video interview with France Done, Chair, Youth Justice Board.

140. Donald A. Andrews et al., 'The Risk-Need-Responsivity (RNR) Model: Does Adding the Good Lives Model Contribute to Effective Crime Prevention?' (2011) 38(7) *Criminal Justice and Behaviour* 735, 735.

141. Ibid 735. See also Maggie Clarke et al., 'Patterns of Change in Dynamic Risk Factors over Time in Youth Offenders' (2019) 61(2) *Canadian Journal of Criminology and Criminal Justice* 1, 19; Lowenkamp et al. (2006), above n 118, 88–90.

142. See for example, Clarke et al. (2019), above n 141, 19; Lowenkamp et al. (2006), above n 118, 88–90; Lipsey (2009), above n 113, 143–145.

143. See for example, Lowenkamp et al. (2006), above n 118, 88–90.

144. Alex R. Piquero et al., 'The Criminal Career Paradigm' (2003) 30 *Crime and Justice* 359, 470–471.

145. Clarke et al. (2019), above n 141, 20–22. Further, one study of a group of young people in Wales deemed to have been 'prolific' offenders found that effective work with young people involved in high-volume offending is characterised by a number of elements, including persistence and 'positive, future oriented' narratives that focus on young peoples' strengths. This study noted the benefits of workers focusing on the 'gaps' between offences, to encourage young people to focus on building prosocial connections that promote desistance from offending: Diana Johns et al., *A Study of 'Prolific' Offending by Young People in Wales 2009–2015* (2018) viii, 69.

146. Piquero et al. (2003), above n 144, 470–471.

147. Farrington et al. (2009), above n 65, 161.

148. Ibid 161.

Supportive and therapeutic interventions achieve the best outcomes with young adults

- 2.58 One meta-analysis of 548 studies on rehabilitation programs for 12- to 21-year-olds found that three key points distinguished successful interventions from unsuccessful ones:
- Supportive approaches were by far the most effective. These include skill-based approaches like cognitive behavioural therapy, counselling and mentoring, restorative justice and the provision of multiple coordinated support services.¹⁴⁹
 - Interventions were more effective for high-risk offenders, consistent with the 'risk principle'. The risk principle is that high-risk offenders are the group for whom the greatest progress can be made, and therefore the group that should be targeted most intensely for rehabilitation.¹⁵⁰ On the other hand, low-risk offenders should be targeted less intensely,¹⁵¹ as there is evidence that intervening with low-risk offenders may actually increase the risk of future offending.¹⁵²
 - Above a minimum threshold of program length, the quality of the service provided was more important than the duration.¹⁵³ These principles held true for the whole group, regardless of gender or race, and the effects were larger for older young people.¹⁵⁴
- 2.59 This meta-analysis, and other research, also found that deterrent or control-based approaches are not as effective as the types of programs outlined above. In fact, there is evidence that they may actually increase recidivism rates.¹⁵⁵ This may be partly because deterrent or control-based approaches often lead to increased surveillance and therefore punishment of minor crimes and/or breaches of conditions on correctional orders: behaviour that otherwise might not attract the attention of authorities.¹⁵⁶ This is likely to have a disproportionate effect on this age group due to their high rate of breaches by non-compliance.¹⁵⁷ There may also be a 'labelling' effect, which may lead young adult offenders to see themselves as criminals and to proceed to live up to that label.¹⁵⁸
- 2.60 In contrast, supportive and therapeutic approaches may recognise that it may take time to support young adults into stopping their offending behaviour, and that minor 'slips' can be viewed as opportunities to reinforce coping and decision-making skills.¹⁵⁹ Supportive and therapeutic approaches are also likely to treat young adults with criminal histories as people with agency, who can choose to take or not to take actions, rather than reinforcing their self-perception as criminals.

149. Lipsey (2009), above n 113, 136–145. The meta-analysis addressed studies in a number of jurisdictions, but over 90% were US-based.

150. Andrews et al. (2011), above n 140, 735. See also Clarke et al. (2019), above n 141, 19; Lowenkamp et al. (2006), above n 118, 88–90; Lipsey (2009), above n 113, 143–145.

151. See for example, Clarke et al. (2019), above n 141, 19; Lowenkamp et al. (2006), above n 118, 88–90; Lipsey (2009), above n 113, 143–145.

152. Lipsey (2009), above n 113, 141–145.

153. Ibid. Quality was measured using proxies including dropout rates, reported problems with staff such as poor training, and the level of involvement of expert researchers in program implementation.

154. Ibid 129, 137. The sample in the study ranged in age from 12 to 21 years, and age was positively correlated with effect size. This suggests that the effects would have been greatest for young adults aged 18 to 21.

155. Ibid 137–145; Skeem et al. (2014), above n 5, 725–734; Lösel (2012), above n 117, 86–88.

156. Lowenkamp et al. (2006), above n 118, 85; Hannah-Moffat (2016), above n 115, 42.

157. Sentencing Advisory Council (2017), above n 61, 78.

158. See Sentencing Advisory Council (2011), above n 119, 18; Cullen et al. (2011), above n 119, 485; Nagin et al. (2009), above n 119, 127. See also Armytage and Ogloff (2017), above n 7, Part 1: 209–210.

159. See for example, a therapist delivering a rehabilitative intervention characterising an incident of illicit drug use as a 'slip': Sheidow et al. (2016), above n 113, 365.

- 2.61 Although imprisonment is generally counterproductive to rehabilitation (see [2.47]), some evidence suggests that, if handled correctly, some types of therapeutic programs can still be successful in a custodial setting.¹⁶⁰ Support during the transition from custody into the community can also increase the effectiveness of prison-based rehabilitative interventions, particularly for young adults aged 18 to 25 and high-risk young adults.¹⁶¹ This is likely because young adults are undergoing major social transitions that require significant structure and support in the community. Without a transition program, they are likely to return to the same social environment that preceded their initial offending. The contrast between the structured environment of a custodial facility and the community means that young adults need support to apply what they have learned.¹⁶²
- 2.62 Some rehabilitation programs targeted at young adults build on the ideas of transition and support by adapting concepts used in family-based therapies for offenders aged under 18. Such programs help young adults to identify the supportive and negative influences in their lives, then strengthen the supportive influences to create a positive social network that they can draw on for support and in times of difficulty.¹⁶³ This type of approach is also compatible with 'positive youth justice' and 'ecological youth justice' models that reject formulaic risk-based interventions, in favour of highly personalised approaches focused on engaging with young people's relationships and environments, including positive relationships between the young person and those providing support or treatment.¹⁶⁴

160. Lipsey (2009), above n 113, 143–145. Lipsey's meta-analysis found that whether a program was delivered in prison or in the community had little effect on its effectiveness; he posited that, since higher-risk offenders were more likely to be imprisoned, the risk principle was compensating for the effect of imprisonment on rehabilitation.

161. James (2015), above n 114, 35.

162. Ibid 35–36.

163. See for example, Sheidow et al. (2016), above n 113, 356–367. See also Lösel (2012), above n 117, 90–91.

164. See for example, Diana F. Johns et al., 'Ecological Youth Justice: Understanding the Social Ecology of Young People's Prolific Offending' (2017) 17(1) *Youth Justice* 3, 3.

3. What sentencing options are available in Victoria to address young adult offenders' offending?

Overview

- 3.1 This chapter describes how youth is treated as a factor in sentencing persons aged over 18 in the adult criminal justice system. It also provides an overview of the operation of Victoria's dual track system for sentencing young offenders aged 18 to 20. The dual track system allows a court, in certain circumstances, to make a youth justice centre order (YJCO) in respect of an offender aged under 21 at the time of sentencing, sending them to a specialised youth justice centre instead of an adult prison.¹⁶⁵
- 3.2 The chapter also discusses the sentencing options currently available to the courts when sentencing young adult offenders,¹⁶⁶ including general sentencing options as well as those targeted specifically at young adult offenders.

Youth as a factor in sentencing

- 3.3 Victoria's criminal justice system recognises young adults as distinct from children and older adults in a number of ways.

Legislative framework

- 3.4 At a statutory level, legislation distinguishes between children and young offenders:
- A child, for the purposes of the Children's Court, is aged 10 or older but is aged under 18 at the time of an offence, and aged under 19 when court proceedings begin.¹⁶⁷ Children are usually sentenced in the Children's Court under the *Children, Youth and Families Act 2005* (Vic).¹⁶⁸
 - A young offender is aged over 18 but under 21 at the time of sentencing.¹⁶⁹ Young offenders are generally sentenced in adult courts under the *Sentencing Act 1991* (Vic).¹⁷⁰ Young offenders cannot be sentenced as 'serious offenders' under Part 2A of the *Sentencing Act 1991* (Vic).¹⁷¹

165. *Sentencing Act 1991* (Vic) ss 3(1) (definition of 'young offender'), 32.

166. In this report, 'young adult offender' refers to a person aged 18 to 25 who has been found guilty of a criminal offence.

167. *Children, Youth and Families Act 2005* (Vic) s 3(1) (definition of 'child'); *Sentencing Act 1991* (Vic) s 3(1) (definition of 'child').

168. However, there are some circumstances in which a child can be sentenced in the adult jurisdiction. Murder, attempted murder and some other culpable homicide offences must be determined in the higher courts. If a child is charged with an indictable offence, they may elect to stand trial in an adult court; the Children's Court may otherwise determine that the charges involve exceptional circumstances and determining the matter summarily in the Children's Court is not appropriate. If a child is charged with certain specified serious offences, the court must not determine the charge summarily unless certain conditions are met: *Children, Youth and Families Act 2005* (Vic) ss 356, 516, 516A. If a child is sentenced by the Supreme Court or County Court, that court may sentence the child as either an adult or a youth: *Children, Youth and Families Act 2005* (Vic) s 586.

169. *Sentencing Act 1991* (Vic) s 3(1) (definition of 'young offender').

170. As noted, someone who is 18 years old may be sentenced in the Children's Court if they committed the offence prior to their 18th birthday: *Children, Youth and Families Act 2005* (Vic) s 3(1) (definition of 'child').

171. *Sentencing Act 1991* (Vic) s 6B(2). A 'serious offender' is an offender who has been found guilty of a designated serious sexual, violent, drug or arson offence: *Sentencing Act 1991* (Vic) s 6B(3).

- Offenders aged over 21 who are still young and immature have no special statutory status. However, the case law generally recognises youth and immaturity as factors to be considered in mitigation, particularly for offenders aged up to approximately 25.¹⁷² These offenders are sometimes referred to as 'youthful offenders'.¹⁷³

Case law

- 3.5 When sentencing any offender, the courts must take into account a number of purposes, factors and principles, and consider the circumstances of the offending and the offender. Relevant purposes include just punishment, deterrence (both specific and general), denunciation, the protection of the community and rehabilitation.¹⁷⁴

Sentencing factors for young adult offenders

- 3.6 Maturity-related considerations are relevant to all aspects of sentencing a young adult, including the decision as to which sanction to apply, the term of the sentence, the judge's assessment of how serious a combination of offences is in totality, and the imposition and length of any non-parole period.¹⁷⁵
- 3.7 In *R v Mills*, the Court of Appeal summarised three key principles relevant to the sentencing of young adult offenders aged 18 to approximately 25:
- An offender's youth, particularly on a first offence, is a primary consideration for a sentencing court.
 - Rehabilitation is usually far more important than general deterrence because punishment may in fact lead to further offending. Rehabilitation benefits the community as well as the offender.
 - A young adult offender is not to be sent to an adult prison unless that is unavoidable, especially if they are beginning to appreciate the effect of their past criminality. When a young adult offender is sent to adult prison, a shorter sentence may be justified.¹⁷⁶
- 3.8 When sentencing young adult offenders, the courts consider youth and immaturity to be relevant circumstances when determining which sentence is proportionate and which other cases are appropriate comparators. Immaturity means that young adult offenders:
- are therefore 'more prone to ill-considered or rash decisions'. They 'may lack the degree of insight, judgment and self-control that is possessed by an adult'. They may not fully appreciate the nature, seriousness and consequences of their criminal conduct.¹⁷⁷
- 3.9 Therefore, younger offenders may be less morally culpable than older offenders, even for similar crimes.¹⁷⁸ This can result in a shorter sentence or a shorter non-parole period.

172. See for example, *R v Mills* [1998] 4 VR 235, 241–242. See also *Azzopardi v The Queen* [2011] VSCA 372 (18 November 2011) [34]–[43]; *DPP v Lawrence* [2004] VSCA 154 (19 August 2004) [16]; *Nancarrow v The Queen* [2010] VSCA 300 (9 November 2011) [18]–[22]; *DPP v Neethling* [2009] VSCA 116 (1 June 2009) [51]–[55]. There is no strict upper limit, and some case law suggests that, in rare cases, offenders who are further into their twenties may also receive the benefit of these principles, although it is a 'stretch' to suggest they apply to a 28-year-old offender: *Huynh v The Queen* [2017] VSCA 216 (25 August 2017) [51]. For an example of an offender at the older end of the age range receiving a more lenient sentence due to special circumstances (intellectual capacity), see *DPP v Lovett* [2008] VSCA 262 (11 December 2008) [37]. For ease of reference, and because it is the most commonly used cut-off, this report treats the age of 25 as an upper limit.

173. This terminology is used to distinguish youthful offenders from children aged under 18 or from young offenders to whom YJCOs are available: see for example, *R v Mills* [1998] 4 VR 235, 241.

174. *Sentencing Act 1991* (Vic) s 5(1).

175. *Azzopardi v The Queen* [2011] VSCA 372 (18 November 2011) [54].

176. *R v Mills* [1998] 4 VR 235, 241. See also *Azzopardi v The Queen* [2011] VSCA 372 (18 November 2011) [34]–[36].

177. *Azzopardi v The Queen* [2011] VSCA 372 (18 November 2011) [34].

178. See *DPP v SJK* [2002] VSCA 131 (23 August 2002) [61].

- 3.10 Alternatively, judges may choose to impose a YJCO (where the offender is eligible) or a community correction order (CCO) instead of imprisonment (provided that no statutory limitations apply),¹⁷⁹ even for relatively serious crimes.¹⁸⁰ These orders are discussed in more detail at [3.52] and [3.81] respectively.

Rehabilitation and previous convictions

- 3.11 The courts consider rehabilitation to be particularly important for young adult offenders, and they recognise that young adult offenders may be particularly susceptible to undesirable influences in adult prisons, impeding rehabilitation.¹⁸¹
- 3.12 Offending that demonstrates a failure to make progress despite previous lenient treatment may undermine the prominence of rehabilitation and suggest that deterrence should take precedence.¹⁸² Courts also place a greater emphasis on deterrence and denunciation for serious offences commonly committed by young adult offenders. For example, in a case involving a young adult offender sentenced for culpable driving causing death, the Court of Appeal said:
- It is precisely because of the tendency of young drivers to drive dangerously that general deterrence must be regarded as of great importance, and youth must be given relatively less weight.¹⁸³

Circumstances in which the relevance of an offender's youth decreases

- 3.13 Although an offender's youth is generally relevant to the sentencing process, there are cases in which the relevance of youth is outweighed by other factors, such as the need for deterrence and just punishment.
- 3.14 Generally, the more serious the offending is and the less it appears to be attributable to features of immaturity such as impulsivity and lack of foresight, the less a court will focus on the offender's youth and the more a court will assign importance to just punishment, denunciation, deterrence and the protection of the community.¹⁸⁴
- 3.15 Offending that displays impulsivity, a lack of understanding of the consequences or a lack of insight is typical of immaturity; offending that demonstrates a high degree of malice, premeditation or intent is not.¹⁸⁵
- 3.16 For certain specific offences, including manslaughter and terrorism offences, the courts have noted that the relevance of an offender's youth is of less weight due to the seriousness of the offending and the need for just punishment and community protection. For example, in the recent case of *R v Shoma*, in which the offender had engaged in a terrorist act, the Supreme Court reiterated:
- [w]hilst youth is relevant to determining the weight to be given to general deterrence and denunciation in the sentencing equation, its weight is diminished quite measurably in terrorist cases where the offender participates in, plans or carries out actions of extreme violence.

179. For certain 'Category 1 and 2' offences, a court must impose a custodial order unless 'special reasons' or 'substantial and compelling circumstances' exist: *Sentencing Act 1991* (Vic) ss 5(2G)–5(2HC). See further Sentencing Advisory Council, *Guide to Sentencing Schemes in Victoria* (2018) 2–3.

180. *Boulton v The Queen* [2014] VSCA 342 (22 December 2014); see particularly [131]–[134]; Appendix I, [1]. In the case of YJCOs, although they can be used as an alternative to imprisonment, the maximum term may, in practical terms, exclude their application to offending that would attract a term of custody longer than that limit: see for example, *R v PP* [2003] VSCA 100 (7 August 2003) [11].

181. *R v Mills* [1998] 4 VR 235, 241; *Azzopardi v The Queen* [2011] VSCA 372 (18 November 2011) [36]. See also *Huynh v The Queen* [2017] VSCA 216 (25 August 2017) [51]; *Pitone v The Queen* [2017] VSCA 3 (25 January 2017) [20].

182. *DPP v Lawrence* [2004] VSCA 154 (19 August 2004) [21]–[22]. See also *Nancarrow v The Queen* [2010] VSCA 300 (9 November 2011) [21].

183. *DPP v Neethling* [2009] VSCA 116 (1 June 2009) [55].

184. See *DPP v Anderson* [2013] VSCA 45 (7 March 2013) [56]–[57].

185. See for example, *DPP v SJK* [2002] VSCA 131 (23 August 2002) [61]–[66].

The protection of society, and the upholding of its most fundamental values, necessitates that in terrorist cases, the sentencing considerations of general deterrence and denunciation must be given primacy above the ameliorating effect of youth.¹⁸⁶

- 3.17 Further, in a case involving recklessly causing serious injury (by glassing), the Court of Appeal stated:

[t]here is a particular reason why, with this offence, youthfulness of an offender cannot be of much significance. This is that ... the persons who commit the offence ... are predominantly youths and young men acting under the influence of alcohol or drugs or both.¹⁸⁷

- 3.18 Additionally, the older the offender, the less weight given to their age as a factor justifying leniency.¹⁸⁸ The Court of Appeal has stated that, although there is no set age at which an offender is, by definition, not youthful, it would be a 'stretch' to consider a 28-year-old 'a relatively youthful offender'.¹⁸⁹

- 3.19 Nonetheless, even if youth becomes a less important consideration, it is rare that it becomes irrelevant. As the Court of Appeal has stated:

only in the circumstances of the gravest criminal offending and where there is no realistic prospect of rehabilitation may the mitigatory consideration of youth be viewed as all but extinguished.¹⁹⁰

Limitations to the current treatment of youth as a factor in sentencing

- 3.20 The case law on youth as a factor in sentencing relies on three main general findings:

- young adult offenders are more impulsive and less able to control their behaviour than older adult offenders, so that their actions are less likely to be premeditated or malicious;¹⁹¹
- young adult offenders are less able to consider the consequences of their actions, and therefore the moral culpability of a young adult offender may be less than that of a mature offender, even where the offence appears malicious or planned;¹⁹² and
- young adult offenders are more amenable to treatment and rehabilitation than older adults.¹⁹³

- 3.21 Broadly, these principles are well supported by the evidence (as outlined in Chapter 2), although there may be disagreement about the relevance and proper application of each principle in any given case.

- 3.22 As discussed at [2.7], young adults are more impulsive, more susceptible to peer pressure and less able to grasp the consequences of their actions, especially in emotional contexts. There is also some evidence that rehabilitation may be more effective for young adults than for adults aged over 25.¹⁹⁴

186. *R v Shoma* [2019] VSC 367 (5 June 2019) [170].

187. *DPP v Lawrence* [2004] VSCA 154 (19 August 2004) [22].

188. *R v Mills* [1998] 4 VR 235, 241; *DPP v Lovett* [2008] VSCA 262 (11 December 2008) [20].

189. *Huynh v The Queen* [2017] VSCA 216 (25 August 2017) [51]–[52].

190. *Azzopardi v The Queen* [2011] VSCA 372 (18 November 2011) [44]. The case involved a number of serious charges relating to completed and attempted armed robberies; the offenders' sentences were nonetheless reduced, partly because the judge at first instance had failed to give sufficient weight to their youth.

191. *Azzopardi v The Queen* [2011] VSCA 372 (18 November 2011) [34]; *R v McGaffin* [2010] SASFC 22 (17 August 2010) [69].

192. *Azzopardi v The Queen* [2011] VSCA 372 (18 November 2011) [34]. See also *DPP v SJK* [2002] VSCA 131 (23 August 2002) [61].

193. *Azzopardi v The Queen* [2011] VSCA 372 (18 November 2011) [35]–[36]; *R v Lam* [2005] VSC 495 (23 December 2005) [32]–[34].

194. See further [2.45]–[2.62]. See also Chu and Ogloff (2011), above n 74, 335.

Assessing the relevance of an offender's youth and psychosocial development

- 3.23 In the absence of an expert report, a court's assessment of an offender's psychosocial maturity is often based on the judicial officer's impressions of the offender and the offending conduct.¹⁹⁵ This can mean that judicial officers may lack relevant information or context, and different judicial officers may give different weight to the relevance of youth as a sentencing factor in a given case.
- 3.24 As discussed from [3.13], youth is taken to be less determinative where the crime is particularly serious, especially where it involves a high degree of premeditation;¹⁹⁶ where the offender has received previous community-based or short sentences;¹⁹⁷ and where the crime is one commonly committed by young adult offenders (applying a general deterrence rationale).¹⁹⁸
- 3.25 Highly premeditated crimes tend to fit the framework for maturity in that they are not impulsive, and they tend to involve a degree of logical consideration of actions and their consequences.¹⁹⁹ However, young adult offenders committing premeditated crimes may still be doing so with increased vulnerability to peer pressure and 'coercive circumstances'.²⁰⁰ They may also fail to fully appreciate the gravity of the consequences of their actions, even if they are able to consider those consequences in an academic way.²⁰¹ This suggests that the established case law, which says that the importance of youth diminishes (but does not disappear) for these types of crimes, is appropriate.

Rehabilitation and access to therapeutic programs

- 3.26 The issues of previous lenient treatment and rehabilitation are complex. The assumption underlying this rationale is that young adult offenders who have received previous community-based sentences, YJCOs or short prison sentences have had a chance to reform themselves.²⁰² However, in reality, not all young adult offenders who receive these types of sentences will receive targeted rehabilitation services.²⁰³ Indeed, in consultation, stakeholders suggested that it would be rare for an offender to undergo any offence-specific programs before receiving a prison sentence, because the evidence-based, offence-specific programs currently offered by Corrections Victoria require elements that could be problematic during the court process, including an admission of guilt and placement in a prison that offers the relevant program.²⁰⁴ Consultation also suggested that sentences of less than approximately 12 to 18 months are generally too short for an offender to receive, and see the effects of, such a program.²⁰⁵

195. Pre-sentence reports are required where a youth justice centre order is being considered, but not required where imprisonment is being considered: *Sentencing Act 1991* (Vic) s 8A(2).

196. *DPP v Anderson* [2013] VSCA 45 (7 March 2013) [56]–[58]; *DPP v SJK* [2002] VSCA 131 (23 August 2002) [61]–[66]; *R v Shoma* [2019] VSC 367 (5 June 2019) [170]; *DPP v Lawrence* [2004] VSCA 154 (19 August 2004) [22]; *Azzopardi v The Queen* [2011] VSCA 372 (18 November 2011) [38]–[39].

197. *R v Mills* [1998] 4 VR 235, 241. See also *DPP v Lawrence* [2004] VSCA 154 (19 August 2004) [16], [22]; *Huynh v The Queen* [2017] VSCA 216 (25 August 2017) [52].

198. *DPP v Lawrence* [2004] VSCA 154 (19 August 2004) [22]; *Azzopardi v The Queen* [2011] VSCA 372 (18 November 2011) [41]–[43].

199. See for example, *DPP v Anderson* [2013] VSCA 45 (7 March 2013) [56]–[57].

200. Chu and Ogloff (2011), above n 74, 337.

201. Steinberg (2008), above n 5, 97.

202. See *DPP v Lawrence* [2004] VSCA 154 (19 August 2004) [16], [22].

203. For example, a key deficiency of service delivery in youth justice centres is that the average length of stay is shorter than waiting times for some key services: Victorian Auditor-General's Office (2018), above n 12, 40–47, 61–67.

204. Meeting with Corrections Victoria (30 July 2019).

205. Meeting with Corrections Victoria (30 July 2019).

- 3.27 Further, the research suggests, and stakeholders agreed, that short-term custodial sentences can be particularly counterproductive, combining a lack of opportunity for rehabilitative interventions with the general problems of imprisonment in terms of exposure to more experienced criminals and disruption of support networks.²⁰⁶ It is therefore problematic for courts to assume that such 'lenient' treatment should have led to rehabilitation or reform.
- 3.28 Similarly, the use of a deterrent approach to sentencing offences commonly committed by young adult offenders is problematic because it conflicts with the general approach that typically youthful behaviour demonstrates immaturity and attracts lenient treatment. If this approach is to be abandoned in favour of a general deterrent approach, it should be supported by some empirical evidence that such an approach does, in fact, have the desired effect, so as not to undermine the general philosophy of the jurisprudence on youth. At present, the evidence does not suggest that deterrence is effective, particularly for offenders who make decisions in ways that are not rational.²⁰⁷ On the other hand, increases in the certainty of apprehension and punishment do have a significant deterrent effect.²⁰⁸

Imprisonment for young adult offenders

- 3.29 When an offender is sentenced to imprisonment, their sentence includes a head sentence and may also include a non-parole period.²⁰⁹ An offender cannot be paroled and released until the non-parole period expires.²¹⁰ Time spent on remand before trial or sentence is considered time served and is deducted from the time an offender spends in prison after sentence.²¹¹
- 3.30 The number of young adult offenders detained in adult prisons is growing. From 2013 to 2017, the number of young adult offenders (aged 18 to 24) detained in adult prisons grew from 679 to 861,²¹² representing a 27% increase. In June 2018, the number stood at 877.²¹³ This increase is occurring despite the decrease in the number of young adult offenders sentenced over the last five years in Victoria (see Figures 9 and 11, pages 46 and 47). It appears to be primarily driven by growth in the number of prisoners on remand.²¹⁴

206. See for example, Julie Trebilcock, *No Winners: The Reality of Short Term Prison Sentences* (2016) 37–38; Duncan Stewart, *The Problems and Needs of Newly Sentenced Prisoners: Results from a National Survey*, Ministry of Justice Research Series no. 16/08 (2008) i. See also Joanna J. J. Wang and Suzanne Poynton, *Intensive Correction Orders Versus Short Prison Sentences: A Comparison of Re-Offending*, *Crime and Justice Bulletin* no. 207 (2017) 9–10.

207. Sentencing Advisory Council (2011), above n 119, 12–15. Young adult offenders, by virtue of their immaturity, are less than rational decision-makers and are therefore less likely than other groups to be influenced by deterrent approaches. There is also evidence that the general Australian public, including Victorians, views rehabilitation as a particularly important factor in sentencing younger offenders (although research rarely investigates the relevance of this finding to the 18 to 25 age group): see Sentencing Advisory Council, *Public Opinion About Sentencing: A Research Overview* (2018) 6–7; Geraldine Mackenzie et al., 'Sentencing and Public Confidence' (2012) 45(1) *Australian and New Zealand Journal of Criminology* 45, 53–57. Victorians also tend to sentence more leniently than judges when presented with the details of a case, even though when surveyed without context they state that judges sentence too leniently: Kate Warner et al., 'Measuring Jurors' Views on Sentencing: Results from the Second Australian Jury Sentencing Study (2016) 19(2) *Punishment and Society* 180, 193–194.

208. Sentencing Advisory Council (2011), above n 119, 16.

209. *Sentencing Act 1991* (Vic) s 11. Non-parole periods must be imposed for sentences of imprisonment longer than two years and may be imposed for sentences between one and two years.

210. *Corrections Act 1986* (Vic) s 74.

211. Pre-sentence detention must be recognised as a period of imprisonment already served under sentence unless the sentencing court, or the court fixing a non-parole period in respect of the sentence, orders otherwise: *Sentencing Act 1991* (Vic) s 18.

212. Australian Bureau of Statistics, *Prisoners in Australia*, cat. no. 4517.0 (2013) Table 21; Australian Bureau of Statistics, *Prisoners in Australia*, cat. no. 4517.0 (2017) Table 21.

213. Australian Bureau of Statistics, *Prisoners in Australia*, cat. no. 4517.0 (2018) Table 21.

214. While the Australian Bureau of Statistics does not publish data on the age distribution of unsentenced prisoners, the rate of unsentenced prisoners has grown rapidly overall. In 2013, 954 of 5,340 prisoners were unsentenced (18%), in 2017, 2,223 of 7,149 prisoners were unsentenced (31%) and in 2018, 2,708 of 7,666 prisoners were unsentenced (35%): Australian Bureau of Statistics (2013), above n 212, Tables 21, 31; Australian Bureau of Statistics (2017), above n 212, Tables 21, 31; Australian Bureau of Statistics (2018), above n 213, Tables 21, 31.

Correctional policies

- 3.31 In adult correctional facilities in Victoria, prisoners are given a security classification and sent to particular prisons and units based on the nature of the offence, a range of risk factors and their circumstances.²¹⁵ Corrections Victoria tries to place prisoners in a facility that has adequate resources to address needs such as medical conditions and drug and alcohol problems, as well as risk. Where possible, placements aim to maintain social support networks, for example, by keeping prisoners close to their families.²¹⁶ Different prisons offer different educational and rehabilitation programs, and different levels of transition support to prepare prisoners for release. Offenders may be moved to different prisons over the course of their sentence to optimise access to available programs.²¹⁷

Facilities and programs for young adult offenders

- 3.32 Corrections Victoria operates two specialist units offering services for young adult male prisoners: the Penhyn Unit at Port Phillip Prison (maximum security, 35 beds)²¹⁸ and the Nalu Unit at Fulham Correctional Centre (minimum security, 68 beds).²¹⁹ Community Two at Ravenhall Correctional Centre now has several areas of focus, one of which is young adult prisoners. However, consultation suggested that youth was not a key concern of the unit.²²⁰
- 3.33 Outside the specialist units, there are few services targeted specifically at young adult offenders, although stakeholder consultation suggested that, if an offender wished to undertake a specific program, they would usually be able to do so.²²¹

Penhyn Unit, Port Phillip Prison

- 3.34 The Penhyn Unit gives priority to young adult prisoners aged under 21, meaning it has limited availability for those aged 21 and over.²²² This unit is aimed at particularly vulnerable young adult prisoners as it seeks to reduce their risk of suicide and self-harm. It is only available to those with 'minimal history of prior incarceration in adult prisons' who display a willingness to participate in the unit program and abide by the unit rules.²²³
- 3.35 Prisoners at Penhyn receive tailored programs and must abide by rules that do not apply elsewhere in the prison system (or elsewhere in Port Phillip Prison). They also benefit from a mentoring program, virtual family visits through Skype and additional pre- and post-release support, including help with employment.²²⁴ Young adult prisoners in this unit take part in the Serving Time program, a small business education program that teaches prisoners both practical and business skills through a functioning screen printing business operating out of the unit.²²⁵

215. Corrections Victoria, *Sentence Management Manual: Part 2* (2018) ('AC 5 – Developing a Prisoner's Placement', [2.0]).

216. Ibid ('AC 5 – Developing a Prisoner's Placement', [2.4], [2.6], [2.10]).

217. Meeting with Corrections Victoria (30 July 2019).

218. Meeting with Corrections Victoria (30 July 2019); Corrections Victoria (2018), above n 215, AC 5, subpart 2.13.

219. Meeting with Corrections Victoria (30 July 2019); Corrections Victoria (2018), above n 215, AC 5, subpart 2.13; Corrections Victoria, 'Fulham Correctional Centre' (corrections.vic.gov.au, 2019) <<https://www.corrections.vic.gov.au/prisons/fulham-correctional-centre>> at 8 October 2019. However, Nalu's emphasis on the young adult age group has recently been eroded: Victorian Ombudsman (2015), above n 49, 101.

220. Corrections Victoria (2018), above n 215 ('AC 5 – Developing a Prisoner's Placement', [2.13]); Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

221. Meeting with Corrections Victoria (30 July 2019).

222. Corrections Victoria (2018), above n 215 ('AC 5 – Developing a Prisoner's Placement', [2.13]).

223. Ibid. The fact that the unit is situated within a maximum security facility renders many young adult offenders ineligible for the unit.

224. Victorian Ombudsman (2015), above n 49, 100.

225. Serving Time, 'Serving Time Inc.' (servingtime.org, 2019) <<https://www.servingtime.org/>> at 8 October 2019. Profits are donated to causes such as the Royal Children's Hospital.

- 3.36 The Penhyn Unit has achieved good results in reducing recidivism.²²⁶ Additionally, a Monash University evaluation found that, compared with mainstream units, the unit was safer, had a more positive rehabilitation focus, operated according to best practice principles and was viewed positively by prisoners.²²⁷

Nalu Unit, Fulham Correctional Centre

- 3.37 The Nalu Unit is a minimum-security rehabilitation annexe to Fulham Prison based on self-management and personal responsibility.²²⁸ It initially catered for offenders aged 18 to 25, focusing on preparing prisoners for reintegration into the community, including through leadership and teamwork challenges, and relatively independent living.²²⁹ The age limit was later relaxed.²³⁰ During consultation, stakeholders noted that, while the Nalu Unit was set up to operate as a youth unit, there have been insufficient numbers of young adult prisoners who have met the criteria to fill the unit, so the eligibility criteria have been broadened. Therefore, the age range of the individuals it accommodates has widened.²³¹

Other specialist units

- 3.38 Youth is one of the seven focus areas of Ravenhall Correctional Centre, with part of an area set aside to support a specific youth response.²³² Young adult prisoner units tend to be small and tend to select a small subset of prisoners who are expected to cooperate with the special requirements of the unit and to be less entrenched in their criminal behaviour than the general population of a given facility.²³³

Limited availability of specialist units for young adult offenders

- 3.39 The number of beds available in specialist units is far smaller than the number of young adult prisoners. Penhyn Unit, the dedicated youth-specific unit, provides only 35 beds, while Nalu and Ravenhall provide approximately 100 additional beds in youth-focused units. There were 877 prisoners aged 18 to 24 in Victoria on 30 June 2018.²³⁴
- 3.40 Eligibility criteria for the specialist units are often very strict. For example, placements to Nalu are made based on assessments by staff at Fulham Correctional Centre.²³⁵ Prisoners in the Nalu Unit must be suitable for minimum security and, further, must be unlikely to attempt to escape, attempt to acquire drugs or otherwise break the rules of the unit.²³⁶ Consultation suggested that these criteria were strict enough that it is often difficult to find enough suitable prisoners to fill the unit.²³⁷

226. Victorian Ombudsman (2015), above n 49, 100, citing Christopher Trotter et al., *Evaluation of Port Phillip Prison Youth Unit 2012* (2012). Prisoners placed in the unit for more than 60 days had 32.5% recidivism rates within two years, compared with 41% for other prisoners. Stakeholders also viewed the unit as being highly effective: Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

227. Victorian Ombudsman (2015), above n 49, 100, citing Trotter et al. (2012), above n 226.

228. Victorian Ombudsman (2015), above n 49, 101.

229. Ibid; Corrections Victoria (2019), above n 219.

230. Victorian Ombudsman (2015), above n 49, 101.

231. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

232. Meeting with Corrections Victoria (30 July 2019).

233. Meeting with Corrections Victoria (30 July 2019).

234. Victorian Ombudsman (2015), above n 49, 100–101; Australian Bureau of Statistics (2017), above n 212, Table 21.

235. Corrections Victoria (2018), above n 215 ('AC 5 – Developing a Prisoner's Placement', [2.13]).

236. Meeting with Corrections Victoria (30 July 2019).

237. Meeting with Corrections Victoria (30 July 2019).

- 3.41 There are no specialist units available for young adult female prisoners in Victoria.²³⁸ This is particularly problematic because women in the criminal justice system tend to have added vulnerabilities, such as high rates of having been a victim of abuse or family violence.²³⁹
- 3.42 In practice, these limitations mean that the vast majority of young adult prisoners are not housed in a unit that caters specifically to their age group.²⁴⁰

Issues with the imprisonment of young adult offenders in adult custodial settings

Education

- 3.43 Adult prisons often offer fewer educational opportunities than youth justice centres. All detainees in youth justice centres are enrolled in Parkville College, a specialised government school that operates out of youth justice centres.²⁴¹ Parkville College has developed specialised materials and teaching strategies and has achieved impressive results with its students. This is particularly important because incarcerated young people have high rates of illiteracy and innumeracy, and low rates of completion of high school.²⁴² Detainees in youth justice centres are not required to participate in work programs.²⁴³
- 3.44 Parkville College does not operate out of adult prisons. Instead, there are various educational programs available to sentenced prisoners in adult prison, largely provided by the TAFE sector.²⁴⁴ However, the delivery of these programs has limitations. There is no requirement for young adult prisoners to undergo education. In addition, prisoners are obliged to participate in work programs.²⁴⁵ This means that education is a lower priority in adult imprisonment facilities in Victoria than it is in youth justice centres.
- 3.45 Stakeholders suggested that the provision of education by the TAFE sector rather than Parkville College might pose limitations, particularly for prisoners who have not finished Year 12, as the focus of the TAFE sector is on the Vocational Education and Training (VET) scheme rather than the Victorian Certificate of Applied Learning (VCAL) or the Victorian Certificate of Education (VCE).²⁴⁶ They noted that, compared with prison providers, Parkville College was 'well set up and hugely resourced'. Further, the fact that education was provided to all detainees on a compulsory basis was significant. One stakeholder, discussing young adult offenders in the adult prison system, noted:

238. Female young adult prisoners are initially sent to the Dame Phyllis Frost Centre, a maximum security prison in Ravenhall (but separate from Ravenhall Prison): Corrections Victoria (2018), above n 215 ('AC 5 – Developing a Prisoner's Placement', [2.13]).

239. Armytage and Ogloff (2017), above n 7, Part 2: 159–160. One stakeholder described young adult women who offend as being characterised primarily by 'desperation'.

240. A number of stakeholders who were cited in the Victorian Ombudsman's *Investigation into the Rehabilitation and Reintegration of Prisoners in Victoria* expressed approval for the Penhyn Unit. A 2012 Monash University study recommended that the model be expanded to other prisons, including those with medium and minimum-security classifications, and that repeat offenders be eligible for new units based on the model: Victorian Ombudsman (2015), above n 49, 100–101, citing Christopher Trotter et al. (2012), above n 226.

241. Victorian Auditor-General's Office (2018), above n 12, 49–50.

242. Ibid 17, 67–71, 87–88. Parkville College also has 18 places for recently released young people to keep them engaged with education: ibid 25.

243. The *Children, Youth and Families Act 2005* (Vic) does not contain a section equivalent to section 84H of the *Corrections Act 1986* (Vic), which allows the Secretary to direct prisoners to undertake work in prison.

244. Meeting with Corrections Victoria (30 July 2019).

245. Corrections Victoria, 'Work, Education and Training' (corrections.vic.gov.au, 2019) <<https://www.corrections.vic.gov.au/prison/going-to-prison/work-education-and-training>> at 8 October 2019. The power to direct prisoners and offenders to work comes from section 84H of the *Corrections Act 1986* (Vic).

246. Meeting with Corrections Victoria (30 July 2019).

Some of them will pick [education] up if they think they can achieve something within their sentence. If they're going to be released before the end of the program, you'd love for them to move straight into an educational institution on the outside, but many of them find other things to do. We create opportunities for them, we can get them access into TAFE courses and those sorts of things, and transition them, but very few of them will take that opportunity up.²⁴⁷

Interaction between young adult prisoners and older prisoners

- 3.46 As discussed from [2.49], exposure to older offenders, who often have much more extensive and serious criminal histories, puts young adult offenders' rehabilitation at risk. In relation to the risks of exposure to older prisoners, the Youth Development Officer at Port Phillip Prison has stated:

Especially for young men, when they hit rock bottom they go 'my life is over, I might as well give up, I can go no further down, I might as well die', and they lack the resilience and the ability to pick themselves up and keep going, because especially if they're in the older units, older prisoners will hook onto that and then even further downplay self-esteem, confidence.²⁴⁸

- 3.47 Imprisonment with older adults also raises serious safety issues for young adult offenders. The Ombudsman has noted that young adult prisoners are at risk of self-harm, suicide, bullying, grooming and negative behavioural influences from older prisoners,²⁴⁹ as well as finding that the adult prison system is 'particularly poorly equipped to deal with young people'.²⁵⁰

- 3.48 Corrections Victoria is required to take the age of a prisoner into account when making decisions, including about where to house a prisoner. Consultation revealed that age is one of many factors that can be taken into account in determining the vulnerability of a prisoner; others might include physical vulnerability, criminal history and other factors relating to a person's background.²⁵¹

- 3.49 Unlike in youth justice centres, in adult prisons there is significant interaction between prisoners of different risk profiles. The exact amount of potential contact varies from prison to prison, but broadly, prisoners are most strictly separated in their accommodation. During the day, prisoners of different profiles may mix in work placements, education or, in some prisons, in the yard, before separating again for the night.²⁵²

'Because of the principles we operate by, in terms of responsibility and leadership, consequences, making well thought out, balanced decisions ... caring about each other, caring about their community, caring about their victim ... understanding empathy ... all of those things ... the longer you can keep someone on that path ... on a day-to-day basis, the more then that becomes entrenched into their behaviour, rather than being influenced negatively by older prisoners who are going to drag them down a path they don't want to go.'

**Youth Development Officer, Penhyn Unit,
Port Phillip Prison**

Source: Victorian Ombudsman, *Investigation into the Rehabilitation and Reintegration of Prisoners in Victoria* (2015) 100.

247. Meeting with Corrections Victoria (30 July 2019).

248. Quoted in Victorian Ombudsman (2015), above n 49, 98.

249. Ibid 98.

250. Victorian Ombudsman (2019), above n 13, 22.

251. Meeting with Corrections Victoria (30 July 2019). For prisoners aged under 18, age is specifically set out in the regulations as a factor that may be considered: *Corrections Regulations 2019* (Vic) rr 30(1)(b)(vii), 31(h). For prisoners aged over 18, age is not specifically noted, but it may be considered under provisions that allow consideration of 'any other matter' relevant to the decision: *Corrections Regulations 2019* (Vic) rr 30(1)(b)(viii), 31(o).

252. Meeting with Corrections Victoria (30 July 2019).

Beyond the safety risks posed to young adult offenders, this also increases the likelihood of young adult offenders developing peer group connections within the prison context, which is likely to have a criminogenic effect.

- 3.50 As discussed further at [4.33]–[4.34], there is evidence that Victorian judicial officers are mindful of the risks that imprisonment may present for some young adult offenders.
- 3.51 The negative effects of exposure to older prisoners could be mitigated by the use of specialist units. However, as noted at [3.32], the programs that are offered for young adult offenders are only available to a very small proportion of young adult male prisoners.

Youth justice centre orders for young offenders under the dual track system

Victoria's dual track system

- 3.52 Victoria's dual track system, which has existed in some form since 1960,²⁵³ allows certain young offenders aged 18 to 20 to be sentenced to a YJCO. This order means that young offenders aged 18 to 20 serve a custodial term in a youth justice centre with children and other young people, rather than in an adult prison.
- 3.53 The aim of the dual track system is to promote the rehabilitation of young offenders, while also serving the other purposes of sentencing, such as just punishment and deterrence.²⁵⁴
- 3.54 A young offender aged 18 to 20 may be eligible for a YJCO where the offending is serious enough to justify a custodial sentence, but the court believes the offender either:
- has reasonable prospects for rehabilitation; or
 - is particularly impressionable, immature or likely to be subjected to undesirable influences in an adult prison.²⁵⁵
- 3.55 As discussed at [3.43], youth justice centres offer more educational opportunities than prison. Young adult offenders who are sentenced to a YJCO are protected from the potential criminogenic influences of being in adult imprisonment alongside older offenders. There are also significant differences in the approach and principles underpinning the youth justice system, and the provision of services that mirror normal aspects of life in the community, such as schooling and opportunities to engage in trades, such as carpentry.²⁵⁶
- 3.56 Youth justice centres have a particular focus on transition to the community. Under current practice guidelines, a case planning meeting must be held within five days of a young adult's arrival into a youth justice centre. This applies whether the young adult involved is a sentenced young offender or is being held on remand. At this meeting, services and programs are planned with a view to an eventual, successful transition to the community. This involves important figures in the individual's life, including parents or (where appropriate) child protection workers.

253. However, important changes to the treatment of children in protective custody, and to the rehabilitative aspects of the system, took place in 1989: Legislative Council Legal and Social Issues Committee, Parliament of Victoria (2018), above n 14, 3–4. The report also notes that youth justice was provided in Victoria as far back as 1864, although the system and its historical and cultural context at that point were significantly different from those of today. Dual track was introduced in some form in 1960, and major reform in 1989 moved focus to rehabilitation and decoupled rehabilitation from the care system. The current system was introduced by the *Children, Youth and Families Act 2005* (Vic), which modernised the 1989 legislation.

254. *R v PP* [2003] VSCA 100 (7 August 2003) [9]; Arie Freiberg, Fox & Freiberg's *Sentencing: State and Federal Law in Victoria* (2014) 773, 775–776.

255. *Sentencing Act 1991* (Vic) s 32(1).

256. Legislative Council Legal and Social Issues Committee, Parliament of Victoria (2018), above n 14, 97–99; Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

This type of transition planning is also undertaken for remand detainees in anticipation of their release on bail, with a particular emphasis on the practical aspects of the transition from remand to bail.²⁵⁷ Transition services can be provided even after a young offender's sentence or parole has expired, in order to protect links with community supports and reduce the risk of reoffending.²⁵⁸

Requirements for imposing a youth justice centre order on a young adult offender

- 3.57 In deciding whether a young offender aged 18 to 20 is eligible for a YJCO, the court must have regard to the nature of the offence as well as the offender's age, character and past history.²⁵⁹ It must first order a pre-sentence report to be made in respect of the offender.²⁶⁰ Such reports may describe matters including the offender's social history and background, medical and psychiatric history, substance use history, educational background and the circumstances of prior offending (if known to the court). The report also highlights any courses, programs, treatment or other assistance that could be beneficial to the offender.²⁶¹
- 3.58 The Magistrates' Court has the power to direct that a young offender be detained for up to two years on a YJCO, while the higher courts can order detention on a YJCO for up to four years.²⁶²

Youth justice centre orders for young adult offenders and the sentencing hierarchy

- 3.59 In the sentencing hierarchy, the YJCO sits below other custodial dispositions (such as imprisonment), but above non-custodial dispositions such as the CCO.²⁶³ This means that a YJCO must only be made where non-custodial options are considered inappropriate. It therefore serves as an alternative disposition for some offending that would otherwise attract another custodial sentence, such as imprisonment. Currently, under half of young offenders sentenced to immediate custodial sentences receive a YJCO (see [4.35]–[4.37]).
- 3.60 YJCOs are seen as valuable in separating young offenders aged 18 to 20 from older adults in prison. They also take into account young offenders' needs for rehabilitation and education while still serving the sentencing purposes of punishment and protection of the community.²⁶⁴ Although there have been significant issues within youth justice centres in Victoria, they are generally regarded as somewhat less harsh, and less criminogenic, than prison because of this rehabilitative focus.²⁶⁵ In addition, as youth justice centres do not house older adults, young offenders are less likely to be exposed to negative influences from more entrenched offenders than they would be in adult prison.²⁶⁶
- 3.61 Offenders subject to a YJCO are sent to one of Victoria's two youth justice centres: men are accommodated at Malmsbury, and women are accommodated at Parkville.²⁶⁷

257. Department of Justice and Community Safety, 'Youth Justice Community Support Service' (justice.vic.gov.au, 2019) <<https://www.justice.vic.gov.au/justice-system/youth-justice/youth-justice-community-support-service>> at 8 October 2019.

258. Youth Parole Board, *Annual Report 2017–18* (2018) 22.

259. *Sentencing Act 1991* (Vic) s 32(2).

260. *Sentencing Act 1991* (Vic) s 32(1): the court must receive the pre-sentence report before making the order.

261. *Sentencing Act 1991* (Vic) s 8B.

262. *Sentencing Act 1991* (Vic) s 32(3).

263. *Sentencing Act 1991* (Vic) s 5.

264. *DPP v Anderson* [2013] VSCA 45 (7 March 2013) [36], [41]–[42], [63].

265. Legislative Council Legal and Social Issues Committee, Parliament of Victoria (2018), above n 14, 131.

266. See *Azzopardi v The Queen* [2011] VSCA 372 (18 November 2011) [36] on the effects of incarceration in an adult prison. However, there may be specific cases in which the opposite is true, for example, where an offender's co-offenders have already received a YJCO: see *Pitone v The Queen* [2017] VSCA 3 (25 January 2017) [14].

267. Boys and young men aged under 18 and girls and women aged under 21 are held at Parkville, while Malmsbury holds young men aged 15 to 20: Department of Justice and Community Safety, 'Custody in the Youth Justice System' (justice.vic.gov.au, 2019) <<https://www.justice.vic.gov.au/justice-system/youth-justice/custody-in-the-youth-justice-system>> at 8 October 2019. A new youth justice

3.62 The Youth Justice unit of the Department of Justice and Community Safety outlines the goals of youth justice centres as follows:

- safe and secure youth justice custodial facilities are provided for young people and staff;
- young people are rehabilitated with reduced likelihood of further offending;
- factors associated with offending are addressed through evidence-based programs; and
- young people with complex and challenging behaviours are provided with integrated and well-coordinated services that meet their individual needs.²⁶⁸

3.63 Recently, certain incidents and statistics have suggested that the youth justice centres may not be living up to these rehabilitative goals (see discussion from [3.70]).

Release on parole

3.64 For YJCOs, the court does not set a minimum term; the Youth Parole Board may release a young person on parole at any time during the term of the order.²⁶⁹ However, the Board must impose special, more restrictive conditions when granting parole to children and young offenders convicted of certain serious crimes committed when they were aged 16 or over.²⁷⁰ Parole can be cancelled at any time.²⁷¹

Transfers between youth justice centres and adult prison

3.65 Offenders sentenced to imprisonment or detention in a youth justice centre may be transferred between adult prison and youth detention, at the discretion of the Adult Parole Board and the Youth Parole Board respectively.²⁷² When sentencing a child or a young offender aged 18 to 20 to imprisonment, the court can express its view that the person should be transferred from prison to a youth justice centre. This may occur in cases in which the sentence length exceeds the court's jurisdiction to impose a YJCO.²⁷³ In 2017–18, one offender was transferred from a prison to a youth justice centre, while 18 offenders were transferred from a youth justice centre to prison.²⁷⁴

centre is planned at Cherry Creek, to open in 2021, with a mental health unit and at least eight beds for intensive supervision: Premier of Victoria, 'New Site for Youth Justice Facility', Media Release (15 March 2017) <<https://www.premier.vic.gov.au/new-site-for-youth-justice-facility/>> at 8 October 2019; Engage Victoria, 'Project Overview' (engage.vic.gov.au, 2019) <<https://engage.vic.gov.au/youthjusticecentre/youthjusticecentre-project-overview/>> at 8 October 2019. The new Cherry Creek facility will have 140 beds and will house male offenders aged 15 to 18: Minister for Corrections, 'Building a Safer and More Secure Youth Justice System', Media Release (27 September 2019) <<https://www.premier.vic.gov.au/building-a-safer-and-more-secure-youth-justice-system/>> at 8 October 2019.

268. Department of Justice and Community Safety, 'Youth Justice' (justice.vic.gov.au, 2018) <<https://www.justice.vic.gov.au/justice-system/youth-justice/>> at 8 October 2019.

269. *Sentencing Act 1991* (Vic) s 32. Unlike section 11, which deals with imprisonment, section 32 includes no requirement or option to impose a non-parole period. However, there are minimum sentence length requirements in respect of certain offences against emergency workers, custodial officers and youth justice custodial workers on duty. The Youth Parole Board's ability to release offenders subject to these requirements is restricted: *Sentencing Act 1991* (Vic) s 10AA; *Children, Youth and Families Act 2005* (Vic) s 458(1A).

270. *Children, Youth and Families Act 2005* (Vic) ss 458, 458A.

271. *Children, Youth and Families Act 2005* (Vic) s 460. Conditions can also be altered at any time, and an order can be revoked before the person is released: *Children, Youth and Families Act 2005* (Vic) ss 458(2), 458(5). There is a presumption that parole will be cancelled if the offender is charged with a terrorism-related offence, the offender receives a terrorism-related order, or the Board receives terrorism risk information that indicates the offender is at increased risk of reoffending: *Children, Youth and Families Act 2005* (Vic) ss 458, 458A.

272. *Children, Youth and Families Act 2005* (Vic) ss 467–469, 471, 473. See also Adult Parole Board of Victoria, 'Youth Justice Transfers' (adultparoleboard.vic.gov.au, 2017) <<https://www.adultparoleboard.vic.gov.au/parole-process/youth-justice-transfers/>> at 8 October 2019. When an offender is transferred from a youth justice centre to a prison, the court can also fix a non-parole period on the application of the offender or the Secretary: *Corrections Act 1986* (Vic) s 75. If no non-parole period is fixed, and there is no applicable restriction on parole because the offence is one against an emergency worker, custodial officer or youth justice custodial worker on duty, it is assumed that the person is immediately eligible for parole upon transfer: *Children, Youth and Families Act 2005* (Vic) ss 469(4)–(5); *Sentencing Act 1991* (Vic) s 10AA.

273. See for example, *Mansfield v The Queen* [2017] VSCA 220 (29 August 2017) [3], [43]; *DPP v Chambers* [2006] VSCA 189 (7 September 2006) [33]. The recommendation carries no formal weight, but it may be persuasive to the Board. The Adult Parole Board website notes that, in many cases, transfers from adult prison to youth justice detention are made where the court has made such a recommendation: Adult Parole Board of Victoria (2017), above n 272.

274. Adult Parole Board of Victoria, *Annual Report 2017–18* (2018) 45.

Recent legislative changes affecting youth justice centre orders

- 3.66 There have been a number of recent changes to the law in Victoria that tighten the circumstances in which a YJCO is available for young offenders aged 18 to 20:
- the classification of certain serious offences as Category A and Category B serious youth offences. Category A offences create presumptions against YJCOs unless 'exceptional circumstances' exist, as do Category B offences committed by those with one or more previous convictions for a Category A or B offence;²⁷⁵
 - the removal of psychosocial immaturity as a factor to be considered when determining whether there is a 'special reason' not to apply mandatory minimum non-parole periods for certain serious offences;²⁷⁶ and
 - the requirement that young offenders with good prospects for rehabilitation or who are otherwise vulnerable (but have not established a 'special reason') must now serve a minimum term on a YJCO for certain offences against emergency workers, if the court does not impose a sentence of imprisonment. Previously, good prospects for rehabilitation and vulnerability were sufficient to exclude the application of these mandatory minimum sentences.²⁷⁷

Issues with use of youth justice centre orders for young offenders

- 3.67 An analysis of young offenders who received a YJCO in the 2014–15 financial year reveals that the average total effective sentence was 10 months and 28 days (see [4.45]). Many young offenders on YJCOs spend less time than this in youth justice centres because of credit for time served on remand (including in an adult prison) and early release on parole.²⁷⁸
- 3.68 When offenders are sentenced to short custodial sentences, they may not be able to access or complete programs or interventions available in custody.²⁷⁹ Currently, many detainees in youth justice centres are not receiving the services they require before they are released.²⁸⁰
- 3.69 Few female offenders are held in youth justice centres, and they are required to be held separately from male offenders. The facilities housing female offenders can be limited, as can female offenders' access to some programs and services.²⁸¹

275. *Sentencing Act 1991* (Vic) ss 32(2C)–(2D); *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017* (Vic) ss 20–21. These offences include murder, manslaughter, rape, home invasion, carjacking and culpable driving causing death: *Sentencing Act 1991* (Vic) s 3 (definitions of 'Category A serious youth offence' and 'Category B serious youth offence').

276. *Sentencing Act 1991* (Vic) s 10A(2)(b), repealed by *Justice Legislation Miscellaneous Amendment Act 2018* (Vic) s 79(2). Previously, offenders could rely on a psychosocial immaturity that gave them a substantially diminished ability to regulate their behaviour in comparison with the norm for people the same age.

277. This applies to certain offences against emergency workers, including intentionally and recklessly causing serious injury: *Sentencing Act 1991* (Vic) s 10AA; *Sentencing Act 1991* (Vic) s 10A(2)(b), repealed by the *Justice Legislation Miscellaneous Amendment Act 2018* (Vic). Depending on the specific offence, minimum terms range from six months to three years.

278. A young adult on a YJCO may be released on parole before their sentence has expired: *Children, Youth and Families Act 2005* (Vic) s 458. See also *Sentencing Act 1991* (Vic) s 32. Time spent in custody before trial is deducted from a person's total effective sentence: *Sentencing Act 1991* (Vic) s 35. This figure does not account for time spent in youth justice centres by unsentenced young people on remand. The average length of stay in a youth justice centre for all sentenced and unsentenced persons (including children) held in youth justice centres is short, at 35 days: Victorian Auditor-General's Office (2018), above n 12, 47.

279. As such, some jurisdictions are restricting the use of short prison sentences. For example, Scotland has a presumption against short prison sentences, defined from July 2019 as 12 months or less (previously three months or less): *Criminal Procedure (Scotland) Act 1995* (Scotland); *Criminal Justice and Licensing (Scotland) Act 2010* (Scotland) s 17; *Presumption Against Short Periods of Imprisonment (Scotland) Order 2019* (Scotland).

280. Victorian Auditor-General's Office (2018), above n 12, 40–47, 61–67.

281. This is because many services are located close to or between the male offender units, meaning that female offenders must be accompanied to and from these services. This can increase the effect of lockdowns on female prisoners: Victorian Auditor-General's Office (2018), above n 12, 13, 70, 79, 82–83.

- 3.70 While the philosophy behind youth justice centres is that they promote a protective and rehabilitative approach, a number of recent reviews have suggested that practices and services within youth justice centres are not currently achieving those goals. Following the 2016 riots at youth justice facilities, two reviews raised a range of concerns: the Victorian Ombudsman's *Report on Youth Justice Facilities at the Grevillea Unit of Barwon Prison, Malmsbury and Parkville* and the Victorian Parliament's *Inquiry into Youth Justice Centres in Victoria*.²⁸² More broadly, the Armytage and Ogloff Youth Justice Review made comprehensive recommendations to enhance the efficacy of youth justice centres.²⁸³
- 3.71 The most recent such report is the Victorian Auditor-General's 2018 *Managing Rehabilitation Services in Youth Detention*. That report found that there were significant issues with the delivery of all services, meaning that it was 'unlikely that youth detention is promoting reduced reoffending'.²⁸⁴ In particular:
- case planning was inadequate, and many detainees did not receive adequate needs assessments, meaning that they would not be offered all the services they required;²⁸⁵
 - waiting lists for medical services, including psychiatric and psychological care, were excessive, often to the point that detainees could not access services they required before the end of their sentence.²⁸⁶ Additionally, screenings occurred too late, facilities were sometimes inadequate, and sessions were often interrupted by lockdown or cancelled because the young person could not be escorted to the appointment;²⁸⁷ and
 - absentee rates at Parkville College (the specialist high school that operates within youth justice centres and in which all detainees are automatically enrolled) were very high, at 66%.²⁸⁸ Department of Justice and Community Safety operational policies prevented Parkville College from offering female detainees the full range of education options.²⁸⁹
- 3.72 This report noted the existence of significant issues within the youth justice centres, while acknowledging work was currently being done to improve the standards of service delivery in youth justice centres. This work is aimed at avoiding replicating the issues with the existing centres in the new planned centre at Cherry Creek, albeit without major systemic change.²⁹⁰
- 3.73 Another issue is the potential for mixing different groups within youth justice centres, and the possible effect this may have on more vulnerable offenders. YJCOs have a minimum age of 16, a maximum age of 20 and a maximum term of four years; therefore, youth justice centres may house individuals aged 16 to 24. This is a significant age gap in terms of psychological maturation and social development. If these groups are not carefully handled, there is a risk that youth justice centres could expose younger or less serious offenders to the same types of criminogenic risk that they are intended to protect young offenders from.²⁹¹

282. Victorian Ombudsman (2017), above n 8; Legislative Council Legal and Social Issues Committee, Parliament of Victoria (2018), above n 14.

283. Armytage and Ogloff (2017), above n 7; Victorian Ombudsman (2015), above n 49.

284. Victorian Auditor-General's Office (2018), above n 12, 57.

285. Ibid 9–10, 36–51, 57–58.

286. Ibid 61–67.

287. Ibid 8, 10–11, 47.

288. Ibid 11.

289. These policies specified that girls and young women were not to move past boys' units; the hospitality, engineering and woodworking facilities are located between boys' units: *ibid* 13, 70.

290. Ibid 13–14, 37, 79–85; Engage Victoria, 'New Youth Justice Centre' (engage.vic.gov.au, 2019) <<https://engage.vic.gov.au/youthjusticecentre>> at 8 October 2019; Engage Victoria, 'Youth Justice Reforms' (engage.vic.gov.au, 2019) <<https://engage.vic.gov.au/youthjusticecentre/youth-justice-reforms>> at 8 October 2019; Department of Justice and Community Safety, 'Malmsbury Youth Justice Precinct' (justice.vic.gov.au, 2019) <<https://www.justice.vic.gov.au/malmsbury-precinct>> at 8 October 2019.

291. Currently, consistent with human rights obligations, male offenders' accommodation is split by age. However, this may not be applied to female offenders due to their small numbers: [3.69].

- 3.74 Similarly, youth justice centres house young people convicted of a wide range of different offences, which suggests that they also have a wide range of different risk levels. The Armytage and Ogloff Youth Justice Review expressed concern that youth justice centres, particularly Malmsbury, were increasingly becoming higher-security options housing more serious offenders, at the cost of less serious and more vulnerable offenders. They therefore recommended that courts be required to take into account the extent to which the young person would pose a risk of harm to others in the youth justice centre or be disruptive to the good order of the youth justice centre when considering whether to make a YJCO for a young offender aged 18 to 20.²⁹²
- 3.75 Although no such legislative amendment has been introduced, a new operating philosophy that notes the distinct developmental needs of children and young people was introduced in 2019.²⁹³

Other sentencing options

Drug treatment order

- 3.76 A drug treatment order (DTO) combines alcohol or other drug treatment with an unactivated sentence of imprisonment. The court imposes a sentence of up to two years' imprisonment, but it does not activate the term of imprisonment while the offender undergoes treatment and supervision.²⁹⁴ DTOs aim to reduce reoffending associated with drug use that is an underlying cause of criminal offending.²⁹⁵ They are only available where the court is satisfied that:
- imprisonment would otherwise be an appropriate sentence; but
 - the offender is dependent on alcohol or other drugs, and this dependency contributed to the offending; and
 - the offender is willing to, and capable of, complying with the treatment and supervision requirements of the order, and this conclusion is supported by the relevant screening and assessment reports.²⁹⁶
- 3.77 An offender on a DTO who successfully completes their treatment does not have to serve any time in prison, whereas an offender who fails to abide by the conditions of the order may have additional conditions imposed or have their sentence of imprisonment activated and serve time in prison.²⁹⁷
- 3.78 The most recent evaluation of DTOs suggested that they are mostly used for older offenders. During the review period, the youngest offender on a DTO was aged 22, and only 5% of those on the order were aged 18 to 24.²⁹⁸
- 3.79 A DTO can only be ordered by the Victorian Drug Court, which is currently a division of the Melbourne and Dandenong Magistrates' Courts only.²⁹⁹ A DTO cannot be made in respect of a conviction for a sexual or violent crime. It is not available to offenders who plead not guilty or offenders already on parole or under a sentence of a court other than the Magistrates' Court.³⁰⁰

292. Armytage and Ogloff (2017), above n 7, Part 2: 87–89.

293. Youth Justice, *An Operating Philosophy for Victoria's Youth Justice Centres* (2019) 1.

294. *Sentencing Act 1991* (Vic) ss 18ZC, 18ZD.

295. *Sentencing Act 1991* (Vic) s 18X.

296. *Sentencing Act 1991* (Vic) ss 18Z(3), 18ZQ.

297. *Sentencing Act 1991* (Vic) ss 18ZC–18ZP.

298. KPMG Government Advisory Services, *Evaluation of the Drug Court of Victoria: Final Report* (2014) 25.

299. *Sentencing Act 1991* (Vic) s 18Y; *Magistrates' Court Act 1989* (Vic) s 4A.

300. *Sentencing Act 1991* (Vic) s 18Z(1)–(2).

- 3.80 Offenders on a DTO have restrictions placed on their freedom of movement and association. They must undergo drug treatment, must meet regularly with the magistrate and counsellors, and may have to take drug tests, among other conditions.³⁰¹ DTOs are considered more restrictive than CCOs, but less restrictive than immediate custodial sentences.³⁰²

Community correction order

- 3.81 The CCO bridges the gap between custodial sentences and non-custodial sentencing options.³⁰³ The CCO is a flexible order that allows the court, with the consent of the offender, to impose a number of mandatory and optional conditions aimed at addressing the causes of a person's offending, as outlined in Table 1 (page 40).³⁰⁴
- 3.82 A CCO is available for a maximum term of one to five years, depending on the number of offences in respect of which it is made and the court sentencing the offender.³⁰⁵ The CCO can be imposed in conjunction with a term of imprisonment of up to 12 months, although it cannot be combined with a YJCO.³⁰⁶
- 3.83 In 2017–18, CCOs were the principal sentence imposed in 10% of cases that were sentenced in the adult courts in 2017–18 for all age groups. CCOs imposed on young adults aged 18 to 25 accounted for 23% of the total CCOs imposed in that year (2,300 orders in total).
- 3.84 The court must set a period, and impose conditions, that will meet the rehabilitative purposes of the CCO; this may include an 'intensive compliance period' during which the offender must complete one or more specific conditions before the period expires.³⁰⁷ However, a CCO can be longer than the period required for rehabilitation because a CCO is punitive as well as rehabilitative.³⁰⁸ The court must seek a pre-sentence report to help it establish which conditions to attach, and it can also seek advice as to the offender's needs, including treatment and rehabilitation needs.³⁰⁹
- 3.85 The CCO is available for most serious offences, although a CCO cannot be imposed for certain serious offences, including murder and rape.³¹⁰
- 3.86 Some conditions have punitive or deterrent effects as well as rehabilitative aims, including restrictions on offenders' freedom of movement and association. There are also inherently punitive and deterrent aspects to a CCO.³¹¹ However, the CCO is available with or without conviction, so if the offender successfully completes the CCO, they may not have a conviction recorded.³¹²

301. *Sentencing Act 1991* (Vic) ss 18ZF, 18ZG.

302. *Sentencing Act 1991* (Vic) s 5.

303. Previous sentencing options that bridged this gap were technically sentences of imprisonment, such as suspended sentences and intensive correction orders: *Boulton v The Queen* [2014] VSCA 342 (22 December 2014) [51]–[62]; *Sentencing Act 1991* (Vic) ss 5(2H)(e), 5(2HC), 5(2I).

304. *Sentencing Act 1991* (Vic) ss 37, 44A–48.

305. *Sentencing Act 1991* (Vic) ss 38–41A.

306. *Sentencing Act 1991* (Vic) s 44: this is provided that the term of imprisonment has no more than one year still to be served after deducting time served in pre-sentence detention.

307. *Sentencing Act 1991* (Vic) s 39.

308. *Boulton v The Queen* [2014] VSCA 342 (22 December 2014) Appendix 1, [31]. The court may not impose a disproportionately long or onerous CCO merely to facilitate treatment, because a CCO is a punitive order: Appendix 1, [41].

309. *Boulton v The Queen* [2014] VSCA 342 (22 December 2014) Appendix 1, [39]–[41]. The court is required to seek pre-sentence reports to establish the offender's suitability, confirm the required facilities exist and indicate the most appropriate conditions to attach. The pre-sentence report will also provide a guide as to the time required for rehabilitation.

310. *Sentencing Act 1991* (Vic) ss 5(2G), 5(2GA), 36; *Boulton v The Queen* [2014] VSCA 342 (22 December 2014) Appendix 1, [2].

311. *Boulton v The Queen* [2014] VSCA 342 (22 December 2014) Appendix 1, [13]–[23]. The court also noted, at [22], the interplay between deterrence and rehabilitation, since rehabilitation minimises the risk of reoffending.

312. *Sentencing Act 1991* (Vic) s 7(1)(e). However, a finding of guilt would still be disclosed in any police check despite the lack of recording of a conviction: Victoria Police, *Information Release Policy* (2019) 1.

Table 1: Conditions of community correction orders³¹³

Mandatory terms
Must not commit an imprisonable offence during the period of the order
Must comply with any direction necessary to ensure compliance with the order
Must report to and receive visits from Corrections Victoria
Must report to a specified community corrections centre within two clear working days of the order coming into force
Must notify Corrections Victoria of changes of address or employment within two clear working days
Must not leave Victoria without permission
Optional conditions (at least one)
Unpaid community work
Treatment and rehabilitation
Supervision
Judicial monitoring
Non-association
Residence restriction or exclusion
Place or area exclusion
Curfew
Alcohol exclusion
Bond
Judicial monitoring
Electronic monitoring
Justice plan (intellectually disabled offenders only)
Other conditions the court thinks fit, but not payment of restitution, compensation, costs or damages

3.87 The various conditions that can be imposed as part of CCOs allow courts: to address the particular circumstances of the offender and the causes of their offending, and to minimise the risk of reoffending by promoting the offender's rehabilitation.³¹⁴

3.88 There are no CCO programs or conditions specifically targeted at young adult offenders.³¹⁵ Stakeholder feedback suggested that the CCO is theoretically flexible enough to meet young adult offenders' rehabilitative needs.³¹⁶ However, there are limitations on the availability of some programs, which are often provided by community organisations rather than directly by Corrections Victoria.³¹⁷

313. *Sentencing Act 1991* (Vic) ss 45, 47–48, 48B–48LA, 80.

314. *Boulton v The Queen* [2014] VSCA 342 (22 December 2014) [2].

315. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

316. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

317. Meeting with Corrections Victoria (30 July 2019).

The availability and accessibility of programs are further limited in regional and rural areas.³¹⁸ Additionally, previous research by the Council has found that the vast majority of CCOs involve only a few conditions, which suggests that their flexibility may not be fully utilised in practice.³¹⁹

- 3.89 In the guideline judgment of *Boulton v The Queen*, the Court of Appeal emphasised the importance of offering support and second chances to those undertaking rehabilitation:

Concern about difficulties of compliance should not be viewed as precluding the imposition of a CCO ... Relapse into addiction during treatment is a common occurrence. The court should not come too quickly to a pessimistic conclusion about future compliance, however, when the very purpose of requiring the offender to commence treatment would be to address the problems which would otherwise create the risk of non-compliance.³²⁰

- 3.90 The fact that the CCO cannot be imposed in combination with a YJCO may limit its availability to some young adult offenders. However, if it is appropriate to impose both a YJCO and a CCO, and the offender is being sentenced on multiple charges, the court may sometimes impose a YJCO on one charge and a CCO on another.³²¹ The use of CCOs to resolve the conflict between youth and rehabilitation, along with the necessity of just punishment and deterrence, is considered particularly important:

Since the CCO can be used to rehabilitate and punish simultaneously, the conflict is likely to be reduced. Instead of needing to give less weight to denunciation or specific or general deterrence, in order to promote the young offender's rehabilitation, the court will be able to fashion a CCO which adequately achieves all of those purposes at once.³²²

- 3.91 The CCO has been compared with the youth supervision order, a non-custodial order available for children sentenced in the Children's Court, where they may be required to attend various supportive programs. In *Baker v DPP*, Justice Tate of the Court of Appeal stated:

In my view, there is not the stark contrast between the community-based sentencing disposition available in the County Court and that available in the Children's Court ... In particular, I reject the proposition that a CCO is primarily punitive and a YSO is primarily rehabilitative. A CCO is designed to address the specific circumstances of the offender.³²³

- 3.92 However, during consultation it was noted by some stakeholders that there are significant differences between the orders available in the Children's Court, including the youth supervision order, and the CCO.³²⁴ These stakeholders highlighted that non-custodial options delivered through the youth justice system focus on outreach and service provision rather than compliance, which has led, among other things, to a different approach to contravention of conditions of the order (see further [5.24]–[5.51]). Further, staff who supervise community-based youth justice orders are specifically trained to apply developmentally appropriate strategies in their supervision of young people.³²⁵

318. In addition to limited service availability, young people in rural and regional areas face practical barriers to complying with conditions of orders when they do not have a driver licence or access to a vehicle, and are dependent on very limited public transport options to attend appointments.

319. Sentencing Advisory Council, *Community Correction Orders: Third Monitoring Report (Post-Guideline Judgment)* (2016) 22.

320. *Boulton v The Queen* [2014] VSCA 342 (22 December 2014), Appendix 1, [48]–[50].

321. See for example, *Bradshaw v The Queen* [2017] VSCA 273 (26 September 2017) [59].

322. *Boulton v The Queen* [2014] VSCA 342 (22 December 2014), Appendix 1, [10].

323. *Baker v DPP* [2017] VSCA 58 (22 March 2017) [111].

324. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

325. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

Young adult offenders and contravention of community correction orders

- 3.93 Contravening a CCO without a reasonable excuse is a criminal offence with a maximum penalty of three months' imprisonment.³²⁶
- 3.94 The Council's 2017 *Contravention of Community Correction Orders* report found that young adult offenders (in that report, offenders aged 18 to 24) were substantially more likely than older offenders to contravene their CCOs. Looking at CCOs imposed in all courts from 1 July 2012 to 30 June 2013, young adult offenders were almost twice as likely as their older counterparts to contravene their CCO by further offending to 30 June 2016.³²⁷
- 3.95 Young adult offenders with prior convictions were particularly likely to contravene their CCO by further offending (49% or 640 of 1,318 young adult offenders contravened their CCO by further offending, compared with 28% or 2,065 of 6,327 of offenders aged 25 and over).³²⁸
- 3.96 That report noted the need for a differential, evidence-informed approach to sentencing and/or managing young adult offenders on CCOs.³²⁹
- 3.97 Analysis of sentencing data from 2013–14 to 2017–18 suggests that contravention of orders continues to be an issue: in 4.9% of cases involving 18 to 20 year old offenders and 6.4% of cases involving 21 to 25 year old offenders in the Magistrates' Court, a 'justice procedures' offence such as contravention of a CCO or breach of bail was the most serious offence during this period.³³⁰

Fines

- 3.98 The court can impose a fine on adult offenders in addition to, or instead of, another order, with or without recording a conviction.³³¹ Judicial officers have the discretion to impose a fine up to the maximum penalty for an offence.³³² In the sentencing hierarchy, a fine is considered less severe than a CCO but more severe than a discharge, dismissal or adjourned undertaking.³³³
- 3.99 Fines are the most common criminal sanction imposed in Victoria's courts,³³⁴ and the most common criminal sanction imposed on young adults.³³⁵ Fines are viewed as a quick, efficient, flexible, effective and cheap form of punishment, which can be readily adjusted to reflect the seriousness of the offence and the circumstances of the offender.³³⁶

326. *Sentencing Act 1991* (Vic) s 83AD(1).

327. Sentencing Advisory Council (2017), above n 61, 78.

328. *Ibid* 78.

329. *Ibid* xv, 78.

330. This count does not include cases in which offenders were sentenced for justice procedures offences as a secondary charge.

331. *Sentencing Act 1991* (Vic) ss 7(f), 49.

332. *Sentencing Act 1991* (Vic) s 50.

333. *Sentencing Act 1991* (Vic) s 5.

334. Sentencing Advisory Council, *Imposition and Enforcement of Court Fines and Infringement Penalties in Victoria* (2014) 2.

335. In the Magistrates' Court in 2017–18, fines were imposed in 54% of cases overall: Sentencing Advisory Council, 'Sentencing Outcomes in the Magistrates' Court' (sentencingcouncil.vic.gov.au, 2019) <<https://www.sentencingcouncil.vic.gov.au/statistics/sentencing-statistics/sentencing-outcomes-magistrates-court>> at 8 October 2019. For cases involving young adult offenders, the figure was 47%: young adult offenders aged 21 to 25 received fines at a rate of 50%, which is close to the overall rate in the Magistrates' Court, whereas young offenders aged 18 to 20 received fines at a lower rate (39%): see [4.21].

336. Sentencing Advisory Council (2014), above n 334, 9, citing Pat O'Malley, 'Politicizing the Case for Fines' (2011) 10(3) *Criminology and Public Policy* 547, 550.

- 3.100 There has been no specific research in Victoria on the imposition of fines on young adult offenders. However, the Council's 2014 *Imposition and Enforcement of Court Fines and Infringement Penalties in Victoria* found that the proportion of unpaid fines was much higher for children (persons aged under 18) than for adults. Data indicated that approximately 30% of fines (excluding transport ticketing offences) imposed on children in any year are paid.³³⁷ It is likely that the payment rates for young adult offenders are lower than they are for older offenders.³³⁸

Adjourned undertakings, dismissal or discharge

- 3.101 Where a charge is proven, the court may:

- *order an adjourned undertaking*,³³⁹ which allows a person to be released into the community unsupervised for up to five years.³⁴⁰ The offender must agree to the undertaking.³⁴¹ Standard conditions attached to an adjourned undertaking include committing no further offences for the duration of the undertaking.³⁴² The court may impose other conditions, such as a 'justice plan'.³⁴³ If a person breaches the conditions of an adjourned undertaking, they may be called back to court for resentencing.³⁴⁴ If the person observes the conditions of the undertaking, the court must discharge the offender. If the adjourned undertaking has been made without a conviction being entered, the court must dismiss the charge;³⁴⁵
- *convict and discharge/unconditional discharge*,³⁴⁶ which results in a conviction, but the offender is unconditionally released without further penalty;³⁴⁷ and
- *discharge without conviction/unconditional dismissal*.³⁴⁸ Even if the offender has been found guilty, the court can make an order dismissing the charge without recording a conviction or imposing a penalty. However, the finding of guilt still appears on a National Police Record Check with Victoria Police.³⁴⁹

- 3.102 There has been no previous, specific research on the use of these low-end orders for young adult offenders. The Council's analysis has found that in the 2017–18 financial year, 6,431 adjourned undertakings, discharges, dismissals and diversions were imposed on young adult offenders, accounting for 25% of the total of these orders imposed in that year. The proportion of sentences of low-end orders for young adult offenders (33%) was higher than the proportion of low-end orders imposed for all offender age groups (26%). The greatest difference was in the 18 to 20 age group: 44% of all their cases resulted in a low-end order.

337. Sentencing Advisory Council (2014), above n 334, 313.

338. Meeting with Dr Karen Hart, CEO, The Youth Junction Inc. (21 August 2019).

339. *Sentencing Act 1991* (Vic) ss 72, 75.

340. *Sentencing Act 1991* (Vic) ss 72(1), 75(1).

341. *Sentencing Act 1991* (Vic) ss 72(1), 75(1), 78(1)(c).

342. This is referred to as being 'of good behaviour': *Sentencing Act 1991* (Vic) ss 72(2), 75(2).

343. *Sentencing Act 1991* (Vic) ss 72(3), 75(3), 80. Justice plans are available to offenders with intellectual disabilities.

344. *Sentencing Act 1991* (Vic) ss 72(4), 75(4).

345. *Sentencing Act 1991* (Vic) ss 72(6), 75(6).

346. *Sentencing Act 1991* (Vic) s 73.

347. *Sentencing Act 1991* (Vic) s 73.

348. *Sentencing Act 1991* (Vic) s 76.

349. 'Victoria Police release criminal history information on the basis of findings of guilt at court, and will also release details of matters currently under investigation or awaiting court hearing. It is important to note that a finding of guilt without conviction is still a finding of guilt and will be released according to the information release policy'. Victoria Police (2019), above n 312, 1.

Sentence deferrals

- 3.103 The Magistrates' Court and the County Court have the power to defer sentencing offenders for up to 12 months. This allows offenders to demonstrate their prospects for rehabilitation by undergoing programs that address the causes of their offending behaviour and the impact on victims.³⁵⁰ The offenders' progress is taken into account when they return to court for sentencing.³⁵¹

Non-sentencing options for minor offending

- 3.104 A number of programs in Victoria aim to divert low-level offenders from the criminal justice system. For example, Victoria Police offers a diversion program for adults found in possession of cannabis or a drug of dependence for their personal use. Instead of being prosecuted, they may instead be given a cannabis caution or a drug diversion. A person will not be considered eligible for such a caution or program if they have previously received more than one caution or drug diversion.³⁵²
- 3.105 Another diversionary program, the Magistrates' Court's Criminal Justice Diversion Program (CJDP), requires offenders to agree to conditions in accordance with a plan developed by a magistrate or a judicial registrar.³⁵³ To be eligible for the program:
- the offence must be triable summarily and not be subject to a minimum or fixed sentence or penalty (excluding demerit points);³⁵⁴
 - the person must acknowledge responsibility for the offence (however, this does not constitute a guilty plea);³⁵⁵ and
 - the prosecution must consent to diversion.³⁵⁶
- 3.106 The court then decides whether the person is suitable for the program, informing itself of any information it considers appropriate. This includes the offender's prior convictions, as well as the gravity of the offence and the circumstances of the case.³⁵⁷ If suitable, the court develops a diversion plan setting out conditions such as completion of counselling, treatment or voluntary work. The matter is then adjourned for up to 12 months to enable the person to participate in and complete the program.³⁵⁸
- 3.107 If the program is successfully completed, no plea is taken and the court must discharge the person without a finding of guilt. Participation in the program, along with subsequent discharge, is a defence to any later charge for the same offence or a similar offence arising out of the same circumstances.³⁵⁹ While Victoria Police keep records of the diversion process, the lack of a finding of guilt means that this information is not released as part of a National Police Record Check.³⁶⁰

350. *Sentencing Act 1991* (Vic) s 83A.

351. *Sentencing Act 1991* (Vic) s 83A(3).

352. Sentencing Advisory Council, *Trends in Minor Drug Offences Sentenced in the Magistrates' Court* (2015) 5; Victoria Police (2019), above n 70 ('Procedures and Guidelines: Disposition of Offenders', 'Policy Rules: Disposition of Offenders'). Because this takes place at such an early stage in the criminal justice process, it does not involve a formal finding of guilt. A broader youth caution program, which includes a much wider range of offences, is available to juvenile offenders, but young adult offenders aged over 18 are ineligible: Victoria Police (2019), above n 70 ('Policy Rules: Disposition of Offenders').

353. Magistrates' Court of Victoria, 'Criminal Justice Diversion Program' (mcv.vic.gov.au, 2018) <<https://www.mcv.vic.gov.au/find-support/diversion>> at 8 October 2019; *Criminal Procedure Act 2009* (Vic) s 59.

354. *Criminal Procedure Act 2009* (Vic) ss 59(1)–(2). Indictable offences can be included as long as they may be heard and determined summarily.

355. *Criminal Procedure Act 2009* (Vic) ss 59(2)(a), 59(3).

356. *Criminal Procedure Act 2009* (Vic) s 59(2)(c).

357. *Rumbiak v Hough* [2004] VSC 95 (30 March 2004) [28].

358. *Criminal Procedure Act 2009* (Vic) s 59(2).

359. *Criminal Procedure Act 2009* (Vic) s 59(4).

360. Victoria Police (2019), above n 312, l.

4. Trends in sentencing young adult offenders in Victoria

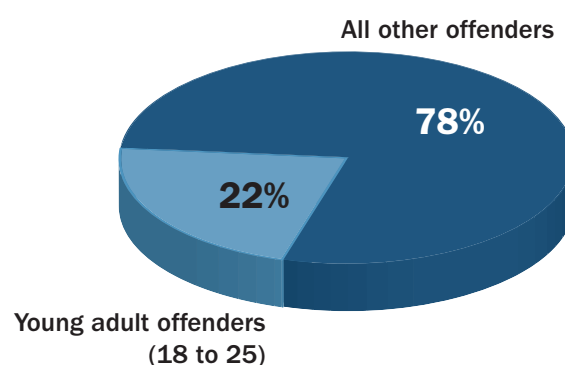
Overview

- 4.1 This chapter provides an overview of key trends in sentencing young adult offenders in Victoria, including the age and gender of offenders, the offences they committed and the sentences they received.³⁶¹ In addition, the Council has compared prior and subsequent sentences for young offenders (aged 18 to 20) receiving youth justice centre orders (YJCOs) or imprisonment sentences within a given financial year.

Sentencing trends overview

- 4.2 This section examines sentencing trends between 2013–14 and 2017–18 (the 'reference period') for young adult offenders (aged 18 to 25) sentenced in the Magistrates' Court and the higher courts of Victoria. More specifically, this section compares sentencing outcomes between two cohorts: young offenders aged 18 to 20 and young adult offenders aged 21 to 25.
- 4.3 Sentencing outcomes are examined at the case level over the reference period. This involves evaluating the most serious offence ('principal offence') within a case and the corresponding principal sentence for that case.³⁶²
- 4.4 Key findings include:
- the number of young adult offenders sentenced in both the Magistrates' Court and the higher courts declined in the five years to 30 June 2018;
 - despite the decline in numbers, there is still a disproportionate rate of young adult offenders being sentenced. Young adults accounted for 15% of the general Victorian population aged 18 and over in 2018,³⁶³ but they comprised 22% of sentenced offenders in both the Magistrates' Court and the higher courts (see Figure 8);³⁶⁴
 - of the young offenders aged 18 to 20 who received an immediate custodial sentence in the Magistrates' Court, 34% received a YJCO over the reference period;

Figure 8: Proportion of cases involving young adult offenders aged 18 to 25 sentenced in the Magistrates' Court and the higher courts, 2013–14 to 2017–18³⁶⁵



361. Detailed findings are presented in Appendix 3.

362. This method relates to the total effective sentence and describes the principal sentence imposed for the charge that is the principal offence at a case level. The principal offence in a case is the offence that attracted the most serious sentence type according to the sentencing hierarchy, and the principal sentence of a case is the most severe sentence type imposed for a charge within the case.

363. Australian Bureau of Statistics, *Australian Demographic Statistics*, cat. no. 3101.0 (2018) Table 52.

364. Young adult offenders comprised 22% of sentenced offenders in the Magistrates' Court and 25% of sentenced offenders in the higher courts. Due to the higher numbers of offenders in the Magistrates' Court, young adult offenders comprised 22% of sentenced offenders in both courts overall.

365. The Magistrates' Court sentences approximately 50 times the number of cases sentenced in the higher courts. Therefore, the overall proportion of cases involving young adult offenders is close to the proportion in the Magistrates' Court.

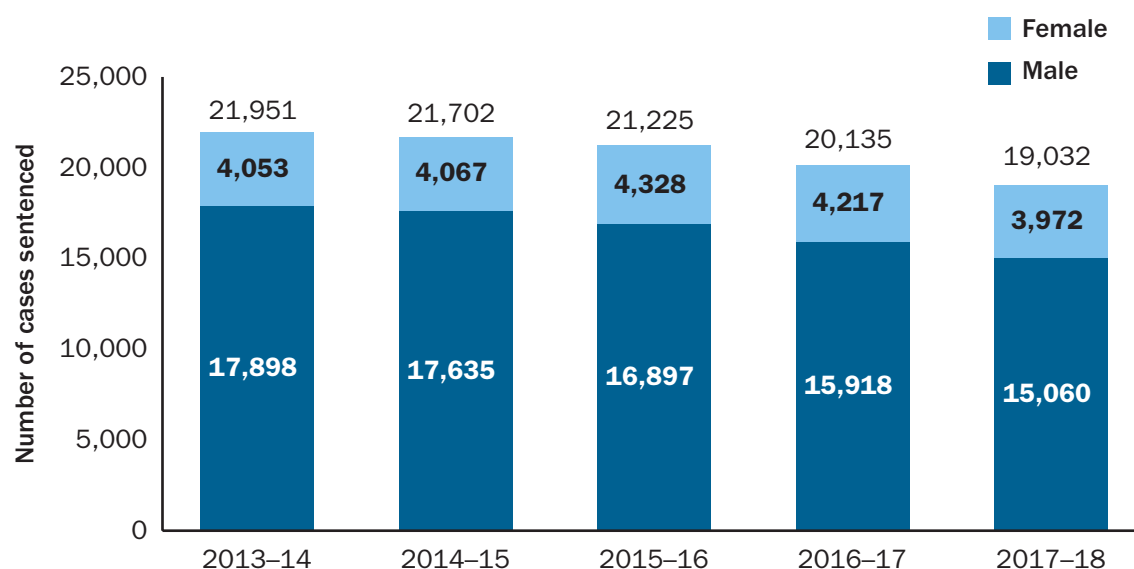
- of the young offenders aged 18 to 20 who received an immediate custodial sentence in the higher courts, 42% received a YJCO over the reference period; and
- analysis of sentencing remarks revealed that some young adult offenders aged 21 to 25 may meet the criteria for a YJCO, if that option were extended to that age group.

Young adult offenders are over-represented in sentencing outcomes

Young adult offenders sentenced in the Magistrates' Court

4.5 As shown in Figure 9, young adult offenders were sentenced in 104,045 cases in the five years to 2017–18.³⁶⁶ The gender distribution for these sentenced cases was predominantly male (80%).³⁶⁷ The median age for offenders aged 18 to 20 at sentence (who may be eligible for dual track) was 19 years. The median age for offenders aged 21 to 25 was 23 years.

Figure 9: Number of cases involving young adult offenders aged 18 to 25 sentenced in the Magistrates' Court, by gender of the offender, 2013–14 to 2017–18



4.6 Over the reference period, the number of cases involving young adult offenders sentenced in the Magistrates' Court declined over consecutive years. The average rate of decline was 2.8%, from 21,951 in 2013–14 to 19,032 in 2017–18. For cases involving offenders aged 18 to 20, the average rate of decline was 5.1% over the reference period. In the higher courts, the average rate of decline was 3%, from 498 in 2013–14 to 428 in 2017–18. The rate of decline in cases involving young offenders aged 18 to 20 was greater in the Magistrates' Court than in the higher courts.

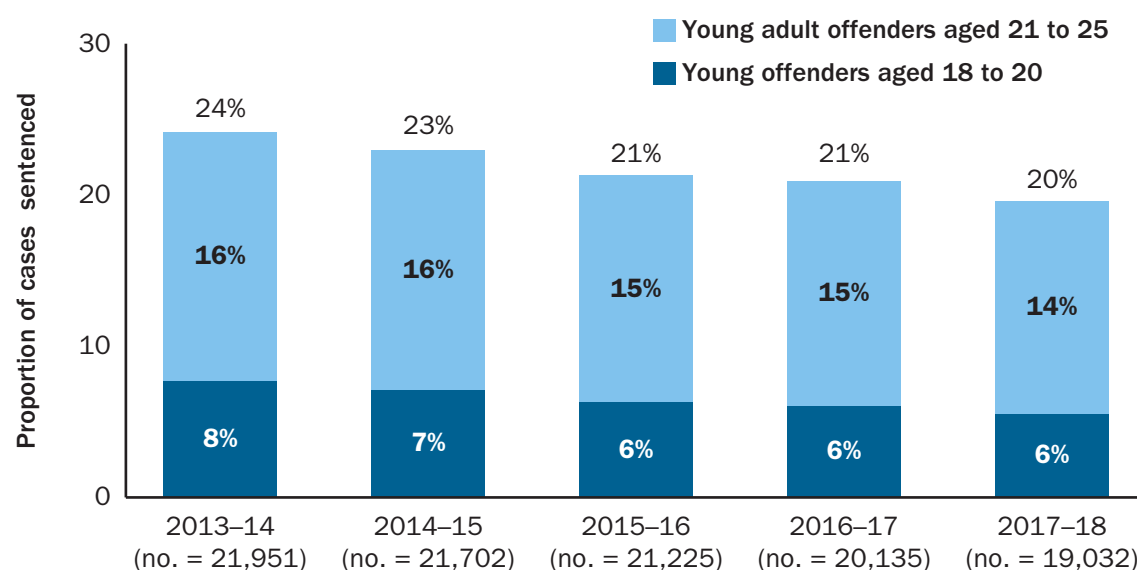
4.7 Figure 10 presents the proportion of young offenders aged 18 to 20 and young adult offenders aged 21 to 25 as a percentage of the total number of offenders sentenced in the Magistrates' Court. Overall, sentenced cases involving young adult offenders (aged 18 to 25) accounted for 22% of all cases sentenced in the Magistrates' Court. Young offenders aged 18 to 20 made up 7% of cases and young adult offenders aged 21 to 25 made up the remaining 15%.

366. Of these, young offenders aged 18 to 20 were sentenced in 31,300 cases, and young adult offenders aged 21 to 25 were sentenced in 72,745 cases in the reference period. Some young adult offenders included in the data may have been sentenced more than once.

367. The data on gender was restricted to the categories of male and female. Data on non-binary gender categories is not currently available.

- 4.8 As mentioned, in 2018, Victorians aged 18 to 25 comprised 15% of the Victorian population aged 18 and over. Those aged 18 to 20 made up 5% of the Victorian population and those aged 21 to 25 made up the remaining 10%.³⁶⁸ These findings show that young adult offenders are over-represented in the Magistrates' Court sentencing data relative to the overall Victorian population aged 18 and over. Aboriginal and Torres Strait Islander young adults aged 18 to 24 are imprisoned at even higher rates; they are approximately 14 times more likely than their non-Aboriginal and Torres Strait Islander peers to be imprisoned.³⁶⁹

Figure 10: Proportion of cases involving young adult offenders aged 18 to 25 sentenced in the Magistrates' Court, by age cohort, 2013–14 to 2017–18



Note: no. = the total number of cases involving young adult offenders (18 to 25) sentenced in the Magistrates' Court for the respective financial year.

- 4.9 The proportion of young adult offenders sentenced in the Magistrates' Court declined steadily over the reference period. Cases involving young offenders aged 18 to 20 decreased from 8% in 2013–14 to 6% in 2017–18. Cases involving young adult offenders aged 21 to 25 decreased from 16% in 2013–14 to 14% in 2017–18.

Young adult offenders sentenced in the higher courts

- 4.10 As shown in Figure 11, young adult offenders aged 18 to 25 were sentenced in 2,186 cases in the higher courts between 2013–14 and 2017–18.³⁷⁰ Overall, most young adult offenders (91%) were male.³⁷¹

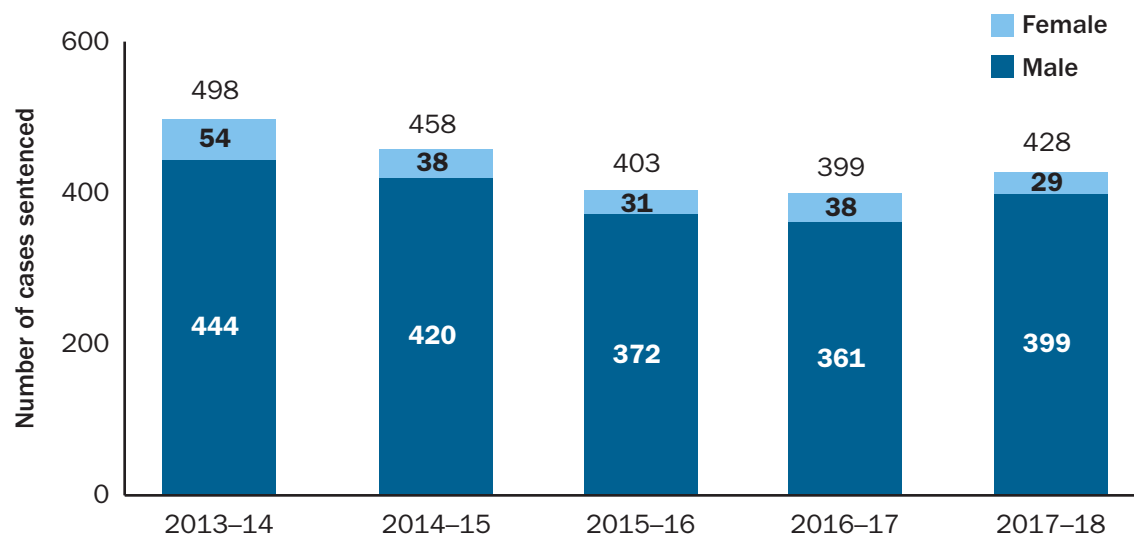
368. Australian Bureau of Statistics (2018), above n 363, Table 52.

369. Australian Bureau of Statistics (2017), above n 212, Table 21; Australian Bureau of Statistics (2018), above n 213, Table 21. From 30 June 2017 to 30 June 2018, the Aboriginal and Torres Strait Islander imprisonment rate in Victoria increased by 10%, from 1,834 to 2,015 prisoners per 100,000 Aboriginal and Torres Strait Islander people. The non-Aboriginal and Torres Strait Islander rate also increased by 4% over the same period, from 134 to 139 prisoners per 100,000 non-Aboriginal and Torres Strait Islander people. The ratio of the imprisonment rate between the two groups as at 30 June 2018 indicates that Aboriginal and Torres Strait Islander people were 14.5 times more likely than their non-Aboriginal and Torres Strait Islander peers to be imprisoned. The gap between the two rates is now the largest that it has been in the past 10 years: Australian Bureau of Statistics (2018), above n 213, Table 18.

370. Of these, young offenders aged 18 to 20 were sentenced in 638 cases, and young adult offenders aged 21 to 25 were sentenced in 1,548 cases in the reference period. Some young adult offenders included in the data may have been sentenced more than once.

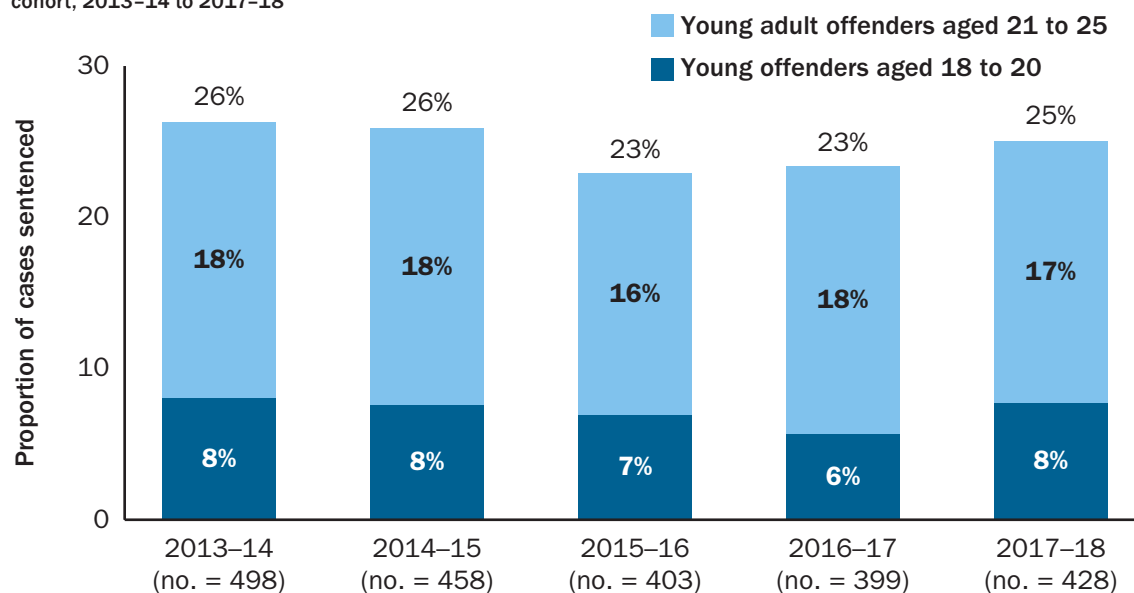
371. The data on gender was restricted to the categories of male and female. Data on non-binary gender categories is not currently available.

Figure 11: Number of cases involving young adult offenders aged 18 to 25 sentenced in the higher courts, by gender, 2013–14 to 2017–18



- 4.11 Between 2013–14 and 2017–18, the number of cases involving young adult offenders sentenced in the higher courts declined. Cases involving young offenders aged 18 to 20 declined at an average rate of 3% each year (compared with 5% in the Magistrates' Court). In the same period, cases involving young adult offenders aged 21 to 25 declined at an average rate of 3% each year, from 345 in 2013–14 to 296 in 2017–18.
- 4.12 Overall, young adult offenders accounted for one-quarter of all cases sentenced in the higher courts (compared with 22% in the Magistrates' Court). Young offenders aged 18 to 20 made up 7% of cases, and young adult offenders aged 21 to 25 made up the remaining 18%. The proportion of cases involving young adult offenders declined steadily for three consecutive years, before gradually rising in 2016–17 and 2017–18 (Figure 12).

Figure 12: Proportion of cases involving young adult offenders aged 18 to 25 sentenced in the higher courts, by age cohort, 2013–14 to 2017–18



Note: no. = the total number of cases involving young adult offenders (18 to 25) sentenced in the higher courts for the respective financial year.

Principal offence classification and analysis

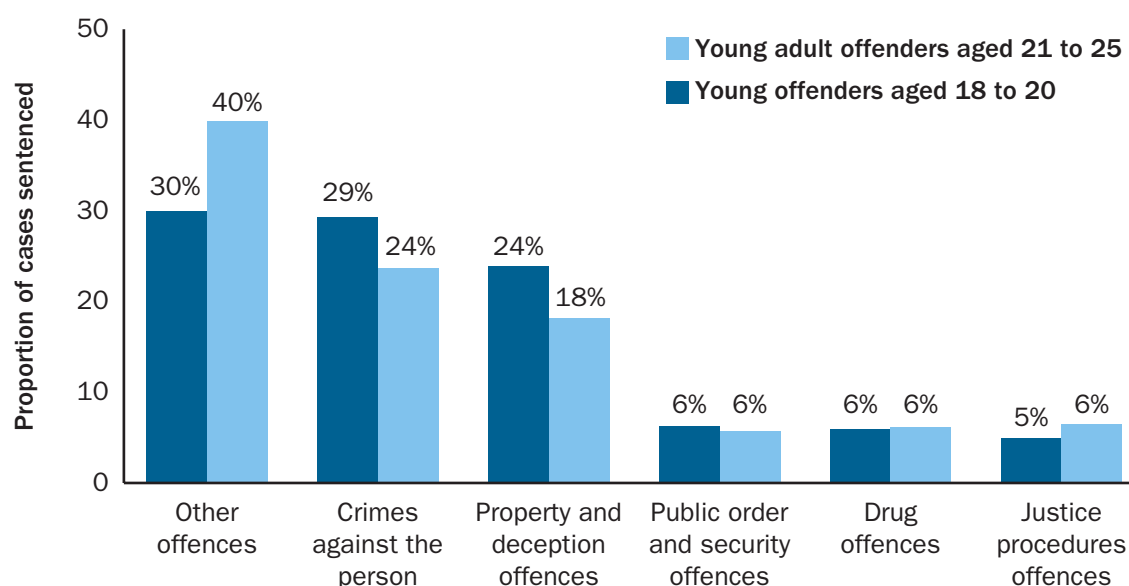
4.13 This section uses different levels of offence classifications to assist in the production and analysis of summary crime and justice statistics in Victoria. The classification hierarchy comprises three levels: categories (the broadest level), subcategories (the intermediate level) and specific offences (the finest level).³⁷² In this report, offences have been classified into these groups with a view to identifying patterns in the sentencing data.

Offending by young adult offenders sentenced in the Magistrates' Court

4.14 Figure 13 shows the types of principal offence, at the offence category level, in cases involving young offenders aged 18 to 20 and young adult offenders aged 21 to 25. Over the reference period, young offenders aged 18 to 20 were sentenced more frequently than young adult offenders aged 21 to 25 for crimes against the person, and for property and deception offences. A detailed breakdown of offence categories is presented in Appendix 3.

4.15 In comparison, young adult offenders aged 21 to 25 were more frequently sentenced for 'other offences' than young offenders aged 18 to 20. These 'other offences' were mainly regulatory driving offences (Appendix 3).³⁷³ As shown in Figure 13, there were marginal differences between the two cohorts in terms of public order and security offences, drug offences and justice procedures offences.

Figure 13: Proportion of cases involving young adult offenders aged 18 to 25 sentenced in the Magistrates' Court, by offence category (based on the principal offence) and age cohort, 2013–14 to 2017–18³⁷⁴



Note: 'Other offences' primarily comprise regulatory driving offences, such as driving whilst disqualified (see further Appendix 3).

372. The terminology used in this report corresponds to the classification hierarchy established by the Crime Statistics Agency, which comprises three levels: divisions (the broadest level), subdivisions (the intermediate level) and groups (the finest level). These classifications are based on the structure and principles of the Australian and New Zealand Standard Offence Classification (ANZSOC) produced by the Australian Bureau of Statistics. These have been adapted by the Council to suit the legislative environment in Victoria.

373. Regulatory driving offences include drive whilst suspended or disqualified and unlicensed driving.

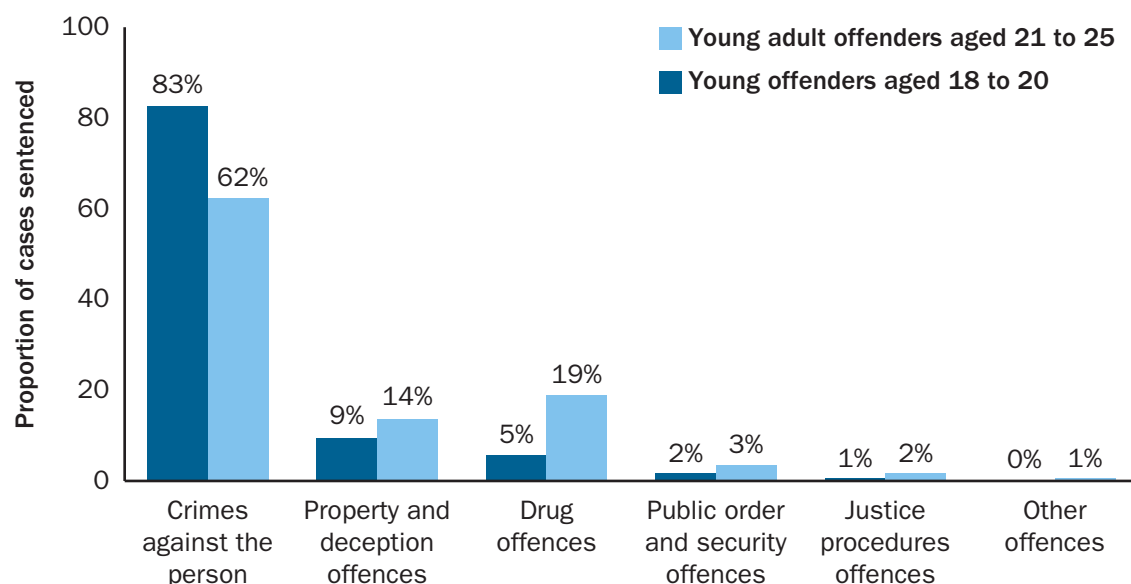
374. The total figures relevant to this graph are contained in Appendix 3.

- 4.16 Approximately two-thirds of sentenced cases for both cohorts comprised regulatory driving, assault and related offences, dangerous and negligent acts endangering people, and theft (Appendix 3).
- 4.17 Stakeholder consultation suggested that the data might not reflect the full extent of young adults' drug- and driving-related offending, perhaps because these types of offences often appeared in conjunction with more serious offences, rather than as a principal charge.³⁷⁵ It was noted that driving offences were often seen alongside drug offences, assault and robbery or aggravated burglary.³⁷⁶

Offending by young adult offenders sentenced in the higher courts

- 4.18 Figure 14 shows that crimes against the person was the most common category of offending in cases involving both cohorts. Approximately 83% of young offenders aged 18 to 20 and 62% of young adult offenders aged 21 to 25 were sentenced in the higher courts for this type of offending during the reference period. More specifically, robbery, assault³⁷⁷ and sexual offences were the most common subcategories of offences, constituting more than half of the offending sentenced for both cohorts.
- 4.19 In the higher courts, drug offences and property and deception offences were substantially more prevalent in sentenced cases involving young adult offenders aged 21 to 25 than young offenders aged 18 to 20. The remaining categories of offending had more similarities than differences between the two cohorts (Figure 14 and Appendix 3).

Figure 14: Proportion of cases involving young adult offenders aged 18 to 25 sentenced in the higher courts, by offence category (based on the principal offence) and age cohort, 2013–14 to 2017–18



375. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019); Meeting with Dr Karen Hart, CEO, The Youth Junction Inc. (21 August 2019).

376. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

377. This category is made up of 'assault and related offences', which includes intentionally causing serious injury, recklessly causing serious injury, intentionally causing injury, recklessly causing injury and aggravated assault.

Analysis of principal sentences

Sentences for young adult offenders in the Magistrates' Court

- 4.20 Non-custodial sentences accounted for over 93% of sentencing outcomes involving young adult offenders, which is consistent with sentencing outcomes overall in the Magistrates' Court over the reference period (93%). Over the reference period, young offenders aged 18 to 20 received non-custodial sentences more frequently than young adult offenders aged 21 to 25 (95% compared with 92%).
- 4.21 Figures 15 and 16 show the distribution of principal sentences in the Magistrates' Court for young offenders aged 18 to 20 and young adult offenders aged 21 to 25 over the reference period. Fines were the most common principal sentence, imposed in approximately half of the cases involving young adult offenders aged 21 to 25 (52%) and approximately 42% of cases involving young offenders aged 18 to 20. This was followed by adjourned undertakings, which were more commonly imposed on young offenders aged 18 to 20 (22%) than young adult offenders aged 21 to 25 (15%).
- 4.22 Diversion was an outcome in almost twice as many cases involving young offenders aged 18 to 20 (14%) as young adult offenders aged 21 to 25 (8%). Conversely, imprisonment sentences were imposed more than twice as often on young adult offenders aged 21 to 25 (8%) as young offenders aged 18 to 20 (3%). There were relatively marginal differences in the imposition of community correction orders (CCOs) between the two cohorts.

Figure 15: Proportion of cases involving young offenders aged 18 to 20 sentenced in the Magistrates' Court, by sentence type, 2013–14 to 2017–18

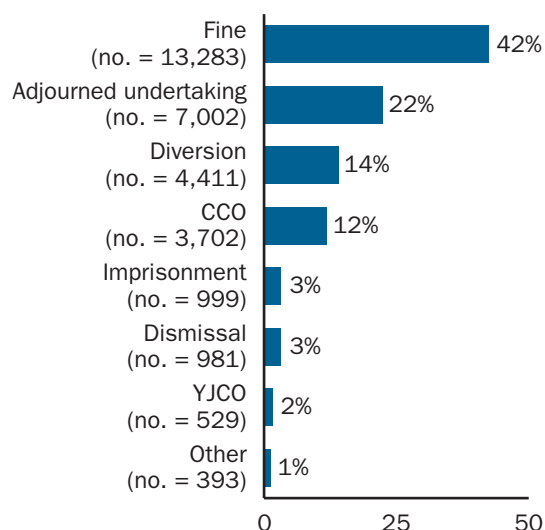
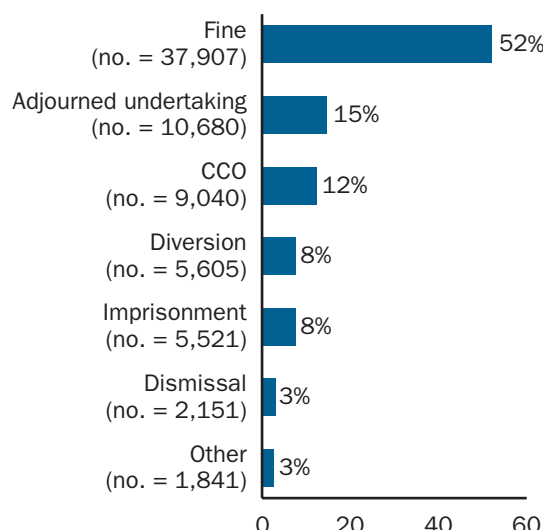


Figure 16: Proportion of cases involving young adult offenders aged 21 to 25 sentenced in the Magistrates' Court, by sentence type, 2013–14 to 2017–18



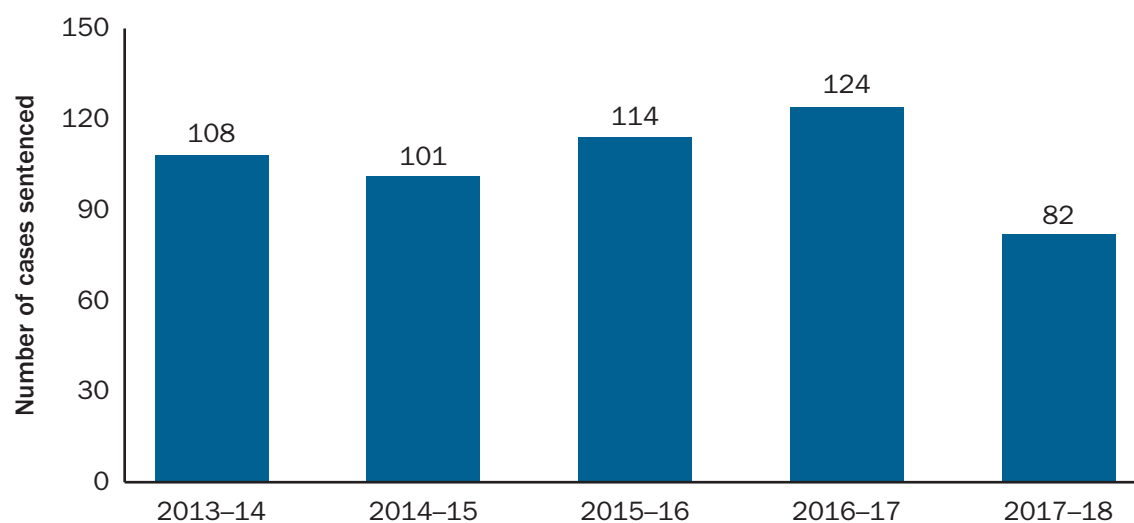
- 4.23 Over the reference period, the sentencing trends for young offenders aged 18 to 20 differed from overall trends in the Magistrates' Court in several ways: adjourned undertakings were imposed more frequently for this age group while fines were imposed less frequently. Imprisonment sentences were used less than half as often for this cohort. Diversion was imposed more than twice as often, and CCOs were imposed slightly more often compared with sentencing patterns in the Magistrates' Court overall.

- 4.24 Fines and adjourned undertakings were also the most common dispositions in cases involving young adult offenders aged 21 to 25, which is consistent with overall sentencing outcomes in the Magistrates' Court.³⁷⁸ Diversion, CCOs and imprisonment were only slightly more common sentencing outcomes for this cohort relative to the overall trends in the Magistrates' Court.³⁷⁹

Young offenders aged 18 to 20 sentenced to a youth justice centre order in the Magistrates' Court

- 4.25 Of the 31,300 cases involving young offenders aged 18 to 20 sentenced in the Magistrates' Court, 529 (2%) received a YJCO as the principal sentence in the case. The young offenders in these cases were predominantly male (96%), and their median age at sentence was 19 years.
- 4.26 Figure 17 shows the number of cases involving young offenders aged 18 to 20 receiving a YJCO. This number remained relatively steady in the four years to 2016–17. However, the number decreased by one-third in the following year, from 124 in 2016–17 to 82 in 2017–18.

Figure 17: Number of cases involving young offenders aged 18 to 20 sentenced to a YJCO in the Magistrates' Court, 2013–14 to 2017–18



Sentences for young adult offenders in the higher courts

- 4.27 An immediate custodial sentence was imposed in approximately two-thirds (66%) of cases involving young adult offenders sentenced in the higher courts during the reference period. This is slightly lower than the overall proportion of custodial sentences imposed in the higher courts (72%). This type of principal sentence was more often imposed in cases involving young adult offenders aged 21 to 25 (69%) than in cases involving young offenders aged 18 to 20 (59%).
- 4.28 A CCO was the most common principal sentence imposed in cases involving young offenders aged 18 to 20 in the higher courts. A CCO was imposed in 36% of cases (Figure 18) involving this cohort, compared with 24% of cases involving young adult offenders aged 21 to 25 (Figure 19). Imprisonment accounted for approximately two-thirds (66%) of the sentences imposed on young adult offenders aged 21 to 25 and one-third (33%) of the sentences imposed on young offenders aged 18 to 20.

378. Sentencing Advisory Council (2019), above n 335.

379. Ibid.

- 4.29 As shown in Figure 18, one-quarter of cases involving young offenders aged 18 to 20 received a YJCO as the principal sentence. This sentencing outcome is not available for young adult offenders aged 21 to 25 (see [3.52]). The availability of YJCOs for young offenders aged 18 to 20 contributes to, but does not fully account for, the disparity between the two cohorts' imprisonment rates.

Figure 18: Proportion of cases involving young offenders aged 18 to 20 sentenced in the higher courts, by sentence type, 2013–14 to 2017–18

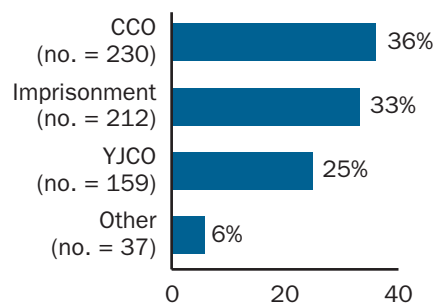
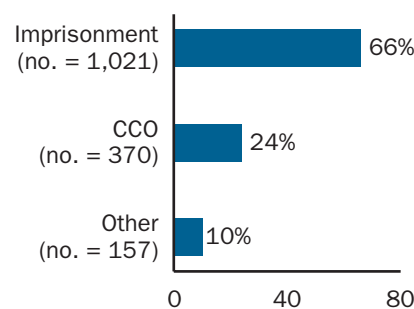


Figure 19: Proportion of cases involving young adult offenders aged 21 to 25 sentenced in the higher courts, by sentence type, 2013–14 to 2017–18

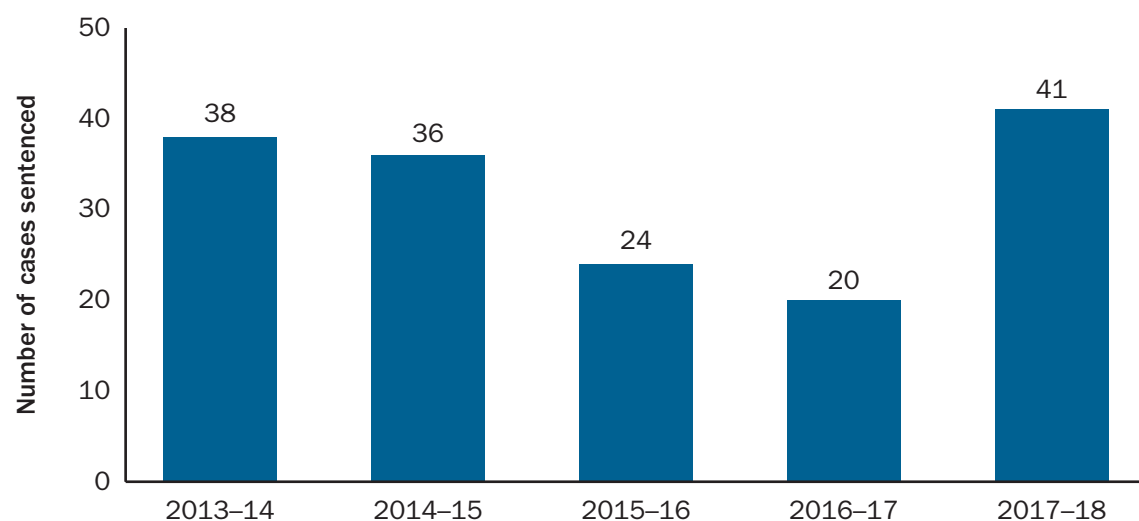


Young offenders aged 18 to 20 sentenced to a youth justice centre order in the higher courts

- 4.30 Of the 638 cases involving young offenders aged 18 to 20 sentenced in the higher courts, 159 (25%) received a YJCO. Most of these offenders were male (97%), and the median age at sentence was 19 years.

- 4.31 Figure 20 shows the number of cases involving young offenders aged 18 to 20 sentenced to a YJCO in the reference period. The number of cases in which the principal sentence was a YJCO declined over four consecutive years to 2016–17, before substantially increasing in the following year. The increase in 2017–18 was partly due to an increase in the number of cases involving young offenders aged 18 to 20 sentenced for the principal offence of armed robbery.

Figure 20: Number of cases involving young offenders aged 18 to 20 sentenced to a YJCO in the higher courts, 2013–14 to 2017–18



- 4.32 Crimes against the person made up a large proportion (85%) of principal offences for which young offenders aged 18 to 20 were sentenced to a YJCO in the higher courts. Within this offence category, the principal offence of armed robbery accounted for almost half of the cases resulting in a YJCO over the reference period (45% or 72 of 159 cases). This was followed by aggravated burglary (7%), causing serious injury intentionally (7%) and causing injury intentionally (5%).

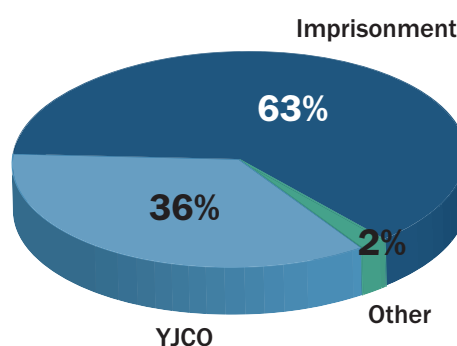
Would young adult offenders aged 21 to 25 qualify for a youth justice centre order if it were available?

- 4.33 To supplement the analysis of principal sentences, the Council reviewed all available sentencing remarks (109) in cases involving young adult offenders aged 21 to 25 who were sentenced to imprisonment between 1 July 2017 and 31 December 2017. In 32 of these cases, reference was made to the offender being 'immature', 'naïve', 'vulnerable' or 'easily led'.³⁸⁰ In a further 17 cases, no explicit reference to maturity was made, but the discussion suggested that the offender was nonetheless significantly immature or vulnerable. In a further nine cases, the judge discussed the risks of prison, in terms of either the offender's personal safety or the risk of the offender becoming further entrenched in their criminal behaviour as a result of incarceration. In nine cases, these risks were discussed in addition to an offender's immaturity or vulnerability.
- 4.34 Some of these cases would not have resulted in a YJCO. In some cases, the offending was so serious that a term longer than the maximum available for a YJCO was required. In other cases, the offending was minor enough that a very short term of imprisonment – in some cases, equal to or less than time served – was justified. Nonetheless, the presence of some suggestion of immaturity or vulnerability in approximately half of surveyed cases suggests that a group of young adult offenders aged 21 to 25 might qualify for a YJCO if the option were available.

Summary of overall use of youth justice centre orders

- 4.35 Of the young offenders aged 18 to 20 sentenced to an immediate custodial sentence in the Magistrates' Court and the higher courts over the reference period, 36% received a YJCO. Of the young offenders who received an immediate custodial sentence in the higher courts during the reference period, 42% received a YJCO. The proportion was lower in the Magistrates' Court (34%). Stakeholders noted that this was surprising: given that the Magistrates' Court deals with less serious offending than the higher courts, it would be expected that YJCOs would make up a higher proportion of all custodial sentences in the Magistrates' Court than in the higher courts.³⁸¹

Figure 21: Proportion of cases involving young offenders aged 18 to 20 sentenced to an immediate custodial sentence in the Magistrates' Court and the higher courts, by sentence type, 2013–14 to 2017–18

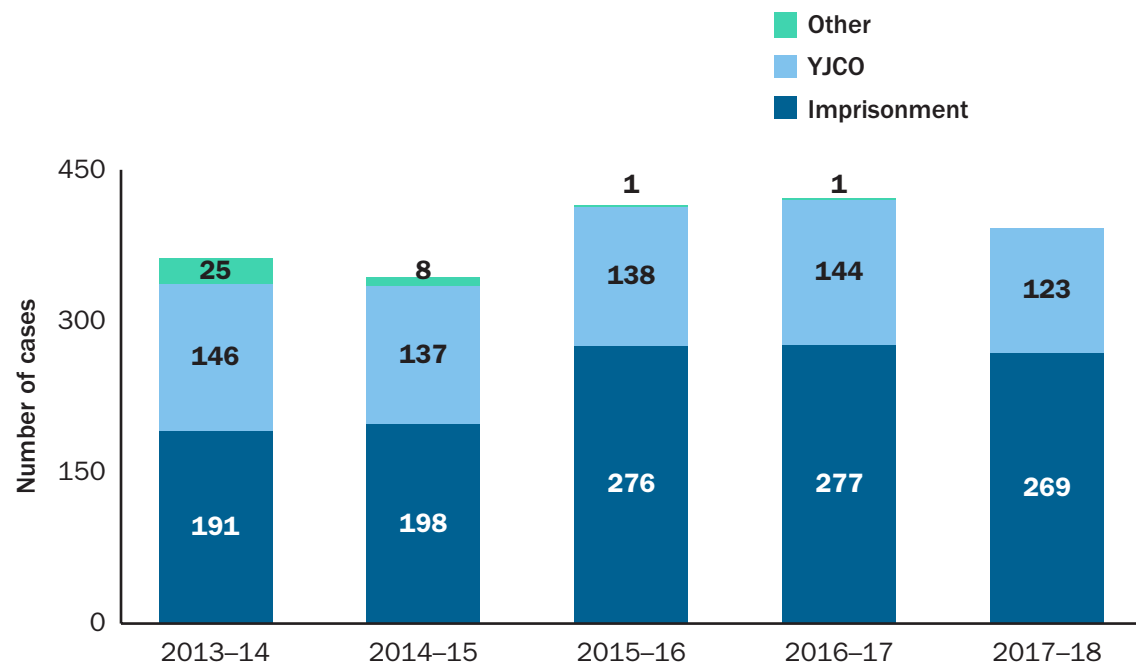


380. References that were counted were made by the judge or were made by counsel or an expert and accepted by the judge. In some cases, immaturity was discussed in the context of an analysis of youth as a mitigating factor with respect to the length of the term of imprisonment; a judge conducting an analysis as to the appropriateness of a YJCO might not have mentioned the factors in the same way.

381. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

- 4.36 The proportion of immediate custodial sentences that were YJCOs declined from 40% in 2013–14 to 31% in 2017–18 for young offenders aged 18 to 20 sentenced in the Magistrates' Court and the higher courts. Over the same period, the proportion of young offenders aged 18 to 20 receiving imprisonment substantially increased, from 53% in 2013–14 to 63% in 2017–18.
- 4.37 Some stakeholders commented that recent legislative changes might be contributing to this change.³⁸² These changes relate both to YJCOs directly, discussed at [3.66], and to minimum sentences for certain types of offending. Other stakeholders suggested that recent increases in the use of adult remand for young offenders aged 18 to 20 might be having an effect: judges might be likely to conclude that, for a young offender who had served time in adult remand, concerns about vulnerability and rehabilitation would be less prominent because the effects of adult incarceration would already have been in play before a sentence was imposed.³⁸³

Figure 22: Number of cases involving young offenders aged 18 to 20 sentenced to an immediate custodial sentence in the Magistrates' Court and the higher courts, by sentence type, 2013–14 to 2017–18



382. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

383. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

Prior and subsequent sentences for young offenders receiving a youth justice centre order or imprisonment

Overview

- 4.38 This section presents the findings of a comparative study of young offenders (aged 18 to 20) sentenced to a YJCO or imprisonment in the Magistrates' Court or the higher courts in 2014–15 (the 'index year').
- 4.39 This study examines the prior and subsequent sentencing events over a seven-year period.³⁸⁴ The two study groups are defined as follows:
- young offenders aged 18 to 20 sentenced to a YJCO in 2014–15 (the 'YJCO study group'); and
 - young offenders aged 18 to 20 sentenced to a term of imprisonment in 2014–15 (the 'imprisonment study group').
- 4.40 The purpose of this study is to identify broad patterns in sentences imposed and reoffending trends among the two study groups. This provides further context on the offending patterns of young offenders aged 18 to 20 who are eligible for a YJCO, and clarifies whether there are differences between the patterns of young offenders who receive a YJCO and those who receive a sentence of imprisonment.

Limitations to this study

- 4.41 This study does not examine each offender's 'time at risk' in the three years following their time served on their index sentence. A consequence of this methodology is that some young offenders may still be serving a sentence, including a custodial sentence, for the entire subsequent reoffending period. In particular, young offenders serving long YJCOs or sentences of imprisonment may remain in custody for most or all of the three years following the imposition of their index sentence. These young offenders would be incapacitated from much, if not all, subsequent offending during the study period. The effect may be greater for offenders serving sentences of imprisonment: unlike YJCOs, imprisonment sentences can be imposed for any length of time up to the maximum penalty available for the offence.³⁸⁵ Hence, the calculated rates that stem from the examination of these study groups should be viewed broadly and with caution.³⁸⁶

Summary characteristics of young offenders sentenced in 2014–15

- 4.42 In total, 5,876 young offenders were sentenced in adult courts in Victoria in 2014–15. Of these, 5,802 received at least one sentence in the Magistrates' Court and 132 received at least one sentence in the higher courts during the year (Table 2, page 57).³⁸⁷

384. This involves studying the prior principal offences for both groups for a three-year period prior and subsequent to the index sentence in 2014–15. The Council addressed the research questions by analysing data in its reoffending database. Created from court sentencing records, the database links together each sentenced case of an individual offender within and across all Victorian criminal courts, going back to 1 July 2011 and forward to the end of 30 June 2018. This seven-year span defines the 'study period' used in this report. All Victorian criminal courts are included in the reoffending database. The methodology for the report is set out in Appendix 2.

385. The maximum term of a YJCO imposed in the Magistrates' Court is two years and in the higher courts is four years: see further [3.58], [3.64].

386. For further discussion, see Appendix 2.

387. Some young offenders received sentences in both the Magistrates' Court and the higher courts.

- 4.43 Table 2 shows the proportion and number of young offenders who received a sentence during the index year. Fines comprised the largest group of principal sentences imposed on young offenders in the Magistrates' Court (46.9% or 2,724 of 5,802). This was followed by adjourned undertakings (23%), diversions (16.1%) and CCOs (13.8%).
- 4.44 In comparison, CCOs were the most common principal sentence in the higher courts (43.9% or 58 of 132) followed by imprisonment (26.5%) and YJCOs (26.5%).

Table 2: Percentage and number of young offenders aged 18 to 20 sentenced in the Magistrates' Court and the higher courts, by principal sentence type, 2014–15

Sentence type	Magistrates' Court		Higher courts		Overall	
	Percentage	Number	Percentage	Number	Percentage	Number
Fine	46.9%	2,724	–	–	46.4%	2,724
Adjourned undertaking	23.0%	1,333	1.5%	2	22.7%	1,335
Diversion	16.1%	932	–	–	15.9%	932
Community correction order	13.8%	803	43.9%	58	14.6%	857
Dismissal	2.9%	170	–	–	2.9%	170
Imprisonment	2.4%	139	26.5%	35	2.9%	171
Youth justice centre order	1.5%	89	26.5%	35	1.9%	114
Wholly suspended sentence	1.1%	64	–	–	1.1%	64
Other	0.6%	33	2.3%	3	0.6%	36
Total unique young offenders		5,802		132		5,876

Note: The percentages do not sum to 100% because some young offenders may have been sentenced for more than one case during the study period and may therefore have multiple principal offences. These percentages reflect the proportion of unique young offenders sentenced in the Magistrates' Court (5,802) and the higher courts (132) who had at least one sentence recorded for each sentence type.

Profile of the YJCO study group

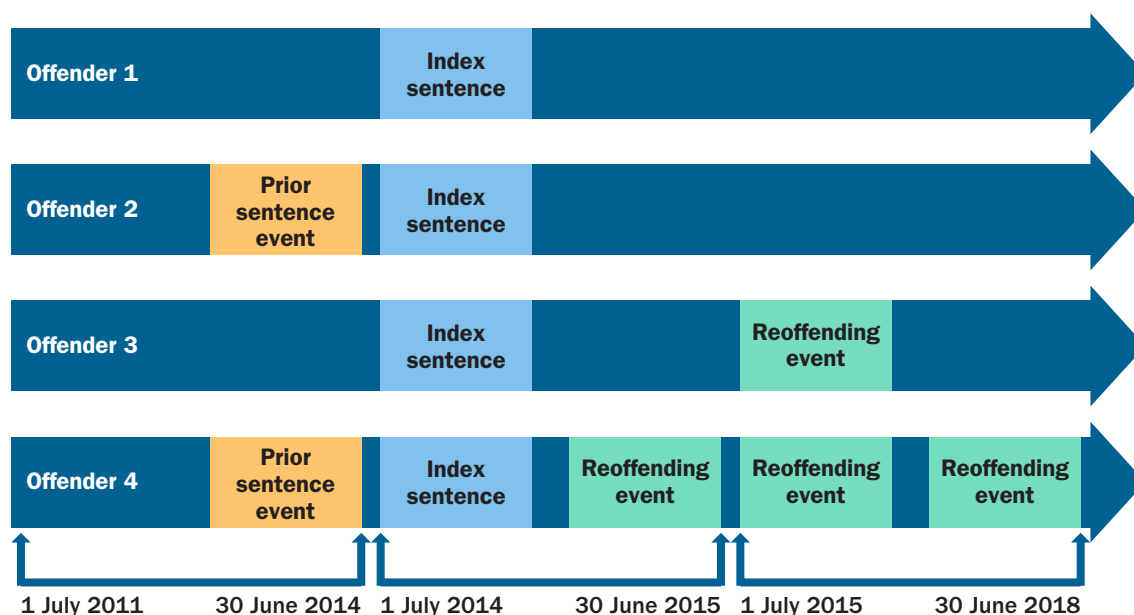
- 4.45 The YJCO study group comprises 114 young offenders aged 18 to 20 who were sentenced to a YJCO in the Magistrates' Court and the higher courts in 2014–15 (the 'index year'). The median age was 19 years, and the majority of the study group (85%) were male.³⁸⁸ The average total effective sentence³⁸⁹ of the YJCOs imposed on the YJCO study group in the index year was 10 months and 28 days.

388. This 'person' count is different from the count of cases sentenced in the Magistrates' Court and the higher courts over the index year because the one young offender may have been sentenced in multiple cases within a single year. The case used for each young offender in the sample is the first YJCO (the 'index sentence') imposed in an adult court (the Magistrates' Court or the higher courts) in the index year. If a young offender had multiple cases heard together in the adult courts on the same date, these cases are all treated as part of the index sentence.

389. In a case with a single charge, the total effective sentence is the sentence imposed for that charge before the non-parole period is set. In a case with multiple charges, the total effective sentence is the total of the sentences imposed for all charges, taking into account whether the sentences are to be served cumulatively or concurrently, before the non-parole period is set. The total effective sentence is also known as the head sentence.

- 4.46 The offending and sentencing patterns of the study group were examined across all court levels (Children's Court,³⁹⁰ Magistrates' Court and the higher courts) for the period from 1 July 2011 to 30 June 2018.
- 4.47 If offenders had multiple sentence events in 2014–15, the earliest sentence has been selected as the 'index sentence', and reoffending has been examined for the three years from the date of that index sentence. For this study group, the index sentence was the earliest YJCO received in the index year in an adult court.³⁹¹
- 4.48 Figure 23 illustrates the process for identifying the index sentence in 2014–15, prior convictions in the previous three years, and reoffending in the subsequent three years, giving four typical scenarios. For example, some index offenders:
- were sentenced only once in the seven-year study period, that is, at the index sentence ('Offender 1');
 - had been previously sentenced but did not reoffend ('Offender 2');
 - had no prior sentence events in the three years before the index sentence but reoffended in the three years after the index sentence ('Offender 3'); and
 - were sentenced more than once in 2014–15 ('Offender 4').

Figure 23: Process for identifying the index sentence, prior sentence events and reoffending events



390. Children's Court outcomes are included in the analysis of prior sentences.

391. In the event that a young offender was sentenced to multiple YJCOs throughout the index year, the index sentence would be the earliest YJCO sentenced in the Magistrates' Court or the higher courts.

Analysis of prior offending and reoffending

- 4.49 In this report, the term 'prior conviction' is used to refer to the presence of at least one proven charge in the three financial years before a young offender's index sentence in 2014–15. Each date on which a young offender appeared in court to be sentenced for a charge or charges (in the three years before their index sentence) is referred to as a 'prior sentence event'. Each prior sentence event could involve a single sentenced charge or multiple cases and charges, providing they were all sentenced on one date. A 'reoffending event' is a sentence imposed after the index sentence to 30 June 2018.
- 4.50 Of the 114 young offenders in the YJCO study group, 94 (82%) had at least one prior conviction in the three years before their index sentence. The same number had at least one reoffending event in the following three years. Almost two-thirds of those in the YJCO study group (63%) had two or more prior sentences, and a similar proportion had two or more reoffending events (62%). Approximately 19% had a single prior sentence event, and 20% had a single reoffending event. Eighteen per cent had no prior sentences, and the same percentage had no reoffending events (Figures 24 and 25).

Figure 24: Percentage of young offenders aged 18 to 20 in the YJCO study group by the number of prior sentence events in the three years before their index sentence

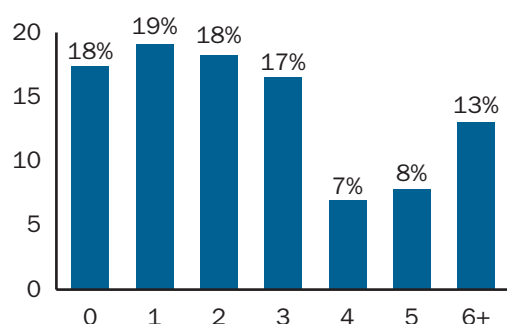
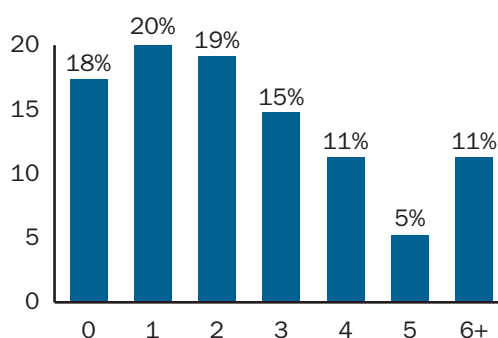


Figure 25: Percentage of young offenders aged 18 to 20 in the YJCO study group by the number of reoffending events in the three years after their index sentence



Analysis of principal sentences

- 4.51 Figures 26 and 27 show the distribution of sentences imposed on the YJCO study group. In these figures, each young offender aged 18 to 20 is counted only once within each sentence category,³⁹² using the principal sentence imposed in the case in the three years before and after the index sentence.
- 4.52 To aid interpretation, sentence types have been grouped into the following categories (see further Appendix 2):
- unsupervised orders (dismissal, discharges, undertakings, good behaviour bonds, wholly suspended sentences³⁹³ and fines);
 - supervised community-based sentences (probation, youth supervision orders, drug treatment orders (DTOs),³⁹⁴ youth attendance orders and CCOs); and
 - immediate custodial sentences (youth residential centre orders, YJCOs, partially suspended sentences and imprisonment).

392. Young offenders may be counted more than once across different sentence types, however.

393. A wholly suspended sentence involved a sentence of imprisonment, although it did not require the offender to serve any term of imprisonment (provided that the order was not breached), nor did it subject the offender to any supervision. It has been grouped with unsupervised orders for the purposes of this discussion.

394. A DTO is a sentence of imprisonment, although it does not require the offender to serve any immediate term of imprisonment or detention (provided that the order is not breached). It has been grouped with supervised community-based sentences for the purposes of this discussion.

4.53 Figure 26 and 27 show the distribution of principal sentences imposed on young offenders in the study group in the three years before and after their index sentence. Almost two-thirds of those in the study group (64%) had received a supervised community-based sentence in the three years before their index sentence, while less than one-third had received a custodial order (Figure 26). Conversely, more than half of the YJCO study group received custodial orders in the three years after their index sentence (Figure 27).

Figure 26: Proportion of young offenders in the YJCO study group with at least one prior sentence in the three years before their index sentence, by sentence type

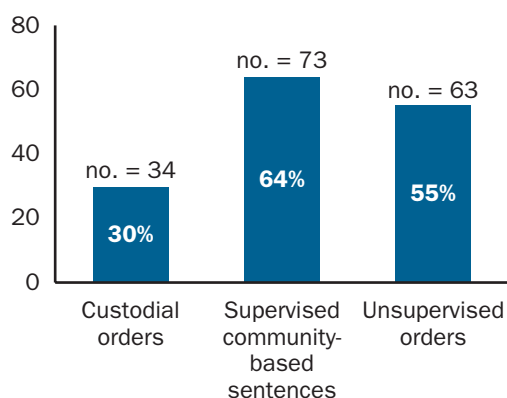
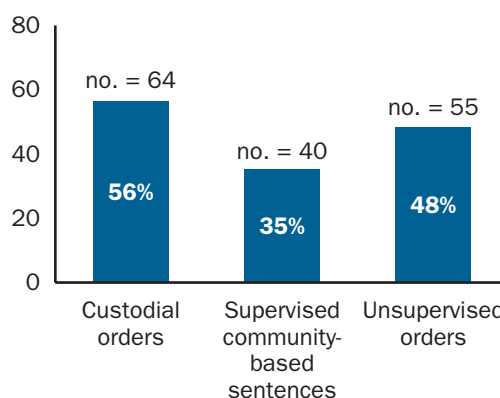


Figure 27: Proportion of young offenders in the YJCO study group with at least one reoffending event in the three years after their index sentence, by sentence type



Note: The percentages do not sum to 100% because some young offenders may have been sentenced for more than one case during the study period and may therefore have multiple principal offences. These percentages reflect the proportion of the 114 young offenders in the YJCO study group who had at least one sentence recorded for each sentence type.

4.54 In the three years prior to their index sentence, 64% of the YJCO study group had received sentences that involved supervision in the community, 55% had received unsupervised orders and 30% had received a custodial order. Custodial orders were imposed on 30% of the study group. Among those who had received custodial orders, the majority (one-quarter of the YJCO study group) had received a YJCO.

Key findings for the YJCO study group

4.55 Key findings on the YJCO study group include the following:

- A large majority (82%) had at least one prior sentence event within the study period.
- Some young offenders in the YJCO study group had a substantial number of prior sentence events: 28% had four or more prior sentence events within the study period, and 13% had six or more. Most young offenders (63%) had two or more prior sentence events.
- A substantial proportion of the YJCO study group (37%) had minimal prior offending, with no (18%) or one (19%) prior sentence event in the study period. This suggests that some young offenders with limited prior contact with the criminal justice system are progressing quickly to very serious offending that justifies a custodial sentence. That conclusion is supported by the fact that the imprisonment study group had an even higher proportion (43%) with no or one prior sentence event in the study period.
- 82% had at least one reoffending event, and 11% had six or more reoffending events.

Profile of the imprisonment study group

- 4.56 The 'imprisonment study group' consists of 171 young offenders aged 18 to 20 who were sentenced to a term of imprisonment in the Magistrates' Court and higher courts in 2014–15 (the index year). Their median age was 20 and the majority were male (83%).³⁹⁵ The average total effective sentence (that is, a young offender's total effective term of imprisonment) at their index sentence was 20 months and 28 days.
- 4.57 The offending and sentencing patterns of the imprisonment study group have been examined across all court levels (Children's Court,³⁹⁶ Magistrates' Court and higher courts) for the period from 1 July 2011 to 30 June 2018. The process of nominating the index sentence is the same as for the YJCO study group (Figure 23, page 58). The index sentence is the sentence of imprisonment that a young offender in the imprisonment study group received in the index year.³⁹⁷

Analysis of prior offending and reoffending

- 4.58 Of the 171 young offenders in the imprisonment study group, 129 (75%) had at least one prior sentence event in the three years before their index sentence and 119 (70%) had at least one reoffending event in the three years after:
- 4.59 Figures 28 and 29 show that over half of the young offenders aged 18 to 20 in the imprisonment study group had two or more prior sentence events, and over half had two or more reoffending events (57% and 51% respectively). In contrast, around 19% had only one prior sentence event, and 18% had one reoffending event. The reoffending events are likely to under-represent the proportion of young offenders who receive imprisonment and go on to commit further offences. This is because the study does not account for the period of time a young offender may be in custody, therefore limiting their ability to reoffend.

Figure 28: Percentage of young offenders aged 18 to 20 in the imprisonment study group by the number of prior sentence events in the three years before their index sentence

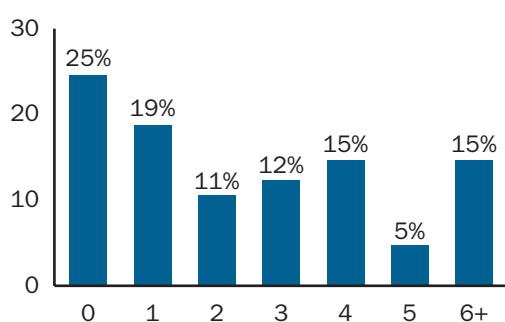
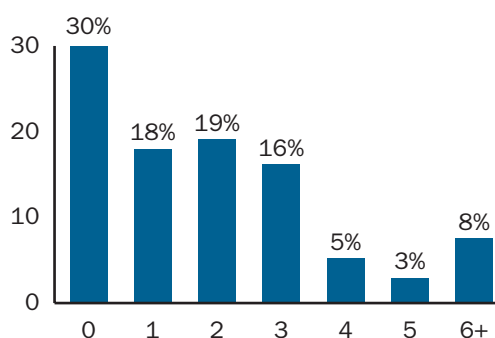


Figure 29: Percentage of young offenders aged 18 to 20 in the imprisonment study group by the number of reoffending events in the three years after their index sentence



395. This 'person' count is different from the count of cases sentenced in the Magistrates' Court and higher courts over the index year because the one young offender may have been sentenced in multiple cases within a single year. The case used for each young offender in the sample is the first case sentenced to a term of imprisonment (the 'index sentence') in an adult court (the Magistrates' Court or the higher courts) in the index year. If a young offender had multiple cases heard together in an adult court on the same date, these cases are treated as part of the index sentence.

396. Children's Court outcomes are included in the analysis of prior sentences.

397. In the event that a young offender received multiple imprisonment sentences throughout the index year, the index sentence would be the earliest imprisonment sentence imposed in the Magistrates' Court or the higher courts.

Analysis of principal sentences

4.60 Figure 30 shows that at least half of the 171 young offenders aged 18 to 20 in the imprisonment study group had received supervised community-based sentences (50% or 86 of 171) and unsupervised orders (54%) during the three years before their index sentence, while less than one-third (32%) had received a custodial order.

Figure 30: Proportion of young offenders in the imprisonment study group with at least one prior sentence in the three years before their index sentence, by sentence type

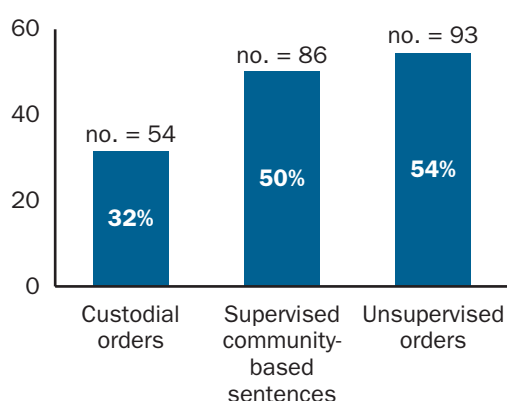
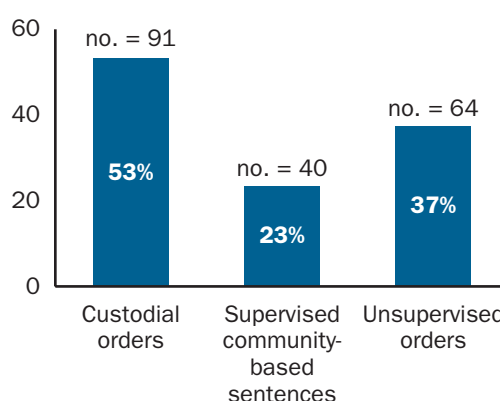


Figure 31: Proportion of young offenders in the imprisonment study group with at least one reoffending event in the three years after their index sentence, by sentence type



Note: The percentages do not sum to 100% because some offenders may have been sentenced for more than one case during the study period and may therefore have multiple principal offences. These percentages reflect the proportion of the 171 young offenders in the imprisonment study group who had at least one sentence recorded for each sentence type.

- 4.61 Custodial orders were the most common sentence type imposed on young offenders during the three years after their index sentence (Figure 31). All these young offenders received at least one imprisonment sentence.
- 4.62 Supervised community-based sentences were imposed on 23% of young people in the imprisonment study group in the three years after their index sentence. All these young offenders received at least one CCO.
- 4.63 Unsupervised orders were imposed on 37% of young offenders in the imprisonment study group: a little under one-third of the imprisonment study group received fines (31%), 11 young offenders received adjourned undertakings and three young offenders received good behaviour bonds (2%). In the three years before their index sentence, a greater proportion of young offenders in the YJCO study group had received unsupervised community sentences than in the imprisonment study group (see Figure 26, page 60), and a greater proportion had received prior supervised community-based sentences.

Key findings for the imprisonment study group

4.64 Key findings on the imprisonment study group include the following:

- A large majority (75%) had at least one prior sentence within the study period. However, one-quarter had no prior sentences during the study period: a surprisingly high rate.³⁹⁸ This is higher than the proportion of the YJCO study group without prior sentences (18%).
- A substantial proportion of young offenders in the imprisonment study group had a large number of prior sentences: 34% had four or more prior sentences, and 15% had six or more.
- A surprisingly large number of young offenders (43%) had minimal prior offending, with no (25%) or one (19%) prior sentence event in the study period.³⁹⁹ These young people may have received sentences of imprisonment rather than YJCOs because the imprisonment sentences are longer than the maximum duration of a YJCO (two years in the Magistrates' Court or four years in the higher courts).⁴⁰⁰ This suggests that some individuals are progressing very quickly to very serious offending.
- 70% had at least one reoffending event, and 8% had six or more reoffending events.

Summary of key findings

4.65 The following key findings are in relation to sentencing trends for cases involving young adult offenders over the reference period:

- The number of young adult offenders sentenced in both the Magistrates' Court and the higher courts declined in the five years to 30 June 2018.
- Despite this decline, a disproportionate rate of young adult offenders was sentenced. Young adult offenders accounted for 15% of the general Victorian population aged 18 and over in 2018 but comprised 22% of sentenced offenders in the Magistrates' Court and 25% of sentenced offenders in the higher courts.
- Young offenders aged 18 to 20 more frequently received low-end orders, such as diversion and adjourned undertakings, than young adult offenders aged 21 to 25. This is consistent with case law that emphasises the importance of rehabilitation over punishment for young people and states that the effect of youth diminishes with age (see at [3.18]).
- Young offenders aged 18 to 20 were more often sentenced for crimes against the person in both the Magistrates' Court and the higher courts than young adult offenders aged 21 to 25.
- Young offenders aged 18 to 20 were sentenced to custodial orders less frequently than young adult offenders aged 21 to 25.
- Of young offenders aged 18 to 20 who received an immediate custodial sentence, 34% received a YJCO in the Magistrates' Court and 42% received a YJCO in the higher courts. This is a surprising finding: it would be expected that the use of YJCOs would be more frequent in the Magistrates' Court because the higher courts deal with more serious offending.⁴⁰¹
- In the higher courts, armed robbery was the most common principal offence in cases receiving a YJCO.
- The suggestion of immaturity or vulnerability was present in approximately half of the 109 cases involving young adult offenders aged 21 to 25 who were sentenced to imprisonment between 1 July 2017 and 31 December 2017. This suggests that there is a group of young adult offenders aged 21 to 25 who might qualify for a YJCO if the option were available.

398. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

399. These figures do not add up to 44% due to rounding of each figure.

400. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

401. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

4.66 The following key findings are in relation to the study of prior and subsequent offences for young offenders aged 18 to 20 sentenced to a YJCO or imprisonment in the 2014–15 financial year:

- Overall, both the YJCO study group and the imprisonment study group had high prior conviction and reappearance rates. This demonstrates that the majority of young offenders aged 18 to 20 who receive a YJCO or sentence of imprisonment have had contact with the criminal justice system both prior to and following their index sentence. This suggests that this group of relatively serious young offenders is complex, and existing sentencing options may not have addressed their offending behaviours and underlying issues.⁴⁰² Additional sentencing, treatment and rehabilitation options, as discussed in Chapter 5, could be considered to help effectively intervene in the offending trajectories of these young offenders.
- The prior sentences of the YJCO study group and the imprisonment study group fell into similar categories. One key difference was that young offenders aged 18 to 20 who received imprisonment as their index sentence most often had no or four or more prior sentences within the study period. Young offenders who received a YJCO most commonly had two or three prior sentences within the study period.
- A total of 22% of all young offenders aged 18 to 20 sentenced to an immediate custodial sentence in the index year had no prior convictions during the study period.⁴⁰³ A relatively high proportion of young offenders aged 18 to 20 sentenced to an immediate custodial sentence in the index year also had a single prior conviction. This indicates that there is a cohort of young offenders who are committing serious offences warranting a custodial sentence, with surprisingly limited prior contact with the criminal justice system in the three years prior to their index sentence.⁴⁰⁴ This finding is consistent with stakeholder feedback: stakeholders suggested that a new problem is young adult offenders ‘hitting the justice system hard’ with serious offending and receiving a custodial sentence on their first or second offence.⁴⁰⁵
- Stakeholders also suggested that this pattern made it difficult to apply preventative interventions with this group, as the existing sentencing hierarchy contemplates a gradual escalation from minor to serious offending.⁴⁰⁶ A range of alternative interventions should therefore be considered – both within and beyond the criminal justice system – to appropriately respond to all young adult offenders, from those who can be diverted from minor offending to those whose initial offence is so serious that any targeted response must be delivered in custody.

402. Given the seriousness of this early offending, if current sentencing options are not effective in reducing the risk that this group will reoffend, some young offenders might, at the end of their sentences, be designated ‘serious offenders’ subject to a supervision order or a detention order under the post-sentence scheme. These orders apply after the end of a sentence, for up to 15 years’ supervision or three years’ detention on top of the length of a determinate sentence. They can be imposed on offenders who, at the end of their sentence, continue to pose an ‘unacceptable risk’: *Serious Offenders Act 2018* (Vic) ss 8, 14, 16, 19, 62–63, 69.

403. This figure is calculated with reference to all young offenders aged 18 to 20 in both the YJCO study group and the imprisonment study group, totalling 278 total unique young offenders, of whom 62 had no prior sentence events in the study period.

404. This is probably because the sentence would exceed the two- or four-year maximum term available on a YJCO. Although YJCOs are an alternative to imprisonment, the maximum term may make them unavailable for offending that would attract a term of custody longer than that limit: Young Adult Offenders Stakeholder Discussion Forum (5 September 2019); *R v PP* [2003] VSCA 100 (7 August 2003) [11].

405. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

406. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

5. What alternative approaches are possible for sentencing young adult offenders?

Overview

- 5.1 Drawing on international literature, this chapter sets out a number of possible approaches to sentencing young adult offenders. These approaches seek to better acknowledge the substantial evidence base demonstrating that young adult offenders aged 18 to 25 are distinct from older offenders due to their incomplete psychobiological development.⁴⁰⁷
- 5.2 There are a number of possible avenues to better acknowledge the particular needs of this age group in the Victorian sentencing process, many of which could feasibly be combined to create a flexible network of overlapping responses. These could include:
- introducing sentencing principles in the *Sentencing Act 1991* (Vic) that specifically address young adult offenders, including making the age and/or psychobiological development of an offender a specific sentencing consideration;
 - introducing changes to the community correction order (CCO) to better promote treatment and rehabilitation for this age group, or introducing a specific non-custodial 'young adult offender order' available for offenders aged 18 to 25, targeted towards promoting the treatment and rehabilitation of this age group;
 - expanding the availability and/or scope of dual track⁴⁰⁸ to include offenders aged 21 to 25, or extending dual track to allow a court to consider all of the sentencing options available under the *Children, Youth and Families Act 2005* (Vic) in sentencing an eligible young adult offender; and
 - introducing a specialist young adult court or a specialist list to address the needs of young adult offenders at sentencing.
- 5.3 Beyond sentencing, other avenues for improving the criminal justice system's ability to respond to the particular needs of this age group include:
- developing additional cautioning options for young adults, to reduce formal processing within the criminal justice system;
 - extending or introducing programs available to young adult offenders on bail or remand prior to sentence, or extending specialist diversionary programs; or
 - expanding facilities and programs for young adult offenders in adult imprisonment, such as the Penhyn Unit of Port Phillip Prison.⁴⁰⁹

407. The evidence base in relation to the development of young adult offenders is discussed in Chapter 2.

408. Dual track allows offenders aged under 21 to be sentenced to a YJCO: see from [3.52] for further discussion.

409. For further discussion of the facilities and programs available to young adult offenders in the adult prison system in Victoria, see [3.32]–[3.51].

- 5.4 These approaches and programs are of course not mutually exclusive. They could be configured in a range of ways to provide the court with more 'gears in the system'⁴¹⁰ to respond flexibly to young adults' different circumstances and offences. Many of these approaches might also be helpful for older offenders, beyond their particular relevance to the young adult cohort. They could also be integrated with delivery of related services.
- 5.5 This chapter refers to examples from other jurisdictions to illustrate alternative and innovative approaches to sentencing young adult offenders. Many of the alternatives discussed are drawn from very different legal and cultural contexts from that in Victoria. No conclusions are drawn on which options may be the most desirable. The purpose of this chapter is to promote discussion of alternative approaches to sentencing this age group, alongside evidence of their effectiveness where available.⁴¹¹

Introducing sentencing principles into the *Sentencing Act 1991* (Vic) that specifically address young adult offenders

- 5.6 Options for acknowledging the distinct developmental stage of young adulthood in sentencing include introducing a requirement that courts take into account a young adult offender's psychobiological development and establishing specific principles for young adult offenders that can be incorporated into the *Sentencing Act 1991* (Vic).
- 5.7 Most European jurisdictions recognise young adult offenders as a distinct cohort.⁴¹² Countries such as Germany, the Netherlands and Portugal provide special rules in the adult criminal law concerning the mitigation of penalties for young adults.⁴¹³

Current statutory guidance

- 5.8 In sentencing an offender under the *Sentencing Act 1991* (Vic), a court must have regard to a number of factors, including the offender's culpability and degree of responsibility for the offence, the presence of any aggravating or mitigating factor concerning the offender, and other relevant circumstances.⁴¹⁴ In assessing an offender's culpability, their age and psychological development may be relevant.⁴¹⁵
- 5.9 There is no legislative requirement that a court take into account an offender's maturity, psychobiological development or age in sentencing. Instead, the principles guiding the consideration of an offender's youth in sentencing are found in the case law, as discussed at [3.6]. This can be contrasted with the legislation applicable to children, which clearly specifies matters that the Children's Court must take into account in sentencing children.⁴¹⁶

410. Meeting with Jesuit Social Services (20 August 2019).

411. Some inter-jurisdictional research has been excluded as the Council can only review materials available in English.

412. Sibella Matthews et al., 'Youth Justice in Europe: Experience of Germany, the Netherlands, and Croatia in Providing Developmentally Appropriate Responses to Emerging Adults in the Criminal Justice System' (2018) 1(1) *Justice Evaluation Journal* 59, 61; Andrea Păroșanu et al., *Alternatives to Custody for Young Offenders and the Influence of Foster Care in European Juvenile Justice* (2015) 19.

413. One survey found that 18 out of 35 European countries (51%) provide special rules for young adults in the adult criminal system: Matthews et al. (2018), above n 412, 61, 65.

414. *Sentencing Act 1991* (Vic) s 5(2).

415. *R v Mills* [1998] 4 VR 235 and *Azzopardi v The Queen* [2011] VSCA 372 (18 November 2011) are leading cases on the relevance of an offender's age and psychological development to their culpability under section 5(2) of the *Sentencing Act 1991* (Vic). See also the discussion at [3.6]–[3.28].

416. *Children, Youth and Families Act 2005* (Vic) s 362.

Principles relating to dual track

- 5.10 Currently, the only statutory recognition of an offender's age in sentencing is the availability of a youth justice centre order (YJCO) under the *Sentencing Act 1991* (Vic) to a young offender aged under 21 at the time of sentencing.⁴¹⁷ The court is not required to consider whether to make a YJCO merely because a young offender falls into the appropriate age range.⁴¹⁸
- 5.11 The *Sentencing Act 1991* (Vic) also contains no clear statement of the purpose of making a YJCO beyond what is implied by the eligibility criteria (namely, the order is aimed at the rehabilitation of the offender and the avoidance of the often detrimental consequences of adult prison faced by particularly immature or impressionable young offenders).⁴¹⁹ In contrast, orders such as the CCO,⁴²⁰ drug treatment order (DTO),⁴²¹ dismissal, discharge and adjournment⁴²² all have provisions that state their respective purposes. The provisions relating to the recently introduced youth control order, available in the Children's Court, also state the purposes of the order.⁴²³

Children's Court sentencing principles

- 5.12 The matters to be taken into account when sentencing children in the Children's Court are substantially different from the principles applied to adult offenders under the *Sentencing Act 1991* (Vic).⁴²⁴
- 5.13 These principles balance justice and welfare considerations. They recognise that children are different from adults: they emphasise the importance for both the child and the community of promoting development and rehabilitation, intervening with the lowest intensity appropriate, and limiting stigma and interference with the child's long-term integration into society as an adult.⁴²⁵

In determining which sentence to impose on a child, the court must, as far as practicable, have regard to:

- a. the need to strengthen and preserve the relationship between the child and the child's family; and
- b. the desirability of allowing the child to live at home; and
- c. the desirability of allowing the education, training or employment of the child to continue without interruption or disturbance; and
- d. the need to minimise the stigma to the child resulting from a court determination; and
- e. the suitability of the sentence to the child; and
- f. if appropriate, the need to ensure that the child is aware that they must bear a responsibility for any action by them against the law; and
- g. the need to protect the community, or any person, from the violent or other wrongful acts of the child:
 - i. in all cases in which the sentence is for a Category A serious youth offence or a Category B serious youth offence; or
 - ii. in any other case – if it is appropriate to do so;
- h. if appropriate, the need to deter the child from committing offences in remand centres, youth residential centres or youth justice centres.

417. *Sentencing Act 1991* (Vic) ss 3 (definition of 'young offender'), 32.

418. *Sentencing Act 1991* (Vic) s 32.

419. *Sentencing Act 1991* (Vic) s 32(1).

420. *Sentencing Act 1991* (Vic) s 36.

421. *Sentencing Act 1991* (Vic) s 18X.

422. *Sentencing Act 1991* (Vic) s 70.

423. *Children, Youth and Families Act 2005* (Vic) s 409A.

424. *Children, Youth and Families Act 2005* (Vic) s 362; *Sentencing Act 1991* (Vic) s 5. The Children's Court can also hear cases involving adults who were children at the time of committing an offence, provided they have not reached their 19th birthday at the time of sentencing: *Children, Youth and Families Act 2005* (Vic) s 3 (definition of 'child').

425. *Children, Youth and Families Act 2005* (Vic) ss 362(1)(a)–(e).

Nonetheless, they also emphasise the importance of ensuring that the child takes responsibility for their actions.⁴²⁶

- 5.14 Recently, the principles were amended to ensure that the court also considers community safety in cases involving Category A and B serious youth offences.⁴²⁷

Possible statutory principles for sentencing young adult offenders

- 5.15 In 2018, the Howard League (UK), in conjunction with the Barrow Cadbury Trust and the Transition to Adulthood Alliance (T2A), published a set of suggested sentencing principles for young adults in England and Wales. The suggested principles aligned, according to the authors, with developments in case law, science and sociology, as well as the relevant sentencing guideline.⁴²⁸
- 5.16 These principles may be useful as an example of the issues that might be considered in sentencing principles for young adults, in addition to the principles that apply to sentencing adults in Victoria. They are more closely aligned with the existing Victorian principles for sentencing adults than those for sentencing children. They state that:
- young adults, typically aged 18 to 25, should be treated as a distinct category for the purposes of sentencing, as they are still physically and psychologically maturing, and have a greater capacity for change in a shorter period of time than older adults;
 - custody should be a last resort, because of the evidence on the capacity of young adults to change, and the potential harmful effects of imprisonment. Sentencing courts should ‘fully consider the risks associated with custody’ and ‘fully explore community options’;⁴²⁹
 - when a custodial sentence is imposed, the term should take into account the effect of prolonged custody on the young adult’s wellbeing and life chances. For example, the sentence will often affect the offender’s prospects of education, employment and contact with any dependent children;
 - any custodial term should be reduced for young adult offenders. This is an extension of the principle that children receive shorter sentences than adults for the same behaviour. In England and Wales, the Sentencing Council’s guideline for sentencing children specifies that, for children aged under 18, a court may impose a discount of half to one-third of the sentence imposed on adults;⁴³⁰ and
 - when considering mitigating factors, attention should be paid to how they particularly affect young adults, on the basis that common mitigating factors – such as brain injury, caring responsibilities and incomplete physical and psychological development – can have a larger effect on young adult’s lives than those of older adults, and young adults may have had less support or opportunity to address their issues than older adults.⁴³¹

426. *Children, Youth and Families Act 2005* (Vic) ss 362(1)(e)–(h).

427. *Children, Youth and Families Act 2005* (Vic) s 362(1)(g) as amended by *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017* (Vic) s 24. These offences include murder, manslaughter and rape, but also home invasion, carjacking and culpable driving causing death. For further discussion of Category A and B serious youth offences, see [3.66].

428. Howard League for Penal Reform, *Sentencing Principles for Young Adults* (2019); Sentencing Council for England and Wales, *Sentencing Children and Young People: Overarching Principles and Offence Specific Guidelines for Sexual Offences and Robbery: Definitive Guideline* (2017).

429. Howard League for Penal Reform (2019), above n 428. This principle is consistent with the approach of the *Mills* principles currently applicable to young adults in Victoria (see from [3.7]), but the principle does not require judges to fully consider the risks associated with custody.

430. Sentencing Council for England and Wales (2017), above n 428, 29.

431. Howard League for Penal Reform (2019), above n 428; Sentencing Council for England and Wales (2017), above n 428.

- 5.17 The fact that mitigating factors, such as cognitive impairment, can have a larger effect on young adults' lives than those of older adults is significant. As discussed at [2.35], the young adults who offend the most often, and the most seriously, are also the most disadvantaged. A number of those disadvantages are long-term issues such as neurological disability or acquired brain injury, care history,⁴³² and limited educational achievement. Some of these issues, in particular acquired brain injury and care history, may also indicate a dual status as both an offender and a victim of crime and/or violence.
- 5.18 Disadvantage, including victim status, is already recognised in sentencing case law.⁴³³ However, there may be value in recognising that young adults with long-term issues stemming from their childhoods may merit particular consideration as they leave the immediate home or care environment of their childhood. Given the scale of that adjustment, there is a high chance that their childhood environment has contributed to their difficulties and a likelihood that their ability to cope maturely with it may be delayed; they may need a transitional period in young adulthood in order to learn coping skills or complete treatment that will assist them in rising above those challenges (see [2.34]–[2.42]).
- 5.19 In addition, a question arises as to whether application of the principles should be limited to a specific age range (such as 18 to 25), or whether an assessment of psychobiological maturity could enliven the application of the principles. Some researchers have questioned whether *immaturity*, as opposed to chronological age, could also be more effectively recognised in the criminal justice system, as part of recognising the circumstances of the offender.⁴³⁴

Options for the Sentencing Act 1991 (Vic)

- 5.20 In the Victorian context, recognition of the distinct developmental stage of emerging adulthood could be achieved by making an offender's 'psychobiological maturity' a specific factor for consideration under section 5(2) of the *Sentencing Act 1991* (Vic). This could be limited to young adult offenders aged 18 to 25, or otherwise invite consideration of an offender's maturity, regardless of their chronological age.
- 5.21 Other legislative avenues may be to introduce more detailed provisions relevant to sentencing young adult offenders (perhaps adapting the provisions in relation to children outlined above) into section 5 of the *Sentencing Act 1991* (Vic).
- 5.22 Of course, any such principles would sit within the broader framework for sentencing adults in Victoria. This also requires consideration of the nature and gravity of the offence and the impact of the offence on any victim, among a range of factors that may override consideration of an offender's psychobiological development in cases involving serious offending.⁴³⁵
- 5.23 It may also be useful to introduce a clear statement of purpose for YJCOs imposed under the *Sentencing Act 1991* (Vic), as noted at [5.8]–[5.11].

432. Sentencing Advisory Council (2019), above n 59, 37–39, 45–84, 93–94.

433. See for example, *Bugmy v The Queen* [2013] HCA 27 (2 October 2013); *Marras v The Queen* [2014] VSCA 119 (18 June 2014).

434. Bryan-Hancock and Casey (2011), above n 5, 76. This may be particularly pertinent as we see the extension of young adulthood into the late 20s as young people take longer to fully mature in a range of domains, such as independent living: see for example, the discussion of unexpectedly late desistance in Moffitt et al. (2002), above n 65, 200.

435. *Sentencing Act 1991* (Vic) s 5. For discussion of circumstances in which youth diminishes in importance as a sentencing factor under the existing case law, see [3.13]–[3.19].

Community-based sentencing options for young adult offenders

- 5.24 This section discusses opportunities for tailoring Victoria's current community-based sentencing options to better promote the treatment and rehabilitation of young adult offenders. It also considers community-based sentencing options available in other jurisdictions that respond specifically to the needs of young adult offenders. The needs of young adults are addressed to a limited extent by the existence of the dual track system and specialist units in adult custodial facilities. However, this section focuses on the fact that, in particular, there is minimal ability to apply a tailored approach to young adult offenders at earlier points in the criminal justice process, as there are no tailored community-based sentencing options for this age group.⁴³⁶
- 5.25 Options include:
- tailoring the CCO to better respond to the needs of young adult offenders (including introducing a 'young adult justice plan' condition into the CCO);
 - introducing a new non-custodial order for young adult offenders; and/or
 - extending community-based sentencing options available in the Children's Court to young adult offenders.
- 5.26 The essential elements of any specific order are likely to be similar. This section therefore discusses potential elements of a non-custodial order for young adult offenders, offering references to existing orders for illustration.

Issues with the use of the community correction order for young adult offenders

- 5.27 As noted at [3.81], the CCO is a 'flexible' order that enables courts to provide for an offender's rehabilitation in the community, while imposing a broad range of optional conditions that may promote the rehabilitation, supervision and/or punishment of the offender.
- 5.28 However, the approach to management of offenders on CCOs is broadly compliance-based, and sanctions apply for contraventions.⁴³⁷ There is no specific framework for managing young adult offenders on CCOs.⁴³⁸
- 5.29 The Council has previously found that young adult offenders have notably high levels of non-compliance with CCOs, breaching by both non-compliance and reoffending at around twice the rates of older groups (see [2.21]). In its 2008 *Suspended Sentences and Intermediate Sentencing Orders: Suspended Sentences – Final Report Part 2*, the Council recommended a separate community-based order for young adult offenders aged under 25 at the time of sentencing who are assessed as having a high level of need and are at a moderate-to-high risk of reoffending. The purpose of the order was to facilitate their rehabilitation and reintegration. The Council found that:
- the rehabilitative focus on this age group largely manifests itself in the type of disposition courts impose. For example, young adult offenders are less likely to receive a custodial sentence

436. Other than the YJCO, sentencing dispositions under the *Children, Youth and Families Act 2005* (Vic) are not available to young offenders aged 18 and over: *Children, Youth and Families Act 2005* (Vic) ss 3 (definitions of 'child' and 'young offender'), 360; *Sentencing Act 1991* (Vic) ss 3 (definition of 'young offender'), 32.

437. Contravention of a CCO results in a separate charge of contravening a community correction order; punishable by three months' imprisonment; it may also have effects on existing orders, including the CCO that was breached. The charge of contravening a community correction order can be prosecuted alone (in cases of breach by non-compliance) or as one of multiple charges (in cases of breach by further offending): *Sentencing Act 1991* (Vic) ss 83AD, 83AS.

438. Some young adult offenders may receive targeted management based on other risk factors they display: Meeting with Corrections Victoria (30 July 2019); Corrections Victoria (2018), above n 215.

than their adult counterparts. However, the high breach rate of community sentences by this age group would suggest that the current orders are not adequately providing the level of intervention and type of support that is required. While the criminogenic factors that can increase the likelihood of breaching orders/reoffending have been identified, it is not clear that the current orders available to the courts address these factors adequately.⁴³⁹

- 5.30 The Council's 2017 *Contravention of Community Correction Orders* report also noted the need for a differential, evidence-informed approach to sentencing and/or managing young adult offenders on community orders.⁴⁴⁰ In consultation, stakeholders similarly highlighted the lack of a dedicated community order with a support-based, rather than compliance-based, approach.⁴⁴¹

Key elements of community-based sentencing options for young adults

- 5.31 Any tailored community-based sentencing option for a young adult offender should recognise the developmental immaturity of young adults. It should also recognise the effects that that might have on young adult offenders' ability to comply with any orders or conditions imposed.
- 5.32 Stakeholders noted that developmental immaturity was relevant not only to the ability to comply with conditions, such as non-association and curfews, but also to young adults' ability to navigate services and systems relevant to compliance with treatment conditions that might assist them to address underlying issues.⁴⁴²
- 5.33 Community-based sentencing options should also provide for a range of levels of intervention, according to the offender's level of risk and particular needs. There is substantial research showing that moderate and high-intensity interventions are most effective with moderate and high-risk offenders.⁴⁴³ In contrast, applying high-intensity interventions to low-risk offenders is usually not the most effective use of resources, and it can sometimes even be counterproductive.⁴⁴⁴
- 5.34 Additionally, young adults perceive time differently from older adults, and their rapid maturation means that their behaviour patterns, including offending behaviour, can change quickly.⁴⁴⁵ Therefore, it is important that the delay between the offending and the order should be kept to a minimum to ensure that the order remains relevant to the offending behaviour.⁴⁴⁶ It may also mean that it may be appropriate to impose a slightly shorter order than would be imposed for an older adult, within what is required to deliver treatments or interventions and with regard to the other factors present in the case.

439. Sentencing Advisory Council, *Suspended Sentences and Intermediate Sentencing Orders: Suspended Sentences – Final Report Part 2* (2008) 223. Similarly, one of the recommendations of the 2002 *Sentencing Review* was the creation of a youth-specific non-custodial order to be used alongside the dual track system. Young offenders on such an order would be supervised by a new youth section within Community Correctional Services. The order would be an intermediate sanction appropriate for diverting suitable offenders from custodial terms: Arie Freiberg, *Pathways to Justice: Sentencing Review* (2002) 156–161.

440. Sentencing Advisory Council (2017), above n 61, 78.

441. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

442. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

443. See [2.43]–[2.62]. See also Lowenkamp et al. (2006), above n 118, 88–90; Lipsey (2009), above n 113, 143–145.

444. Ibid.

445. Steinberg et al. (2009), above n 20, 28; Steinberg and Cauffman (1996), above n 20, 249; Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

446. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019). Research has found that the greater the time between first contact with the youth justice system and final adjudication, the worse an offender's prognosis in terms of further offending: Waln K. Brown et al., 'The Effect of Early Juvenile Court Adjudication on Adult Outcome' (1989) 33(3) *International Journal of Offender Therapy and Comparative Criminology* 177, 177. In addition to the question of whether the order remains appropriate to the offender's behaviour at the time of sentencing, there is a risk that if the delay between the conduct and the consequence is too great, the offender may perceive the sentence as being irrelevant, and therefore arbitrary or unfair. This may be particularly problematic where consequences follow non-compliance with the order after an extended period on a program (for example, as a condition of an adjourned undertaking) as it may undermine the therapeutic aspects of the relationship between the sentencing judge and the offender. See generally, Steinberg et al. (2009), above n 20, 28.

Need for a specialist approach to service delivery

- 5.35 The non-custodial sentencing options available under the *Children, Youth and Families Act 2005* (Vic) and delivered by Youth Justice (Department of Justice and Community Safety) recognise the developmental maturity of offenders aged under 18, and as such provide a compelling model for extension or adaptation. They differ from options delivered to adult offenders in significant ways. Importantly, programs are generally delivered by specialist staff with expertise and training in working with adolescents, including, for example, dealing with impulsivity and volatility in the supervision process. There are strong links and/or structured service partnerships between Youth Justice, educational services and other service pathways that aim to provide specialist assistance to children and young people. Further, the offence-specific interventions applied are evidence-based and developmentally appropriate.⁴⁴⁷ Youth Justice case management aims to provide a model of service delivery that 'wraps around' the child, whereas the adult system may require a significant degree of logistical coordination by the offender.⁴⁴⁸ Finally, supervision of young people on youth justice community orders typically includes family and significant others and involves outreach models of service delivery. This contrasts with the office-based model that is predominant in adult correctional settings.⁴⁴⁹
- 5.36 Several stakeholders commented on the different approaches of the youth justice system and Corrections Victoria in relation to the delivery of community-based sentences. It was observed that the primary focus of orders under the *Children, Youth and Families Act 2005* (Vic) is care and support, rather than compliance; services were provided in the knowledge that complete compliance would not necessarily be a realistic goal early in the term of an order. There was an emphasis on guiding the child through the services available to them, and through the criminal justice process. This includes ensuring that orders made were appropriate for the child's developmental level, and that the child was equipped to comply with any conditions.⁴⁵⁰
- 5.37 One stakeholder noted that some young adults had criminal matters in both the children's and the adult jurisdictions, and that these offenders often had particular difficulty in navigating the contrast between the two, describing the shift between the two systems as 'stark and immediate'.⁴⁵¹

Management of non-compliance with conditions

- 5.38 Any new intermediate sanction may need to have a flexible approach to responding to a young adult offender's non-compliance behaviour in light of the high rates of contravention of CCOs observed in this age group ([3.93]–[3.97]). Intermediate steps aimed at improving compliance could be taken, perhaps stepping incrementally up in intensity,

447. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019). See also Legislative Council Legal and Social Issues Committee, Parliament of Victoria (2018), above n 14, 33–62, 87–92, 179–188.

448. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019). See also Legislative Council Legal and Social Issues Committee, Parliament of Victoria (2018), above n 14, 33–62, 87–92, 179–188; Department of Justice and Community Safety, 'Support Services in the Youth Justice System' (justice.vic.gov.au, 2019) <<https://www.justice.vic.gov.au/justice-system/youth-justice/support-services-in-the-youth-justice-system>> at 16 October 2019; Department of Justice and Community Safety (2019), above n 257.

449. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019). See also Youth Parole Board (2018), above n 258, 12, 23; Legislative Council Legal and Social Issues Committee, Parliament of Victoria (2018), above n 14, 33–62, 87–92, 179–188; Department of Justice and Community Safety (2019), above n 448; Department of Justice and Community Safety (2019), above n 257.

450. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

451. This often occurred with young adult offenders aged 18 to 19 because charges in the Children's Court are based on offence date, whereas the adult courts use sentence date as the key criterion: Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

before formal action such as breach charges are implemented. For example, this could involve identifying the reasons a young person has failed to attend a required program, and discussing with them how they might overcome the psychological or practical obstacles they have encountered.

Ease of access to programs and services

- 5.39 It is important that services be provided promptly, and that orders not be excessively long compared to the time required to provide any mandated program or intervention. Young adults mature quickly, which suggests that programs targeted to their offending at a certain stage of maturity may quickly become irrelevant if they are provided after an excessive delay. Further, young adults perceive the passage of time, and the relevance of future events, differently from older adults (see [2.7]). Stakeholder consultation suggested that young adults struggled to process the relevance of the intervention and punishment when their programs involved long delays in providing interventions.⁴⁵²
- 5.40 Key service providers working with young adult offenders, including in the Youth, Community and Law Program, emphasise the importance of a wrap-around approach with a number of services in a single location (see [5.112]). This has positive effects on young adult offenders' practical ability to access services. Stakeholder consultation suggested that if services are disparate, there is an increased risk that young adult offenders will not have the time, executive function or transport to access all relevant services, and it will be difficult for service providers to coordinate among themselves.⁴⁵³

Improving the non-custodial options available to young adults

- 5.41 The elements discussed above – developmental appropriateness, supportive focus, flexibility, outreach-based, prompt service delivery, and wrap-around service provision – appear to be the most important elements of any tailored order focused on young adult offenders.
- 5.42 As noted at [5.25], there are a number of possible ways in which Victoria's current community-based sentencing options could be tailored to better promote the treatment and rehabilitation of young adult offenders.

Tailoring the community correction order for young adult offenders

- 5.43 A condition modelled on the existing justice plan scheme for intellectually disabled offenders could be developed to address the offending behaviours of young adult offenders.⁴⁵⁴ This could enable a court to request from Corrections Victoria a plan of available services designed to reduce the likelihood of the young adult offender committing further offences.⁴⁵⁵

452. This is also relevant to diversion programs where sentencing is deferred until after a program is complete.

453. Meeting with Dr Karen Hart, CEO, The Youth Junction Inc. (21 August 2019); Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

454. A justice plan is a condition available for intellectually disabled offenders on a CCO or adjourned undertaking. The condition requires the offender to comply with a plan of available services designed to reduce the likelihood of reoffending, in accordance with the objectives and principles specified in Part 2 of the *Disability Act 2006* (Vic). A court considering making such a condition may request a pre-sentence report, a statement from the Secretary to the Department of Health and Human Services that the person has an intellectual disability, and 'a plan of available services designed to reduce the likelihood of the offender committing further offences'. The offender must agree to comply with the order before it is imposed. If the order is made, the offender must also comply with the justice plan, as it becomes a condition of the CCO or adjourned undertaking: *Sentencing Act 1991* (Vic) ss 3 (definition of 'justice plan condition'), 80.

455. *Sentencing Act 1991* (Vic) s 80(3)(c).

- 5.44 A 'young adult justice plan' might engage a young adult offender in education, training and employment opportunities, or other relevant services, to reduce their possibility of contravening the CCO by non-compliance with conditions or further offending.

Germany, the Netherlands and the United States: Children's Court options

In Germany, all offenders aged under 21 are initially processed in specialised youth courts. It is for the specialised youth court to determine whether the sanctions of the *Youth Court Act* or the general *Criminal Code* should be applied to the offender. This happens for all offences, including murder.

Juvenile sanctions are available in respect of such an offender if:

- a global examination of the offender's personality and of their social environment indicates that, at the time of committing the crime, the young adult's moral and psychological development was like a juvenile; or
- the nature, circumstances or motivations of the offence are of a juvenile nature.

Since April 2014, the Netherlands has operated a similar system that extends up to the age of 23. All system-involved young adults aged 18 to 23 are assessed by the public prosecutor at an early stage of the process to determine whether or not they qualify for a youth sanction, based on a report on their social, emotional and cognitive development. However, the vast majority of young people over 18 are dealt with in the adult system.

Source: Sibella Matthews et al., 'Youth Justice in Europe: Experience of Germany, the Netherlands, and Croatia in Providing Developmentally Appropriate Responses to Emerging Adults in the Criminal Justice System' (2018) 1(1) *Justice Evaluation Journal* 59, 65–71.

Some U.S. jurisdictions, including Massachusetts, are considering raising the age at which a young person is tried in the adult jurisdiction to 21.

Source: WBUR News, 'At 18, Mass. Residents Are Tried as Adults. Lawmakers Could Raise That Age to 21' (wbur.org, 2019) <<https://www.wbur.org/news/2019/03/12/juvenile-court-age-raise-21>> at 17 October 2019.

- 5.45 Provision of employment and training opportunities is particularly relevant. Research suggests that employment is a powerful protective factor against further offending, and provision of these opportunities, along with a non-custodial sentence following less serious offending, may help young adult offenders to avoid further offending.⁴⁵⁶ Further, the provision of rehabilitative services under a specific, distinct plan aimed at young adult offenders may have positive effects on the availability and accessibility of services specifically targeted at this age group.⁴⁵⁷
- 5.46 In addition, or alternatively, there could be staff in Corrections Victoria with specialist expertise in working with young adult offenders to manage those aged 18 to 25 on CCOs. Specialist young adult Corrections Victoria staff could have tailored approaches to managing non-compliance behaviour, drawing on the approach of the youth justice system.

456. Lowenkamp et al. (2006), above n 118, 89.

457. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

Extending non-custodial options available in the Children's Court to young adult offenders

- 5.47 Consideration could be given to extending the scope of Victoria's dual track system, to enable young offenders aged 18 to 20 (or older) to have access to non-custodial sentencing options available in the Children's Court. This would enable some young adult offenders to have access to the specialist approach of the youth justice system to managing non-custodial orders and service delivery (as discussed above at [5.35]).
- 5.48 There are a number of non-custodial dispositions available under the *Children, Youth and Families Act 2005* (Vic) that do not have a direct counterpart in the *Sentencing Act 1991* (Vic), including the youth attendance order and the youth control order. While the conditions available on a youth supervision order can generally be achieved on a CCO,⁴⁵⁸ as noted at [3.91], there are fundamental differences in the delivery and management of offenders on these orders in the youth justice system.
- 5.49 The youth attendance order is a Children's Court sentencing option with no adult counterpart. A youth attendance order is an alternative to detention for children aged 15 and over at the time of sentencing. The Children's Court can order a child on a youth attendance order to attend a program, which may include counselling but could simply be educational, at the youth justice unit; this can be up to 10 hours per week for a maximum of 12 months.⁴⁵⁹ Associated conditions prohibit reoffending and may include community service conditions. The provision of services at the youth justice unit raises an interesting possibility for the provision of rehabilitative services in a structured environment without requiring a custodial sentence to be imposed first. This may have positive effects in terms of changing behaviour patterns before a young adult commits an offence serious enough to justify a custodial term.⁴⁶⁰

Attendance centres in the United Kingdom

In the United Kingdom, a court may impose an 'attendance centre order' on an offender aged under 25 in certain circumstances.

Source: *Powers of Criminal Courts (Sentencing) Act 2000* (UK) s 60.

An attendance centre is a place embedded in a local community in which offenders aged under 25 are provided a disciplined learning environment. The centres incorporate a range of educational, vocational and other training programs to promote the rehabilitation of the offender.

Source: Gov.UK, 'Youth Offending Teams' (gov.uk, 2019) <<https://www.gov.uk/youth-offending-team>> at 17 October 2019; *Powers of Criminal Courts (Sentencing) Act 2000* (UK) s 60.

The order and requirement to attend such a centre punishes the offender by depriving them of leisure time. Generally, an offender would be ordered to spend 12 to 36 hours in total at a centre, with a maximum of three hours per day. The attendance times must not clash with the offender's employment or schooling timetable.

Source: *Powers of Criminal Courts (Sentencing) Act 2000* (UK) s 60(7)(b).

458. *Children, Youth and Families Act 2005* (Vic) s 389; *Sentencing Act 1991* (Vic) s 45. The court may impose 'any special condition' on a youth supervision order, provided it relates to the offence and the court gives its reasons. Listed special conditions include requirements that the person attend school, abstain from alcohol or other drugs, abide by a curfew, or undergo treatment: *Children, Youth and Families Act 2005* (Vic) ss 381(3)–(4). These conditions, or closely related conditions, are all available under a CCO, except the requirement to attend school (treatment includes conditions aimed at treating drug abuse): *Sentencing Act 1991* (Vic) ss 48D, 48I, 48J.

459. *Children, Youth and Families Act 2005* (Vic) ss 397–399, 402.

460. A 1996 evaluation of youth attendance orders found that 80% of 465 offenders reoffended within 12 months of being placed on the order. However, this evaluation did not consider whether there had been a reduction in the seriousness of the reoffending compared with the offence for which the young person received the youth attendance order: Reece Walters, 'Alternatives to Youth Imprisonment: Evaluating the Youth Attendance Order' (1996) 29 *The Australian and New Zealand Journal of Criminology* 166, 174.

- 5.50 The youth control order is an example of an alternative sentence available to children, which might be adapted for young adult offenders. It provides an alternative to custodial dispositions for children sentenced under the *Children, Youth and Families Act 2005* (Vic). Available since 1 June 2018, the order is served in the community under strict conditions and is now the most intensive sentencing order that a child can serve in the community in Victoria.⁴⁶¹ Certain compulsory conditions must be made, including requirements that the child not commit further offences, they report to the Secretary as required under the order, they notify the Secretary of any change in their residence, school or employment, and they participate in education, training or work.⁴⁶² In addition, optional conditions can be imposed, including various treatment-related conditions.⁴⁶³ Stakeholders noted that the most attractive features of the youth control order are the 'planning stages ... and the accountability of service providers', but that the conditions on this order can be too onerous for many children and young people. It was suggested that the increased planning and engagement of service providers available for youth control orders would be useful for other non-custodial options available in the Children's Court.⁴⁶⁴
- 5.51 When a youth control order is made in respect of a child, it can include a parental undertaking to support the order.⁴⁶⁵ Consideration could be given to the appropriateness of this type of condition for young adult offenders, adapted for their developmental stage. For example, the general approach of using the important relationships in an individual's life to support rehabilitative orders could be extended to other family members or partners, recognising that parental relationships may no longer be the most relevant in the daily life of a young adult.⁴⁶⁶

Expanding the availability and scope of the dual track system

- 5.52 As discussed at [3.52], Victoria's current dual track system allows for young offenders aged 18 to 20 who would otherwise be sentenced to imprisonment in an adult facility to be sentenced to a YJCO. The young offender then serves their term of custody in a youth justice centre. The aim of the dual track system is to promote the rehabilitation of young offenders, while also serving the other purposes of sentencing, such as just punishment and deterrence.⁴⁶⁷ It also recognises that some young offenders would be more appropriately placed in a facility separate from older offenders.
- 5.53 One possibility for dealing with young adult offenders would be to extend the age limits for access to all Children's Court sentencing options, as discussed in the context of non-custodial sentencing options from [5.24]. In the custodial context, options include:
- raising the age limit for eligibility for a YJCO (which might necessitate the creation of a specific facility, or specific units, to house newly eligible offenders); and/or
 - reversing recent legislative changes that have restricted the availability of YJCOs in respect of certain offending.

461. *Children, Youth and Families Act 2005* (Vic) ss 409A–C.

462. *Children, Youth and Families Act 2005* (Vic) s 409F(3).

463. *Children, Youth and Families Act 2005* (Vic) s 409F(2).

464. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

465. *Children, Youth and Families Act 2005* (Vic) s 409G.

466. As a comparison, see the adaptation of multisystemic therapy for young adults, which draws on close friendships and relationships with non-parent authority figures: Sheidow et al. (2016), above n 113.

467. *R v PP* [2003] VSCA 100 (7 August 2003) [9]; Freiberg (2014), above n 254, 773–775.

Raising the age limit for eligibility for a youth justice centre order

- 5.54 As discussed at [4.33], there is evidence that some offenders aged 21 to 25 who receive sentences of imprisonment are noted by the sentencing court to be 'immature', 'naïve', 'vulnerable' or 'easily led'.⁴⁶⁸ This suggests that there may be a further cohort of young adult offenders who could be suitable for a YJCO if the statutory age criteria were extended.
- 5.55 One option is to extend eligibility for a YJCO to young adult offenders up until the age of 25.⁴⁶⁹ Young adult offenders would still need to meet the other relevant statutory criteria, meaning they must:
- have reasonable prospects for rehabilitation; or
 - be particularly impressionable, immature or likely to be subjected to undesirable influences in an adult prison.⁴⁷⁰
- 5.56 Extending the use of dual track to young adult offenders aged 21 to 25 could have advantages related to the provision of specialised, supportive and rehabilitative interventions to them, in line with the purpose of the dual track system. It would also allow them increased access to educational opportunities. Further, it would give them access to youth justice transition planning support, which can be more comprehensive than the supports provided in the adult prison system.⁴⁷¹
- 5.57 In addition, or alternatively, vulnerable young people's offending may necessitate a sentence longer than the maximum duration currently available for a YJCO.⁴⁷² They could be permitted to commence their sentence in a youth justice centre, and then transfer to an adult prison at the discretion of either Youth Justice or the Youth Parole Board.

Challenges to raising the age limit for eligibility for a youth justice centre order

- 5.58 A challenge posed by extending the availability of YJCOs is that this change would mean that youth justice centres could house offenders aged up to 29.⁴⁷³ Consideration would need to be given to managing and providing for a wide range of age groups housed in youth justice centres. This may require the creation of separate facilities or units within existing facilities to ensure that the youngest people housed in a youth justice centre were sufficiently supported and protected from the oldest.⁴⁷⁴
- 5.59 The imprisonment of children under the age of 18 in adult prisons has been found to pose risks to their physical safety,⁴⁷⁵ and to infringe their rights to protection as well as their rights to be treated humanely when deprived of liberty.⁴⁷⁶ Depending on the conditions in which children are held, other rights may also be infringed.⁴⁷⁷ The infringement of rights arises largely from elements of the prison environment established to maintain security and control in the adult prison context.⁴⁷⁸

468. See for example, *DPP v Kanneh* [2017] VCC 1142 (18 August 2017); *DPP v Madul* [2017] VCC 1509 (19 October 2017); *DPP v Whelan* [2017] VCC 1746 (22 November 2017); *DPP v Blow* [2017] VCC 1615 (2 November 2017).

469. This could be described as 'up until their 26th birthday' in the legislation, mirroring the current wording that states that a young offender must not have reached their 21st birthday: *Sentencing Act 1991* (Vic) ss 3, 32.

470. *Sentencing Act 1991* (Vic) s 32.

471. This is due to the increased emphasis on education in youth justice centres compared with prisons: see [3.43], [3.55].

472. A YJCO may be imposed for a maximum of two years in the Magistrates' Court or four years in the higher courts: *Sentencing Act 1991* (Vic) s 32(3).

473. The maximum term of a YJCO imposed in the higher courts is four years. If a 25-year-old offender is sentenced to a four-year YJCO, this could mean that they are held in a youth justice centre up until the age of 29.

474. Recommendation 1 from the Parliamentary Inquiry into Youth Justice Centres in Victoria stated that 'the Department of Justice and Regulation consider developing an intake assessment system that takes into account other additional factors along with chronological age, such as developmental age and cognitive development': Legislative Council Legal and Social Issues Committee, Parliament of Victoria (2018), above n 14, 9–11. This may assist in appropriately placing and separating different groups of young adults within the youth justice centre setting.

475. *Ibid* 143–144.

476. *Certain Children v Minister for Families and Children & Ors* (No 2) [2017] VSC 251 (11 May 2017).

477. *Certain Children by Their Litigation Guardian Sister Marie Brigid Arthur v Minister for Families and Children* [2016] VSC 796 (21 December 2016).

478. *Certain Children v Minister for Families and Children & Ors* (No 2) [2017] VSC 251 (11 May 2017) [423]–[424].

Additionally, children held in youth justice centres are entitled to have their developmental needs catered for.⁴⁷⁹ If such an option were adopted, young adult offenders would need to be carefully managed in these centres to mitigate the risks to children aged under 18 (and to younger detainees more generally), without infringing their human rights.

Reversing recent changes to dual track

- 5.60 In 2018, changes were made to dual track sentencing⁴⁸⁰ that restricted its availability to those convicted of certain offences now considered Category A and Category B serious youth offences.⁴⁸¹ In effect, the changes meant that offenders convicted of certain offences can no longer be sentenced to a YJCO or a youth residential centre order unless they can show 'exceptional circumstances' beyond immaturity and vulnerability.⁴⁸²
- 5.61 Many of those being sentenced for these types of offences would not be eligible for a YJCO even if the restriction were removed. Category A and B serious youth offences are very serious offences, and in most cases they reflect the fact that the offender has engaged in serious criminal behaviour. Offenders committing this type of offending generally receive less leniency from sentencing courts; they may also not meet the statutory criteria of vulnerability and potential for rehabilitation.⁴⁸³
- 5.62 However, some of the offences affected by the changes can cover a wide range of seriousness. At the less serious end of this spectrum, some such charges may relate to offending typical of immature young offenders. This can include some offenders who might otherwise meet the statutory criteria for a YJCO because they are vulnerable and/or have a high potential for rehabilitation. For example, home invasion is a Category B serious youth offence, while aggravated home invasion is Category A.⁴⁸⁴ A person can be guilty of home invasion if they enter a home in order to steal, along with another person, while someone is in the home.⁴⁸⁵ This is true even if they do not interact with the person, or even realise the person is in the home. If they commit the same offence with two other people instead of one, they are guilty of aggravated home invasion.⁴⁸⁶
- 5.63 Consultation suggested that there were at least some young offenders aged 18 to 20 who might have received a YJCO but for recent legislative changes.⁴⁸⁷ Arguably, in situations where an offence can cover a wide range of criminality, it may be more effective to allow a judicial officer with access to all the information on the offending, the offender and the available sentencing options to decide the appropriate sentence, rather than limiting judicial discretion.

479. *Children, Youth and Families Act 2005* (Vic) s 482(2). Development is defined widely in section 3 as 'physical, social, emotional, intellectual, cultural and spiritual development'. Section 482(1) specifically requires the Secretary to separate persons held on remand who are under the age of 15 from those held on remand who are of or above the age of 15 unless exceptional circumstances exist.

480. *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017* (Vic). The changes commenced in 2018. The changes also affected the sentencing of children, including restricting the availability of YJCOs and youth residential centre orders for children and young people convicted of Category A and B serious youth offences.

481. *Sentencing Act 1991* (Vic) s 2: these offences include murder, manslaughter and rape, but also home invasion, carjacking and culpable driving causing death.

482. *Sentencing Act 1991* (Vic) ss 32(2C)–(2D).

483. See for example, *R v Bain-Singh* [2017] VSC 431 (28 July 2017) (murder); *DPP v Za Lian* [2018] VCC 773 (24 May 2018) (rape); *DPP v Arvidson* [2017] VCC 1264 (1 September 2017) (aggravated carjacking).

484. *Sentencing Act 1991* (Vic) s 2.

485. *Crimes Act 1958* (Vic) s 77A.

486. *Crimes Act 1958* (Vic) s 77B.

487. This includes young offenders sentenced for Category A and B serious youth offences, as well as offences attracting a minimum non-parole period. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019). The number of offenders actually affected by the introduction of Category A and B serious youth offences is small: between the introduction of the new home invasion offences in 2016 and 30 June 2018, 10 offenders were sentenced for aggravated home invasion in the higher courts, resulting in 14 charges. Most of these were aged 35 or older. Of those sentenced for aggravated home invasion, all received sentences of at least five years' imprisonment, suggesting that, even if the offence had not been a Category A serious youth offence, it would still have been too serious for a YJCO with a maximum duration of four years.

Measures aimed at limiting the harms of adult imprisonment for young adult offenders

- 5.64 As discussed from [2.47] and at [3.43], holding young adults in adult prisons can be counterproductive to their treatment and rehabilitation. It can expose them to harms (such as risks to their safety from older adults) and can restrict their participation in mandatory prosocial, constructive activities that are typically available in youth-focused facilities (such as improved educational opportunities, targeted programs and specialist transition resources). This poses risks to the community, which is better served by approaches that maximise the potential for an offender's rehabilitation.
- 5.65 Measures that might help to address these issues include:
- expanding the availability of specialist units within adult prisons;
 - creating a specialist youth justice centre for young adult offenders aged 21 to 25; and/or
 - implementing limitations or prohibitions on adult imprisonment for young adult offenders generally or for particular groups of young adult offenders.
- 5.66 As with other options discussed, eligibility for these units could be based on age, maturity, risk, or a combination of all these factors. In consultation, stakeholders expressed a strong preference for a system that allowed for a combination of factors – including chronological age, risk and maturity – to determine whether a given individual would be placed with young offenders aged 18 to 20, young adult offenders up to age 25, or older adults.⁴⁸⁸

Specialist units for young adults within adult prisons

- 5.67 Victoria currently has two dedicated facilities for young adults within adult prisons: the Penhyn Unit of Port Phillip Prison (maximum security) and the Nalu Unit at Fulham Prison (minimum security). The criteria for entry to these units are strict, and the units are relatively small: see [3.34]–[3.37].
- 5.68 One approach to young adult imprisonment might be to expand the availability of placements within these existing programs. However, stakeholders suggested that one reason the Penhyn Unit, in particular, is so effective is that it is small.⁴⁸⁹ Alternatively, additional young adult units could be created within adult prisons, perhaps with different eligibility criteria and in additional locations. This could allow some of the benefits associated with a dedicated facility to be provided to a greater number of young adults within the prison system. An advantage to the possibility of establishing multiple young adult units is that services for young adults could then be provided in multiple locations, and for prisoners with multiple security classifications.⁴⁹⁰
- 5.69 If this approach were taken, consideration could be given to establishing specialised units for young adults on remand, as well as facilities for young adult female prisoners; as one stakeholder commented, 'at the moment, the disadvantage to female prisoners is notable'.⁴⁹¹
- 5.70 Prisoners are currently allocated to specialist units by the assessment and classification unit of Corrections Victoria.⁴⁹² If more units were made available, it may be desirable to allow a court to order a certain prisoner to be placed in a particular specialist unit.

488. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

489. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

490. As one stakeholder commented, proximity to their community is important for young adult offenders. Even if a youth unit is available in a different geographical location, 'no one is going to go to Fulham if their family are in Geelong': Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

491. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

492. Corrections Victoria (2018), above n 215 ('AC 5 – Developing a Prisoner's Placement', [2.13]). See also [3.31].

Small-scale facilities for juvenile and young offenders in the Netherlands

The Netherlands has a number of innovative youth justice centres that are:

- small-scale (holding up to eight young people);
- local (proximate to a young person's family and community); and
- focused on relational security and maintaining positive elements in the lives of young people.

Researchers have suggested that local facilities might have positive effects for detained young people's development, treatment and rehabilitation. Young people detained in Victoria often lack protective factors, particularly school engagement and prosocial involvement.

Sources: Government of the Netherlands, 'Small-Scale Facilities for Young Offenders Opened in Groningen and Nijmegen' (government.nl, 2016) <<https://www.government.nl/latest/news/2016/11/02/small-scale-facilities-for-young-offenders-opened-in-groningen-and-nijmegen>> at 16 October 2019; Sanne Oostermeijer and Matthew Dwyer, *Local Facilities: Promoting Resilience in the Juvenile Justice System* (2018) [4]–[8] ('Background and Proposal'); Sanne Oostermeijer, 'Local Time: Working Towards Small-Scale Local Facilities for Justice-Involved Young People' (ypjustice.wordpress.com, 2019) Justice-Involved Young People Network <<https://ypjustice.wordpress.com/2019/02/13/local-time-working-towards-small-scale-local-facilities-for-justice-involved-young-people/>> at 16 October 2019; Stephane Shepherd et al., 'The Role of Protective Factors and the Relationship with Recidivism for High-Risk Young People in Detention' (2016) 43(7) *Criminal Justice and Behavior* 863, 873–875.

5.71 In addition, or alternatively, imprisoned young adults might benefit from the approach to education taken by Parkville College at Parkville and Malmsbury youth justice centres. This approach aims to provide year-round educational programs, compulsory enrolment, and prioritisation of education ahead of work programs.⁴⁹³ This could help to reduce the educational gap between young adult offenders held in youth justice centres and those in prisons.

Specific facilities operated by adult corrections for young adult offenders

5.72 Multiple stakeholders suggested that there could be a specific facility dedicated to housing offenders aged 18 to 25, or aged 21 to 25, at the time of sentencing. This could avoid the issues arising from contact between young adult offenders and older offenders (as discussed at [2.51] and [3.46]), as well as the possible risks to children in youth justice centres of extending the availability of YJCOs to young adult offenders aged up to 25 (see discussion at [5.58]).⁴⁹⁴

5.73 Some stakeholders felt that there was a substantial difference between a specialist unit on the grounds of a mainstream prison (as discussed at [3.32]) and a dedicated facility on its own site. These differences include the types of education and programs available, and interaction with older adult prisoners. Although limited in specialist units, this interaction may still occur in contexts such as attending treatment and rehabilitation programs, obtaining medical treatment, and during other time outside the specialist unit. Further, many stakeholders held a firm view that, all else being equal, the difference of approach between adult prisons and youth justice centres was meaningful and significant.⁴⁹⁵

493. See [3.43]–[3.45]. However, concerns have been raised about the operation and delivery of services in Parkville College, particularly in relation to girls and young women, and to lockdowns: Victorian Auditor-General's Office (2018), above n 12, 49–50, 67–78.

494. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019); Meeting with Dr Diana Johns, University of Melbourne (3 June 2019).

495. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

- 5.74 Facilities for young adults could be modelled on the current youth justice centre approaches, with an emphasis on transition, as well as prioritising access to education and training opportunities.⁴⁹⁶ However, this could be delivered in alternate formats, such as through very small units and units that mimic adult life outside the facility, such as those operating in the Netherlands (see page 80). Like youth justice centres, these facilities could be made available as a specific sentencing option for the sentencing court, or as a custodial facility for young adult offenders serving a term of imprisonment in a mainstream adult facility.

Prohibitions or limitations on adult imprisonment for young adult offenders

- 5.75 In Victoria, sentencing a young offender aged 18 to 20 to detention in a youth justice centre is discretionary, as is transfer to an adult prison. Young offenders aged 18 to 20 who are sentenced to a YJCO can theoretically serve sentences in youth justice centres until the age of 24.⁴⁹⁷
- 5.76 One option for reform is for Victoria to introduce a prohibition or limitation on adult imprisonment for offenders aged 20 or younger, or even 25 or younger. Instead, young adult offenders could receive a YJCO.
- 5.77 This could mean that all young adult offenders would have access to the same interventions and educational opportunities that are provided in youth justice centres (see [3.43], [3.55]).
- 5.78 Consideration would need to be given to the exact limits of any prohibition – in terms of age at sentence, sentence length and offence type – in order to maintain the philosophy of youth justice centres as protective of vulnerable young offenders.

Germany: limitations on adult imprisonment for immature offenders

In Germany, young offenders aged under 21 who are sentenced to imprisonment under the *Juvenile Court Act* serve their sentence in a juvenile facility. Young offenders also have a reduced maximum sentence: 10 years for serious crimes or 15 for murder.

Source: Ineke Pruin and Frieder Dünkel, *Better in Europe? European Responses to Young Adult Offending* (2015) 40. See also Sibella Matthews et al., 'Youth Justice in Europe: Experience of Germany, the Netherlands, and Croatia in Providing Developmentally Appropriate Responses to Emerging Adults in the Criminal Justice System' (2018) 1(1) *Justice Evaluation Journal* 59, 62, 65.

Assessment of suitability for juvenile sanctions under the German system differs from assessment for suitability for the YJCO under the Victorian system. In Germany:

- either an immature offender or an immature offence triggers the application of the juvenile system;
- even youth offenders serving the longest possible sentences (15 years) are eligible;
- offenders with very long sentences are transferred to adult facilities at age 24; and
- the analysis is required, not optional, for an offender in the relevant age group.

In Victoria, the test for immaturity is more difficult to meet. There is a maximum sentence of two years (or four years in the higher courts), and the judge is not required to consider imposing a YJCO.

Source: *Sentencing Act 1991* (Vic) s 32.

In practice, around two-thirds of German offenders aged 18 to 20 are dealt with under the juvenile system.

Source: Ineke Pruin and Frieder Dünkel, *Better in Europe? European Responses to Young Adult Offending* (2015) 39.

496. The Council notes concerns raised about the operation of the youth justice system: see discussion at [3.63], [3.70].

497. This could occur if an offender is 20-years-old at the time of sentencing, they receive the maximum length of a YJCO (four years), and they are not transferred to an adult facility during the term of their sentence.

For example, if the prohibition extended to young adult offenders receiving lengthier sentences, or to the oldest young adult offenders (for example, 25-year-old offenders), these facilities could be required to accommodate offenders in their late twenties or thirties (or older) with detainees under 18 years of age. This might undermine the protection of younger and more vulnerable detainees.⁴⁹⁸ However, such an issue may be managed by transferring offenders administratively from the youth justice system to the adult correctional system at a certain age, or by placing them in specialist young adult justice centres rather than the existing youth justice centres (as discussed at [5.72]–[5.74]).

United Kingdom: mandatory youth facilities

The United Kingdom has a mandatory youth sentencing regime for custodial sentences imposed on young adult offenders aged under 21 when they are convicted. Young adult offenders may only be sentenced to detention in a young offender institution, unless they receive an indeterminate sentence. However, they can be transferred from a young offender institution to a prison without formally changing the nominal sentence they are serving.

Source: *Powers of Criminal Courts (Sentencing) Act 2000* (UK) ss 89–98.

Offenders who turn 21 in custody are transferred from young offender institutions to adult prisons as a matter of course.

Source: Youth Justice Legal Centre, 'Age' (yjlc.uk, 2018) <<https://yjlc.uk/age-2/>> at 1 November 2018.

Young offenders aged 21 and over, or those aged 18 to 21 but assessed as having a negative influence within the young offender institution, can have their sentence formally converted to a term of imprisonment.

Source: *Powers of Criminal Courts (Sentencing) Act 2000* (UK) s 99.

Specialist courts and court lists

- 5.79 Specialised courts adapt their procedures, and often the sanctions they apply, to render them more effective for a given cohort. Some specialist courts make relatively minor changes to court processes. Increasingly, however, specialised courts incorporate therapeutic elements such as restorative justice programs, referrals to services, intensive case management, and the involvement of people significant in the offender's or the accused's life or community.⁴⁹⁹
- 5.80 For example, some specialised court models involve cultural Elders in the process for accused persons or offenders of culturally and linguistically diverse backgrounds.⁵⁰⁰ Others might focus on precursors to offending, such as mental health issues or addiction.⁵⁰¹

498. For further discussion of the potential risks of housing older or higher-risk offenders in youth justice centres, see [5.58].

499. Emerging Adult Justice Project, 'Recent Reforms' (eajjustice.org, 2019) <<https://www.eajjustice.org/recent-reforms/>> at 19 September 2019.

500. For example, Koori Courts in Victoria, Rangatahi and Pasifika courts in New Zealand: Magistrates' Court of Victoria, 'Koori Court' (mcv.vic.gov.au, 2019) <<https://www.mcv.vic.gov.au/about/koori-court/>> at 17 October 2019; Children's Court of Victoria, 'Koori Court' (childrenscourt.vic.gov.au, 2019) <<https://www.childrenscourt.vic.gov.au/jurisdictions/koori-court/>> at 17 October 2019; County Court of Victoria, 'County Koori Court' (countycourt.vic.gov.au, 2019) <<https://www.countycourt.vic.gov.au/learn-about-court/court-divisions/county-koori-court/>> at 17 October 2019; Youth Court of New Zealand, 'About Youth Court' (youthcourt.govt.nz, 2018) <<https://www.youthcourt.govt.nz/about-youth-court/rangatahi-courts-and-pasifika-courts/>> at 17 October 2019. For Indigenous offenders, there may be a cultural education and reclamation process. For example, Maori youth involved with the Rangatahi courts will give their pepeha (traditional greeting of tribal identity) at the end of the process. This involves learning not only about ancestry but also about local associations with land and water, and a level of Maori language.

501. For example, drug treatment courts operate in New Zealand, the United States, New South Wales, Victoria, Queensland, South Australia and Western Australia: Australasian Institute of Judicial Administration, 'Drug Courts' (aija.org.au, 2019) <<https://aija.org>>.

Specialised case management and treatment staff are often a key part of such courts, and magistrates and judges often receive special training in how to apply therapeutic jurisprudence. Similarly, specialist court lists allow courts to provide targeted case management and coordination.⁵⁰²

- 5.81 Young adult courts are often modelled on drug courts or juvenile/family courts.⁵⁰³ They adopt a model that includes frequent contact through court hearings and intensive services to assess participant progress.
- 5.82 Unlike most of the other options discussed in this report, which operate post-plea, specialist courts and lists usually hear matters involving an accused early in the criminal justice process, before a verdict or plea has been entered. In contexts that include pre-plea events, people are referred to as an 'accused', rather than as an 'offender'.
- 5.83 The establishment of specialised court processes could be approached in a number of ways:
- Allowing the transfer of young adult offenders to the Children's Court for sentencing upon an assessment of maturity and suitability, or more generally extending the jurisdiction of the Children's Court to include young adult offenders. This change might require a change of name, for example, to the 'Youth Court'.
 - Establishing a specific young adult court with a jurisdiction covering young adults aged 18 to 25. This model has been adopted on a pilot basis in a number of US jurisdictions, including San Francisco and Brooklyn.⁵⁰⁴
 - Establishing specialised lists within existing adult courts (such as the Magistrates' Court and County Courts), overseen by specialised judges and magistrates. These specialised lists might focus specifically on young adults. Alternatively, they might function as early intervention lists, resourced to address issues such as acquired brain injury, mental illness and homelessness, that disproportionately affect young adult offenders.

Young adult courts

- 5.84 In Victoria, a specialist court would likely incorporate aspects of Children's Court and adult court approaches. This would ensure that this cohort of accused is managed in a way appropriate for their developmental stage, while also recognising that, despite their immaturity, they are still adults with a greater degree of responsibility for their actions and lives than accused in the Children's Court.
- 5.85 Typically, a key aspect of young adult courts is the measures in place to enhance engagement during hearings. These may or may not be paired with restorative justice or problem-solving approaches. These measures address immaturity, but they may also assist in other ways.

au/research/resources/drug-courts/> at 17 October 2019; Gayathiri Ganeshan et al., *Drug Courts: Evidence Brief* (2016); Magistrates' Court of Victoria, 'Drug Court' (mcv.vic.gov.au, 2019) <https://www.mcv.vic.gov.au/about_us/drug-court> at 17 October 2019. Additionally, mental health courts operate in some US jurisdictions. Aspects of these therapeutic jurisdictions can be found in the Assessment and Referral Court List in Victoria (discussed at [5.93]), the Treatment Intervention Court in South Australia, and the Tasmanian Diversion List: Courts Administration Authority of South Australia, 'Treatment Intervention Court' (courts.sa.gov.au) <<http://www.courts.sa.gov.au/OurCourts/MagistratesCourt/InterventionPrograms/Pages/Treatment-Intervention-Court.aspx>> at 17 October 2019; Magistrates Court of Tasmania, 'The Diversion List' (magistratescourt.tas.gov.au, 2019) <https://www.magistratescourt.tas.gov.au/about_us/criminal_division/diversion_list> at 17 October 2019.

502. Michael S. King, 'What Can Mainstream Courts Learn from Problem-Solving Courts?' (2007) 32(2) *Alternative Law Journal* 91, 91.

503. These courts are also often known as emerging adult courts: Emerging Adult Justice Project (2019), above n 499.

504. Center for Court Innovation, 'Brooklyn Young Adult Court' (courtinnovation.org, 2019) <<https://www.courtinnovation.org/programs/brooklyn-young-adult-court>> at 17 October 2019; Brooklyn District Attorney's Office, 'Young Adult Bureau' (brooklynda.org, 2019) <<http://www.brooklynnda.org/young-adult-bureau/>> at 17 October 2019; Superior Court of California, County of San Francisco, 'Young Adult Court' (sfsuperiorcourt.org, 2019) <<https://www.sfsuperiorcourt.org/divisions/collaborative/yac>> at 17 October 2019.

For example, alternate seating arrangements, conversational formats and frequent breaks might all help to make a hearing more accessible to an accused with the reduced attention span associated with acquired brain injury and certain mental illnesses. Common measures include the following:

- Adapted court layout or venue, for example, allowing the accused to sit at a table with the affected people, counsel and judge, or allowing the accused to sit with their family and/or lawyer. This facilitates conversation between the offender and family, lawyers and judicial officer.⁵⁰⁵
- Continuity of judge and court staff. This allows young adults to form a relationship with the personnel involved in their case, and ensures that the staff know the commitments an individual has made.⁵⁰⁶ It may be particularly important in supportive or problem-solving models that require frequent contact (for example, models that include requirements to attend court for a judicial monitoring condition, with a magistrate supervising a rehabilitation or wellness plan).
- Informal, non-legal language, and discussions about the accused's life and situation as well as their offending. This improves young adults' understanding of the processes and why they are occurring and provides additional context for judicial officers and case management staff.⁵⁰⁷ Conversation can also make an accused feel more respected and therefore improve their perception of, respect for, and engagement with the court.⁵⁰⁸
- Family involvement. This is particularly relevant for younger accused who may still be living at home, or who require family support to understand the repercussions of their actions or to support rehabilitative or restorative interventions.⁵⁰⁹
- Interactivity/discussion with the accused. This may be limited to asking questions about the accused's background and situation, their offending and its impact, but it is often combined with restorative justice and/or treatment and rehabilitation initiatives.⁵¹⁰ Goal setting may be a particularly effective element of interactivity that may go some way to counteracting what disadvantaged people and groups may perceive as the paternalism of the mainstream court system.⁵¹¹

5.86 Therapeutic justice processes often operate following an admission of guilt. Processes that encourage offenders to examine how their behaviour affects others, and to find ways to address current and potential future causes of offending, can help them to avoid reoffending. Such processes build empathy for the victim and give offenders a sense of control over their own behaviour, as well as increasing their acceptance and respect for the criminal process. The Koori Court is an example of this type of process outside the young adult context: there, Elders and the judicial officer lead the sentencing conversation.⁵¹² The involvement of Elders is aimed at reducing perceptions of alienation from the court process, increasing accountability and ensuring that sentences are culturally appropriate.⁵¹³

505. See Andrew Becroft, *10 Ideas that Might "Cross-Pollinate" from the Youth Court into the Adult District Criminal Court* (2012) 5.

506. See for example, *ibid* 9.

507. *Children, Youth and Families Act 2005* (Vic) ss 522(1)(a)–(b), 527. Compare also the use of informal language in the Koori Court: Magistrates' Court of Victoria (2019), above n 500.

508. King (2007), above n 502, 92.

509. An example is group conferencing in the Children's Court: *Children, Youth and Families Act 2005* (Vic) s 415; Children's Court of Victoria, 'Group Conferencing' (childrenscourt.vic.gov.au, 2019) <<https://www.childrenscourt.vic.gov.au/jurisdictions/criminal/group-conferencing>> at 17 October 2019. See also the use of family group conferences in New Zealand: Oranga Tamariki, 'Family Group Conferences' (orangatamariki.govt.nz, 2019) <<https://www.orangatamariki.govt.nz/youth-justice/family-group-conferences/>> at 17 October 2019.

510. See *Children, Youth and Families Act 2005* (Vic) s 522(1)(c). See also the practices of the Koori Court: Magistrates' Court of Victoria (2019), above n 500. See also King (2007), above n 502, 91.

511. King (2007), above n 502, 92–93.

512. Magistrates' Court of Victoria (2019), above n 500.

513. Magistrates' Court of Victoria, *Koori Court: Information for Legal Representatives* (n.d.) 2.

San Francisco: specialist, developmentally informed processes even for serious offences

San Francisco's Young Adult Court, established in 2015, is a collaborative, problem-solving court for young adults aged 18 to 24 who have been arrested in San Francisco. Participants in the program are selected on a range of eligibility criteria. The program is designed for young adult persons with a moderate-to-high risk of recidivism and a high level of criminogenic needs. Their willingness and ability to participate in and complete the program are also considered. The Young Adult Court can hear felony cases as well as misdemeanour cases; felony cases have priority. For most charges, the program operates before plea; for the remainder, it operates after plea but before sentence. There is no requirement for a young adult accused to plead guilty to participate in Young Adult Court.

Participants are generally referred to the Young Adult Court by lawyers or probation officers. In accordance with eligibility guidelines, the District Attorney must confirm legal eligibility for a young adult to participate. In appropriate cases, even if the District Attorney determines the participant to be ineligible under the guidelines, defence counsel can petition the managing attorney to waive the criteria that the participant does not meet.

If a young adult is admitted to Young Adult Court, the young adult is referred to the 'Family Service Agency'. The Family Service Agency administers mental health and drug addiction screening tools to prepare a clinical case management plan. There are four phases of treatment:

- *Phase 1: Engagement and Assessment;*
- *Phase 2: Stability and Accountability;*
- *Phase 3: Wellness and Community Connection; and*
- *Phase 4: Program Transition (and Graduation Day).*

The duration of each phase depends on the speed of a participant's progress. The average program length is 10 to 18 months. All participants receive a Wellness Care Plan, which includes dialectical behaviour therapy,* life skills instruction and intensive case management. If appropriate, participants can also receive substance abuse counselling; housing, education, employment and family/parenting support; and probation support.

Participants are also subject to random drug testing. There is a reward and response system for good or poor compliance. Rewards include gift cards or public acknowledgment by the judge, and responses include additional court appearances and termination from the program.

*Dialectical behavioural therapy is a modified version of cognitive behavioural therapy initially designed to treat borderline personality disorder. It can also be used to treat other conditions, like suicidal behaviour, self-harm, substance use, post-traumatic stress disorder, depression and eating disorders. In the context of San Francisco's Young Adult Court, dialectical behavioural therapy is used in a skills group that teaches participants mindfulness, distress tolerance, emotional regulation and interpersonal effectiveness over an eight-week period.

Source: Superior Court of California, County of San Francisco, *Young Adult Court Policies and Procedures Manual* (2019) 9–21.

- 5.87 As discussed from [2.3], young adults' decision-making skills, and particularly their ability to evaluate the consequences of their actions, are not yet functioning at an adult level. Therefore, thinking through the context and repercussions of their behaviour in a context outside the problematic behaviour (and the influences that precipitate it) may help them process that same information in a more immediate context when necessary, offsetting these deficits. Perhaps more importantly, in a process involving judicial monitoring or engagement with program staff, the offender's recognition of their own behaviour helps to hold them accountable for their ongoing behaviour.⁵¹⁴
- 5.88 Some young adult courts adopt an explicitly restorative approach, in which the offender may be asked to apologise or make amends to a victim. Where a victim's involvement is impossible or inappropriate, restorative justice processes may involve other organisations or members of the community representing the public at large, or a group affected by the type of behaviour the offender has engaged in.⁵¹⁵ This can further reinforce lessons about the effect of harmful behaviour, as well as helping the victim to process their experiences, and provide some understanding of the context to the offender's behaviour.⁵¹⁶

Specialised lists

- 5.89 A specialist court list could involve the provision of training to magistrates, lawyers and other court staff, who might then receive an endorsement to allow them to practice in the specialist list. A number of European jurisdictions operate a youth venue of their main criminal courts, whose staff receive training in areas relevant to young adults' needs, such as psychology and pedagogy.⁵¹⁷ This means that, even if a young adult may not be eligible for different outcomes, the judicial officers and court staff have a greater understanding of their risks, needs and behaviours.
- 5.90 Additionally, specialised lists are usually provided in a separate venue, or on a separate day, from general criminal lists. This simple distinction has certain advantages: it highlights for magistrates that the individual is a young adult with the attached, developmental limitations and needs that youth entails, and it therefore prevents that young adult from becoming 'lost' among the mass of criminal cases being heard. This was underlined by stakeholders as being a minor change that could have important implications for judges, lawyers and court staff.⁵¹⁸
- 5.91 Some specialised lists also involve assessment and referral procedures. Staff can help offenders access services to resolve issues that may have contributed to their offending or that simply undermine their stability or wellbeing. This might include education, housing assistance, mental health care, addiction services, behaviour change programs, employment assistance and more.
- 5.92 The Assessment and Referral Court List provides a Victorian-based example of the types of services, referrals and specialist staff that can be provided.

514. Becroft (2012), above n 505, 10.

515. See for example, family group conferences in the New Zealand Youth Court and group conferencing in the Children's Court: Andrew Becroft, *Family Group Conferences: Still New Zealand's Gift to the World?* (2017) B. See also *Children, Youth and Families Act 2005* (Vic) s 415; *Oranga Tamariki Act 1989* (NZ) ss 20–38; Department of Justice and Community Safety, 'Youth Justice Group Conferencing' (justice.vic.gov.au, 2019) <<https://www.justice.vic.gov.au/justice-system/youth-justice/youth-justice-group-conferencing>> at 17 October 2019. See further discussion at [5.117].

516. New Zealand research suggests that victim involvement in family group conferences following offending by children is usually a positive experience for the victim: Becroft (2017), above n 515, C.

517. See for example, Austria, Belgium: Păroşanu et al. (2015), above n 412, 32, 37.

518. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

New Zealand: neurodisability court for young adults, or for all?

In August 2018, the Chief Judge of New Zealand's District Court and the Principal Judge of the Youth Court jointly announced that the court would consider adopting a specialised approach to young adult accused to respond to the high incidence of neurodisabilities among them. The approach would implement important procedural aspects found in the Youth Court:

The Youth Court has well developed processes to respond to the complex needs of these young people, whereby their disability and lack of maturity [are] taken into account in the way the court runs. These include having multi-disciplinary teams in court and ways for young people to participate in their court case. However, these processes do not generally extend into the adult court.

Source: Chief District Court Judge for New Zealand and Principal Youth Court Judge of New Zealand, 'District Court Responds to High Incidence of Disabilities', Media Release (18 August 2018) 2 <<http://www.districtcourts.govt.nz/media-information/media-releases/16-august-2018/>> at 17 October 2019. See also Matthew Lark, 'Judges Call for Specialist Neuro-Disability Courts' (adls.org.nz) Auckland District Law Society <<https://www.adls.org.nz/for-the-profession/news-and-opinion/2019/2/22/judges-call-for-specialist-neuro-disability-courts/>> at 17 October 2019.

There was also limited continuity in relationships with legal representatives once an accused transitioned into the District Court age group.

The proposal received initial support from the Minister of Justice. However, as at March 2019, it was still at an early, conceptual stage of development. The Chief Justice of New Zealand, Helen Winkelmann, commented that the prevalence of neurodisability among accused and offenders was so high that 'we'd want anything that's available from specialist courts to be generally available through the mainstream court system'.

Source: Jenni McManus, 'Visiting Expert Speaks Out on Specialist Disability Courts' (adls.org.nz) Auckland District Law Society <<https://www.adls.org.nz/for-the-profession/news-and-opinion/2019/4/12/visiting-expert-speaks-out-on-specialist-disability-courts/>> at 17 October 2019.

There has also been a recent proposal for a trial of a Young Adult List in Porirua District Court.

Source: Email correspondence with Chief District Court Judge's Chambers, Wellington (16 October 2019).

Assessment and Referral Court List

- 5.93 If an accused has a mental illness, they may be eligible for participation in the Assessment and Referral Court (ARC) List, which operates at the Magistrates' Court in Melbourne.⁵¹⁹ The ARC List was established in 2010 to meet the needs of accused with a mental illness or cognitive impairment.⁵²⁰
- 5.94 In order to be eligible for participation in the ARC List, an accused must meet certain diagnostic criteria and have reduced functioning in certain areas. It must also be likely that they would benefit from any of a broad range of treatment services.⁵²¹
- 5.95 Participation in the ARC List is not strictly a 'sentencing' option, but it can result in a final disposition. If the accused participates in an individual support plan to the satisfaction of the court, the court has the power to either discharge the accused without any finding of guilt or allow the proceedings to continue and then take successful participation in the program into account during sentencing.⁵²² If the accused fails to participate in an individual support plan to the satisfaction of the court, the court cannot take that failed participation into account during sentencing if the accused is ultimately found guilty of the alleged offending.⁵²³

Neighbourhood Justice Centre 'Young Adult List' pilot

- 5.96 Victoria's Neighbourhood Justice Centre, a multi-jurisdictional court with a wide array of support services,⁵²⁴ is planning to pilot a 'Young Adult List,' commencing in late 2019. The list will manage matters involving young adults aged 18 to 25, providing referrals to services and programs targeting the needs of this age group.⁵²⁵ This list is intended to target relatively complex and serious matters involving young adults. Those whose matters can be dealt with at a single hearing will remain in the main lists, in order to avoid net-widening.⁵²⁶
- 5.97 Like all cases heard in the Neighbourhood Justice Centre, cases in the Young Adult List will be dealt with by a single magistrate, and accused will have access to a range of internal and external services, including problem-solving initiatives and referrals to organisations providing support with issues such as homelessness, addiction and mental illness.⁵²⁷ Separating young adults' matters from the general criminal list will highlight the relevance of age and will result in a greater emphasis on tailoring proceedings and responses in a developmentally appropriate way. For example, the list is expected to facilitate timely hearings and resolutions, to respond to young adult's differing perception of the passage of time and their potential to make significant rehabilitative changes within a short period.⁵²⁸
- 5.98 Additionally, the Young Adult List will take place on the same day as the Neighbourhood Justice Centre's Children's Court List (however, they will be separated in time). This will make it more practical for youth-focused community organisations to attend. This includes Youth Justice workers, who will be able to work on a formal basis with offenders aged under 21, and to consult with Neighbourhood Justice Centre and Corrections Victoria staff in relation to young adults aged 21 and over.⁵²⁹

519. Magistrates' Court of Victoria, 'Assessment and Referral Court' (mcv.vic.gov.au, 2018) <<https://www.mcv.vic.gov.au/about-us/assessment-and-referral-court-arc>> at 17 October 2019.

520. *Magistrates' Court Act 1989* (Vic) s 4S.

521. *Magistrates' Court Act 1989* (Vic) s 4T.

522. *Magistrates' Court Act 1989* (Vic) ss 4Y(2)–(5).

523. *Magistrates' Court Act 1989* (Vic) s 4Y(6).

524. Neighbourhood Justice Centre, 'What We Do' (neighbourhoodjustice.vic.gov.au, 2019) <<https://www.neighbourhoodjustice.vic.gov.au/about-us/who-we-are/what-we-do>> at 26 October 2019.

525. Meeting with Neighbourhood Justice Centre (24 September 2019).

526. Meeting with Neighbourhood Justice Centre (24 September 2019).

527. Meeting with Neighbourhood Justice Centre (24 September 2019).

528. Meeting with Neighbourhood Justice Centre (24 September 2019); Steinberg et al. (2009), above n 20, 28; Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

529. Meeting with Neighbourhood Justice Centre (24 September 2019).

Pre-sentence and diversionary options

- 5.99 Diversion and pre-sentence programs aim to prevent the negative effects of conviction and sentence on offenders. In a diversion program, offenders who admit an offence, and who meet the relevant criteria, receive a formal or informal warning rather than a conviction.⁵³⁰ Pre-sentence programs build on this approach and deliver programs prior to sentence, often during a formal deferral of sentence.⁵³¹ In some programs, offenders receive a reduced sentence, a conviction and discharge, or even a dismissal or discharge without conviction upon completion.⁵³²
- 5.100 Diversion schemes are particularly relevant to young adults. They allow young adults to avoid the labelling effects of a conviction, and the consequent restrictions on their access to opportunities like housing and employment, which may last far longer than the behaviour patterns that led to their offending.⁵³³ Victoria currently does not have a spent convictions scheme,⁵³⁴ and Victoria Police policy is to release information on minor offending by a person aged 18 or over for 10 years, and to release information on more serious offending indefinitely.⁵³⁵ In many cases, therefore, the information will continue to be released for longer than young adults are likely to continue offending.

- 5.101 Possible pre-sentence and diversionary options include:

- expanding the use of police cautions;
- expanding existing programs within Victoria, such as the Youth Community and Law Program;
- expanding the availability of restorative justice programs; and
- implementing residential diversion programs.

South Australia: a universal cautioning policy

In December 2016, South Australia implemented a policy allowing police to issue cautions for low-level adult criminal offending. Around 3,000 cautions were issued in the first six months of the scheme.

Source: Australian Broadcasting Corporation, 'Cautions Issued for 'Low-Level' Offences by SA Police in National First' (abc.net.au, 2017) ABC News <<https://www.abc.net.au/news/2017-06-14/sa-police-cautions-low-level-offences-in-national-first/8616100>> at 17 October 2019.

Unlike the pre-existing youth cautioning schemes under the *Young Offenders Act 1993* (SA), this was not a legislative change, but a change based on the discretion of whether to take enforcement action. This format allowed a local trial to take place before the scheme was expanded.

Source: South Australia Police, *Annual Report 2015–16* (2016) 5.

Decisions about whether to issue a caution are situational and involve consideration of a number of offender- and offence-related factors.

Source: Legal Services Commission of South Australia, 'Police Cautions' (lawhandbook.sa.gov.au, 2017) <<https://lawhandbook.sa.gov.au/ch03s01s02.php>> at 17 October 2019.

530. For example, the Victoria Police cautions program requires the offender to admit the offence. For adults, it is only available for minor drug and shopsteal offences: Victoria Police (2019), above n 70 ('Policy Rules: Disposition of Offenders').

531. *Sentencing Act 1991* (Vic) s 83A provides for such deferrals for a period of up to 12 months, if the court is of the opinion that sentencing should be deferred in the interests of the offender, and the offender agrees.

532. See for example, the Youth Community and Law program (discussed below), and the New Zealand Rangatahi Courts: Youth Court of New Zealand (2018), above n 500.

533. Legislative Council Legal and Social Issues Committee, Parliament of Victoria (2019), above n 10, 11–13. Victoria is currently the only state without a legislated spent convictions scheme: *ibid* 1–6.

534. A recent parliamentary review has recommended that a spent convictions scheme be introduced: Australian Law Reform Commission, *Pathways to Justice: Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, ALRC Report 133 (2018).

535. Victoria Police (2019), above n 312, 1.

- 5.102 Police cautions result from a decision by the relevant police force (or officer) not to prosecute an alleged offence. Formal police cautions relate to a recognised scheme, often established by legislation, and appear on internal police records. Informal police cautions result from the police's discretion not to pursue offending. It may simply consist of a verbal warning from a police officer along with a decision not to prosecute an alleged offence.⁵³⁶
- 5.103 Victoria currently has a limited range of formal adult police cautions available. As discussed at [3.104], formal police cautions for adults are available only in relation to possession of cannabis or a drug of dependence for personal use, and only for the first two offences, or for shopsteal in relation to property worth less than \$100.⁵³⁷ A number of stakeholders expressed frustration with the limitations of the scheme.⁵³⁸

New Zealand: adult police diversion

New Zealand operates a formal cautioning scheme for first-time offenders, as well as for some adults with a prior offence. For example, an adult with a prior offence may be eligible for diversion if the prior offence is dissimilar or historical or if pursuing a conviction would be disproportionate.

Diversion is only available for minor offending, and the offender must accept full responsibility for the offence. The victim's views are considered when deciding whether to grant diversion.

Source: New Zealand Police, *Adult Diversion Scheme Policy* (2019) 8–9.

Diversion may be subject to conditions, which can include:

- making an apology to the victim;
- making reparation to the victim;
- referral to counselling, education, addiction treatment or other programs;
- community service; and
- a referral for restorative justice.

Source: New Zealand Police, *Police Adult Diversion Scheme Factsheet* (2019).

- 5.104 Victoria's cautioning schemes are limited in scope compared with other Australian jurisdictions, such as South Australia, New South Wales and the Northern Territory.⁵³⁹ Offences falling outside this limited scheme, and for which there is a finding of guilt, appear on a person's criminal record under Victoria Police's Information Release Policy, discussed at [3.107].⁵⁴⁰

Expanding the use of police cautions

- 5.105 In Victoria, the youth caution program (for persons aged 18 and under) includes a much wider range of offences than for adults. The framework for determining whether to caution a person aged under 18 involves consideration of the seriousness or triviality of the offence; mitigating and aggravating circumstances; whether the offence is property-related or against the person; the offender's previous criminal history; and the personal characteristics of the offender, including age, maturity and mental capacity.⁵⁴¹ Cautioning involves discretion rather than strict application of inflexible rules, and it requires officers to consider 'what is the least severe action that can be taken to reduce the probability of the offender committing future offences'.⁵⁴²

536. In the Victoria Police Manual, this discretion is discussed as being a 'discretion as to whether enforcement action is taken', with a caution or official warning being the lowest tier of enforcement action available: Victoria Police (2019), above n 70 ('Procedures and Guidelines: Disposition of Offenders', 'Policy Rules: Disposition of Offenders').

537. Victoria Police (2019), above n 70 ('Procedures and Guidelines: Disposition of Offenders', 'Policy Rules: Disposition of Offenders'). A broader youth caution program, which includes a much wider range of offences, is available to juvenile offenders, but since young adult offenders are aged over 18, they are ineligible.

538. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

539. Australian Law Reform Commission (2018), above n 534, 395–397; Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

540. Victoria Police (2019), above n 312, 1.

541. Victoria Police (2019), above n 70 ('Procedures and Guidelines: Disposition of Offenders').

542. Ibid.

- 5.106 Cautioning is an extremely low-cost intervention: it involves a choice not to direct the resources of the criminal justice system at a particular offence. It is also quicker than most other interventions, which may improve its efficacy.⁵⁴³ As one stakeholder commented:
- One of the attractions of cautioning and diversion is that it's something that's happening that's got some immediacy to the offending behaviour, and I wonder if ... you get an earlier outcome, you potentially get a better rehabilitative outcome.⁵⁴⁴
- 5.107 There is substantial evidence that the use of formal or informal cautioning for minor offences can reduce the risk of reoffending among offenders aged under 18, and there is increasing evidence that this principle also applies to adult cautioning.⁵⁴⁵ A recent Australian Institute of Criminology review of the evidence in relation to Queensland found that there was a large cohort of offenders who began offending between the ages of 18 and 25 and offended only once or twice. For this group, an adult caution would be a very effective intervention. Cautioning first-time adult offenders could result in cost savings of approximately \$32.5 million per year. The use of cautioning for young adult offenders 'may be particularly relevant, or arguably necessary' given the potentially negative effects on their reoffending rates of transitioning from the youth justice system to the more punitive adult court.⁵⁴⁶ The Australian Law Reform Commission has also suggested that cautions could be used instead of fines or infringement notices as a way to protect vulnerable or disadvantaged people who may not be able to pay.⁵⁴⁷
- 5.108 A caution program could be introduced either on a formal basis (perhaps using legislation to establish parameters and internal recording systems for Victoria Police while limiting dissemination of that information externally) or on an informal basis (for example, by issuing new guidelines in relation to when the discretion to take enforcement action should be used). The caution program could be universal for specified offence types, or it could depend on a list of specified factors, as the current youth cautioning scheme does. Such a scheme could be extended solely to young adults, or to adults of all age groups. A discretionary system might be more flexible, but it might also require careful administration to ensure that the use of cautions is relatively consistent.⁵⁴⁸ Consideration could also be given to whether services should be provided upon issue of a caution, as there is some evidence that this may further improve outcomes.⁵⁴⁹

Court Integrated Services Program

- 5.109 The Court Integrated Services Program (CISP) is a pre-sentence support program available through certain venues of the Magistrates' Court of Victoria. It aims to reduce the risk of reoffending by providing support services for drug and alcohol treatment, disability and mental health services, and crisis accommodation.⁵⁵⁰

543. Brown et al. (1989), above n 446, 177.

544. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

545. See for example, Wilson and Hoge (2013), above n 131, 497.

546. Carleen Thompson et al., *Examining Adult-Onset Offending: A Case for Adult Cautioning*, Trends & Issues in Crime and Criminal Justice no. 488 (2014) 7.

547. Australian Law Reform Commission (2018), above n 534, 395–397.

548. For example, in its *Pathways to Justice* report, the Australian Law Reform Commission discussed the need for guidelines or formal schemes in order to ensure that vulnerable people are consistently identified: *ibid* 395–397.

549. Wilson and Hoge (2013), above n 131, 505.

550. Magistrates' Court of Victoria, 'Bail Support (CISP)' (mcv.vic.gov.au, 2019) <<https://www.mcv.vic.gov.au/find-support/bail-support-cisp>> at 17 October 2019.

5.110 To be eligible, a person must be suffering from:

- physical or mental disabilities or illnesses;
- drug and alcohol dependency and misuse issues;
- inadequate social, family and economic support that contributes to the frequency or severity of their offending; or
- homelessness.⁵⁵¹

5.111 The accused must also agree to be involved. An accused can self-refer.⁵⁵² Successful applicants are assigned a case manager who develops a personalised treatment plan. This often involves approximately four months of case management, including monitoring by a magistrate and referrals to support services within the community. Successful completion of the program is taken into account at sentencing.⁵⁵³

Expanding the Youth Community and Law Program

5.112 Developed in 2008, the Youth Community and Law Program is a pre-sentence program available in Broadmeadows and Sunshine to people aged 18 to 25 referred by magistrates in Broadmeadows, Sunshine and Werribee.⁵⁵⁴ It is managed by The Youth Junction Inc., a not-for-profit organisation based in Sunshine. The Youth Junction Inc. is the co-located lead agency within a multi-youth services facility known as the 'Visy Cares Hub'.⁵⁵⁵

5.113 The Youth Community and Law Program provides intensive case management and support, and it links participants to various co-located agencies as well as external services through the Visy Cares Hub. The program is designed to address reoffending by addressing underlying issues that contribute to offending behaviour, and it aims to prevent young people from receiving a custodial sentence.⁵⁵⁶

5.114 In Victoria, the closest generally available comparison to the Youth Community and Law Program is CISP operating out of the Magistrates' Court (see [5.109]).⁵⁵⁷ Similar to the Youth Community and Law Program, CISP engages with alleged offenders prior to their sentencing for matters in the Magistrates' Court. It also takes a multi-disciplinary approach to addressing the individual needs of its clients.⁵⁵⁸ However, the Youth Community and Law Program is distinguished by several factors, including that it is:

- young adult specific;
- co-located with 12 not-for-profit youth organisations and 20 youth-specific programs (at the Visy Cares Hub, Sunshine), in a separate, neutral environment that is unconnected to any court or custodial facilities;
- centrally located within the communities it services; and
- works not only with young adults who are on bail but also with those on deferred sentences or adjourned undertakings, including those who may not have met the criteria to access CISP.⁵⁵⁹

551. Ibid.

552. Ibid.

553. Ibid.

554. Karen Hart, 'The Efficacy of Community Justice Intervention Services to Increase Social Capital and Reduce Incarceration for Young Adults' (PhD Thesis, Victoria University, 2016) 3; The Youth Junction Inc., 'What We Offer' (youthjunctioninc.net.au, 2017) <<http://www.youthjunctioninc.net.au/what-we-do/>> at 17 October 2019.

555. The Youth Junction Inc. (2017), above n 554; Meeting with Dr Karen Hart, CEO, The Youth Junction Inc. (21 August 2019).

556. The Youth Junction Inc. (2017), above n 554.

557. Magistrates' Court of Victoria (2019), above n 550.

558. Ibid.

559. Hart (2016), above n 554, 24–25; The Youth Junction Inc. (2017), above n 554.

5.115 An evaluation of the Youth Community and Law Program found that:

- the program offers the Magistrates' Court a clear and straightforward referral point for young adults aged 18 to 25 to receive preventative intervention services;⁵⁶⁰
- the program has high compliance and completion rates;⁵⁶¹ and
- young people have low reoffending rates while participating in the program.⁵⁶² Previous research has also suggested that this effect lasts for at least a year: Youth Community and Law Program clients' reoffending rates after 12 months sit at half the rate of a comparator group of similarly aged offenders, and less than half the rate of young people on CCOs.⁵⁶³

5.116 The Youth Community and Law Program is not a sentencing outcome, but it has been used by magistrates in Victoria as an alternative to a CCO due to its effectiveness.⁵⁶⁴ Stakeholders suggested that this was likely due to the high quality of services provided; in particular, they emphasised the fact that workers were specifically trained to deal with the young adult age group, and the co-location of services allowed the program to operate as a hub for providing multiple services. Stakeholders also noted that the fact that the program was external to the criminal justice system was useful in establishing a productive relationship between service providers and offenders.⁵⁶⁵

Restorative justice for young adults: group conferencing

5.117 While many specialist courts draw on restorative and therapeutic justice principles, there are also examples of targeted restorative justice programs that are driven by non-for-profit organisations, rather than courts. The term *restorative justice* applies to procedures that operate as an alternative to, or in addition to, the criminal trial process, and that focus on victim healing, holding the offender to account, community restoration, repairing harm and loss, and repairing damaged relationships.⁵⁶⁶

Brooklyn's 'Common Justice' Program

New York's Common Justice is a Brooklyn-based organisation that operates a restorative justice program. Common Justice works with people aged 16 to 24 who have been accused of violent crimes, and with their victims. Cases are diverted into a 'dialogue process' that gives the parties an opportunity to identify and address the effects of the offence to promote healing. During this process, all parties agree on sanctions other than incarceration to hold the perpetrator accountable. The perpetrator must meet certain criteria, and both the District Attorney and the victim or victims must agree.

Source: Danielle Sered, 'A New Approach to Victim Services: The Common Justice Demonstration Project' (2011) 24(1) *Federal Sentencing Reporter* 50, 50–53; Common Justice, 'Common Justice Model' (commonjustice.org, 2018) <https://www.commonjustice.org/common_justice_model> at 17 October 2019.

560. Hart (2016), above n 554, 129.

561. PwC, *Evaluation of the Youth Community and Law Program* (2018) 17–20.

562. Ibid 22–23.

563. Ibid 20–22.

564. Ibid 18; Young Adult Offenders Stakeholder Discussion Forum (5 September 2019). Because the program is undertaken before sentence, it minimises the sentence participants receive, often meaning that participants are kept out of prison. This minimises the negative consequences, including criminogenic effects, associated with prison sentences: The Youth Junction Inc. (2017), above n 554.

565. Meeting with Jesuit Social Services (20 August 2019); Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

566. Centre for Innovative Justice, *Restorative Justice Conferencing Pilot Program: Restorative Justice for People Affected by a Serious Motor Vehicle Collision* (2018) 2.

- 5.118 A common example of a restorative justice practice is group conferencing. In Victoria, organisations including Jesuit Social Services provide restorative justice-driven group conferencing to certain offenders aged under 18.⁵⁶⁷ Currently, this program is available to children aged 10 to 17 who have pleaded guilty to offences serious enough to attract a sentence, have consented to the program, and have been assessed as suitable. This program is based on a court's referral under the *Children, Youth and Families Act 2005* (Vic).⁵⁶⁸ At the conference, the child, their lawyer, a police officer and a convener must attend. Other affected parties, including the victim and the child's family, may attend. The conference discusses the offence and its effects, as well as what needs to be done to make amends for the offence and keep the child from reoffending.
- 5.119 The process aims to divert children away from more serious outcomes within the criminal justice system. At sentencing, the court must take into account the outcomes of the conference, including compliance with the outcome plan, but also the young person's participation at the conference, behaviour throughout the process, and the contents of any relevant report.⁵⁶⁹ The court must impose a less severe sentence than it otherwise would have done.⁵⁷⁰
- 5.120 Restorative justice approaches can assist in supporting a young adult's maturation out of crime while still holding them accountable for their behaviour. Like many other options available in the Children's Court, this option is helpful for child offenders for developmental reasons that do not simply disappear at age 18. In fact, as one stakeholder commented, 'your outcomes in group conferencing improve as you mature'.⁵⁷¹ This suggests that group conferencing might be even more effective for the young adult cohort than for the under 18 cohort to whom it is currently applied.
- 5.121 A series of recent, randomised studies in the United Kingdom have found that restorative justice conferencing reduces subsequent offending.⁵⁷² This is consistent with previous research in Victoria, which found that group conferencing reduced reoffending among Victorian youth offenders and reported high rates of victim satisfaction with the process.⁵⁷³ There was also strong support from stakeholders for expanding group conferencing to young adults, whether as a stand-alone option or a condition of another sentence.⁵⁷⁴
- 5.122 Group conferencing could be expanded to young adult offenders either as a stand-alone option or as part of a broader expansion of access to Children's Court options (as discussed at [5.47]).

567. Jesuit Social Services, 'Youth Justice Group Conferencing' (jss.org.au, 2019) <<https://jss.org.au/what-we-do/justice-and-crime-prevention/youth-justice-group-conferencing/>> at 17 October 2019.

568. *Children, Youth and Families Act 2005* (Vic) ss 414–416.

569. *Children, Youth and Families Act 2005* (Vic) s 416.

570. *Children, Youth and Families Act 2005* (Vic) s 362(3).

571. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

572. Heather Strang et al., 'Restorative Justice Conferencing (RJC) Using Face-to-Face Meetings of Offenders and Victims: Effects on Offender Recidivism and Victim Satisfaction. A Systematic Review' (2013) 9(1) *Campbell Systematic Reviews* 1, 2.

573. KPMG Government Advisory Services, *Review of the Youth Justice Group Conferencing Program: Final Report* (2010); Jacqueline Larsen, *Restorative Justice in the Australian Criminal Justice System*, Research and Public Policy Series no. 127 (2014) 23–27.

574. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

Residential diversion programs

- 5.123 Residential diversion programs are not currently in use in Victoria. These programs are particularly interesting as a response to relatively serious adolescent and young adult offending. They provide a structured environment in which services, including rehabilitative services, can be provided but without a requirement to record a conviction. This allows supports aimed at accelerating age-related desistance from crime to be provided, without necessarily triggering the labelling effect of a recorded conviction.
- 5.124 A pre-sentence residential diversion program for young adult offenders, such as the award-winning program proposed by collaborative group 'Local Time', could provide a pre-sentence alternative to detention for select young adults.⁵⁷⁵ Although this project was proposed in relation to the youth justice system, it may also be useful for the young adult cohort. The proposal is based on key principles and requirements for resilience-focused facility design.⁵⁷⁶
- 5.125 Although this proposal was intended for use for children and young people sentenced in the Children's Court in Victoria, such a program may be particularly appropriate for young offenders aged 18 to 20 sentenced in the adult criminal courts, or for the wider young adult cohort. Consultation suggested that a lack of contact with prosocial networks was a key issue for managing young adults in prison, and that, for this age group in particular, the availability of family for visits could be a key determinant of prison placement.⁵⁷⁷ Therefore, maintaining contact with family and other protective factors could be expected to have a significant positive effect.
- 5.126 Further, consultation suggested that the use of small residential units within custodial settings was considered best practice. These units had groupings that were easier to manage, and they were more likely to have positive outcomes for those housed within them. In addition, consultation suggested that the use of open facilities was seen as desirable.⁵⁷⁸

Local Time: a proposal for a residential diversion program for the youth justice system

The Local Time proposal is to build local, small-scale (approximately eight beds) semi-open facilities to house residential diversion programs in Victoria for young people involved in the criminal justice system.

The facilities would offer a pre-sentence alternative to detention. They would assist in building resilience skills in daily activities and act as a base to continue schooling and receive mental health care. Young people would be referred by a magistrate, and they would spend six months in the local facilities completing their program (six months is the current average supervision time in Youth Justice). They would avoid detention and a criminal conviction if they completed their program.

Source: Sanne Oostermeijer and Matthew Dwyer, *Local Facilities: Promoting Resilience in the Juvenile Justice System* (2018) [4]–[8] ('Background and Proposal').

575. Sanne Oostermeijer and Matthew Dwyer, *Local Facilities: Promoting Resilience in the Juvenile Justice System* (2018) [4]–[8] ('Background and Proposal'). Local Time won the Victorian Design Challenge in 2018.

576. These principles, developed by Local Time, include that the facility is small scale, has 'adaptable security' (that facilitates relational care approaches) and is destigmatising: *ibid* [9]–[11] ('Impact Statement and Key Objectives').

577. Meeting with Corrections Victoria (30 July 2019); Meeting with Dr Diana Johns, University of Melbourne (3 June 2019). Embeddedness in local communities was also considered important, as it enables other prosocial and reintegrative connections (such as employment, training and education) to be maintained during a person's stay in custody, for example, through day release. This work is more practical in a small local facility than in a prison.

578. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

Summary

- 5.127 This chapter has canvassed a number of overlapping measures that could form part of a tailored response for young adult offenders within the criminal justice system. These include the following:
- Sentencing principles could set out a framework of factors to be taken into account at sentencing, supplementing the existing case law. These factors could include age and maturity as well as associated factors like young adults' perceptions of the passage of time, cognitive impairment and acquired brain injury (see [2.3]–[2.13]).
 - Community-based sentencing options for young adult offenders could cater for immaturity using elements of the trauma-informed, developmentally appropriate and outreach-based approach that governs youth justice service delivery. A 'young adult justice plan' option would allow courts to inform themselves of the services available to a specific young adult offender before making a CCO.
 - Dual track could be expanded by reversing recent changes (see [3.66]) and raising the age limit, with appropriate safeguards for younger people on YJCOs. This would cement dual track's place as a true alternative to imprisonment even for serious crimes, and cater for the significant number of young adult offenders aged 21 to 25 who remain immature and vulnerable at the time of sentencing.
 - Specialist custodial units inside or outside prison, and with or without limitations on adult imprisonment, could mitigate harms to young adult prisoners arising from exposure to older and more risky prisoners, without causing harm to child and youth offenders by exposing them to risky young adult offenders.
 - Specialist courts and lists could allow for developmentally appropriate court procedures, specialist case management, centralised service referral and restorative justice practices. This could vary from relatively minor interventions without legislative change, such as to existing court processes and referrals to established services (as in the Neighbourhood Justice Centre pilot) to a specialised diversionary treatment court approach (as in the San Francisco Young Adult Court).
 - Pre-sentence and diversionary options could be used to limit contact with the criminal justice system as well as stigma arising from convictions and findings of guilt. Diversionary options range from very low intensity (police cautions) to very intensive treatment suitable for young adults who have committed serious offences (residential diversion).
- 5.128 These possible responses are not mutually exclusive. Indeed, one offender might receive more than one of these responses at various points in the criminal justice process, depending on their offending trajectory.
- 5.129 The options are drawn from international systems that may be legally, culturally and structurally different from systems in Victoria. As such, some responses discussed might not be suitable for Victoria or might require substantial modification. This report does not make recommendations as to which options, if any, might be preferable. Nonetheless, the alternatives outlined in this chapter show the breadth of potential responses.
- 5.130 These options, in conjunction with the evidence outlined in Chapters 2, 3 and 4, may be considered in a dialogue regarding the merits of a differential approach to young adult offenders in the criminal justice system, and the ways in which such a differential approach should map onto young adult offenders' particular needs and issues.

6. Conclusion

- 6.1 Young adult offenders have a unique position: they are legal adults who are not yet developmentally mature, and they are responsible for a disproportionate amount of criminal offending in Victoria. Young adulthood is a period of significant change for all young people, but particularly for those who have experienced childhood trauma or disruption, which is the case for many of the young adults who have contact with the criminal justice system. As a result of their incomplete development, and in many cases their underlying vulnerabilities, young adults may act in ways that are ill-considered, disruptive, potentially harmful or illegal. Other areas of government, notably the health system, recognise and account for the particular needs of people aged 18 to 25,⁵⁷⁹ but the justice and correctional systems lack a real differential response for this age group.
- 6.2 Young adults commit a high proportion (22%) of all offences. They have higher reoffending rates than other groups, and they also have high rates for contravention of community correction orders. A large proportion of this offending is regulatory in nature. However, young adult offenders also commit a relatively high number of crimes against the person. Such crimes can have a significant adverse effect on their victims, as well as the community's sense of safety. Some young adult offenders, though a small proportion of the total, commit very serious crime.
- 6.3 However, young adult offenders are also uniquely suited to early intervention: they are still maturing, and they are not as heavily entrenched in the criminal justice system as older offenders. The most serious young adult offenders tend to have the most unmet needs, providing potential avenues for improved responses. Treating young adults as if they were fully mature may be counterproductive both for those young adults and for the community. In particular, imprisonment with older offenders in adult prisons is harmful to young adults, and to their prospects of treatment and rehabilitation. It also costs communities dearly in terms of not only the intangible costs of reoffending but also the direct financial cost of imprisonment: over \$118,000 per prisoner per year.⁵⁸⁰
- 6.4 This report has drawn on international experiences to consider options that are used elsewhere to address some of the issues relevant to Victoria. No conclusions are drawn as to which options are preferred: the intent is to promote dialogue regarding the merits of a differential approach to young adults in the criminal justice system and to explore what this may involve in practice.

579. For example, VicHealth defines young people as those aged 12 to 25: VicHealth (2017), above n 6, 4. Headspace delivers specialist, subsidised mental health services for the same age group: Headspace (2019), above n 6.

580. Anthony Morgan, *How Much Does Prison Really Cost? Comparing the Costs of Imprisonment with Community Corrections*, Research Reports no. 5 (2018). In 2018–19, the direct cost of prison in Victoria was \$118,000 per prisoner per year. This does not include any indirect costs such as job loss, homelessness, or loss of relationships due to incarceration, and it does not take into account the opportunity cost of failure to apply a more effective intervention: Productivity Commission, '8: Corrective Services', *Report on Government Services 2019* (2019) Table 8A.2. Previous research has suggested that the public is aware of, and concerned about, these monetary and social costs. The public tends to be sympathetic to the vulnerability of young adults who offend, and to the circumstances that can contribute to that type of behaviour, provided they are given full context in relation to the offending. Victorian research has found that a clear majority believe it is 'very important' that 'taxpayer money should be used on programs that reduce crime in the first place rather than on prison': Sentencing Advisory Council, *Alternatives to Imprisonment: Community Views in Victoria* (2011) 9. New South Wales research has found that people are very concerned about reducing crime rates, and just as willing to pay for rehabilitation programs to do so as to pay for prisons: Craig Jones and Don Weatherburn, 'Willingness to Pay for Rehabilitation versus Punishment to Reduce Adult and Juvenile Crime' (2011) 46(1) *The Australian Journal of Social Issues* 9, 9. Most Australians support the provision of alternatives to prison for offenders who are young (80%) or mentally ill (82%): Mackenzie et al. (2012), above n 207, 53–57. See also Sentencing Advisory Council (2018), above n 207, 5–6, 10.

- 6.5 Nonetheless, evidence about development, and responses elsewhere, suggest that a differential approach to sentencing young adults should be considered. This would require an in-depth investigation of the efficacy of any options drawn from other jurisdictions and consideration of their appropriateness for the Victorian legal, cultural and social context. Reforms to responses, in sentencing or otherwise, to young adult offenders would also require the support of the community. Some members of the community may be understandably reluctant to invest in the rehabilitation of young adults who have engaged in criminal behaviours.
- 6.6 No single intervention is likely to meet all the needs of the most serious young adult offenders. Many, if not most, will require related interventions from outside the criminal justice system, such as mental health care, housing, education or job support. For some young adult offenders, there may be a benefit in introducing further options for diversion at earlier points in the criminal justice system. For others, further options may be appropriate for specialist custodial units or facilities that are tailored to address the higher risks and higher needs of some young adult offenders. Additional options for addressing the needs of higher-risk young adult offenders in custodial settings will be of benefit not only to these young adults but also to youth justice staff and other detainees.
- 6.7 During consultation, stakeholders emphasised the multiple vulnerabilities of young adult offenders. They highlighted the fact that meeting those needs – including mental illness, early parenthood, addiction and homelessness – would require a coordinated response from a number of services and agencies, both before and after contact with the criminal justice system.⁵⁸¹
- 6.8 Nonetheless, the evidence shows that, with effective criminal justice responses and appropriate supports, many young adult offenders have the capacity to change, including those who have engaged in repeat offending. If the criminal justice system can respond differentially and effectively to this cohort, it may be able to divert young adults away from criminal pathways, achieving better results for those young adults and for the community.

581. Young Adult Offenders Stakeholder Discussion Forum (5 September 2019).

Appendix 1: Consultation

Date	Meeting
03 June 2019	Meeting with Dr Diana Johns, University of Melbourne
30 July 2019	Meeting with Corrections Victoria
31 July 2019	Meeting with Community Crime Prevention Unit, Department of Justice and Community Safety
20 August 2019	Meeting with Jesuit Social Services
21 August 2019	Meeting with Dr Karen Hart, CEO, The Youth Junction Inc.
05 September 2019	Young Adult Offenders Stakeholder Discussion Forum
24 September 2019	Meeting with Neighbourhood Justice Centre

Appendix 2: The Council's approach and methodology

The Council addressed a broad range of research questions using sentencing data sourced from Court Services Victoria. Data from the Children's Court, Magistrates' Court and higher courts (County and Supreme Courts) is provided to the Council on a regular basis. The data exists in separate datasets.

The Council maintains a reoffending database, which utilises a unique person identifier that links together sentencing cases belonging to the same person and information within and across courts (although the Council only publishes aggregate data). The database includes information about each case such as the date of sentence and the type and length of sentence imposed, as well as the offence and offence date attached to each proven charge.

Study group

At the time of publication, the Council's reoffending database contained all cases sentenced between 1 July 2004 and 30 June 2018. This means that the sentencing history of each offender in the database can be tracked for a period of up to 14 years. Within this period, the Council examined the offending history of offenders aged 18 to 20 ('young offenders') who were sentenced to a youth justice centre order (YJCO) (the 'YJCO study group') in 2014–15 (the 'index year') in the adult courts (that is, the Magistrates' Court and higher courts). A second examination focused on offenders aged 18 to 20 who received a term of imprisonment (the 'imprisonment study group'). The offenders in these study groups are 'index offenders'.

For people sentenced more than once in an adult court to a YJCO or imprisonment in the index year, their earliest sentence in 2014–15 was selected. This sentence event is referred to as the 'index sentence', representing a date on which a person was initially sentenced to the relevant penalty for one or more offences in 2014–15. The year 2014–15 was selected to balance the need for a reasonable follow-up period against the need to minimise the extent to which legislative and social change limited the relevance of the results.

Prior and subsequent offending and sentence events

Critical to this investigation into offending patterns over time are prior and subsequent sentence events relative to the index sentence.

A reoffending event, or a subsequent sentence event, is a sentence imposed on a date after the index sentence. The period over which reoffending events were examined concluded with the latest sentence event date in the Council's database: 30 June 2018. To maintain consistency across all index offenders, the reoffending event study period was three years to the day after the index sentence was imposed. For the purposes of this report, the date on which the offence was committed (the 'offence date') was not used to classify subsequent offending. Hence, the subsequent offending count includes sentences imposed after the index sentence, even if the actual offence was committed prior to the index sentence.

A prior sentence event is a sentence event that occurred before the index sentence. To maintain consistency across all index offenders, the study period for prior sentence events was three years to the day before the index sentence was imposed. Only offences that were proven and sentenced before the index sentence are included in the count of prior sentence events.

A consequence of this methodology is that some offenders may still be serving a sentence, including an immediate custodial sentence, for the entire subsequent reoffending period. In particular, offenders serving long YJCOs or sentences of imprisonment may remain in custody for most or all of the three years following the imposition of their index sentence. These offenders would be incapacitated from much subsequent offending during the study period. Hence, the calculated rates that stem from the examination of these study groups should be viewed broadly and with caution.

Another limitation in this approach is that the lengths associated with YJCOs imposed in the Magistrates' Court have not been made available, as at the date of publication. The absence of this information has a direct impact on the Council's processes for identifying the principal offence for a case.

Appendix 3: Further statistical findings

Sentencing trends overview

Principal offence classification and analysis

Table A1: Proportion and number of cases sentenced in the Magistrates' Court, by offence subcategory (based on principal offence) and age cohort, 2013–14 to 2017–18

Crime category	Offenders aged 18 to 20		Offenders aged 21 to 25	
	Percentage	Number	Percentage	Number
Crimes against the person	29.3%	9,157	23.7%	17,219
Assault and related offences	48.5%	4,438	57.4%	9,877
Dangerous and negligent acts endangering people	44.2%	4,051	34.7%	5,968
Stalking, harassment and threatening behaviour	3.9%	358	5.1%	873
Robbery	1.9%	177	1.1%	198
Sexual offences	1.3%	115	1.5%	253
Abduction and related offences	0.2%	16	0.3%	47
Homicide and related offences	0.0%	1	0.0%	–
Blackmail and extortion	0.0%	1	0.0%	3
Property and deception offences	23.8%	7,454	18.2%	13,214
Theft	49.3%	3,678	47.1%	6,222
Property damage	23.6%	1,757	21.2%	2,799
Deception	13.1%	977	19.5%	2,577
Burglary/break and enter	12.0%	894	10.5%	1,386
Arson	2.0%	148	1.7%	229
Bribery	0.0%	–	0.0%	1

Crime category	Offenders aged 18 to 20		Offenders aged 21 to 25	
	Percentage	Number	Percentage	Number
Drug offences	5.9%	1,850	6.2%	4,489
Drug use and possession	51.7%	956	51.6%	2,316
Drug dealing and trafficking	40.6%	752	38.4%	1,724
Cultivate or manufacture drugs	7.7%	142	9.9%	446
Other drug offences	0.0%	–	0.1%	3
Public order and security offences	6.2%	1,949	5.7%	4,161
Weapons and explosives offences	58.4%	1,139	64.4%	2,678
Disorderly and offensive conduct	27.8%	542	26.3%	1,093
Public nuisance offences	13.6%	266	9.3%	385
Public security offences	0.1%	2	0.1%	5
Justice procedures offences	4.9%	1,530	6.4%	4,690
Breaches of orders	64.8%	992	67.0%	3,142
Justice procedures	35.2%	538	33.0%	1,548
Other offences	29.9%	9,360	39.8%	28,972
Regulatory driving offences	93.3%	8,735	95.4%	27,633
Transport regulation offences	2.8%	263	1.3%	374
Miscellaneous offences	2.7%	252	1.8%	529
Other government regulatory offences	1.2%	110	1.5%	436
Total	100.0%	31,300	100.0%	72,745

Note: Percentages for each category (in bold) are based on the total of 31,300 cases sentenced for offenders aged 18 to 20 and 72,745 cases sentenced for offenders aged 21 to 25. Percentages for each subcategory offence are based on the total of the relevant category.

Table A2: Proportion and number of cases sentenced in the higher courts, by offence subcategory (based on the principal offence) and age cohort, 2013–14 to 2017–18

Crime category	Offenders aged 18 to 20		Offenders aged 21 to 25	
	Percentage	Number	Percentage	Number
Crimes against the person	82.6%	527	62.1%	962
Robbery	44.2%	233	34.1%	328
Assault and related offences	23.5%	124	27.3%	263
Sexual offences	20.5%	108	19.6%	189
Homicide and related offences	5.1%	27	8.1%	78
Dangerous and negligent acts endangering people	3.2%	17	6.0%	58
Abduction and related offences	1.9%	10	3.2%	31
Stalking, harassment and threatening behaviour	0.9%	5	0.6%	6
Blackmail and extortion	0.6%	3	0.9%	9
Property and deception offences	9.4%	60	13.6%	210
Burglary/break and enter	70.0%	42	64.3%	135
Arson	13.3%	8	11.0%	23
Theft	8.3%	5	11.9%	25
Property damage	5.0%	3	1.4%	3
Deception	3.3%	2	11.4%	24
Drug offences	5.5%	35	18.7%	290
Drug dealing and trafficking	62.9%	22	54.5%	158
Cultivate or manufacture drugs	31.4%	11	38.3%	111
Drug use and possession	5.7%	2	7.2%	21
Public order and security offences	1.7%	11	3.4%	52
Disorderly and offensive conduct	63.6%	7	59.6%	31
Weapons and explosives offences	18.2%	2	36.5%	19
Public security offences	18.2%	2	3.8%	2

Crime category	Offenders aged 18 to 20		Offenders aged 21 to 25	
	Percentage	Number	Percentage	Number
Justice procedures offences	0.6%	4	1.7%	26
Justice procedures	75.0%	3	73.1%	19
Breaches of orders	25.0%	1	26.9%	7
Other offences	0.2%	1	0.5%	8
Miscellaneous offences	100.0%	1	–	–
Regulatory driving offences	–	–	50.0%	4
Other government regulatory offences	–	–	50.0%	4
Total	100.0%	638	100.0%	1,548

Note: Percentages for each category (in bold) are based on the total of 638 cases sentenced for offenders aged 18 to 20 and the 1,548 cases sentenced for offenders aged 21 to 25. Percentages for each subcategory offence are based on the total of the relevant category.

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