The Extension of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 to the Children's Court: Opportunities and Shortfalls

Katinka Morton, Adam Deacon and Danny Sullivan

Victorian Institute of Forensic Mental Health, Clifton Hill, Australia

In 2014, the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 in Victoria was extended to the Children's Court of Victoria. This article describes the processes that preceded this change and the changes that occurred. The potential opportunities consequent to the changes are described, with their corresponding ethical implications. The decision not to resource some of the changes as recommended by the Victorian Law Reform Commission is described, with reference to the lack of establishment of an adolescent forensic mental health facility. The shortfalls currently occurring and their ethical implications are also discussed. We note the need for data regarding the number of children whose matters are being heard under the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997, and the resourcing implications that flow from this.

Key words: adolescent; ethics; fitness to be tried; forensic psychiatry; human rights; mental health; mental impairment defence; youth justice.

Introduction

In 2011, in the Australian state of Victoria, the case of *CL, A Minor (by his Litigation Guardian) v Director of Public Prosecutions (on behalf of Lee)* [2011] VSCA 227 was heard in the Victorian Court of Appeal. CL was a child facing serious charges within the Children's Court, and the issue of CL's fitness to stand trial was raised. The Children's Court Magistrate questioned the jurisdiction of the Children's Court to hear matters of fitness to be tried and recommended elevation of the hearing to the County Court. The need to elevate the hearing was appealed by CL's litigation guardian (his mother). The Court of Appeal found that at that time the Children's Court was not able to hear matters of fitness.¹

This case was one element that led to a review of the Crimes (Mental Impairment and Unfitness to be Tried) Act (CMIA) 1997 by the Victorian Law Reform Commission in 2013. In 2013, the Children's Court of Victoria was granted some powers to enact the CMIA, including the making of orders consequent to a finding of unfitness to stand trial or not guilty by reason of mental impairment. The extension of the CMIA to the Children's Court was one of the major recommendations of the Commission's Review. However, many other recommendations regarding processes that should accompany the extension of the CMIA were not subsequently adopted.

In this article, we consider the Victorian Law Reform Commission Review, its recommendations and potential implications of the

Correspondence: Katinka Morton, Victorian Institute of Forensic Mental Health, Clifton Hill, Australia. E-mail: Katinka.Morton@forensicare.vic.gov.au

extension of the CMIA to the Children's Court.

We describe the exchange of one set of ethical concerns, existing prior to the legislative changes, for another set which is consequent to the changes. We argue that there are currently inadequate processes to ensure that children have a standardised assessment by a mental health professional of accepted expertise when considering matters of fitness to be tried or potential findings of mental impairment. We express concern about the placement of young persons found not guilty by reason of mental impairment in a custodial facility. We argue additionally that opportunities are being squandered under Non-Custodial Supervision Orders, which should ensure that risk to the community is minimised by ensuring that optimal mental health care and risk management are in place.

We argue that the resources required to implement the recommendations of the Review in a more comprehensive way would be readily justified by what is known about the likelihood of recidivism in adolescents² and the established systems in the adult sector where comparable orders are well established. We recognise that empirical research to evaluate the outcomes of the legislative changes, including the clinical and ethical concerns we describe, is crucial.

Nomenclature

In Victoria, the CMIA states that to be fit to be tried, a person must be: able to understand the nature of the charge; able to enter a plea to the charge and to exercise the right to challenge jurors or the jury; able to understand the nature of the trial; able to follow the course of the trial; able to understand the substantial effect of any evidence that may be given in support of the prosecution; and able to give instructions to his or her legal practitioner (section 6(1)).³ All criteria must be satisfied. Unfitness may be temporary or permanent and may be caused by mental illness, cognitive impairment or neurological disorder. It is considered independently of a mental

impairment defence, although a single condition may cause unfitness and also provide a mental impairment defence.

The defence of mental impairment requires that the person either did not know what the conduct was to have caused the offence, or that they did not know that their conduct was wrong, with a standard of being able to 'reason with a moderate degree of sense and composure about whether the conduct, as perceived by reasonable people, was wrong' (section 20(1)).³ A mental impairment defence may also be caused by mental illness, cognitive impairment or neurological disorder.

The Legal Situation in Victoria Prior to the Extension of the CMIA to the Children's Court

In 2011, the case of *CL* confirmed that the CMIA did not extend to the Victorian Children's Court jurisdiction. In 2013, the Victorian Law Reform Commission began a review of the CMIA at the request of the state Attorney-General. The primary terms of reference stipulated stated that 'the review should examine the operation of the CMIA and consider whether changes are needed to ensure that the CMIA operates justly, effectively and consistently with the principles that underlie it' (p xiii).⁴

Supplementary terms of reference were later provided, asking the Commission to 'consider whether the application of the CMIA should be further extended to the Children's Court' (p xiii).⁴ The Commission was asked to consider specifically:

- the Court of Appeal decision in *CL, A Minor (by his Litigation Guardian) v Director of Public Prosecutions (DPP) (on behalf of Lee)* [2011] VSCA 227;
- whether the process for determining fitness to stand trial in the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 should be adapted for application in the Children's Court;

- in relation to fitness and the defence of mental impairment, whether a different process for determination should apply in the Children's Court than any that may be proposed by the Commission with regards to the Magistrates' Court;
- what orders should be available to the Children's Court following a finding of unfitness or not guilty because of mental impairment;
- whether the current jurisdiction of the Children's Court should apply, so that the Court could hear and determine any matter before it if fitness or mental impairment should arise, apart from those currently required to be committed to the Supreme Court (p xiv).⁴

At the time of the review, the Children's Court shared 'all the powers and authorities' (p 173)⁴ of the Magistrates' Court in the areas over which it had jurisdiction. The Children's Court could determine the defence of mental impairment, as could the Magistrates' Court. The outcome of a finding of mental impairment however, unlike in the County Court, could only be one of unconditional discharge (p xxviii).⁴ At the time of the review, and as stated in the case of *CL*,¹ the Children's Court had no power to determine fitness to stand trial or conduct special hearings consequent to this finding.

With consideration of whether the CMIA should be applied to the Children's Court, the review considered both whether a program should be introduced in the Children's Court to divert young people found not fit to stand trial or who had been found to have a defence of mental impairment, and the orders the Court should have the power to make following these findings.

Ethical Issues Present Prior to the Extension of the CMIA to the Children's Court

Delays in Legal Processes

The review makes extensive reference to the delays associated with the Children's Court not having the power to respond to concerns about

fitness to stand trial or the defence of mental impairment. The Commission was provided with information regarding 25 cases of young people who had presented to the Children's Court with concerns around fitness to stand trial or the possibility of a mental impairment defence (p 86).⁴ This information was provided to the Commission in de-identified form by the Department of Human Services for the period of 1 July 2012 to 31 October 2013 (p 86).⁴ This data did not include all cases concerning fitness or a mental impairment defence, as some cases may have been withdrawn, and in others, discharge may have meant that the cases were not recorded by the Court.

In 13 of the cases, the issues were solely those of fitness, and in one case, solely that of mental impairment, while in two cases there were concerns about fitness and the availability of a mental impairment defence. Information about the issues raised was unknown in nine cases. In one case, fitness was raised, but there was no information about whether the matter had been transferred to the County Court (p 179).⁴

In eight of the cases, the charges were ultimately dismissed or withdrawn. All the offences were summary or indictable offences which could be heard in the Children's Court. However, 16 cases were transferred to the County Court because of the limited powers of the Children's Court to hear matters of fitness or consider the availability of a mental impairment defence. The delays associated with these transfers were considered likely to be harmful for children, given the distress associated with the legal processes.

The concerns about delays in legal proceedings for young people are described in detail in the United Nation's General Assembly Beijing Rules for the administration of juvenile justice.⁵ These rules emphasise the importance of avoiding harm, while noting that contact with juvenile justice services may themselves be harmful for young people. An emphasis is therefore placed in minimising periods of time in custody prior to trial.

The legislative amendments which extended the jurisdiction of the Children's Court to include CMIA dispositions were intended to reduce delay, compared to previous legal disputation which arose in such matters. There is not yet any data documenting the outcomes in terms of reduction in delay, however.

The Principle of Diversion

The principle of diversion is also described in detail in the United Nation's Beijing Rules.⁵ Diversion seeks to redirect young people who would have contact with youth justice services to those offering community-based support, and, where possible, from justice interventions to appropriate therapeutic interventions. The principle of diversion is underpinned by concerns about the harms experienced by young people as a direct consequence of contact with the youth justice system. These harms include stigma, as well as separation from family and disruption of education and peer relationships and social development.⁵

The Beijing Rules emphasise the importance for young people of avoiding institutionalisation and exposure to more serious offenders. The latter is described as 'criminal contamination' and is regarded as a very serious risk with the potential to cause further harm to young people.⁵ The Beijing Rules argue that institutionalisation should be restricted in two ways: in time, with the amount of time in custody minimised, and in quantity, with detention in custody being a 'last resort'.⁵

The CMIA Review, then, sought to distinguish young people with mental health concerns who could be diverted from standard juvenile justice interventions. Appropriate treatment for this population of young people would enable better outcomes for them and their families, while also ensuring that future risks to the community would be minimised.

Recommendations of the Victorian Law Reform Commission

The recommendations made by the Review supported application of the CMIA to the Children's Court through new provisions in the existing Children, Youth and Families Act 2005. That is, the review recognised the need for 'a specialised approach' (p 172)⁴ to provide 'an appropriate response to young accused under the CMIA who face multiple layers of vulnerability, including mental conditions, development issues and trauma in connection with offending behaviour' (p xxix).⁴ The Commission consequently emphasised 'special features designed to maximise early intervention, uphold the rights of young people and ensure protection of the community' (p xxix).⁴

The Commission ultimately recommended significant changes, including:

1. a presumption in favour of diversion and community options if the issue of unfitness and/or the defence of mental impairment are raised
2. the creation of an 'assessment order' that allows a young person to be assessed for unfitness as well as their suitability for voluntary diversion to a case worker program
3. the creation of two-year therapeutic supervision orders with built-in six-month review periods
4. the establishment of a youth forensic facility underpinned by a multi-disciplinary model of care (p xxix).⁴

The supervision orders were described as either custodial or non-custodial.

The establishment of a youth forensic facility received particular emphasis from the Commission. They stated:

The Commission's view is that the extension of the CMIA's application in the Children's Court should not occur without the establishment of a youth forensic facility. Such a facility is necessary to provide a secure and

therapeutic environment – which currently does not exist in Victoria – to conduct assessments, undertake treatment, and provide services to optimise fitness and protect the community through secure supervision of young people on therapeutic supervision orders (p xxix).⁴

It was recommended that an expert advisory group be established to consider the expertise required for assessments of fitness to stand trial and standardisation of these assessments (p 99).⁴ The need for expertise within the Children's Court was also noted, and the Commission recommended that when unfitness to stand trial or the defence of mental impairment was raised in regional Children's Courts, the case should be transferred and heard at the Melbourne Children's Court (p 186).⁴

The costs were considered based on costings performed by the University of Melbourne. Not surprisingly, given the extent of the changes, the Commission recommended increases to existing resources (p 222).⁴ These resources were anticipated for education and training, as well as increased Children's Court resources for the increased numbers of matters expected consequent to reduced numbers being diverted or not proceeding and the additional costs associated with expert assessments.

Legislative Change Consequent to the Recommendations of the Victorian Law Reform Commission

The changes recommended by the Commission regarding the application of the CMIA to the Children's Court were largely accepted. In amendments assented to in 2014,⁶ elements of the CMIA were extended into the jurisdiction of the Children's Court, including the making of orders consequent to a finding of not guilty by reason of mental impairment or unfitness to stand trial.

The supervision orders available are custodial and non-custodial in type. The legislation states that a Non-Custodial Order cannot be made unless 'adequate supervision is available

in the community' (p 98)⁶ and specifies that 'the purpose of a supervision order is to ensure that a child receives treatment, support, guidance and assistance for the child's mental impairment or other condition or disability' (p 107).⁶ Custodial Supervision Orders are described as having 'an additional purpose of protecting the child or the community while the child receives the treatment, support, guidance and assistance referred to in subsection (2)' (p 107).⁶

Importantly, and counter to the Recommendations, there was no development or proposed development of a youth forensic mental health facility. A Custodial Supervision Order, then, resulted in the child being remanded 'in a youth justice centre or a youth residential centre or from a disability services provider or the Secretary to the Department of Human Services' (p 122).⁶ Under the legislation, once a child has been declared liable for supervision, a certificate of available services must be requested of the Department of Health if the Court is considering a supervision order including services from a mental health service provider.

Ethical Concerns Consequent to the Extension of the CMIA to the Children's Court

Access to Appropriate Treatment Services

In early 2010, the Victorian Ombudsman received allegations from a whistleblower regarding 'serious misconduct of staff' at Parkville Youth Justice Precinct (p 6).⁷ At that time, Parkville Youth Justice Precinct included facilities for girls and boys aged 10 to 20 years remanded to youth justice detention. The Department of Human Services (as it then was) was responsible for administering the Precinct. The allegations were of staff at Parkville 'inciting assaults between detainees, assaulting detainees, restraining detainees with unnecessary force, supplying contraband to detainees, including tobacco, marijuana and lighters, stealing goods and consumables'

(p 6).⁷ The Ombudsman determined these allegations warranted investigation, and an investigation was planned. On 22 March 2010, the Ombudsman wrote to the Secretary for the Department of Human Services noting 'poor conditions to reflect non-compliance with human rights principles and present many safety issues for both staff and detainees' (p 6).⁷ The Ombudsman consequently requested of the Secretary 'that she take prompt action to address the disgraceful conditions' (p 6).⁷

The Ombudsman's Report was released on 7 October 2010 and documented numerous health and safety concerns, including the presence of hanging points, high levels of communicable diseases and unhygienic conditions in food preparation areas.⁷ In addition, it described poor responses to improper conduct, including alleged assault of detainees, the presence of contraband, inadequate workforce safety checks and failure to comply with operational and legislative provisions.

Particular mention was made of 'inadequate care for detainees with mental health issues' (p 13).⁷ The Ombudsman stated: 'the Precinct is struggling to meet adequately the needs of children who are seriously mentally ill, including detainees who are suicidal or displaying self-harming behaviour' (p 14).⁷ The resultant recommendation was that the Department 'review the adequacy of the current response to young offenders with significant mental health problems who are detained in custodial centres. This review should also consider establishing a purpose built facility operated by trained health professionals' (p 71).⁷ The Department response included an undertaking to 'review the response to detainees with significant mental health issues to identify service improvements' (p 71).⁷

The absence of a forensic inpatient mental health facility preceded the review and has long been a serious concern in Victoria. The 2010 Ombudsman's Report stated:

When an adult is sentenced to imprisonment and presents with significant psychiatric problems, a judge or magistrate

is given the option of ordering the detention of the person at Thomas Embling Hospital. This facility is operated by mental health professionals for offenders who are mentally ill. There is no comparable facility for young offenders who are mentally ill and sentenced to detainment. There is also no facility or unit available in Victoria specific for youth detainees who develop significant mental health concerns while in custody (p 66).⁷

The Ombudsman further stated:

Unlike the adult correctional system, dedicated secure inpatient beds are not available to detainees in the youth justice system. The support provided on-site at the Precinct is limited in terms of the hours of coverage. The Precinct is clearly struggling to adequately meet the needs of children who are seriously mentally ill. This is particularly concerning given the general unsafe conditions within the Precinct that I have referred to previously (p 70).⁷

The Ombudsman noted that 'failure to ensure that adequate support is available for mentally ill detainees is also incompatible with the department's Charter of Human Rights responsibility to provide each child in its custody with "such protection as is in his or her best interests"' (p 70).⁷

The principle of 'provision of needed assistance' is described in detail in the United Nation's Beijing Rules.⁵ Mental health should be a priority for young people encountering the juvenile justice system. We know that young people committing offences are significantly more likely than their non-offending peers to have experienced trauma and have ongoing difficulties with mental health concerns and substance use.⁸ These mental health concerns will in turn have a disproportionate effect on the child's life and their ability to engage in rehabilitation, if not addressed. The risk of recidivism is consequently higher without appropriate mental health interventions.⁹

Furthermore, principles underpinning the care of juveniles include a focus on diversion and community support, and a finding under

the CMIA appears to deprive a young person of those opportunities for disposition.

The detention of any adolescent in a facility that offers inadequate mental health treatment is deeply problematic, whether that adolescent is remanded or sentenced. Consequent to the CMIA revisions, however, there was acceptance that adolescents found either permanently unfit or not guilty by reason of mental impairment would be detained at facilities such as Parkville Youth Justice Centre rather than a clinical and therapeutic setting. We consider this to be additionally problematic. The adolescent has been determined either to have offended consequent to their mental health or cognitive difficulties, or to have been unable to participate in their legal processes consequent to these. This group of young people would particularly seem to warrant very assertive mental health care, or care appropriate to their cognitive difficulties, both for their own well-being, but also with the intention of addressing any future risk of offending.

The Principle of Equivalence

Despite a strong statement from the Commission that the review recommendations not be implemented without establishment of a forensic mental health treatment facility, no facility has been established. The United Nations, in Resolution 45/111, described 'Basic Principles for the Treatment of Prisoners'. Key to these principles was the principle of equivalence, stated as: 'Prisoners shall have access to the health services available in their country without discrimination on the grounds of their legal situation'.¹⁰

If a Custodial Supervision Order occurs in response to persisting concerns about fitness due to a major mental illness, placement in a custodial setting is not incompatible with the young person accessing a mental health inpatient bed for their ongoing treatment. However, for this to occur, the young person can be released to a hospital bed only with the approval of the Secretary to the Department of Justice. The risks associated with this release

are mediated by the use of escorting custodial staff, the cost of which is borne by the Department. Release to accept inpatient care would necessarily only be for acute episodes of care, rather than prolonged periods of treatment or rehabilitation. There is, therefore, a significant barrier to care that is not present for the non-offending peers of this group.

Even more marked is the disparity between this group and the comparable adult population in Victoria. In Victoria, an adult who is placed on a Custodial Supervision Order after having been found permanently unfit to stand trial due to mental illness, or not guilty by reason of mental impairment, is placed in the statewide forensic psychiatric hospital, Thomas Embling Hospital. This is a secure forensic psychiatric hospital that offers multidisciplinary treatment and rehabilitation. Patients receive high quality psychiatric care in a setting that includes all the benefits of a therapeutic, rather than a custodial, setting.

It remains a concern that this standard of care is not available to young people in a comparable legal situation. Their care needs may well be more complex and require more intensive expertise and care if there is to be any hope that their longer-term outcomes are optimised and the risks to the community minimised.

In the absence of a youth forensic inpatient unit, youth receiving a custodial sentence will receive their mental health care within a Youth Justice Precinct. Compared to equivalent inpatient hospital services for adults, these children are first and foremost in a custodial setting, and there is no hospital alternative available to them. Despite a presumably severe mental illness, these children are held with other young people that are either on remand facing serious charges, or have been found guilty of serious offending. There is no segregation of the CMIA cohort. Because the Precinct has only one unit for girls, this will mean that someone serving a significant and prolonged sentence will be on a unit with a potentially high turnover of remanded girls. The rehabilitation options in a custodial setting

cannot be seen to be equivalent to a clinical setting for boys or girls.

This dilemma is not specific to Victoria. In their recent review of Juvenile Justice and Human Rights in Australia, Cunneen et al argued that young people with mental health disorders and cognitive disability experienced disproportionate 'substantive and procedural human rights violations' (p 173),¹¹ including those consequent to a lack of 'declared places' (p 176)¹¹ for those under 18 who have been found unfit or mentally impaired.

The care that is provided at Thomas Embling Hospital seeks to optimise mental health and engage patients in programmes to minimise their longer-term risk of further offending. The programmes are specialised and include multidisciplinary expertise targeting psychotic symptoms, cognitive distortions around offending, additional risk factors for offending, such as substance abuse, and engagement with carers. The treatments are based on the international evidence base. There is now a well-established and growing evidence base regarding an equivalent evidence base for best practice care of young people with mental illness.¹²

There is a further inequality for young people placed on Non-Custodial Supervision Orders. In Victoria, there is a dedicated Non-Custodial Supervision Order Team which offers expertise in risk management and provides supervision of all adult mental health Non-Custodial Supervision Order patients, with the expectation that they will make progress under those orders. At the current time, no such service exists for children placed on Non-Custodial Orders. The system in place for adults could readily be replicated for young people, with the intention of ensuring that they receive assertive risk management and supervision to minimise the risk to themselves and others.

Criminal Contamination Effects

Not only are this group of children missing out on the opportunity to receive optimal care, there is good local evidence suggesting that

incarceration itself increases the likelihood of further offending.¹² This effect has been postulated to be due to stigmatisation, as well as exposure to a criminal peer group.¹² Children with major mental illness or an intellectual disability would be at least as vulnerable to both factors and could be argued to be more so than their non-mentally ill, non-intellectually disabled incarcerated peers. The Sentencing Act 1991 (Vic) recognises this concern by allowing young adults under the age of 21 to be held in Youth Justice facilities if they are considered 'particularly impressionable, immature or likely to be subjected to undesirable influences in an adult prison' (section 32(1)(b)).¹³

Expert Evidence

In adult jurisdictions, expert evidence about mental impairment is provided by forensic psychiatrists; and about fitness to be tried, by forensic psychiatrists and psychologists, the latter of particular relevance in cases of intellectual disability. In some cases, neuropsychological evidence is of utility. The adult jurisdictions, responding to concerns about the standards of expertise, have recently enacted a practice note addressing the provision of expert evidence.¹⁴

However, in the Children's Court jurisdiction, the Recommendations of the VLRC have not been enacted, and it remains to be seen how the Court will ensure that evidence required in such cases is based upon the requisite expertise. The diagnosis of severe mental illness is appropriately made by psychiatrists with formal training and experience in child and adolescent cohorts, and – in giving expert evidence in these matters – expertise obtained through assessment and management of young persons in forensic contexts. If the Children's Court relies on evidence from professionals with credentials that fall short of this, the system of diversion may well be undermined.

Conclusions

We believe that the needs of adolescents with serious mental illness and cognitive impairment are critical and, to avoid further disability, that their processes through the justice system should occur as promptly as possible. However, we have concerns about the piecemeal application of the recommendations of the Law Reform Commission and the potential for the benefits associated with the extension of the CMIA to be undermined by a lack of standardisation of expectations and lack of resources to ensure that appropriate expectations can be met.

We believe that there should be clear processes and minimum standards of expertise for the provision of expert evidence regarding fitness and the availability of a mental impairment defence. This expertise should come from clinicians familiar with the adult requirements of the CMIA and also holding expertise on the developmental needs of children and adolescents. Services should be available that can respond to a finding of lack of fitness or a mental impairment defence, including those seeking to restore fitness. We believe that these facilities may be able to draw on the learning obtained from the adult CMIA experience, but that they must be developed to ensure that children are treated as children. We believe that the establishment of inpatient beds for adolescents found unfit or not guilty by reason of mental impairment, as well as those in custody and requiring treatment under the Mental Health Act, is essential.

The extent to which this legislation is being applied, from which finding and in what type of offending, is not yet known. The relative numbers of Non-Custodial Supervision Orders and Custodial Supervision Orders will need to be understood to a far greater extent if services are to be planned to meet the need of the Court, the children affected, their families and the broader community. The Sentencing Advisory Council's Data Update Report in July 2016¹⁵ referred to three cases in Higher Courts which imposed Non-Custodial

Supervision Orders under the CMIA, before the Children's Court had capacity to do so. This report updates data from the Sentencing Advisory Council's 2012 report and includes data from 2010 to 2015 inclusive. At the time of submission, the Children's Court's 2016 Annual Report, which includes data about Court outcomes, had not been published. We argue that examination of these data is the next step to further understanding the implications of the current processes and the size and significance of any gaps in service need, as well as their implications for the broader community.

Ethical standards

Declaration of conflicts of interest

Katinka Morton has declared no conflicts of interest.

Adam Deacon has declared no conflicts of interest.

Danny Sullivan has declared no conflicts of interest.

Ethical approval

This article does not contain any studies with human participants or animals performed by any of the authors.

References

1. *CL, A Minor (by his Litigation Guardian) v Director of Public Prosecutions (DPP) (on behalf of Lee)* [2011] VSCA 227.
2. Sentencing Advisory Council. 2016. Reoffending by Children and Young People. Victoria State Government.
3. Crimes (Mental Impairment and Unfitness to be Tried) Act (Vic) 1997.
4. Victorian Law Reform Commission. Review of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 Report June 2014.
5. United Nations General Assembly. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

- 29 November 1985 A/Res/40/33. The Beijing Rules.
6. The Criminal Organisations Control and other Acts Amendment Act (Vic) 2014.
7. The Victorian Ombudsman. Whistleblowers Protection Act 2001: Investigation into Conditions at the Melbourne Youth Justice Precinct October 2010.
8. Fazel S, Doll H, Langstrom N. Mental disorders among adolescents in juvenile detention and correctional facilities: a systematic review and metaregression analysis of 25 surveys. *Journal of the American Academy of Child and Adolescent Psychiatry* 2008;47(9): 1010–19.
9. Kasinathan J. Predictors of rapid reincarceration in mentally ill young offenders. *Australasian Psychiatry* 2015;23(5):550–55.
10. The United Nations General Assembly. Principle 9 of Resolution 45/111 of the United Nations Organisation of 14 December 1990 Concerning the ‘Basic Principles for Treatment of Prisoners’.
11. Cunneen C, Goldson B, Russell S. Juvenile justice, young people and human rights in Australia. *Current Issues in Criminal Justice* 2016;28(2):173–89.
12. Underwood LA, Washington A. Mental illness and juvenile offenders. *International Journal of Environmental Research and Public Health* 2016;13,228:1–14.
13. Sentencing Act (Vic) 1991.
14. County Court of Victoria. Practice Note: Expert Evidence in Criminal Trials 2014.
15. Sentencing Advisory Council. Sentencing Children in Victoria: Data Update Report July 2016.