

2 June 2017

Lizzie Blandthorn MP
Chairperson
Scrutiny of Act and Regulations Committee
Parliament House, Spring Street
EAST MELBOURNE, VIC 3002

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

Dear Ms Blandthorn MP

RE: Submission on the Children and Justice Legislation Amendment (Youth Justice Reform) Bill 2017

1. The Victorian Equal Opportunity and Human Rights Commission (**Commission**) seeks to contribute to the Scrutiny of Acts and Regulations Committee's (**SARC**) consideration of the Children and Justice Legislation Amendment (Youth Justice Reform) Bill 2017 (**the Bill**). The Bill was introduced to the Legislative Assembly on 24 May 2017. The Bill proposes to make a number of amendments to a variety of legislative instruments including the *Crimes Act 1958*, *The Children Youth and Families Act 2005* (**the Principal Act**) and the *Sentencing Act 1991*.
2. SARC has an important role in considering and reporting on whether Bills introduced into Parliament are compatible with the *Charter of Human Rights and Responsibilities Act 2006* (**Charter**).
3. As Victoria's independent statutory human rights authority the Commission wishes to draw to SARC's attention some of the potential human rights impacts that the Bill's proposed reforms will have on children. We invite SARC to consider this submission and to publish the submission on the SARC website.
4. In summary the Commission makes the following points:
 - The Commission welcomes some of the reforms in the Bill as proactive changes to the youth justice system. Subject to some minor reservations regarding the inclusion of a requirement for prosecutorial consent, the establishment of a youth diversion scheme is a positive step and develops a framework that promotes children's rights.
 - The Commission also acknowledges that the Victorian Government wishes to address community concerns about serious crimes committed by children and young people, as well as the desire to improve the safety and security of youth justice facilities.

humanrightscormission.vic.gov.au
Enquiry Line 1300 292 153 or (03) 9032 3583

Level 3, 204 Lygon Street, Carlton, Vic 3053
Telephone 1300 891 848 Fax 1300 891 858 TTY 1300 289 621 Interpreters 1300 152 494
Email information@veohrc.vic.gov.au

- However, there are provisions in the Bill that raise significant human rights considerations under the Charter. The Charter rights that are limited include children’s right to protection in their best interest (s 17(2)), their right to a procedure that takes account of their age and the desirability of promoting their rehabilitation (s 25(3)), their right to equality (s 8), cultural rights (s 19 (2)), the right to privacy (s 13), the right to be treated with humanity and dignity when deprived of liberty (s 22), and the right to be presumed innocent until proven guilty (s 25(1)).
 - Under s 7(2) of the Charter, reforms that limit human rights must be proportionate and appropriately supported by an evidence base. Importantly, the onus is on the government to provide the relevant evidence base.
 - The Commission considers that Parliament should conduct a robust and cogent examination of the evidence in support of the amendments to ensure that any limitations on Charter rights are reasonably justified in accordance with section 7(2) of the Charter. This will ensure that that the Bill strikes the appropriate balance between promoting and protecting the rights of children and community safety considerations. Ideally, for such a balancing analysis to be effective, Parliament would benefit from evidence that substantiates how the proposed measures improve community safety.
5. The Commission’s submission is structured by reference to the relevant human rights under the Charter that are engaged by each of the proposed reforms.

Children’s right to protection in their best interest – Section 17(2)

6. Section 17(2) of the Charter provides that, “every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child”.¹
7. The 'best interest principle' recognises that children are entitled to special protection due to their age and vulnerability. This right was modelled on international law including Article 24(1) of the *International Covenant on Civil and Political Rights (ICCPR)* and Articles 3(1) and (2) of the *Convention on the Rights of the Child (CROC)*. This principle is further enshrined in the Principle Act which requires that the “best interests of the child must always be *paramount* (emphasis added)”.² In the recent Supreme Court case of *Certain Children v Minister for Families and Children*³ the court held that the key element of the rights protected by s 17(2) is the best interests of the child.⁴ It is an accepted principle of Victorian law that the scope of the right is appropriately informed by CROC and the *United Nations Standard Minimum Rules for the Administration of Justice (Beijing Rules)*.⁵ These resources provide “an established international framework by

¹ *Charter of Rights and Responsibilities 2006* (Vic) s 17(2).

² *Children, Youth and Families Act 2005* (VIC) s 10(1).

³ [2016] VSC 796.

⁴ *Certain Children by their Litigation Guardian Sister Marie Brigid Arthur v Minister for Families and Children* ('*Certain Children*') [2016] VSC 796, [147–155].

⁵ UN General Assembly, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")*: resolution / adopted by the General Assembly, 29 November 1985, A/RES/40/33. In *Certain Children (No 2)* at [261] Dixon J notes that “In certain Children, [Garde

which substance and standards can be given to s 17(2)".⁶ The Supreme Court judgment confirmed that in all decisions taken within the context of the administration of youth justice, the best interests of the child should be a primary consideration.⁷ The State of Victoria is required to ensure, to the maximum extent possible, the survival and development of a child.⁸

Establishment of a youth diversion scheme

8. The Commission generally welcomes the introduction of the youth diversion scheme and notes the preventative focus of the comments of the responsible Minister in the second reading speech.⁹
9. The Commission supports legislative reform that focuses on the use of early intervention and preventative measures before a child is entrenched in the youth justice system. Such measures are consistent with the rights of the child in the Charter and are well supported by evidence and studies conducted into the youth criminal justice system: "Rehabilitation is at the heart of the youth justice system."¹⁰
10. The UN Committee of the Rights of the Child has observed "the use of deprivation of liberty has very negative consequences for the child's harmonious development and seriously hampers his/her reintegration into society".¹¹ Accordingly, the creation of a legislative scheme diverting children who have committed low level offences from the criminal justice system is in keeping with the best interests of the child. Such measures are more likely to appropriately address their offending behaviour and any risk to the community before it escalates into persistent offending. This measure recognises the emphasis on the developmental needs of the child and focus on the reintegration of the child to assume a constructive role in society.¹²
11. Further, such measures are supported by key findings of the Sentencing Advisory Council, which emphasise the importance of early intervention and resources as vital to preventing or interrupting the criminal trajectories of children in the criminal justice system.¹³ The development of a youth diversion scheme appropriately recognises that "children differ from adults in their physical and

J] accepted that guidance from the CROC and materials from the United Nations inform the scope of the right protected in section 17(2)".

⁶ *Certain Children v Minister for Families and Children & Ors* (No 2) ("*Certain Children No 2*") [2017] VSC 251; *Certain Children 'No 2'* [2017] VSC 251, 104, [261]; *Certain Children* [2016] VSC 796.

⁷ *Certain Children (No 2)* [2017] VSC 251, 104, [262]; Convention on the Rights of the Child ('CROC'), opened for signature 20 November 1989, 1577 UNTS 3, Art 3 (entered into force 2 September 1990)

⁸ *Certain Children (No 2)* [2017] VSC 251, [264].

⁹ Victoria, *Parliamentary Debates, Legislative Assembly*, 25 May 2017, 62 (Mr Pakula, Attorney General).

¹⁰ Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria* (December 2016), in particular 52, 53; UN Committee on the Rights of the Child, General Comment No 10 (2007) "Children's rights in juvenile justice," 5, [11].

¹¹ UN Committee on the Rights of the Child, General Comment No 10 (2007) "Children's rights in juvenile justice," 5.

¹² CROC, Art 40(1).

¹³ Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria* (December 2016), 52–53.

psychological development, and their emotional and educational needs”.¹⁴ The Commission commends the government on this proposed reform.

12. However, we note that clause 59 of the Bill inserts a new section 356D into the Principal Act. Relevantly, section 356D(3) provides that the court may not order a diversion program in respect of a child without prosecutorial consent. This appears to be an unnecessary barrier to the adoption of diversionary measures, which focus on early intervention and the best interests of the child.

Requiring certain offences to be heard in higher courts, rather than the Children’s Court

13. The Bill creates a presumption that certain matters will be heard in the higher courts, rather than the Children’s Court, for children over the age of 16.¹⁵ The Bill inserts a new section 356(3)(a) into the Principal Act. The provision provides that when a young person aged 16 years or over is charged with a category A offence (apart from offences already determined to be outside the jurisdiction of the Children’s Court), different rules will govern when such charges can be heard and determined summarily in the Children’s Court, or uplifted to the higher courts.¹⁶
14. A child is defined as a person under the age of 18 in the Charter.¹⁷ Uplifting matters into a higher court has the effect of removing a matter from the specialist jurisdiction of the Children’s Court and will potentially subject children to adult sentencing regimes. The Bill notes that judicial officers may continue to sentence the child in accordance with the principles and sentencing options available to the Children’s Court, however this is only discretionary.¹⁸ The higher courts are not a specialist jurisdiction designed to protect and promote the rights of children and do not have many of the tailored protections accorded in the Children’s Court.
15. The Commission considers that this proposed reform limits children’s rights, particularly the best interests principle and the right in section 25(3) of the Charter, which provides that a child charged with a criminal offence has the right to a procedure that takes account of his or her age and the desirability of promoting the child’s rehabilitation to what is in their best interest.

¹⁴ UN Committee on the Rights of the Child, General Comments No 10 (2007) “Children’s rights in juvenile justice,” 11, [5].

¹⁵ Clause 23 amends s 356(3)(a) of the Principal Act, and has the effect of limiting the jurisdiction of the Children’s Court. Note also that clause 27 of the Bill inserts a new section 168A into the *Criminal Procedures Act 2009* which provides that when a young person is 16 years or over and charged with a category A offence different rules will govern when charges can be heard or uplifted.

¹⁶ The new provisions mean that children aged 16 or over at the time of committing Category A, and in certain circumstances cases Category B offences, must generally have their matters heard and determined in the higher courts (unless certain exceptional circumstances exist). Once convicted in the higher courts, these young people must be sentenced to imprisonment. See *Children Youth and Families Act* s 586. Sections 32–35 of the *Sentencing Act 1991* (Vic) relate to when the higher courts should sentence young offenders to a youth justice centres or youth residential centres. The *Sentencing Act 1991* (Vic) s 4 states that the *Sentencing Act 1991* (Vic) applies to all courts except the Children’s Court).

¹⁷ Charter, s 3(1).

¹⁸ Children and Justice Legislation Amendment (Youth Justice Reform) Bill 2017 (Vic), s 50, s 51, s 52

16. The uplifting of matters to a higher court may lead to outcomes for children that harm the development of a child and hamper his or her reintegration into society.¹⁹ The Beijing Rules, now adopted by the Supreme Court, recommend that there should be an emphasis on the wellbeing of children and a proportionate response to young offenders having regard to both the offenders and the offence.²⁰ The Commission is concerned that the proposed presumptive ‘uplift’ of certain matters to the higher courts would not be consistent with the protection and promotion of children’s human rights. Reference can be had to the recent Supreme Court jurisprudence in this regard as well as the findings of the two key 2016 Sentencing Advisory Council reviews of the youth justice system.²¹

Provisions introducing harsher penalties

17. The effect of the Bill is to increase the maximum rates and incarceration periods for a number of offences.²² The maximum period of youth detention that can be imposed for a single offence is increased from two years to three years.²³ The Bill also increases the maximum period of youth detention that can be imposed on a single occasion for multiple offences from three years to four years.²⁴ There will also be a new presumption that young offenders who damage property, escape or attempt to escape from a youth justice facility will serve their sentences on top of an existing period of detention, regardless of age. This amendment is effectively a shift toward cumulative sentencing rather than concurrent sentencing.²⁵

18. The Commission considers that, on its face, the increase in maximum penalties for the sentencing of young people may limit children’s rights under the Charter. The introduction of more punitive sentencing regimes shifts the emphasis away from the developmental needs of the child.²⁶ Further, the introduction of harsher sentencing does not accord with the focus and objectives of the Beijing Rules and CROC. The Beijing Rules inform the scope of s 17(2) and provide that the objective of treatment of children placed in institutions including prisons is to

¹⁹ UN Committee on the Rights of the Child, General Comment No 10(2007) “Children’s rights in juvenile justice” paragraph 11, 5; *Certain Children ‘No 2’* [2017] VSC 251, [262].

²⁰ *Certain Children* [2016] VSC 796, [154] *Certain Children ‘No 2’* [2017] VSC 251, [264]; Beijing Rules, Principle 5.

²¹ Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria* (December 2016), 52–53; Sentencing Advisory Council, *Sentencing Children in Victoria: Data Update Report* (July 2016), 51; *Certain Children* [2016] VSC 796; *Certain Children (No 2)* [2017] VSC 251.

²² Children and Justice Legislation Amendment (Youth Justice Reform) Bill 2017 (Vic), s 7, s 8, s 50, s 51, s 52.

²³ Children and Justice Legislation Amendment (Youth Reform) Bill 2017.

²⁴ Most relevantly s 32(3)(b) of the *Sentencing Act 1991* (Vic) currently provides that a child cannot be sentenced to a youth justice centre for a period of more than three years. The Bill will amend s 323(3)(b) to allow the higher courts to sentence a child to a youth justice centre for a maximum of four years.

²⁵ Children and Justice Legislation Amendment (Youth Justice Reform) Bill 2017 (Vic), s 7. This provision inserts s 362B into the Principal Act allowing courts to aggregate sentences in detention in respect of certain offences.

²⁶ *Certain Children (No 2)* [2017] VSC 251, [265]: Justice Dixon notes that the appropriate focus of CROC and the Beijing Rules is on a child’s continuing development.

“provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society”.²⁷

19. The introduction of these penalties should be considered in light of recent leading reports on the effectiveness of youth incarceration at reducing rates of offending.²⁸
20. Careful examination of the evidence base is needed to justify this limitation on children’s rights. The imposition of longer incarceration rates on children as an isolated measure does not correlate to reduced rates of offending. The 2016 Sentencing Advisory Council report notes that:

*Sentencing the most problematic children and young people is highly complex, and the reoffending patterns found in this report suggest that **sentencing alone cannot address the root causes of offending by children and young people.** The findings suggest that **enhanced early intervention and resources to rehabilitate young offenders are vital to prevent or interrupt the criminal trajectories of children who enter the criminal justice system at a young age and commit a disproportionately high volume of all youth crime (emphasis added).***²⁹

Right to equality – Section 8

21. The Commission is concerned that the Bill limits children’s right to equality before the law. Under section 8 of the Charter every person has the right to enjoy his or her human rights without discrimination.³⁰ Furthermore, every person is equal before the law and is entitled to the equal protection of the law without discrimination and has the right to equal and effective protection against discrimination.³¹ Section 8(3) is expressed in terms of discrimination within the meaning of the *Equal Opportunity Act 2010*.³² The scope of the right to equality has been comprehensively explored by the courts.³³ The right is considered to express the fundamental value of substantive equality in the content and operation of the law. The Supreme Court of Victoria has noted that, “It protects the interests that all people have, as of right, in being equally protected by the law from discrimination, including protection from laws that are discriminatory in nature.”³⁴ Relevantly, section 6 of the Equal Opportunity Act lists age as an attribute in respect of which discrimination is prohibited.³⁵

²⁷ *Certain Children (No 2)* [2017] VSC 251, [264]; UN Committee on the Rights of the Child, General Comment No 10 92007 “Children’s rights in juvenile justice”, 5, [11].

²⁸ See the Sentencing Advisory Council Report *Reoffending by Children and Young People in Victoria* (December 2016), 52–53.

²⁹ Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria* (December 2016), 52–53.

³⁰ Charter, s 8(2).

³¹ Charter, s 8(3).

³² For a detailed analysis of the scope of this right reference should be had to *Lifestyle Communities (No 3)* (2009) 31 VAR 286, 322 [162]–[163].

³³ *Matsoukatidou v Yarra Ranges Council* [2017] VSC 61, 54; *Taha* [2013] VSCA 37 (4 March 2013) [209] (Tate JA).

³⁴ *Lifestyle Communities (No 3)* (2009) 31 VAR 286, [285]–[286].

³⁵ *Equal Opportunity Act 2010* (Vic), s 6.

22. The Bill's creation of separate procedures for children over the age of 16 is inconsistent with the right to equality under section 8 of the Charter.³⁶ The Commission considers that a provision like this, which imposes a distinction on the basis of age, amounts to treating a certain subset of children (those over 16 years of age) differently by subjecting them to different offence categories and the process of uplifting proceedings to higher courts. On its face, such a distinction on the basis of age limits the right to equality under the Charter. The Commission is not aware of any evidence that supports the limitation of this right in accordance with section 7(2) of the Charter.

Cultural rights – Section 19(2)

23. The Commission observes that the Statement of Compatibility (**SoC**) accompanying the Bill makes no reference to cultural rights, particularly the distinct cultural rights of Aboriginal persons.³⁷ Section 19 of the Charter explicitly protects the rights of Aboriginal persons noting they hold distinct cultural rights and must not be denied the right to maintain and use their languages, maintain kinship ties and maintain distinctive spiritual material and economic relationships with the land and waters and other resources with which they have a connection under traditional laws and customs.³⁸
24. The Commission notes that section 10(3)(c) of the Principal Act expressly acknowledges the importance of maintaining kinship ties for Aboriginal children. The provision provides that in determining what decision to make or action to take in the best interests of an Aboriginal child, consideration must be given to the need to protect and promote his or her Aboriginal cultural and spiritual identity and development by, wherever possible, maintaining and building the child's connection to their Aboriginal family and community. Australian Institute of Health and Welfare data shows that Aboriginal children make up less than two per cent of Victoria's population of children and young people aged 17 and under, but make up more than 15 per cent of the youth detention population aged 17 and under.³⁹
25. There appears to have been no consideration of how these rights may be impacted by the imposition of harsher penalties and the presumptive uplifting of matters to higher courts. Any adoption of more punitive sentencing will put more Aboriginal children in jail. Culture and connection are key markers of resilience and are an intrinsic part of Aboriginal Children and young peoples' identity.⁴⁰ Any

³⁶ Charter, s 3(1).

³⁷ Victoria, *Parliamentary Debates, Legislative Assembly*, 25 May 2017, 62 (Mr Pakula, Attorney General).

³⁸ See also the United Nations *Declaration on the Rights of Indigenous Peoples* states that "Indigenous peoples have the right to practice and revitalize [sic] their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures." United Nations *Declaration on the Rights of Indigenous Peoples*, Art 11(1).

³⁹ Australian Institute of Health and Welfare, *Victoria Youth Justice Supervision in 2015-2016: Youth justice facts sheet no. 81*. (31 March 2017) <<http://www.aihw.gov.au/publication-detail/?id=60129559089>> at 1 June 2017.

⁴⁰ Kelly, K., Dudgeon, P., Gee, G., and Glaskin, B., 2009, *Living on the Edge: Social and Emotional Wellbeing Risk and Protective Factors for Serious Psychological Distress among Aboriginal and Torres Strait Islander People*, Discussion Paper Series No. 10, Cooperative Research Centre for Aboriginal Health, Darwin.

damage to these connections through deprivation of liberty is counterproductive to the risk of children re-offending.⁴¹

26. Parliament should consciously consider the body of work that specifically addresses the spiritual and cultural needs of young people. Ensuring these rights are contemplated acknowledges that past government practices and policies continue to significantly affect the wellbeing of Aboriginal children and young people.⁴²

Right to privacy – Section 13

27. Clause 40 of the Bill amends section 534 of the Principal Act (which restricts the publication of Children’s Court proceedings except with the permission of the President) by providing that the Secretary may grant permission for the publication of the identifying information of a child involved in criminal proceedings who has escaped from a youth justice facility. Clause 40 requires that publication is reasonably necessary for the safety of the child or any other person, or would assist to apprehend the child. Publication means to provide access to the public or a section of the public by any means, including media broadcast.⁴³
28. A detailed analysis of this right is required to ensure that any limitation is reasonable and justified. Any limitation will only be justified if it is supported by a cogent evidentiary basis.⁴⁴
29. Section 13(a) of the Charter provides that a person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with. An arbitrary interference may be defined as an interference that is not proportionate to the legitimate aim sought.⁴⁵
30. As noted above, section 7(2) of the Charter provides that Charter rights may be subject only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom. This section also requires that in limiting a right, consideration is given to less restrictive means available to achieve the purpose that the limitation seeks to achieve.
31. The Commission is concerned that the publication – including to the media – of an escaped child’s identity may unreasonably limit a child’s right to privacy. A key purpose of the Principal Act is to provide for the protection of children.⁴⁶ Accordingly, restrictions in this Act on the publication of a child offender’s identity are in place to ensure that the child’s ability to rehabilitate is not unduly

⁴¹ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time – Time for Doing: Indigenous Youth in the Criminal Justice System* (2011) ch 3

⁴² Australian Institute of Health and Welfare and Australian Institute of Family Studies 2013, *Strategies and practices for promoting the social and emotional wellbeing of Aboriginal and Torres Strait Islander people*, Resource sheet no. 19 produced for the Closing the Gap Clearinghouse, Canberra, 3.

⁴³ *Open Courts Act* 2013 (Vic), s 3.

⁴⁴ *Re An Application Under the Major Crimes (Investigative Powers) Act 2004; DAS v Victorian Human Rights and Equal Opportunity Commission* (2009) 24 VR 415 at 448 [147]; *R v Momcilovic* (2010) 25 VR 436, [143]–[146].

⁴⁵ *WBM v Chief Commissioner of Police* [2012] VSCA 159, [114].

⁴⁶ *Children, Youth and Families Act 2005* (Vic), s 1(b).

constrained by the ongoing stigmatisation related to the publication of their offending and sentencing history. Proposed clause 40 of the Bill effectively strips certain child offenders of this protection, and may be inconsistent with the purposes of the Principal Act and is contrary to the best interests of the child principle in section 17(2) of the Charter. Publicising an escaped child's identity is arguably a punitive measure as it could lead to long-term stigmatisation, and have far-reaching negative consequences for the child.

32. The Commission acknowledges that the confidential provision of an escaped child's identifying information to law enforcement agencies could assist in the apprehension of that child. However, any potential public interest benefit to be gained from the wider dissemination of identifying information beyond law enforcement agencies is arguably outweighed by the potential limitation to the child's right to privacy.
33. Accordingly, the Commission considers that while the provision of information to law enforcement agencies may constitute a reasonable limit on the right to privacy under section 13 of the Charter, the wider dissemination of this information may not be a reasonable limit, and requires careful examination of any evidence base substantiating the measure. Further, providing an escaped child's identifying information to anyone other than law enforcement agencies does not appear proportionate to the legitimate aim sought – the apprehension of the child – and may not be a reasonable limit under s 7(2) of the Charter.

Right to be treated with humanity and dignity when deprived of liberty – Section 22; Right to be presumed innocent until proven guilty – Section 25(1)

34. Clause 32 of the Bill will amend section 482(1)(c)(ii) of the Principal Act to allow a young person on remand to be co-located with sentenced prisoners. This provision operates without the remandee's consent, if the remandee has previously served a period of detention, and if it is reasonably necessary for any persons on remand to be accommodated with any persons who are serving a period of detention.
35. The Commission is concerned that co-locating child remandees with sentenced prisoners may unreasonably limit the child's right to be treated with humanity and dignity when deprived of their liberty protected under section 22 of the Charter.
36. Section 22(2) of the Charter specifically provides that an accused person who is detained or a person detained without charge must be segregated from persons who have been convicted of offences, except where reasonably necessary. The meaning of 'reasonably necessary' in s 22(2) has not been examined by the courts. However, in the context of another internal limit on a Charter right (s 15(3)), 'reasonably necessary' has been compared to a proportionality exercise involving the evaluation of competing interests.⁴⁷ The Court of Appeal has noted

⁴⁷ *Hogan v Hinch* (2011) 243 CLR 506; [2011] HCA 4 [72]; see also *Noone v Operation Smile (Australia)* [2012] VSCA 91, [156]–[157].

that unconvicted persons are not undergoing punishment, and so it is not appropriate that they be detained along with prisoners serving a sentence.⁴⁸

37. The Commission is also concerned that co-location may pose an unreasonable limit on a child remandee's right to be presumed innocent until proven guilty according to the law under section 25(1) of the Charter. The SoC notes that "co-location will not equate to treating a remandee as if he or she were a sentenced detainee. Remandees co-located with sentenced detainees will receive the same treatment as other remandees, with the same access to facilities and resources".⁴⁹ The immutable characteristics of a detention environment may make it difficult to give practical effect to this intent in all circumstances. The Commission is also concerned that one unintended consequence of the co-location reforms is that an accused child may be co-located with a young person over the age of 18. This has the potential to limit a child's right in section 23(1) of the Charter to be segregated from detained adults.

Conclusion

38. The Commission welcomes the opportunity to comment on the proposed Bill and contribute to SARC's consideration of the human rights issues raised by the Bill.

39. The Commission is pleased to see the proposed reforms in the Bill that proactively provide an early intervention framework aimed at addressing youth crime and community concerns. However, the Commission considers that the Bill proposes significant limitations on Charter rights. Parliament needs to carefully review the evidentiary basis for these limits to assess whether these limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom, in accordance with section 7(2) of the Charter.

If you have any queries about this submission, please contact Jacinta Lewin or Emily Minter, Senior Legal Advisers, at legal@veohrc.vic.gov.au.

Yours sincerely,



Kristen Hilton
Commissioner

⁴⁸ *DPP v Dale* [2009] VSCA 212 [39], quoting *Re Paul Noel Dale* [2009] VSC 332, [16].

⁴⁹ Victoria, *Parliamentary Debates, Legislative Assembly*, 25 May 2017, 62 (Mr Pakula, Attorney General).



**Victorian Equal Opportunity
& Human Rights Commission**

Contact us

Enquiry Line	1300 292 153 or (03) 9032 3583
Fax	1300 891 858
Hearing impaired (TTY)	1300 289 621
Interpreters	1300 152 494
Email	information@veohrc.vic.gov.au
Website	humanrightscommission.vic.gov.au
Follow us on Twitter	@VEOHRC
Find us at	www.facebook.com/VEOHRC