

Annexure A — compatibility with the *Charter of Human Rights and Responsibilities Act 2006* (Vic) of the decision to apply to the Youth Parole Board under s 467 of the *Children, Youth and Families Act 2005* (Vic) for a direction that [REDACTED] be transferred to a prison

Summary

The decision to apply to the Youth Parole Board (Board) for a transfer under s 467 of the *Children, Youth and Families Act 2005* (Vic) (CYFA) of [REDACTED] to prison (the transfer decision) is considered compatible with the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (Charter):

- The transfer decision requires the Secretary (or delegate) to give proper consideration to human rights engaged by the application, and to reach a decision that is compatible with the Charter.
- The transfer application decision limits the rights under the Charter to protection of the best interests of children, humane treatment when deprived of liberty, and rights of children in the criminal process.
- However, those limitations are reasonable and demonstrably justified in accordance with s 7(2) of the Charter, for the reasons set out below.

Rights analysis

Right	Nature of the right and how engaged	Importance and purpose of limitation	Nature and extent of limitation	The relationship between the limitation and its purpose	Less restrictive means reasonably available to achieve the purpose
The right of children to protection in their best interests (s 17(2))	Placement of any child in detention in an adult prison or other adult facility which has not been designed to cater for the particular developmental needs of children is not in a young person's best interest and is likely to have corresponding adverse consequences on a young person's wellbeing, development and prospects for rehabilitation.	The purpose of the limitation is the need to ensure the good order and safe operation of youth justice centres, including maintaining the safety and wellbeing of other young people and of staff. The information provided indicates [REDACTED] cannot be properly controlled in a youth justice centre and has engaged in violent behaviour [REDACTED]	The limitations identified are, by their nature, capable of impacting significantly on [REDACTED]. [REDACTED] may be particularly vulnerable due to [REDACTED]	There is a clear relationship between the limitation on the right and the purpose sought to be achieved. Removal of [REDACTED] from youth justice centres is an immediate and effective means of eliminating the risk to staff and other young people in youth justice centres. To the extent that the transfer application also involves an element of denunciation or deterrence, there is a relationship between that outcome and	The material available indicates that [REDACTED] offending both in and outside of custody has continued to escalate in both severity and frequency. [REDACTED] supports an assessment that the risk [REDACTED] poses to the safety of other young people and staff is such that he can longer be properly controlled in a youth justice setting. Further, no other less restrictive means are reasonably available

		[REDACTED] Of these incidents, [REDACTED] [REDACTED] The transfer application decision thus serves a legitimate and important purpose aimed at protecting the safety, security and human rights of other young people and staff in youth justice centres, including the right to life and the right to security and humane treatment when detained.		the object of ensuring the safe operation and good order of youth justice centres generally.	to achieve the purpose served by the transfer application. [REDACTED] has progressed through the hierarchy of warnings available to Youth Justice – which includes [REDACTED] [REDACTED] – indicating that warnings have had little or no effect on [REDACTED] behaviour in Youth Justice custody. Relevantly, Youth Parole Board warnings are the highest ‘tier’ of warning available. [REDACTED] matters were escalated directly from Operations manager warnings to warnings from the Board (without Director and Executive Director warnings) given the severity of the incidents. [REDACTED] is already on a behavioural management plan, and has otherwise had limited engagements with other supports (noting he has elected not to engage in some services, and [REDACTED])
--	--	---	--	---	--

					[REDACTED] Other placement options within the Youth Justice system are extremely limited, noting alternative placement options have previously been used prior to the most recent [REDACTED] [REDACTED] exclude him from placement at Cherry Creek, and other age and gender appropriate units at Parkville. [REDACTED] was separated out to function without peers to focus on behaviour modification and anger management via the behaviour support team. This plan progressed on a lengthy period of time of around 6 weeks to see [REDACTED] return to the [REDACTED]. However, this placement was followed by the [REDACTED] In his current placement and following the recent assault in [REDACTED] has been placed in a unit specifically with 2 peers of his choosing who were assessed as being pro-social peers to allow a non-threatening engaging environment. However, this
--	--	--	--	--	---

					placement was followed by the [REDACTED]
Humane treatment when deprived of liberty (s 22)	This is an important right recognising the particular vulnerability of prisoners. It seeks to ensure that prisoners should not be subjected to hardship or constraint other than that which is a necessary consequence of their deprivation of liberty. Insofar as imprisonment in an adult prison or facility has the consequence young people are not accorded treatment appropriate to their age, and denies young people adequate opportunities for educational and vocational training, recreation and social and physical development, this is likely a hardship that goes beyond that which is required to be imposed as a necessary consequence of incarceration so as to engage s 22.	As above re s 17.	As above re s 17.	As above re s 17.	As above re s 17.
The right of a child who	The authorities considering the treatment	As above re s 17.	As above re s 17.	As above re s 17.	As above re s 17.

has been convicted of an offence to be treated in a way that is appropriate for their age (s 23(3))	of children in detention in the context of the Charter make clear that it is generally not appropriate for children in the corrections system to be treated in the same way as adults and that children in detention are particularly vulnerable by reason of their age and circumstances. Insofar as imprisonment in an adult prison or facility has the consequence young people are not accorded treatment appropriate to their age, including through the provision of opportunities to continue education while in detention, access to vocational training and access to leisure activities to promote physical and social development, the transfer application decision will limit the right under s 23(3).				
---	---	--	--	--	--