

INVESTIGATION REPORT

‘I just get dark, dark thoughts’:
How DJCS considers human rights
when applying to transfer
children to adult prison

September 2026

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**The Victorian Ombudsman pays respect to First Nations custodians of Country throughout Victoria.
We extend this respect to their Elders past and present. We acknowledge their sovereignty was never ceded.**

Letter to the Legislative Council and the Legislative Assembly

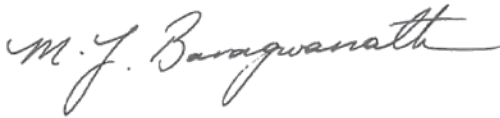
To

The Honourable the President of the Legislative Council

and

The Honourable the Speaker of the Legislative Assembly

Pursuant to sections 25 and 25AA of the *Ombudsman Act 1973*, I present to Parliament my investigation report '*I just get dark, dark thoughts*': How DJCS considers human rights when applying to transfer children to adult prison.

A handwritten signature in black ink, reading 'M. J. Baragwanath' in a cursive script.

Marlo Baragwanath

Ombudsman

24 September 2026

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Foreword

The heart of an Ombudsman's role is ensuring that whenever public officers make decisions that affect people, they act fairly. To protect against unfairness, and set a benchmark for good decision making, Victoria has the *Charter of Human Rights and Responsibilities Act 2006*.

The Charter was introduced twenty years ago, by then Attorney-General Rob Hulls, with the sentiment that it was about 'those rights and values that belong to all of us by virtue of our shared humanity'. He described the Charter as 'a powerful, symbolic and educative tool for future generations'.

However, the complaints that come to this office make it clear that meaningfully considering human rights is still not a matter of course in the public service. This report examines a case where a child's rights were not properly considered and ultimately were breached. It's about a child who was transferred from a Youth Justice centre to a maximum-security adult prison for six weeks in 2025.

Yes, he had a history of violent incidents and the Department of Justice and Community Safety applied to transfer him because of an attack on staff, but the decision to apply to transfer him didn't adequately consider how his rights would be impacted.

In adult prison he was held in conditions that bordered on solitary confinement for over 22 hours a day and often handcuffed when he was out of his cell. He told us he had 'dark, dark thoughts' he had never had before and described lingering effects from his time in prison.

In 2026, the child was involved in another incident. Now 18, he was the subject of another application by the Department to transfer him to adult prison. As he was now treated as adult, the human rights impacts of the transfer application were significantly different.

However, the way the Department considered his human rights this time – after seeing a draft of this report – was a distinct improvement. Its 2026 assessment provided a more defensible rationale for the transfer.

This shows that the Department has the capacity to meaningfully consider human rights as part of its processes, as do all Victorian government organisations.

I know many people will find it difficult to sympathise with a child who has been repeatedly violent towards youth justice staff. But human rights apply to everyone, including people accused or convicted of a crime.

Regardless of how children who break the law are managed, or how public debate on law and order issues evolves, the decisions governments make must adhere to the Charter. This is especially important for difficult decisions like the ones considered in this report.

The Charter should act as a true north – guiding decisions so they meet our agreed standards of fairness and humanity.

Considering rights is still seen by many as an inconvenience or impediment, instead of the safeguard it was intended to be. If we want people to have trust in government, they need to believe that decision makers are acting fairly, transparently and humanely. To earn that trust, the Charter should be front and centre for all government decisions and actions.

Twenty years ago Victoria was a leader in championing human rights in Australia. With every decision we make, we have the opportunity to become that again.

Marlo Baragwanath
Ombudsman

Background

In early 2025, the Ombudsman received a report about the transfer of a child from Parkville Youth Justice Precinct ('Parkville') to the adult maximum-security Melbourne Assessment Prison ('MAP'). The child, who was 16 years old, was reported to have engaged in seriously dangerous and disruptive behaviour.

Under Victorian law, a sentenced child who is 16 years or older can be transferred from a youth justice centre to an adult prison in certain circumstances, as a last resort. An application to transfer is made by the Secretary ('the Secretary') of the Department of Justice and Community Safety ('the Department') or their delegate, to the Youth Parole Board ('the Board'). The decision to make an application to the Board is required by the *Charter of Human Rights and Responsibilities Act 2006* ('the Charter') to be informed by proper consideration of the impact on the child's human rights.

The Charter protects all Victorians. People do not lose the protection of the Charter because they have committed criminal offences. Under the Charter, children are entitled to special protection. Children who are found guilty of criminal offences are entitled to be treated in a way that is appropriate for their age.

Why we investigated

The decision to apply to transfer a child into adult custody is one of the most significant human rights decisions that a public authority can make. It has very serious implications for the rights, safety and wellbeing of the child, and for the broader community. For this reason, other transfers of children into adult custody have often been the subject of review (see Figure 3).

The Ombudsman recognises that the Department has a legal duty to provide a safe environment for its staff and for children in custody, and that this was a serious and pressing concern in this case. We make no criticism of Youth Justice staff at Parkville in

this report. The issue examined in this report is whether, alongside that duty to ensure safety, the Department properly considered what the transfer would mean for the child's rights.

The Ombudsman made enquiries with the Department about its decision to apply to transfer the child.

After receiving information from the Department, we were particularly concerned about the written human rights assessment conducted as part of the transfer application. We sought expert legal advice on whether this human rights assessment and subsequent decision making met the Department's obligations under the Charter.

On 17 July 2025, we launched an investigation into whether the Department gave proper consideration to the child's human rights when deciding to apply to the Board. The scope of the investigation included:

- the human rights assessment produced by the Department's internal legal team, the Office of the General Counsel ('OGC')
- the Secretary's consideration of the human rights assessment
- if the Secretary's decision to proceed with the application was lawful under section 38 of the Charter.

We conducted this investigation to determine whether the decision was fair and because of the importance of proper human rights assessments to other children in this situation, and to the community more broadly.

The Victorian Ombudsman has a clear mandate to protect and promote human rights. Since the Charter's introduction 20 years ago, the Ombudsman has emphasised that protecting human rights is integral to good administration. Government decision making must respect the dignity and equality of every person, especially children and young people.

Figure 1: Transfers from youth justice centres to adult prison

Under the *Children, Youth and Families Act 2005* ('CYF Act'), the Secretary has the power to apply to transfer a sentenced child into adult custody. In practice, this power has been delegated – at least since 2020 – to other senior Youth Justice staff.

The Department is required to give proper consideration to a child's human rights before deciding to apply for a transfer to adult custody. In accordance with Youth Justice's *Practice Instruction – Transfer to prison*, legal advice and support is obtained to assist the delegate to consider the Charter. The Practice Instruction states the delegate must document their consideration of relevant human rights, and that this consideration should be recorded in the transfer application. If the decision to apply for a transfer is compatible with the Charter, the Secretary or their delegate then makes the application to the Board, which ultimately makes the transfer decision.

Before a child is transferred, they are usually given a formal warning by the Board at the request of Youth Justice. Children are not represented by their lawyer in warning or transfer application meetings, despite the seriousness of the potential consequences.

The Board falls outside the Ombudsman's jurisdiction. The only available avenue to challenge a decision made by the Board is through the Supreme Court of Victoria.

The Board is not a 'public authority' under the Charter. As such, it is not required to act compatibly with or give proper consideration to human rights when making transfer decisions. This is different to many comparable jurisdictions. The ACT, Queensland, the United Kingdom, New Zealand and Canada all operate parole boards within a statutory human rights framework, with no exemption.

This is also different to other key bodies involved in the criminal justice system, including Victoria Police, Corrections Victoria, Youth Justice, and the Post Sentence Authority, which are all public authorities under the Charter.

What the Board must consider before directing a transfer is the child's background and behaviour, their age and maturity and the report from the Secretary.

Because the Board is exempt from the Charter, the Secretary's application is the final point at which human rights must be considered as part of this process. This means the role of the Secretary, or their delegate, becomes critically important. This is the last safeguard in protecting a child's rights when a transfer into adult custody is being considered.

These human rights assessments will become even more important from September 2026, when provisions in the new *Youth Justice Act 2024* take effect. With new elements introduced, the grounds to transfer a child to an adult prison are broadened and are more subjective. This lowers the threshold for transfer, meaning the number of children considered for transfer into adult custody may increase. This is discussed later in the report.

Source: Victorian Ombudsman

Transferring children to adult prison is controversial. The Ombudsman reported on this issue in 2013. In 2017, the Supreme Court of Victoria ruled that two transfers were unlawful. In another case, a child was transferred despite advice that to do so was likely incompatible with the Charter.

Figure 2: The Ombudsman's 2013 *Investigation into children transferred from the youth justice system to the adult prison system*

In July and August 2012, the State placed five children in a highly restrictive management unit at the maximum-security Port Philip Prison, alongside adult men.

The children experienced 23-hour a day solitary confinement in sterile conditions for months. They took meals in their cells and had no access to education and programs. They had one hour a day in the exercise yard on their own and in handcuffs.

The Ombudsman concluded that the children's human rights were breached and there was no evidence that the Charter had been considered. The Ombudsman recommended changing legislation to remove the option to transfer children to the adult prison system.

The Ombudsman wrote:

It is evident that the youth justice system is limited in its capacity to deal with a small, but increasing, cohort of young people exhibiting violent behaviour. It is important that the youth justice system respond appropriately to these children rather than abrogate its responsibility by transferring them to the adult system.

I am of the view that there are no circumstances that justify the placement of a child in the adult prison system.

Source: Victorian Ombudsman

Figure 3: The 2017 Grevillea ruling: *Certain Children v Minister for Families and Children & Ors* [2017]

In 2016, children at Parkville rioted. Parkville was damaged and its capacity was significantly reduced so the State reclassified the Grevillea Unit at the adult Barwon Prison as a youth justice centre. While the legal status changed, the unit remained a maximum-security adult environment. The children placed in that unit experienced extensive isolation, were routinely handcuffed and their developmental needs were not met.

Some of the children placed in the Grevillea Unit went to the Supreme Court of Victoria to challenge their detention at Barwon Prison.

The Court found that the State did not demonstrate or justify the reason for limitations on the children's human rights. These limitations included:

- the impact of Grevillea's built environment on children
- the extensive isolation of up to 23 hours a day
- the use of handcuffs
- the heightened risk of mental health problems being created or exacerbated by the environment
- the impact on the children's developmental needs, specifically their physical, social, emotional, intellectual and spiritual needs.

The Court determined that:

- the State's decisions to reclassify the Grevillea Unit and to transfer children there were unlawful under the Charter
- these decisions breached the children's right to protection in their best interests and the right to be treated humanely when deprived of liberty
- the person delegated the power to make the transfer decisions failed to give proper consideration to those rights.

The Grevillea ruling illustrates that the human rights impacts of placing children in adult prisons are foreseeable and underscores the importance of carefully examining those impacts when undertaking a human rights assessment.

Source: Victorian Ombudsman

Figure 4: Two child transfers in 2022

In 2022, Youth Justice applied to transfer two children into adult custody following a serious attack on staff.

Crown Counsel, a senior barrister appointed by the Victorian Government to provide high-level legal and policy advice, conducted a human rights assessment for each child, but these assessments were brief and did not explore all of the significant limitations and impacts that the transfers would have. These assessments served as a template for the case examined by this report.

Crown Counsel and a barrister from the Victorian Bar also produced an accompanying memo outlining its human rights considerations in more detail. It noted the assessment was limited because it had no information about where the children would be placed in the adult prison system, or the conditions they would experience.

Crown Counsel determined that transferring one of the children 'would likely not be compatible with the charter'. Crown Counsel considered the child's intellectual disability, immaturity, the negative influence from their peers (from whom they had not been separated) and that there were potentially 'less restrictive' ways to manage the child.

Despite Crown Counsel's advice, the Department applied to the Board to transfer both children. Instead of providing the Board with Crown Counsel's assessment or memo, Youth Justice submitted an entirely different human rights assessment with the application report. Youth Justice told us Crown Counsel's advice was also provided to the Board, however we saw no evidence of this. If the Board had received it, it would have seen two conflicting human rights assessments.

Youth Justice said there was extensive discussion of human rights during the Board's hearing. As the Board falls outside the Ombudsman's jurisdiction and gives no reasons for its decisions, we do not know what the Board was told.

Source: Victorian Ombudsman

After we investigated

After we had finished our investigation and while finalising our report, the child was involved in another incident at Parkville.¹

An application to transfer the child to adult prison was made some weeks later. Many of the circumstances and considerations for this application were the same as in 2025. However, the child had turned 18, meaning that he would likely face different conditions as an adult in prison compared to his 2025 transfer.

In light of these developments, we made enquiries with the Department to understand the circumstances surrounding this transfer application. We examined the Department's new consideration of the child's human rights following its review of our draft investigation report and findings.

This report

The next four chapters of this report detail the findings of our investigation into the 2025 application to transfer. They examine whether the Department properly considered and acted compatibly with the child's human rights, as well as broader issues arising from this case.

The final chapter examines the 2026 application to transfer.

The opinion and recommendations included in this report were made as part of our investigation of the 2025 application to transfer. Responses to our report and our recommendations were provided by the Department and by the then Minister for Youth Justice, who provided a response on behalf of the Victorian Government. While these responses were provided before the 2026 application to transfer was made, the Department has confirmed that its position remains unchanged.

Victoria's human rights Charter

The Charter sets out the basic rights and freedoms of people in Victoria. Its principles are drawn from international human rights law. The Charter recognises that all people are born free and equal in dignity and rights. It lists 20 fundamental human rights, which should be broadly interpreted.

The Charter applies regardless of public, political or operational pressures. Human rights assessments function as a safeguard, ensuring that government decisions respect the inherent dignity of those affected.

Section 38 of the Charter requires public authorities to think about people's human rights when making decisions. Section 7(2) of the Charter allows for a person's rights to be limited, but requires the limitation to be lawful and demonstrably justified. The Charter does not prescribe a specific form or process for doing this; instead, it sets principles that decision makers must apply in a practical and meaningful way to the circumstances of each case.

The Ombudsman has a role under the Ombudsman Act to enquire into or investigate the compatibility of administrative actions with the Charter. We can form an opinion on whether an administrative action was incompatible with a human right set out in the Charter or whether the decision maker failed to properly consider relevant human rights when making a decision.

¹ This report includes no details about this incident in line with s 13AB of the *Ombudsman Act 1973*.

Figure 5: Relevant Charter rights and obligations



Source: Victorian Ombudsman and the *Charter of Human Rights and Responsibilities Act 2006*

The 2025 transfer

On an evening in early 2025, the child was involved in a serious incident in which youth justice workers at Parkville were attacked. This was not the first violent incident the child is reported to have been involved in. At the time of the incident, the child is reported to have been involved in a significant number of other physical violence incidents involving staff and other children.

It is clear that the child was very difficult for Youth Justice to manage. The Department made many attempts to support the child and manage his behaviour, however his difficult behaviour continued. The Department said:

Staff from the ... unit threatened not to return to work if the child was placed back there given his history of violence, difficulties in managing the current cohort, and likelihood of exacerbating the issues if the child was placed there.

In the six months prior, the child had received two formal warnings about his behaviour from the Board, at the request of Youth Justice. The warning was about the possibility of being transferred into adult custody if his violent behaviour continued.

When asked about the impact of these warnings on changing his behaviour, the child said:

it just seemed like I was just getting warned ... like it was just a little possibility.

It appears that the child did not understand the stark differences in the conditions between Parkville and MAP. He did not seem to appreciate the gravity of the warning.

In response to draft extracts of this report, the Board said that it 'clearly and concisely explained' the risk of a transfer to the child, but conceded that it assumes children understand the conditions and practical realities of adult custody. The Board acknowledged that more detail could be provided to them. This would make a warning more effective.

The incident occurred less than a week after the second warning from the Board.

Senior Executives within Youth Justice immediately began the transfer process, and about 50 minutes after the attack, had arranged to meet with the Board the following morning.

At 9am the following morning, Youth Justice met with the Board to discuss the transfer. At 9:30am Youth Justice received advice from Corrections Victoria (which operates the adult prison system) about where the child would be placed.

By around 11am, Youth Justice staff had shared information about the child to help OGC in preparing the human rights assessment.

At 2pm Youth Justice and Corrections Victoria had a 15-minute meeting about the transfer, and at approximately 3pm the child's lawyer was told that Youth Justice was applying for a transfer. The human rights assessment had not yet been completed.

At 3:36pm, OGC provided Youth Justice with the first draft of the human rights assessment for review. This was four and a half hours after OGC received information from Youth Justice.

Youth Justice, including the delegate, provided feedback on the draft assessment and collaborated with OGC until it was comfortable for the assessment to be finalised, around 6pm that evening.

Youth Justice submitted the application for the transfer to the Board at 7:02pm.

The next morning, the child and his parents were told the application had been made. In the afternoon, Youth Justice, Corrections Victoria and MAP staff met to prepare for the transfer.

By 3:30pm, the Board had approved the transfer and Youth Justice was notifying relevant staff of the decision.

Around 4:30pm, the child's lawyer and parents were notified and the child was transferred to MAP, arriving about 8pm.

The child's time at MAP

MAP is a maximum-security prison, primarily used as the assessment facility for male prisoners entering the prison system. As MAP does not have any designated youth units, the child was placed in the Spring Unit, which is a management unit.

Management units are used to accommodate people who require separation from the general prison population for safety, security or behavioural management reasons. People in management units experience significantly greater restrictions than other people in prison.

The Department told us the child's placement was determined by a range of factors including his age and an assessment of the risk he posed to staff and other prisoners. These factors are relevant. However, the child's age alone would have required separation from adult prisoners, typically achieved through highly restrictive arrangements.

It said the reasons for his separation were clearly explained to the child. The child didn't completely understand the reasons for his separation and placement in a management unit as the Department intended. He said he was told that he wasn't allowed to mix with other people in prison:

But what I got explained was that if you do something bad, you end up in the slot. And that's what they called it when I was in the slot. And so, and they told me, "You're on the slot, so you're not going to be mixed with anyone," so that's just how I took it.

The child's placement in the Spring Unit meant he was locked down to his cell except when attending meetings and when spending time in the unit yard. The unit's 'Out of Cell Hours' register shows that the child spent an average of over 22 hours in his cell each day over a period of six weeks.

Solitary confinement is described in the *United Nations Standard Minimum Rules for the Treatment of Prisoners* ('Mandela Rules') as the physical isolation of individuals 'for 22 or more hours a day without meaningful human contact'. Meaningful human contact means direct, face-to-face social interaction that is more than fleeting or incidental, and that allows genuine interpersonal communication. Purely routine custodial contact is not enough.

Source: *Essex paper 3: Initial guidance on the interpretation and implementation of the UN Nelson Mandela Rules*, 2017, Penal Reform International

Figure 6: A Spring Unit cell, Melbourne Assessment Prison



Source: Department of Justice and Community Safety

The child's cell at MAP was cramped and worn. There was a small window in his cell door that could provide a limited view into the unit, but during the child's stay the external blind over the cell door window was always closed. The windows to outside were frosted and limited natural sunlight. The child said:

... you have a window, but you can't see anything out ... I was shocked ... if you're in some type of environment like that, I guess you have no hope ... it's just hard. After a while, it starts playing with your mind ...

To fill the 22 hours a day in his cell, the child was provided a small television, a radio, activity books and school texts. The child ate his meals in his cell.

The child had no in-person visits from his family or friends during his six weeks at MAP. The Department advised us MAP offered the child in-person visits but due to his security rating, these would have been 'box visits' where the child was separated from visitors by glass and speaking through a phone.

The child said:

... normally, they'll come here [Parkville]. We'll have a little like gathering around the table. We'll just talk, pray. So, when we pray, we all hold hands. And then they told me there [MAP], all my visits are going to have to be boxed up ... there's no point of having personal visits if that's what's going to happen. So, yeah, I just told my family not to come ... it's pretty hard. 'Cause, yeah, normally if I see them, I want to touch them 'cause, you know, that's my family.

Professional visits from Youth Justice, such as support and education workers were also box visits. The only face-to-face human contact he had was with MAP's tactical Emergency Response Group during internal prison movements, and routine engagement with other Corrections Victoria staff.

MAP staff told us that unit staff talked with the child through the trap in his cell door and attempted to create a rapport with him and some positive interactions were documented in the General Manager's diary. The child told us he occasionally chatted with one guard about soccer, and otherwise the exchanges were different from what he experienced from youth justice workers. The child told us about his first request for water in the MAP, as he had no cup to drink from:

On my first day there, I asked for water. He said, he said, "What the fuck do you think this is? Drink out of your tap." I said, "What? Like, what do you mean? Why would I drink out of my tap?" I was like, "I'm not, I'm not a dog," you know. He was like, "Huh, you are, mate." And I said, "What the fuck?" And, yeah, we just started an argument. And after that, I realised I've got to drink from my tap.

As the child had to be separated from adult prisoners, his movements throughout MAP were tightly coordinated to prevent contact with them.

Early in his stay the child requested to mix with other prisoners, indicating a need for social connection. The child told us that guards closed down his attempts to talk to other men in the unit under the door, telling him to 'shut up'. But it's also clear the child was surrounded by challenging people.

At one stage he requested to change cells as the occupant of the neighbouring cell was known for making noise overnight and racist remarks. The child described this person:

just banging on the door all day, all night. Like, you think it will be done. You'll try to go to sleep, would start doing it again. So I felt like when I first got there, I could never sleep. Like yeah, I couldn't sleep at all. And would say some messed-up stuff to the female staff walking around. Would say some comments under the door ... would just be repeating it all day, all day. And eventually, it got like stuck in my head. I can hear them saying it just even when he's not saying it.

The child was not allowed to use MAP's large main outdoor yard due to being unable to mix with adults in prison. Instead, the child was permitted to access the 'yards' attached to the Spring Unit. Unit staff regularly provided the child with additional time over the one-hour typically given to people in prison.

The Spring Unit yards are small concrete areas with a portion of the roof made of a metal mesh, providing a view of only the sky. They are effectively a room that is open to the sky. The child said:

You can't see anything else ... You'll just see like the police headquarters. That's about it. Other than that, dark. Everything is black. And, yeah, a little phone in the corner ... a little bench on the side. Yeah, that's about it ... that room was worse than my actual cell ... Just felt like another cell, I guess.

When asked if he felt like he was outside while in the yard he replied:

No, not at all. That's why I was confused they called it the yard.

He contrasted this with his experience at Parkville, where 'it feels like I'm actually outside 'cause I can actually feel fresh air'.

No recreational or exercise items were supplied to the child while he was in the yard, which provided the child little opportunity for meaningful exercise or recreation. This was a significant change from his experience at Parkville:

I play basketball, play any sport, to be honest. We have a big courtyard. We can run around, play table tennis. So, yeah, there was a big difference.

The child spent his time in the yard on the phone or listening to music on a hand-held radio:

I'll just call family for one hour, and then, yeah, just go straight back to my cell. Sometimes if no one answers, I'll just go straight back to my cell. There's nothing else you can do. So if you're not using the phone, you're not going to want to go there.

Figure 7: Spring Unit Recreation Yard



Source: Victorian Ombudsman

Figure 8: *Marrogi v Secretary, Department of Justice and Community Safety & Ors (No 1)* [2026] VSC 4

In January 2026, the Supreme Court found that the small ‘yards’ attached to management unit cells at the maximum-security Barwon Prison and Metropolitan Remand Centre did not satisfy the prisoners right to one hour a day in open air.

The Court examined the physical characteristics of the yards, noting that some consisted of small, concrete enclosures surrounded by high walls and partially enclosed by heavy-duty mesh, with limited exposure to natural light and restricted airflow. Although technically outdoors, some yards were found to offer little more than an extension of the cell environment and lacked the qualities ordinarily associated with being in the open air.

The Court found these largely enclosed spaces were incompatible with the Charter, particularly the right to humane treatment when deprived of liberty. It emphasised that meaningful access to open air was essential to human dignity, physical health and psychological wellbeing.

At the time of the Ombudsman’s visit to MAP, proceedings in the *Marrogi* case were ongoing. The Spring Unit yard was not a location considered by that judgment, and its compliance with the Secretary’s obligation to provide access to open air was therefore not determined by the Court.

Source: Victorian Ombudsman

Because of his history of violence toward staff in Youth Justice, the child was placed on a handcuff regime upon entering MAP. This meant he was handcuffed when he was outside his cell, severely restricting his liberty and movement. This was expected to last two to three weeks and be reassessed daily. After the first week, the handcuff regime was downgraded, so that he no longer had to be handcuffed while alone in the exercise yard. However, the child remained on a handcuff regime for the duration of his stay, despite there being no incidents.

The Department told us:

the handcuff regime was reviewed by Corrections Victoria on a weekly basis and each time it was assessed that staff safety could not be assured given the significant history of assaults.

The child told us he was not used to being handcuffed whilst in Youth Justice, recalling only one occurrence during their time at Parkville, being a Board meeting which occurred outside of the precinct walls. The child said:

I just felt like a prisoner, I guess ... I would wonder like why am I in handcuffs all the time?

The child’s transfer to MAP affected his access to education. While the child had been largely disengaged from schooling at Parkville, he did attend some elective classes. He had expressed a desire to return to education in the months before the transfer. Soon after arriving at MAP he told staff he wanted to undertake some formal learning to occupy his time.

At Parkville the child was able to attend school five days a week but at MAP he had weekly hour-long visits with Parkville College staff and was provided with some homework. These were 'box visits' that stopped after three weeks (presumably due to school holidays).

The child's access to cultural and spiritual supports was also affected. At MAP, the child's opportunity to participate in group-based worship and cultural activities were completely restricted. This is significant as the child was reported to have had generally low engagement with broader behavioural supports, but did participate in faith-based activities and cultural programs while at Parkville. The Department told us the child was offered in-person visits at MAP from the Youth Justice Cultural Team and a faith leader, but he did not engage in any religious or cultural support during his stay.

He described being very bored:

I'll just be laying down, thinking all day ... I look for something on TV. There won't be anything. I'll just lay myself and think, I guess, all day, literally ... I had a radio, but it was broken ... I didn't bother to ask [for another radio]. I was speaking to one of the boys next door to me. He said it's rare to get a radio, so I just didn't bother.

The child remained at MAP for six weeks. He described being lonely and having feelings of hopelessness while he was there:

I just get dark, dark thoughts ... my cell was always dark. I can't see anything ... I wouldn't start thinking bright anymore, if you know what I mean ... everything I feel would be negative just 'cause of the environment ... after a while ... it was playing with my mind. Started thinking stuff I've never thought before ... a lot of self-harm ... along those lines, you know. Suicidal stuff ... I don't really want to talk too much about it ... Just negative thoughts, yeah, that I try hard not to think about now.

The Department told us it did try to support the child's mental health. During his placement at MAP, the child met four times with his rehabilitation worker from Youth Justice and with an occupational therapist. These were also box visits. However, he declined to see a psychiatrist.

The child told us his time at MAP was 'an experience I'll never forget' and that he thinks about it 'pretty much every day'.

The child had six weeks of his sentence remaining when he was transferred to MAP. However, he had been charged with further offences for which he had not yet been convicted, so after six weeks he was not freed but sent back to Parkville on remand.

What our human rights expert said

As part of our investigation, we sought legal advice from a senior barrister who is an expert in human rights. Sarala Fitzgerald SC ('the expert') is a barrister at the Victorian Bar with expertise in administrative law and human rights and has conducted litigation under the Charter. She frequently acts for both Corrections Victoria and others in cases relating to corrections and human rights matters. Ms Fitzgerald holds a master's degree in Public and International Law from the University of Melbourne.

We asked the expert:

In making the decision to apply to the Youth Parole Board for the transfer under section 467 of the CYF Act did the delegate:

- fail to give proper consideration to a relevant human right?
- act in a way that was incompatible with a human right?

Detailed observations from her advice are included throughout this report, but she ultimately concluded that:

the human rights assessment does not evidence proper consideration having been given to the child's human rights, including the rights in ss 14(1)(b), 17(2), 19(1), 22(1) and 23(3) of the Charter, when making the decision to apply to the Youth Parole Board for the transfer of the child to prison

...

based on the information provided by the Department, I consider that the delegate did not act compatibly with the child's human rights, including the rights in ss 14(1)(b), 17(2), 19(1), 22(1) and 23(3) of the Charter, when making the decision to apply to the Youth Parole Board for the transfer of the child to prison.

Did the Department properly consider the child's human rights?

Section 38(1) of the Charter requires a public authority, such as Youth Justice, to give 'proper consideration' to relevant human rights before making a decision.

The expert has outlined what this means:

The Charter does not stipulate what 'proper consideration' involves, nor what form it should take. In what has come to be known as 'the *HJ* test', the Court of Appeal has confirmed that in order to give proper consideration to a relevant human right a decision-maker must:

- understand in general terms which of the rights of the person affected by the decision may be relevant and whether, and if so how, those rights will be interfered with by the decision;
- seriously turn their mind to the possible impact of the decision on a person's human rights and the implications for the affected person;
- identify the countervailing interests or obligations; and
- balance competing private and public interests as part of the exercise of justification.

This section outlines the Department's proper consideration of the child's rights.

OGC's human rights assessment identified three rights that would be limited by transferring the child into adult custody:

- the right of the child to protection in their best interests
- the right to humane treatment when deprived of liberty
- the right of the convicted child to be treated in a way that is appropriate for their age.

The Department's template requires that five relevant factors be considered for each right that is impacted (see Figure 9). However, these five factors were only explored against the first of the three impacted rights. For the other two rights, the assessment simply says 'As above re s 17'. This means the distinct nature of those human rights, and how their limitation would affect the child, were not addressed or documented.

The assessment was focused on describing the child's behaviour and associated operational risks, which may be an attempt to consider the human rights of custodial staff and other children. However, the assessment fails to meaningfully explore the child's rights, identifying his unique vulnerabilities and the conditions he would experience in adult custody.

This focus on the child's behaviour and perceived risk conflates behavioural justification with human rights consideration.

The assessment does not address the child's loss of specific protections under the CYF Act, a youth-specific custodial framework designed to prioritise rehabilitation, age-appropriate treatment and protection, as well as considering the broader implication of adult custody for children.

A redacted version of the Department's full assessment is included in Appendix 2.

Figure 9: Summary of the 2025 human rights assessment

The nature of the right and how it is engaged	The assessment acknowledged that the transfer was not in the child's best interests and would impact his wellbeing, rehabilitation and access to education and recreation, but did not detail the child's individual circumstances in any way.
The importance and purpose of any limitation of that right	The assessment stated that the transfer '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'. The reasoning relies on the child's incidents of violence and disruption.
The nature and extent of the limitation	The assessment stated 'The limitations identified are, by their nature, capable of impacting significantly on [the child]'. It noted that the child could be particularly vulnerable in an adult prison due to his existing relationship to other people being held there. The assessment also commented on the child's mental health. These points show risks were generally considered but did not account for the impact the transfer would have on the child's rights or his specific health or relationship circumstances.
The relationship between the limitation and its purpose	The assessment concluded that the limitations were justified because of the threat the child posed. This emphasised the child's behaviour and the risks to safety but did not demonstrate that the limitation of rights was a proportional response. The assessment referred to 'an element of denunciation or deterrence'. Denunciation is not a relevant consideration and is discussed later in this report.
Any less restrictive means reasonably available to achieve the purpose	The assessment concluded there was no less restrictive way to control the child. It documented the child's ongoing offending and the steps already taken to control the child at Parkville. These included: • warnings about his behaviour • a behavioural management plan • working with the behaviour support team on anger management • placing the child in isolation • placing the child with peers of his choosing who were a positive influence. The assessment noted that attempts to engage the child in violence intervention programs, mental health supports, and cultural and spiritual supports failed. It also noted that a transfer to Cherry Creek Youth Justice Centre ('Cherry Creek') was not possible due to the child's existing relationships with other children being held there.

Source: Victorian Ombudsman based on the Department's written human rights assessment

Youth Justice provided OGC with information about the child's behavioural incidents. However, Youth Justice shared no information about the child's proposed placement or regime, despite Youth Justice communicating with Corrections Victoria about the placement earlier that morning. Crown Counsel had advised Youth Justice in 2022 this information was necessary:

Proper consideration of human rights will require the facilities, programs and policies of a particular prison to be considered at a greater level of specificity when a further decision is made as to the permanent placement facility.

This information is critical. A proper assessment of the impact on the child could not be made without detailed information about his proposed placement, the regimes he would be subject to, and the programs and supports that would be available to him in adult custody. This information was needed to determine whether the decision to transfer him was proportionate and demonstrably justifiable.

Our expert noted that many of the conditions were not difficult to anticipate:

The likely conditions of the child's imprisonment were matters that could have been readily ascertained or predicted by the delegate prior to the application for transfer on the basis that:

- It was inevitable that the child would be given protection status, classified as a major offender and placed in a management unit.
- Management units have internal 'yards' with no access to the outdoors.
- The child would not be able to mix with other prisoners and would therefore have very limited human contact.
- The child would be placed on a handcuff regime, given that in order to meet the legislative threshold for transfer to an adult prison an eligible child will have violent behaviours that will result in a high V (violence) rating.

- The child would not be allowed to have contact visits, given that he would inevitably be placed on a handcuff regime.

...

- The child would no longer be able to attend weekend services.
- The child was required to be returned to a youth justice centre only six weeks after transfer, because his sentence ended and he was remanded in relation to new offences. Transferring the child for only six weeks was potentially destabilising and did not provide a long term solution to the ongoing issue of managing his behaviour within a youth justice setting.

None of this was considered in the written assessment. The expert's view is that this assessment did not give proper consideration to the child's rights:

I have been provided with an internal Departmental email ... in which the author of the human rights assessment observes that:

It's relatively short, but I think the numbers of previous assaults and number of previous warnings really speaks for itself in this case.

There is then a comparison of the bare numbers of assaults and warnings with those numbers for another child who was transferred to prison in 2022. The author then notes that:

The one missing piece is what other measures may be open to YJ to take before going to transfer – though if he has progress[ed] through the full hierarchy of warnings, I would assume YJ have also been considering all other options as well.

Assuming other options have also already been explored, then it appears there would be no reasonably available less restrictive means available.

The human rights assessment itself, and the Departmental correspondence reflecting what was taken into account in conducting the assessment, suggests that the consideration was focussed on justifying the transfer (the third and fourth steps of the *HJ* test) rather than on understanding the impact on the child (the first two steps in the *HJ* test). There is nothing in the Department's documents to support the assumption that all other options had been considered.

I do not consider that the human rights assessment reflected a genuine understanding of how the child's rights would be interfered with by the transfer and the implications of the transfer for the child, including because the assessment did not give any consideration to the conditions in which the child was to be imprisoned (nor did Departmental officers consider these matters when undertaking the assessment). This was information that was readily available to the Secretary, who is responsible for both prisons and youth justice centres, and which should have been requested by the delegate when exercising the Secretary's delegated powers.

The human rights assessment and application report did not consider how the supports available to the child in Youth Justice would be provided, altered or lost while in the adult environment. It also didn't consider whether he would engage with service providers he was unfamiliar with. It should have considered whether these changes would adversely affect his wellbeing, rehabilitation or sense of identity; how it would engage with his human rights; and whether this loss was justifiable.

The transfer application also did not go through the prescribed approval process. Youth Justice's *Practice Instruction – Transfer to Prison* states that a senior legal representative is responsible for signing off on the transfer application to confirm that it accords with the relevant legal requirements of the CYF Act and Charter. This did not happen in this case.

In response to a draft of this report, the Department defended its human rights assessment saying it 'was not cursory'. It acknowledged that 'it would have been preferable' to examine each relevant right individually, but that 'it is not fatal that these issues were considered in a consolidated fashion'.

The Department stated 'It is clear the delegate who made the Application did give proper consideration to Charter rights.' It said 'The Charter Assessment was not intended to be a complete record' and that the delegate also relied on their own expertise:

The delegate also considered various sources of information regarding risk that informed the operational functioning of the child on any given day. The delegate also relied on their own knowledge both of the child and the custodial settings more generally.

However, given the seriousness of an application to transfer a child into adult custody, the Ombudsman considers there should have been some contemporaneous records to supplement the gaps in the OGC's assessment, demonstrating that the delegate turned their mind to the human rights impact of their decision.

In this case, beyond the assessment document itself, there is no record of the delegate's consideration of human rights at the time. Even in response to this report, the Department did not articulate what further rights-focused reasoning the delegate did.

While identifying every relevant right separately may not always be necessary where limitations affect multiple rights, proper consideration still requires a genuine engagement with the nature of the limitation and its impact on the individual child. That engagement is not evident here.

The Department made a legal argument relying on *Castles v Secretary to the Department of Justice* [2010] VSC 310 ('*Castles*'). Its position is that it met its obligation to give proper consideration to the child's human rights. It submits that *Castles* confirms that the Charter does not require a detailed, technical or exhaustive human rights analysis, nor does it mandate that consideration be documented in any particular form.

On this basis, the Department contends that proper consideration may be satisfied through a practical and commonsense approach, informed by the decision maker's experience, operational knowledge and the broader circumstances in which the decision is made. The Department submits that the absence of more detailed reasoning in the human rights assessment or other records does not indicate a failure to comply with the Charter.

The expert did not accept the Department's reliance on *Castles* in this way. She advised that while *Castles* was an early decision on proper consideration, it does not reflect the current and authoritative position. The expert advised that subsequent decisions of the Court of Appeal have clarified what constitutes proper consideration, and that *Castles* cannot be relied upon to dilute that standard. She also noted that the human rights assessment in *Castles* itself involved detailed legal advice, and that the Court's comments about less demanding analysis were made in a different factual context.

The Department stated the delegate's engagement of the OGC shows they 'explicitly considered potential limitations to human rights as well as the justification for those potential limitations'. The Ombudsman does not accept that the act of seeking legal advice demonstrates that the delegate gave proper consideration to the human rights impact of the decision.

In response to our comments about the focus of the assessment being on the child's behaviour, the Department reiterated the operational reasons for the transfer. It provided further detail about the seriousness of the child's behaviour to explain why the transfer happened. The Department did not seem to acknowledge that the assessment failed to address what the transfer would mean for the child's rights.

We agree with our expert's assessment that the advice shows that proper consideration was not given to the child's human rights in making the transfer application, and was incompatible with the Department's obligations under the Charter.

Did the Department act compatibly with the child's human rights?

In addition to considering whether the Department failed to properly consider the child's rights, we also considered whether the Department acted compatibly with the child's rights. This chapter examines which of the child's rights were interfered with by transferring him to an adult prison for six weeks, and whether the Department's actions were lawful and reasonable.

Were human rights limited by the application to transfer?

Five of the child's human rights were engaged by the outcome of Youth Justice's application. The expert concluded that the following rights were clearly limited:

- his right to such protection as is in his best interests and is needed by reason of being a child;
- his right to be treated with humanity and with respect for the inherent dignity of the human person, while deprived of liberty;
- his right to be treated in a way that is appropriate for his age; and
- his freedom to demonstrate his religion in worship, observance, practice and teaching as part of a community and to enjoy his culture and practice his religion.

Conditions in custody

One reason the child's rights were so significantly impacted was that the transfer fundamentally changed the rules that governed his detention. Our expert noted:

... upon transfer the child will automatically lose the various legal entitlements and safeguards provided to people who are detained in youth justice centres.

...

Section 488 of the CYFA regulates the use of isolation in youth justice centres, which is defined in that section as 'the placing of the person in a locked room separate from others and from the normal routine of the centre'.

A child can only be isolated in a youth justice centre if their behaviour presents an immediate threat to their own safety or the safety of any other person or to property. A person placed in isolation must be closely supervised and observed at intervals of not longer than 15 minutes.

Once the child was transferred into the custody of the Secretary, he lost the child-specific statutory protections and was exposed to harsher conditions. The expert stated:

The harsh conditions in Corrections Victoria's management units have been the subject of judicial consideration in a number of cases involving adults. The Court of Appeal has observed that there are 'very great deprivations associated with being so held'. Recently, the Court of Appeal observed that the conditions in another management unit, with severe restrictions on time out of cell and interaction with other prisoners 'were, in effect, solitary confinement'. The regime in one such unit was described by a forensic psychiatrist as 'undoubtedly a very austere and restrictive regime that would be challenging to the most mentally able in the community'.

The child told us the experience of being isolated in his cell caused 'dark thoughts' that he had never experienced before and feelings of loneliness. The child echoed the sentiment of the forensic psychiatrist:

... there's no way you should be locked down 23 hours a day ... even as an adult, I don't reckon that's a good punishment, let alone a kid. Like, yeah, that's probably one of the worst experiences a kid can even go through, being locked down 23 hours in a cell.

The United Nations Convention on the Rights of the Child ('UNCRC') and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty ('Havana Rules') state that children deprived of liberty should be separated from adults unless it is not in the child's best interest to separate them. However, once a child is in adult prison, given the safety concerns, there is no option but to isolate the child.

Youth Justice and OGC knew that in adult prison the child would end up in a management unit. The child's placement and regime, while protecting his right to be separated from adults, would isolate him and deprive him of meaningful human interaction.

Placement in a management unit at MAP completely removed the child from contact with other children. Age-appropriate social contact is fundamental to a child's healthy development and wellbeing. The absence of this risks loneliness and psychological harm and may impact rehabilitation. This is recognised by the Charter, the UNCRC and the Havana Rules.

Under both Victorian and international standards, the conditions experienced by the child bordered on solitary confinement.

In addition, the rules around handcuff use changed. The Havana Rules stress that instruments of restraint should only ever be used as a last resort and for the shortest possible time. In youth justice centres, the use of handcuffs is tightly restricted and subject to strict safeguards.

By contrast, people in adult custody can be subjected to handcuff regimes requiring handcuffs whenever they are moved from their cell. This is what the child experienced. Our expert noted:

While at MAP the child was placed on a handcuff regime, which required him to be handcuffed when he was outside of his cell in the unit including when being moved around the prison and when attending visits. The child's review minutes state that 'the location assesses his handcuff regime on a daily basis'. The General Manager's diary also makes a statement that 'MAP management agreed to review this [handcuff] regime every day, to enable progression as soon as appropriate'. This is contrary to what in fact occurred – the child remained on a handcuff regime for his entire six week stay despite 'engaging appropriately' with staff and no incidents for the entire six weeks.

The Ombudsman considered the continued handcuffing of a child to be a breach of human rights under similar circumstances in 2013, and it seems nothing has changed.

The transfer denied the child his right under the Charter, the UNCRC and the Havana Rules for adequate opportunity to play, recreation and physical development, as the built environment of the management unit and the need to separate the child from adults did not support it.

The Spring Unit 'yards' – small concrete areas, effectively a room partially open to the sky – did not provide the child with the opportunity for meaningful exercise or recreation. MAP staff told us that the child occasionally accessed the prison's gymnasium; saying the child enjoyed playing basketball in the gym. We saw no record of this movement within the prison and the child told us he never went to the gym:

All I had was access to the yard and visits on and off, yeah. That's, that's the only places I went.

The expert noted:

The issue of whether particular yards in the management units at Barwon Prison and the Metropolitan Remand Centre constitute 'the open air' for the purposes of s 47(1)(a) of the *Corrections Act 1986* (Vic) has been considered by the Supreme Court of Victoria in *Marrogi v Secretary Department of Justice and Community Safety & Ors* [2026] VSC 4, and is the subject of an appeal to the Court of Appeal. The yards in the management units at MAP are similar to those that have been considered by the Supreme Court. I do not consider that during times when the child had access to the airing yards the child was 'in the open air' as required by s 47(1)(a) of the *Corrections Act 1986* (Vic). ...

The child reported that the lack of movement made him 'lazy' with the impact of the restriction lingering following his return to Parkville.

To be honest, I became lazy. Yeah, after that, I'm still lazy to this day 'cause of that. I just watch TV all day. The only time I'm standing is when I'm showering or in the yard ... I play basketball sometimes. Yeah. I used to go to the gym like a lot. Now I'm just lazy.

Access to education and religious and cultural supports

While the transfer to MAP did not result in the complete removal of access to education and religious and cultural supports, it significantly altered the form and context of those supports. These changes were a foreseeable consequence of his placement in adult prison.

The UNCRC and the Havana Rules state that every child has the right to education designed to prepare them for return to society. Also, under the CYF Act and the Charter, the child was entitled to age-appropriate education. The Charter also protects a person's right to participate in activities related to their religion or belief and culture. This is echoed in the UNCRC and Havana Rules, which emphasise the importance of preserving a child's cultural identity and spiritual development, including while in detention.

The human rights assessment recognised that the transfer would deny the child 'adequate opportunities for education and vocational training' and more broadly would impact his development and rehabilitation. However, it did not explore or weigh how those limitations would impact the child, their ability to engage in education, religion and culture in a meaningful, developmentally appropriate and prosocial way, particularly given the child's history of disengagement from individualised services.

In response to a draft of this report, the Department advised that the delegate was aware of plans for Parkville Youth Justice staff to continue providing case management, educational, cultural, religious and clinical support – being programs and services connected to basic human rights. However, it provided no evidence that the delegate considered, through a human rights lens, whether those planned supports would be available in a meaningful form within a highly restrictive adult custodial environment or weighed their likely effectiveness.

Records indicate that over a six-week period, the child received around three hours of engagement with Parkville College staff through box visits. He no longer had access to group-based education, communal worship or structured cultural activities of the kind available to him at youth justice, and did not engage in solo faith and cultural supports while at MAP. Records indicate that faith-based activities and cultural programs were some of the few behavioural supports the child participated in. Our expert said:

The documentation provided by the Department notes that while he was detained in Parkville Youth Justice Centre the child was engaging with [faith leaders] weekend services, 'which he values as a source of connection to both his cultural heritage and faith ... these opportunities have been instrumental in fostering his well-being, strengthening his cultural and spiritual connections, and promoting a sense of stability'. The Department's material indicates that the child engaged minimally with behavioural support and forensic intervention services. The cultural support team appears to be the only service within Parkville that was able to develop genuine rapport with the child. Upon transfer to prison the child did not have any connection with [faith leader] and was unable to attend weekend services.

...

I have concluded that the lack of connection to [faith leader] and loss of attendance at weekend services has impacted on the child's religious and cultural rights for the purposes of both s 14(1)(b) and s 19(1) of the Charter.

Access to friends and family

The transfer also impacted the child's ability to maintain relationships with friends and family.

The child spoke to friends and family daily using the phone in the yard and unit staff gave him additional yard time to facilitate this. MAP has devices to provide video calls.

However, records show just three video calls were made, which appears in part due to logistical issues and the child not making requests.

Yeah, because the first one was so bad, I just said there's no point of doing that. Like, my family seeing me arguing with the guards, that's not healthy. So I just said, you know, it's not worth it.

There was also an initial hurdle with speaking to his family, as they did not have an 'Engine' phone number which allows for cheaper calls.

So I'd be wasting heaps of money calling them, so I'd rather just call my girlfriend. She had an Engine number, and just pass the messages. If--yeah, just ask them if they're all right.

A key difference to how the child could engage with his family was that at MAP, the child was not allowed any physical contact during in-person visits. They were 'box visits' where the child was separated from visitors by glass and speaking through a phone. If family had visited, the child would have been deprived of familial touch.

A shift to non-contact visits is a significant change for a young person still developing emotionally and should have been recognised as a limitation to the child's rights and potentially harmful to family dynamics.

The cumulative effect of these impacts is particularly acute given the child's age and inherent vulnerability. These limitations go beyond inconvenience and amount to a substantial interference with his Charter rights.

In response to the draft report, the Department advised that the delegate was aware that the child would have access to in-person family visits in adult custody, and that he was offered non-contact box visits. However, there is no evidence that the delegate considered the foreseeable impact of the absence of physical contact with family members, or weighed how that limitation would affect the child's rights and wellbeing.

Were these limits 'under law'?

Under the Charter, a limit on a human right is only permitted if it is 'under law'.

A particularly problematic element of the human rights assessment is its reference to 'denunciation or deterrence' in the 'relationship between the limitation and its purpose' section as a justification for the transfer:

To the extent that the transfer application also involves an element of denunciation or deterrence, there is a relationship between that outcome and the object of ensuring the safe operation and good order of youth justice centres generally.

'Denunciation' is an adult sentencing concept. Courts may impose sentences to not only punish offenders for their crime, but also for other purposes, such as expressing society's disapproval of the offending.

The expert noted:

A limit on Charter rights will only be 'under law' if it conforms with the legislation that authorises the decision-maker's action ...

I observe that the Charter assessment ... stated that 'the transfer application also involves an element of denunciation or deterrence'. This suggests that part of the reason for the transfer was to denounce. The Oxford Dictionary defines denounce as 'publicly declare to be wrong or evil'.

Section 482(1)(a) of the CYFA provides that the Secretary must determine the form of care, custody or treatment which they consider to be in the best interests of each person detained in a youth justice centre. The Secretary owed this obligation to the child at the time of the transfer application. Whilst s 482(1)(a) may allow the Secretary to act in a manner that maximises the best interests of all detainees by making compromises between the competing needs of detainees, denunciation is not a proper basis for determining the form of the child's custody. It is for this reason that I have suggested that the delegate's decision may have been *ultra vires* [beyond the delegates powers] if it was made for this purpose, which I consider may be an improper purpose.

...

Denunciation is not a defensible purpose for significant limits on a child's right to humane treatment; treatment appropriate to their age; to protection in their best interests; or religious and cultural rights.

References to 'denunciation' have appeared in human rights assessments for child transfers since at least 2022. This suggests that the transfer examined in this report is not an isolated case.

Decisions about the form of a child's custody under the CYF Act must be directed to the child's best interests, rehabilitation and development. Under both Victorian law and international standards, children are entitled to age-appropriate, rehabilitative treatment when deprived of liberty. Denunciation – understood as moral condemnation of conduct – is not an appropriate purpose under the CYF Act for determining the form of a child's detention.

In response to a draft of this report, the Department submits that the decision to apply for the child's transfer was not influenced by any improper considerations. It relies on established administrative law principles that a consideration will only be irrelevant where it is expressly or impliedly prohibited by statute. On this basis, the Department contends that the matters taken into account in this case were all legally permissible and relevant.

The Department also submits that references to denunciation and deterrence in the assessment were not problematic. It points to the *Sentencing Act 1991*, which treats denunciation and deterrence as concepts distinct from punishment, and says their inclusion did not introduce a punitive purpose. The Department's position, which is also referred to in Crown Counsel's 2022 advice, is that denunciation is a relevant consideration directed at maintaining the safe operation and good order of the youth justice system more broadly, by discouraging serious violence and signalling that such behaviour may lead to transfer into adult custody.

The Ombudsman does not agree with the Department's position. Even where a consideration is not expressly prohibited by statute, reliance on it may still render a decision wrong or incompatible with the Charter if it distorts the character of the decision making or displaces proper consideration of the individual's human rights. The Charter imposes additional requirements on public authorities beyond orthodox administrative law standards, including requirements as to the quality, focus and substance of decision making when rights are limited.

Were these limits reasonable and demonstrably justified?

The human rights assessment failed to demonstrate that the impact the transfer would have on the child's rights was reasonable or demonstrably justified. Our expert wrote:

... it appears that the primary purpose of the transfer was the safety of staff, which is clearly a very important purpose (including in circumstances where lack of staff safety leads to staff shortages which has resulted in lockdowns within youth justice centres).

There does appear to be a relationship between the limitation and the valid purpose of staff safety. However, the transfer did not provide a long term solution to that issue – it only resolved it for the six week period of the transfer. The child was required to be returned to Parkville Youth Justice Centre after six weeks, whilst he was on remand.

The Department knew that the transfer would be a temporary solution. The human rights assessment should have considered the temporary nature of the transfer and the fact that changing placements would be disruptive.

Subjecting a child to the significant limitations and risks of an adult prison environment for such a short timeframe raises questions about the actual purpose of the transfer.

The delegate was required to consider whether there was a better way to manage the child that would restrict his human rights less. The expert noted:

Section 7(2)(e) requires consideration of whether there are any less restrictive means that are reasonably available to achieve the purpose that the limitation seeks to achieve. The Department's assessment states that the purpose of the transfer 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. There are two potentially less restrictive options that may have been available to achieve this purpose – isolation at Parkville Youth Justice Centre or transfer to Cherry Creek Youth Justice Centre.

The assessment contains no consideration of why the purpose of staff safety could not be achieved by the use of isolation within Parkville Youth Justice Centre, under s 488 of the CYFA, on the basis that the child's behaviour presented an immediate threat to the safety of staff. The child had previously had a six week period of separation to function without peers to focus on behaviour modification and anger management. Presumably this was under the isolation power in s 488. It is not clear why isolation within a youth justice centre, as opposed to being transferred into solitary confinement within an adult prison, was not preferred on this occasion.

If the child remained in a youth justice centre under isolation he would have retained the entitlements and protections that the CYFA attaches to that detention setting. In circumstances where the transfer to prison involved the child being held in solitary confinement, in close proximity with adult management prisoners, on a handcuff regime, with no access to outdoor spaces, I consider that it would have been less restrictive to detain the child in isolation under s 488 of the CYFA.

If the child's behaviour was not severe enough to meet the threshold for the isolation of a child in a youth justice centre, set by Parliament in s 488 of the CYFA, it was arguably not proportionate to transfer him into solitary confinement in a prison.

In response to a draft of this report, the Department told us:

Isolation was also considered by the delegate but determined not to be an alternative measure that was available to mitigate against the risk posed by the child ... The use of isolation as punishment or a long term management strategy is prohibited under the Children Youth and Families Act 2005. The delegate was cognisant of the poor impact extended periods of isolation would have on the child's overall wellbeing, mental health, capacity to engage in education and recreation, or function appropriately within a unit.

We accept the Department's advice that the decision maker considered and ruled out the use of isolation as an alternative to a transfer to adult custody. Though, when assessing whether the transfer's impact was proportional to the restrictions on the human rights, we did not see evidence that the impact of isolation and restrictions in a maximum-security prison was considered. This is required to provide the decision maker with a holistic view on whether the limitations were reasonable and demonstrably justified.

Another possibly less restrictive measure would be a different placement within Youth Justice. The assessment noted that there were 'extremely limited' placement options for the child. The child had already been in various unit placements at Parkville in attempts to improve his behaviour.

Youth Justice determined that it would not be appropriate for the child to go to Cherry Creek, a purpose-built youth justice facility designed to be a safe, therapeutic and rehabilitative environment.

The expert noted:

... Cherry Creek Youth Justice Centre was designed to be better suited to young people with complex needs. It has smaller units of four children, so staff can provide more targeted and individual support in a safer environment – including modern security systems. When it was opened the Minister for Youth Justice made a statement that it would provide better safety for staff.

There is a brief unexplained statement in the assessment that the child's '[associations] exclude him from placement at Cherry Creek'. Whilst [associations] are a rational placement consideration, it is not evident that there was any consideration of whether it would be preferable for the child to be transferred to Cherry Creek notwithstanding this placement consideration, in order to avoid transferring him to prison.

At the time, Cherry Creek was only half full, but it had more children than it was funded for and staffed to manage, and workers were spread thin separating the children located there. At the time the child was initially remanded, Youth Justice determined that placing the child at Cherry Creek would likely create conflict with other children there. It may have threatened the broader security and good order of the centre and posed a significant risk to staff.

While Cherry Creek may ultimately not have been not a viable option, the report to the Youth Parole Board did not address placement at Cherry Creek as an alternative to adult prison. The human rights assessment excludes it in a single sentence.

The Ombudsman accepts that the delegate would have access to current operational intelligence about the child's behaviour, history and placement considerations, and that this would have informed their operational judgement. However, in assessing whether the limits imposed by the transfer were reasonable and demonstrably justified, the Charter required more than identifying those risks. The human rights assessment does not demonstrate that the delegate weighed the

impact of transferring the child to adult prison on his human rights against the competing interests of safety and good order at Cherry Creek, or considered whether those risks could be managed in a less restrictive, youth-specific custodial environment. Without weighing these competing interests, it is not possible to conclude that adult imprisonment was necessary or proportionate.

Where a child is placed in an adult prison, particularly within a restrictive management unit, the resulting limitations on rights are fundamental. The child is subjected to an adult custodial regime and exposed to conditions that risk long-term developmental harm. The seriousness of these impacts makes it exceedingly difficult to envisage circumstances in which such a transfer could be regarded as a proportionate response.

In response to a draft of this report, the Department maintained that:

any limitations on the Charter rights of the child which occurred because of the Application, were reasonable and demonstrably justified as required by ss 38(1) and 7(2) of the Charter.

The Department strongly objects to the characterisation that it did not consider alternative options, the human rights of the young person, impact of a transfer, and cursory reference to the decision being informed by its desire to maintain the good order of the youth justice facility.

We agree with the expert's assessment that the limits on rights in this case were not reasonable and demonstrably justified under section 7(2) of the Charter.

Broader issues

The Department's approach to human rights assessments

The transfer examined in this report demonstrates issues with the Department's current process that will affect any future transfer decisions. The 2025 human rights assessment we examined was created:

- in less than one business day
- in consultation with the youth justice staff who were managing the child
- without all the relevant information needed for a proper assessment
- to support a decision that was already made.

Purpose of the assessment

It is our view that the human rights assessment was created primarily to support the decision to transfer the child, not to inform or shape that decision. This is reflected in the assessment's focus on the child's poor behaviour, risk profile and the seriousness of incidents, and its limited engagement on the practical impact on the child or the State's obligations in moving a child to a maximum-security men's prison. This is reinforced by the internal correspondence about the assessment, which focused on comparing the incidents with a previously transferred child, rather than on the specific human rights implications for this child.

The assessment very much reads like a justification for a decision, not an objective assessment to inform a decision.

Speed of the assessment

In total, the human rights assessment was produced in around seven hours, and finalised within 24 hours of the violent incident.

The impetus for a transfer application is usually a serious incident, so urgency is understandable. However, it appears as though not much thought was put into the assessment. The fact that OGC was able to produce a draft in four and half hours, and the brevity of the advice, suggests that detailed consideration of all the possible impacts on the child did not occur.

The rapid turnaround was achieved by relying heavily on a similar assessment from 2022. Having a template and referring to previous examples are not in themselves problematic. However, much of the text was reused with little change and no regard to the child's individual circumstances or this specific transfer.

The speed of the assessment suggests it was treated as a tick box formality, not the substantive safeguard the Charter requires, and Parliament intended.

The Department told us the short timeframe for deciding to apply for the transfer was possible because tasks and consultation were undertaken concurrently. The Ombudsman's concern is not the speed of the decision to apply, but the short timeframe in which the human rights assessment was finalised. There is a lack of evidence that consultation meaningfully informed the content of the assessment and that the speed of preparation did not limit the depth of the analysis.

Objectivity of the assessment

The objectivity of an assessment can be affected by the source from which the legal advice is obtained.

In-house advice can help ensure that advice is closely aligned with operational needs. In-house legal advisers are professionally independent and subject to the same ethical obligations as external practitioners. However, they are not institutionally independent of the decision maker or the operational environment. There is a risk that internal proximity can narrow the range of options explored, frame advice around how a decision may be implemented lawfully rather than whether it should be taken at all or reduce the likelihood of sustained challenge to established practices.

In 2022, human rights advice was sought from Crown Counsel and a barrister at the Victorian Bar. This provided a degree of separation from the Department, proportionate to the seriousness of the issues under consideration. There is a clear difference between the depth and quality of the advice received in 2022 and the assessment provided by OGC in this case.

Ultimately the assessment in this case did not equip the delegate to meet their Charter obligations, in the way that advice like the independent advice provided in 2022 would have.

In response to the draft report, the Department stated that lawyers in OGC are bound by professional duties and obligations like all practising lawyers in Victoria. It is not inappropriate or unusual for a large and complex department to rely on in-house legal advisors for advice on a range of complex and sensitive matters. The Department disputes that advice received by OGC is any less independent or objective than legal advice it receives when it engages external providers on occasion.

Our comments are not intended to impugn the professional independence, competence or good faith of OGC lawyers. Rather, we have identified a structural risk inherent in relying solely on in-house legal advice for decisions of exceptional gravity, particularly where the advice is closely embedded within operational decision-making.

Delegation of power

Under s467 of the CYF Act, the decision to apply for a transfer rests with the Secretary. In practice, this responsibility has been delegated to senior Youth Justice staff.

Delegation is practical and lawful. Delegates may have more direct knowledge of the matter at hand, and delegating decision making to local staff can arguably be more efficient. However, operational staff are close to the problem and have competing demands.

They have an interest in maintaining order in youth justice centres but are not close to the impacts of the transfer decision on Corrections Victoria and the likely conditions under which a child will be held in adult custody.

Given the seriousness of the decision, the small number of cases in which it is made, and the importance of considering information from both Youth Justice and adult corrections when making a proper assessment of the lawfulness in applying to transfer a child, we think this decision should be made by the Secretary.

In response to a draft version of this report, which included our proposed recommendations, the Department increased the delegation level to the Youth Justice Commissioner, who reports directly to the Secretary. We note the Commissioner has no oversight or responsibility for adult corrections, who may receive the child.

Upcoming changes to transfer rules

The new *Youth Justice Act 2024* is a standalone legislative framework for the youth justice system. It contains core provisions from the CYF Act and will be implemented in stages.

In late September 2026, existing safeguards around the decision to transfer a child to an adult prison will be removed.

The existing test is narrow. The Board must be satisfied that the child:

has engaged in conduct that threatens the good order and safe operation of the youth justice centre and cannot be properly controlled in a youth justice centre.

From September 2026, the Board must be satisfied the child:

has engaged in conduct that threatened the security or stability of a youth justice custodial centre or caused serious harm to, or posed a risk of serious harm to, the health, wellbeing or safety of any other person in a youth justice custodial centre or when otherwise in the custody of the secretary, and cannot be safely and appropriately accommodated and supported in a youth justice custodial centre.

This new test is more subjective, and new elements have been introduced. A child may have 'posed a risk of serious harm' but not 'threatened the security' of the centre. Issues like operational or resourcing pressures within youth justice centres could make it hard to 'appropriately accommodate and support' a child and could therefore be used to justify a transfer.

As a result, the number of children eligible for transfer into adult custody may increase. It is therefore imperative that the Department undertake meaningful human rights assessments to ensure that decisions are proportionate, lawful and consistent with the Charter, and that transfers remain a last resort.

Another change which comes into effect in September 2026 is that children must be given the opportunity to obtain legal advice before the Board decides on an application for transfer. However, whether this will be effective in practice remains uncertain.

It is not clear what level of access lawyers will have to the materials that support the application, or how much time they will have to prepare a response. Previous practice has shown that transfer applications are made, decided and executed within days and behind closed doors. In addition, lawyers cannot attend the Board's hearing.

These limitations raise concerns about whether there is any meaningful opportunity for lawyers to advise or advocate for the children. The child told us he was uncertain about what the meeting with the Board and its warning really meant for him. This demonstrates how important it is for a child or young person to have an independent advocate present in real time. When asked what he understood the Board to be telling him, the child recalled:

... they didn't go into too much detail into it. It's just, you know, "You keep doing this, and we're going to transport you." But I didn't really think much of it ... I've got previous warnings from like other people.

Under both the CYF Act and the Youth Justice Act, children have the right to legal representation before the Children's Court in almost all hearings, including those in which the resulting decision will have a much less significant impact on rights than being transferred to adult custody. The lack of access to proper legal assistance through the transfer process is an anomaly which should be addressed.

The Department's view on human rights, transfers and the role of the Ombudsman

In response to a draft of this report, the Department provided several legal arguments concerning the application of the Charter to decisions to transfer a child into adult custody, and the Ombudsman's role in respect of the Charter.

These positions differ in several respects from the Ombudsman's view of the Department's obligations and the Ombudsman's role in assessing Charter compliance. Given this, we asked the expert for advice on the Department's position.

The Department's position was that while public authorities are required to act compatibly with the Charter, only the courts can determine Charter breaches under section 39. It is the Department's view that the Ombudsman's role does not extend to making findings of unlawfulness in relation to Charter compliance, and therefore any such findings should be qualified by the word 'appears' to reflect the opinion available to the Ombudsman under section 23(1)(a) of the Ombudsman Act.

The expert advised:

Section 23(1) of the *Ombudsman Act 1973* does not confine the actions that the Ombudsman can take, rather it sets out when the power to take action will be enlivened. Section 23(1)(a) sets a very low bar for when the power to take action will be enlivened by merely requiring the Ombudsman to be of the opinion that it "appears" that administrative action was contrary to law.

The expert further advised that once this threshold is met, the Ombudsman Act requires the Ombudsman to report their opinion and the reasons for it, and that this obligation to explain conclusions is not limited by the use of the word 'appears'. The expert concluded:

In my view it is untenable to claim that the Ombudsman is not empowered to express conclusions on compliance with section 38 of the Charter when section 13(2) of the *Ombudsman Act 1973* expressly provides that the Ombudsman's functions involve investigating:

- whether the relevant administrative action is incompatible with a human right set out in the *Charter of Human Rights and Responsibilities Act 2006*; and
- if the administrative action involves a decision, whether there was a failure to give proper consideration to a relevant human right set out in the *Charter of Human Rights and Responsibilities Act 2006*.

The expert also advised that section 39 of the Charter does not constrain the Ombudsman's functions, as the Charter was intended to operate as a 'dialogue model', with section 38 promoting human rights compliance in public administration without the need for court proceedings.

The Department also argued that the decision to apply to the Board did not constitute a 'decision' engaging section 38 of the Charter, as it did not have a substantive or material effect on a person's human rights and interests. The Department relied on *Keasey v Director of Housing* [2022] VSCA 7 ('*Keasey*') to support this view, in particular the analogy that the Secretary's application 'puts a process in train but does not, in itself, determine or affect the rights of the young person', with the ultimate decision being made by the Board. Despite this, the Department states that when transfer applications are made, 'the delegate gives proper consideration to relevant human rights as a matter of good practice', rather than legal obligation.

The expert did not accept this characterisation, advising that *Keasey* does not determine the scope of a public authority's obligations under section 38 of the Charter. She advised that *Keasey* related to the meaning of 'decision' under the *Administrative Law Act 1978*, not under section 38 of the Charter.

The Ombudsman agrees with the expert's advice. The practical effect of the Department's position would be that starting a process with serious and obvious human rights consequences for a child could occur without any legal requirement to consider Charter compatibility, beyond optional 'good practice'.

Ultimately, the Department disagreed with our position and findings and defended its actions. In response to the final draft of this report, the Department wrote:

The Department of Justice and Community Safety (DJCS) acknowledges the impact of the transfer on this young person but reiterates that this was a challenging situation that posed significant safety risks to other young people in our care and our custodial staff.

At the time the decision was made the young person had committed multiple serious acts of violence while in custody. He had injured other young people and harmed staff performing their duties of maintaining the safety and security of all people in Youth Justice facilities. This has had a long-lasting physical and emotional impact on the affected young people and staff.

It is important to stress that these are difficult decisions and only used as a last resort when all other options have been exhausted. In making an application to transfer a young person to adult prison, DJCS gives careful consideration of the circumstances, rights of the young person, and impact on them.

The 2026 transfer

In 2026, while detained at Parkville, the child was involved in another incident.² Youth Justice was of the view that managing the child in a youth justice centre was not sustainable, resulting in an application to transfer him into adult custody.

In the days following the transfer application, the Board met with Youth Justice and the child and ultimately approved the transfer. The child was transferred to adult prison where he will likely remain until the completion of his sentence.

The 2026 human rights assessment

At the time of the 2026 incident and transfer request, the Department had reviewed and responded to a draft version of this report. We looked at whether the Department made any changes to its approach to conducting human rights assessments in response to our draft findings.

At the time of the incident, the child was under 18 years of age. However, by the time was transferred into adult custody he had turned 18. This changed the legal and practical context in which Corrections Victoria could manage him in adult prison. Unlike the earlier transfer, Corrections Victoria was no longer required to keep him separated from adults in prison solely because of his age. This meant it could manage him like other adults in prison.

Unlike the 2025 human rights assessment, the 2026 assessment was reviewed by the Victorian Government Solicitor's Office, and endorsed by the Commissioner, Youth Justice. This consideration of the child's rights by the VGSO and the most senior Youth Justice staff member appropriately reflects the significance of the application decision.

The differences between the 2025 and 2026 assessments are immediately evident. A redacted version of the full assessment is included in Appendix 4.

The 2026 assessment:

- is far more thorough and detailed than the earlier assessment
- considers each engaged human right individually
- includes specific consideration of the child's right to religion and culture
- maintains its consideration of the best interests of a child (s17(2)) and the right to be treated in an age-appropriate manner (s23(3))
- lists the rights the Department considered but determined to be not engaged and the reasons why
- considers the child's loss of protections under the CYF Act, the conditions of adult custody, the loss or impact to programs and services, his new status as an adult in prison and the change of parole jurisdiction to the Adult Parole Board
- makes no reference to denunciation and deterrence.

² This report includes no details about this incident in line with s 13AB of the *Ombudsman Act 1973*.

These are important improvements. The depth of the Department's 2026 assessment and its focus on the child's human rights reflects a more considered approach to the significance of human rights in its decision making and the gravity of its application. It provides clear and concise evidence that the Department has properly considered the child's rights, supports good record-keeping and makes the decision to transfer more defensible.

While the child 'aged-out' of the human rights protections that apply specifically to children, the Department appropriately continued to consider those rights and principles. This reflected the fact the child had been convicted and sentenced through the Children's Court and had only recently turned 18, which did not suddenly remove the child's developmental and rehabilitation needs.

The child's return to adult custody does not diminish the importance of this rigorous approach, rather it reinforces it. The earlier transfer was intended to include 'an element of denunciation or deterrence'. However, the transfer did not change the behaviour of the child or other children in Parkville.

Conclusions

Children are not adults. They are developmentally distinct. Even those who have made poor decisions and caused harm to others need humane treatment that will promote their rehabilitation and eventual reintegration into society.

It is clear the environment the child experienced in MAP in 2025 was far from humane and had a significant negative impact on him.

Victorian legislation continues to permit the transfer of children into adult prisons. As the Victorian Government has not accepted our recommendation to remove the power to transfer children into the adult prison system, it must strongly reinforce that these decisions must be made in accordance with the Charter. Decision makers must give proper consideration to the specific child's human rights and ensure that any limitation on their rights is reasonable and justifiable.

The 2025 application to transfer

In 2025, the Department did not properly consider the child's human rights. The assessment was cursory and based on a previous assessment. It failed to identify and engage with all of the child's affected rights, and did not adequately address the impacts on each relevant right or the conditions the child would experience.

The human rights assessment was not used as a decision-making tool but was completed to support a decision that had already been made.

It is clear that Youth Justice's decision to apply to transfer the child to adult prison limited several of the child's rights and these limits were not lawful. By introducing the concept of denunciation, the Department's human rights assessment considered irrelevant factors.

The conditions the child experienced – isolation, use of restraints, lack of education, lack of cultural support and no physical family contact – were not reasonable or demonstrably justified by the human rights assessment or contemporaneous records.

The 2026 application to transfer

The Department's 2026 human rights assessment is a distinct improvement. It demonstrates deeper consideration of the impacts on the child's rights and provides a more defensible rationale for its conclusion that the application to transfer is compatible with the Charter.

Despite the Minister's rejection of our recommendations for change and the Department's opposition to our findings, the Department's welcomed improvement demonstrates that the Department has the capacity to meaningfully consider human rights as part of its processes.

Opinion

The Charter

The heart of the Ombudsman's role is ensuring public officers act fairly when making decisions that will affect the public. The Charter acts as a benchmark for good decision making and as protection against unfairness.

When people will be affected, decisions need to properly consider the human rights in the Charter. This case is a stark reminder of the impact that a failure to properly consider those rights can have.

It is striking that neither of the responses received from the Minister for Youth Justice or the Department express regret for the conditions the child was held in following the transfer or the impact that the transfer had on his wellbeing and rights.

The complaints the Ombudsman receives and our engagement with the community and non-government organisations tells us that the inadequate consideration of people's human rights is an issue across the Victorian public sector. Meaningful consideration of human rights is not routinely part of the way the public service operates. Sometimes, the Charter is seen as an inconvenience or an impediment, instead of the safeguard it was intended to be.

This year marks 20 years of the Charter. To promote and maintain confidence in government, it is more important than ever that human rights are front of mind in government decision making.

On the basis of the evidence obtained in the investigation, the Department of Justice and Community Safety:

- acted in a manner that appears to have been contrary to law pursuant to section 23(1)(a) of the Ombudsman Act by failing to give proper consideration to relevant human rights before the 2025 application to the Board to transfer the child into adult custody as required by section 38 of the Charter
- made a decision based on improper considerations pursuant to section 23(1)(d) of the Ombudsman Act because the 2025 application was motivated in part by denunciation
- was wrong, pursuant to section 23(1)(g) of the Ombudsman Act because the 2025 application:
 - placed a disproportionate emphasis on the child's behaviour as the justification for the transfer
 - included concepts of denunciation, and
 - did not adequately focus on the child's individual circumstances and the State's obligations under the Charter.

In 2013, the Ombudsman wrote 'I am of the view that there are no circumstances that justify the placement of a child in the adult prison system'. Thirteen years later, having closely examined another transfer application and the conditions a child experienced in adult custody, we see no reason to change that view.

Recommendations

To the Minister for Youth Justice and the Attorney-General:

Recommendation 1

As recommended in 2013, seek to amend the *Children, Youth and Families Act 2005* and the *Youth Justice Act 2024* to remove the power to transfer children into the adult prison system.

The Minister for Youth Justice has provided a response on behalf of the Victorian Government:

Not accepted

The power to transfer children into the adult prison system provides an important mechanism to ensure youth justice facilities can operate safely. The custodial population is dynamic and changing, and the transfer mechanism allows the system to respond efficiently to disruptive, dangerous or threatening behaviour, including serious assaults on staff or other children and young people in youth justice facilities. Transfers are subject to strict statutory criteria and considered only where necessary to manage serious safety risks where other options are not appropriate or on request of the relevant child or young person.

Recommendation 2

Amend the *Charter of Human Rights and Responsibilities (Public Authorities) Regulations 2023* to limit the exemption applying to the Youth Parole Board, so that it is subject to the *Charter of Human Rights and Responsibilities Act 2006* when deciding on transfers into the adult prison system.

The Minister for Youth Justice has provided a response on behalf of the Victorian Government:

Not accepted

There is an operational need for decisions made by the Youth Parole Board to continue to be exempt from the Charter of Human Rights and Responsibilities Act (Charter). Exemption from these requirements enables timely response to dynamic custodial situations where delay may expose persons to harm or where individuals cannot be safely accommodated in youth justice facilities. As noted in the report, the DJCS Secretary is a public authority for the purposes of the Charter and will continue to be required to give proper consideration to, and act compatibly with, human rights when making an application to transfer.

To the Secretary, Department of Justice and Community Safety:

Recommendation 3

Seek to amend the *Youth Justice Act 2024* to ensure children have the right for their legal representatives:

- a. to appear in Youth Parole Board hearings when transfers are being considered
- b. to be present when children are being given formal warnings from the Youth Parole Board.

The Minister for Youth Justice has provided a response on behalf of the Victorian Government:

Not accepted

The Youth Parole Board is an administrative body focused on rehabilitation and the best outcomes for children and young people and operates differently to an adversarial court, which is why legal representatives do not appear at parole hearings. The *Youth Justice Act 2024* (section 666) introduces a new requirement that a child or young person who is the subject of an application for a transfer direction must be given an opportunity to obtain legal advice prior to the application being heard or determined. Additionally, section 619(5)(b) requires the Youth Parole Board to provide a child or young person with the opportunity to comment on their involvement in any incident that threatened the security and stability of a youth justice custodial centre or conduct that threatened another person's safety or damaged property. These are intended to provide the child or young person with a right of reply and provide their version of events to the Youth Parole Board.

The Minister for Youth Justice's response letter is included in Appendix 5.

Recommendation 4

Amend the instrument of delegation, so that the decision to apply to transfer a child into the adult prison system must be made by the Secretary of the Department of Justice and Community Safety.

The Department response:

Not accepted

The Department does not accept this recommendation because decision making regarding the application for the transfer of a child to an adult prison most appropriately sits with the most senior operational staff, being the Commissioner, Youth Justice, who reports directly to the Secretary.

Recommendation 5

Ensure that human rights assessments for the application to transfer a child into the adult prison system are:

- a. undertaken prior to the decision being made
- b. informed by rigorous legal advice at arm's length from the decision maker.

The Department response:

Accepted

The Department accepts the recommendation but notes that it reflects current practice in relation to human rights assessments being undertaken prior to a decision being made and informed by rigorous legal advice provided at arm's length.

Recommendation 6

Revise the *Practice Instruction – Transfer to Prison* to require that:

- a. placement, classification and regime, and support information is provided for consideration during the development of the human rights assessment
- b. the transfer application report to the Youth Parole Board explicitly addresses compatibility with human rights obligations.

The Department response:

Accepted in principle

The Department supports the recommendation and will update its policies, including the *Practice Instruction – Transfer to Prison*, to include in the transfer application report to the Youth Parole Board:

- a copy of the charter assessment and whether the proposed transfer is compatible or incompatible with human rights obligations
- an outline of the young person's anticipated conditions in adult prison, based on discussions between Corrections Victoria and Youth Justice. This would include any requirements regarding separation of the young person from other prisoners, and the arrangements which could be put in place to continue to support the young person in adult prison (for example, education requirements) – noting that operational circumstances are fluid and may change upon arrival of the young person in adult prison, and that DJCS also needs to consider the safety and the rights of its staff and its legislated safety obligations.

The Department will also require that any legal advice prepared in relation to an application to transfer comprehensively sets out each human right that is engaged and/or limited by the proposed transfer, whether the proposed transfer would be compatible or incompatible under the Charter, and the reasons why.

The Department will also ensure that the advice considers the supports available for the young person in adult custody and their anticipated conditions of custody.

Recommendation 7

Develop and provide training to all staff involved in transfer applications on their obligations under the *Charter of Human Rights and Responsibilities Act 2006*.

The Department response:

Accepted

The Department accepts this recommendation noting that the provision of human rights training, including to staff involved in transfer applications, is already standard practice.

Recommendation 8

Develop clear, age-appropriate guidance for children at risk of being transferred to the adult prison system, explaining the process, potential consequences and their rights.

The Department response:

Accepted

The Department accepts the recommendation but notes that it already has guidance in place for staff to ensure the warning hierarchy is clearly explained to young people, and that they have an awareness when these warnings may be escalated to the Youth Parole Board and could possibly result in transfer to adult prison.

However, the Department will strengthen this process and the Department will develop a youth-friendly fact sheet explaining the warning hierarchy for young people which can be utilised as an additional visual resource.

Appendix 1: The investigation

Authority to investigate

The Ombudsman's jurisdiction to investigate any administrative action, decision or omission taken by or within an authority is derived from section 13 of the *Ombudsman Act 1973*.

While the Ombudsman is not able to make a binding determination of legal liability in the same way that a Court can, section 13(2) of the Ombudsman Act empowers the Ombudsman to reach and express conclusions about incompatibility with the Charter.

The Department of Justice and Community Safety is an 'authority' pursuant to the Ombudsman Act. This investigation was conducted under section 16A of the Ombudsman Act, which states that the Ombudsman may conduct an 'own motion' investigation into any administrative action taken by or in an authority.

In addition, section 13(2) of the Ombudsman Act grants the Ombudsman the power to enquire into or investigate whether the administrative action is incompatible with a human right set out in the *Charter of Human Rights and Responsibilities Act 2006*.

How we investigated

On 17 June 2025, the Ombudsman notified the then Minister for Youth Justice and the Secretary of the Department of Justice and Community Safety of her intention to investigate.

The investigation met with the child and his support person to understand his experience at Melbourne Assessment Prison.

We sought legal advice from an external barrister who is an expert in human rights.

The investigation also involved:

- reviewing relevant documents held by Youth Justice, Corrections Victoria and the Department of Justice and Community Safety related to the creation of the human rights assessments and transfers of the child
- reviewing Youth Justice's *Practice Instruction – Transfer to Prison*
- examining relevant legislation, regulations, and ministerial orders, including:
 - *Child, Youth and Families Act 2005*
 - *Youth Justice Act 2024*
 - *Charter of Human Rights and Responsibilities Act 2006*
- engaging with the Commissioner for Children and Young People.

Procedural fairness

This investigation was guided by the civil standard of proof which requires that the facts be proven on 'the balance of probabilities'. This differs from the criminal standard of 'beyond a reasonable doubt'. To reach our conclusions, we considered:

- the nature and seriousness of the matters examined
- the quality of the evidence
- the gravity of the consequences an adverse opinion could create.

This report makes adverse comments, or includes comments which could be considered adverse, about the actions and decisions the Department and Youth Justice executives, Corrections Victoria staff and the child. In line with section 25A(2) of the Ombudsman Act, we provided the relevant parties with a reasonable opportunity to respond to the report. This report fairly sets out their responses.

We also provided a copy of the report to the Youth Parole Board to confirm factual accuracy and have fairly set out their responses.

The assessment included here has been redacted to protect the privacy of the child.

Appendix 2: The 2025 human rights assessment

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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

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		to achieve the purpose served by the transfer application. has progressed through the hierarchy of warnings available to Youth Justice – which includes – indicating that warnings have had little or no effect on behaviour in Youth Justice custody. Relevantly, Youth Parole Board warnings are the highest ‘tier’ of warning available. 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. 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	the object of ensuring the safe operation and good order of youth justice centres generally.		Of these incidents, 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.		
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					[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
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					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.

OFFICIAL: Sensitive

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).			
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Appendix 3: Expert assessment of the consideration given to human rights prior to a child's prison transfer application

MEMORANDUM OF ADVICE

A. Advice Sought

1. On [REDACTED] [a] child was transferred from Parkville Youth Justice Centre to an adult prison by the Youth Parole Board, on the application of [REDACTED] (the delegate) under delegation from the Secretary of the Department of Justice and Community Safety, relying on the power in s 467 of the *Children Youth and Families Act 2005* (Vic) (**CYFA**).
2. I have been requested by the Victorian Ombudsman to advise on the adequacy of the Department's human rights assessment of that transfer. In particular:
 - 2.1 In making the decision to apply to the Youth Parole Board for the transfer under s 467 of the CYFA did the delegate:
 - (a) act in a way that was incompatible with a human right?
 - (b) fail to give proper consideration to a relevant human right?
 - 2.2 If the answer is 'yes', what can be done to strengthen the human rights assessment to ensure compatibility with s 38(1) of the *Charter of Human Rights and Responsibilities Act 2006* (**Charter**)?
3. The short answer to these questions is:
 - 3.1 based on the information provided by the Department, I consider that the delegate did not act compatibly with the child's human rights, including the rights in ss 14(1)(b), 17(2), 19(1), 22(1) and 23(3) of the Charter, when making the decision to apply to the Youth Parole Board for the transfer of the child to prison;
 - 3.2 the human rights assessment does not evidence proper consideration having been given to the child's human rights, including the rights in ss 14(1)(b), 17(2), 19(1), 22(1) and 23(3) of the Charter, when making the decision to apply to the Youth Parole Board for the transfer of the child to prison.

4. The human rights assessment could better achieve proper consideration of Charter rights by:
 - 4.1 undertaking the assessment before the decision to seek transfer is made;
 - 4.2 engaging genuinely and thoroughly with the impact of the transfer on the child;
 - 4.3 ensuring that information about the conditions that the child will be held in (if they are transferred to an adult prison) is considered in the assessment;
 - 4.4 not making the assumption that all other options have been considered; and
 - 4.5 ensuring that the purpose of the limitation of human rights is consistent with the Secretary's legislative duties towards the child.
5. In **Part B** of this advice I set out the factual background to the child's transfer to prison, which I have ascertained from the materials that I have been briefed with – including materials obtained from the Department by investigating officers. **Part C** then addresses the legal context in which these events occurred. **Part D** explains the obligations imposed by s 38(1) of the Charter, considers whether those obligations were complied with, and what could be done to strengthen the human rights assessment of child transfer decisions. **Part E** considers an additional matter that is beyond the scope of the advice I was requested to give.

B. Factual Background

6. On [REDACTED] the child was issued two warnings by the Youth Parole Board for serious staff assaults. On [REDACTED] the child committed a further serious assault on a staff member. At that stage the view was taken that the child's behaviour posed an unacceptable significant risk to staff and other young people and was impacting on other young people's progress and opportunities in custody, such that he could no longer be properly controlled in a Youth Justice setting.

7. On [REDACTED] Youth Justice staff met with the Major Offenders Unit of Corrections Victoria at which time it appears that the placement of the child in prison was discussed. On [REDACTED] the delegate applied to the Youth Parole Board to transfer the child to an adult prison. The Department notes that this was the day that the application was 'formally lodged with the Board', which suggests that the transfer decision may have been made the day before – when the incident occurred. A human rights assessment of the transfer was conducted by the Department on [REDACTED], which concluded that the transfer was compatible with the child's Charter rights. In anticipation of the transfer, on [REDACTED] a handover meeting occurred with the Major Offenders Unit of Corrections Victoria. On [REDACTED] the Board approved the transfer and the child was transferred to a management unit at the Melbourne Assessment Prison (**MAP**) – the Spring Unit – and was classified as a 'major offender'.
8. The child had only six weeks left on his sentence, after which he was to be remanded back at Parkville Youth Justice Centre in relation to new charges. A child on remand cannot be held in an adult prison.
9. The materials I have been briefed with indicate that while he was imprisoned in the Spring Unit the child was not allowed to mix with other prisoners, on the basis that mixing was not appropriate because of his age. He was classified by Corrections Victoria as a 'major offender' and was referred to the High-Risk Management Advisory Panel, because of his age. The materials also state that he was given 'protection status' and held in a 'management unit', and it appears that this was by reason of being a child in an adult prison.
10. Information provided by the Department states that each day the child was able to access one hour out of his cell in what is referred to as an 'airing yard' and that he was offered additional time daily. The 'Out of Cell Hours' register provided by Corrections Victoria indicates that the small amount of out of cell time that the child had was spent in one of the unit's two internal 'yards', other than when he was out of his cell for a visit. The 'yards' are shown on a unit plan provided by Corrections Victoria – they are shown as rooms in the unit that are slightly less than twice the size of a cell. In photographs taken by the Ombudsman's investigating officers during a tour of the unit it appears that the two 'yards' are rooms in the unit that

are completely empty other than a fixed metal bench and a wall mounted telephone. A portion of the roof is made of metal mesh through which the sky can be seen.

11. Although the Ombudsman's investigating officers were told that the child had access to the gym facility, the 'Out of Cell Hours' register indicates that the child did not access the gym facility on any occasion during the six weeks.
12. It appears from the 'Out of Cell Hours' register that during the entire six week period that the child was imprisoned he was not ever provided with access to an outdoor area or allowed outdoors.
13. While at MAP the child was placed on a handcuff regime, which required him to be handcuffed when he was outside of his cell in the unit including when being moved around the prison and when attending visits. The child's review minutes state that 'the location assesses his handcuff regime on a daily basis'. The General Manager's diary also makes a statement that 'MAP management agreed to review this [handcuff] regime every day, to enable progression as soon as appropriate'. This is contrary to what in fact occurred – the child remained on a handcuff regime for his entire six week stay despite 'engaging appropriately' with staff and no incidents for the entire six weeks. On [REDACTED], during a meeting with the Major Offenders Unit, the child asked when his handcuff level would be lowered so he could be moved by normal staff and not have to wait to be moved by the Emergency Response Group (ERG), and he was told 'in the adult system, that risk to staff is paramount and that it takes time for these decisions to be made'. The only change over the entire period was that on [REDACTED] the child was downgraded from an H3 handcuff regime to an H2 handcuff regime.
14. While the child was at MAP he was not allowed to have contact visits with his family, or any other visitor. Although the child was allowed to have box visits with his family, he did not have any. In my experience a box visit allows much less human interaction than a contact visit. The prohibition on family contact visits was apparently a consequence of the child being on a handcuff regime, not for any other reason.

15. The likely conditions of the child's imprisonment were matters that could have been readily ascertained or predicted by the delegate prior to the application for transfer on the basis that:
- 15.1 It was inevitable that the child would be given protection status, classified as a major offender and placed in a management unit.
 - 15.2 Management units have internal 'yards' with no access to the outdoors.
 - 15.3 The child would not be able to mix with other prisoners and would therefore have very limited human contact.
 - 15.4 The child would be placed on a handcuff regime, given that in order to meet the legislative threshold for transfer to an adult prison an eligible child will have violent behaviours that will result in a high V (violence) rating.
 - 15.5 The child would not be allowed to have contact visits with his family, or any other visitor, given that he would inevitably be placed on a handcuff regime.

C. Legal Context

16. Section 467(2)(d) of the CYFA provides that the Youth Parole Board may only direct that a child serve their sentence of detention in a youth justice centre as a sentence of imprisonment if it is satisfied that the child:
- 16.1 has engaged in conduct that threatens the good order and safe operation of the youth justice centre; and
 - 16.2 cannot be properly controlled in a youth justice centre.
17. Section 482(1)(a) of the CYFA provides that the Secretary must determine the form of care, custody or treatment which they consider to be in the best interests of each person detained in a youth justice centre. Section 482(2) requires that children who are detained in youth justice centres must have their developmental needs catered for, and are entitled to have reasonable efforts made to meet their medical, religious and cultural needs.

18. Section 487 sets out a number of actions that are prohibited in relation to a person who is detained in a youth justice centre:
- 18.1 the use of isolation (within the meaning of section 488) as a punishment;
 - 18.2 the use of physical force unless it is reasonable and necessary for the identified purposes or otherwise authorised by law;
 - 18.3 administering corporal punishment;
 - 18.4 the use of psychological pressure intended to intimidate or humiliate the person or child;
 - 18.5 the use of any form of physical or emotional abuse; and
 - 18.6 the adoption of any kind of discriminatory treatment.
19. Section 488 of the CYFA regulates the use of isolation in youth justice centres, which is defined in that section as ‘the placing of the person in a locked room separate from others and from the normal routine of the centre’. A child can only be isolated in a youth justice centre if their behaviour presents an immediate threat to their own safety or the safety of any other person or to property. A person placed in isolation must be closely supervised and observed at intervals of not longer than 15 minutes.
20. These protections, entitlements and obligations are lost when a child is transferred to an adult prison because they are no longer a person who is ‘detained in a youth justice centre’. The *Corrections Act 1986* (Vic), which governs the rights of both adult and child prisoners in adult prisons, does not provide equivalent protections to these beneficial protections contained in the CYFA.

D. Section 38(1) of the Charter

21. Section 38(1) of the Charter requires the delegate both to give ‘proper consideration’ to the human rights that are relevant to the application and to act ‘compatibly’ with human rights, which in the context of decision-making means to reach a decision that is compatible with the Charter. A likely outcome of the delegate’s application for transfer under s 467 of the CYFA is that the Youth Parole

Board will direct that the child be transferred to an adult prison, so the rights that will be limited if the transfer occurs are, in practical terms, limited by the application itself.

D-1 Was the transfer compatible with the child's Charter rights?

22. The Victorian Supreme Court has found that the assessment of whether an act is 'compatible' with any human rights that it limits is to be undertaken by reference to the reasonable limits provision in s 7(2) of the Charter.

23. The Court has held on at least two separate occasions that:

It is generally not considered to be in the best interests of a child deprived of liberty to be placed in an adult prison or other facility for adults.

24. In *Certain Children v Minister for Families and Children (No 2)* the Court held that the decision to transfer two children to a unit within a maximum security adult prison that had recently been gazetted as a youth justice centre, was incompatible with the rights in ss 17(2) and 22(1) of the Charter. The Court made this finding on the basis of the combined effects on young detainees of the following matters:

- 24.1 the extensive use of isolation;
- 24.2 the use of handcuffs;
- 24.3 the requirement to take the children through the adult prison to get outdoors;
- 24.4 the physical high security prison environment;
- 24.5 the lack of natural light and fresh air;
- 24.6 the noise;
- 24.7 the visible presence of prison officers;
- 24.8 the lack of privacy;
- 24.9 the lack of education, stimulation and time out of doors; and
- 24.10 the confined outdoor space.

25. Further, as discussed above, in the case of a transfer from a youth justice centre to prison, upon transfer the child will automatically lose the various legal entitlements and safeguards provided to people who are detained in youth justice centres. This negative consequence was not a feature of the *Certain Children* cases because the children were being transferred to an area within the adult prison that had been de-gazetted as a prison and re-gazetted as a youth justice centre.
26. The current practices of Corrections Victoria with respect to the placement of children in adult prisons means that a child will inevitably be imprisoned in much more restrictive conditions than most maximum security adult prisoners. They will be classified as major offenders and protection prisoners; held in a management unit; not allowed any access to outdoor space; only allowed a very short period of time out of their cell; required to be handcuffed whenever they are out of their cell; and not allowed to mix with any other prisoner for the entire period of their imprisonment.
27. The harsh conditions in Corrections Victoria's management units have been the subject of judicial consideration in a number of cases involving adults. The Court of Appeal has observed that there are 'very great deprivations associated with being so held'. Recently, the Court of Appeal observed that the conditions in another management unit, with severe restrictions on time out of cell and interaction with other prisoners 'were, in effect, solitary confinement'. The regime in one such unit was described by a forensic psychiatrist as 'undoubtedly a very austere and restrictive regime that would be challenging to the most mentally able in the community'.
28. Management units are used to accommodate prisoners who are not suitable for the mainstream prison population due to the risks they pose to other prisoners, or the risks they face from other prisoners. For the first two weeks that the child was held in the Spring Unit he was placed in a cell close to a prisoner who 'is known for being very noisy during the night and for making racist remarks'. It was recorded that this upset the child ([REDACTED]) and he asked to be moved, which the General Manager notes 'the staff were able to finally facilitate'.

29. The documentation provided by the Department notes that while he was detained in Parkville Youth Justice Centre the child was engaging with [REDACTED] weekend services, 'which he values as a source of connection to both his cultural heritage and faith ... these opportunities have been instrumental in fostering his well-being, strengthening his cultural and spiritual connections, and promoting a sense of stability'. The Department's material indicates that the child engaged minimally with behavioural support and forensic intervention services. The cultural support team appears to be the only service within Parkville that was able to develop genuine rapport with the child. Upon transfer to prison the child did not have any connection with [REDACTED] and was unable to attend weekend services.
30. The imprisonment of any child in an adult prison is likely to have a negative impact on their mental health and wellbeing, which will limit the right of children to such protection as is in their best interests. It is also likely to impose hardship that goes beyond that which is required to be imposed as a necessary consequence of incarceration, which will limit the right to humane treatment when deprived of liberty. Further it does not accord the child treatment that is appropriate for his age, which requires governments to adopt all necessary actions and procedures to protect children from physical and emotional harm in criminal detention.
31. In light of the above I have concluded that the following human rights of the child were clearly limited by transferring him to prison:
- 31.1 his right to such protection as is in his best interests and is needed by reason of being a child;
 - 31.2 his right to be treated with humanity and with respect for the inherent dignity of the human person, while deprived of liberty;
 - 31.3 his right to be treated in a way that is appropriate for his age; and
 - 31.4 his freedom to demonstrate his religion in worship, observance, practice and teaching as part of a community and to enjoy his culture and practice his religion.

32. I have concluded that the lack of connection to [REDACTED] and loss of attendance at weekend services has impacted on the child's religious and cultural rights for the purposes of both s 14(1)(b) and s 19(1) of the Charter. I consider that the equality rights in s 8 of the Charter were also limited, although in this context the limitation is indistinguishable from the limits on the right to age appropriate treatment whilst incarcerated. However I do not consider that the minimum level of severity required for limitation of any of the rights in s 10(b) of the Charter – cruel, inhuman or degrading treatment – has been met.
33. Having found that Charter rights were limited by the transfer, it is necessary to consider whether those limits were:
- 33.1 'under law'; and
- 33.2 reasonable and demonstrably justified taking into account all relevant matters including those listed in s 7(2) of the Charter.
34. A limit on Charter rights will only be 'under law' if it conforms with the legislation that authorises the decision-maker's action. For reasons discussed below, there is a possibility that the decisions of the delegate were *ultra vires*.
35. I observe that the Charter assessment that was provided to the delegate and annexed to the application to the Youth Parole Board stated that 'the transfer application also involves an element of denunciation or deterrence'. This suggests that part of the reason for the transfer was to denounce. The Oxford Dictionary defines denounce as 'publicly declare to be wrong or evil'.
36. Section 482(1)(a) of the CYFA provides that the Secretary must determine the form of care, custody or treatment which they consider to be in the best interests of each person detained in a youth justice centre. The Secretary owed this obligation to the child at the time of the transfer application. Whilst s 482(1)(a) may allow the Secretary to act in a manner that maximises the best interests of all detainees by making compromises between *the competing needs of detainees*, denunciation is not a proper basis for determining the form of the child's custody. It is for this reason that I have suggested that the delegate's decision may have been *ultra vires* if it was made for this purpose, which I consider may be an improper purpose.

37. Turning to the second question – whether the limits on the child’s rights were reasonable and demonstrably justified – this requires a consideration of all relevant matters ‘including (a) the nature of the right; and (b) the importance of the purpose of the limitation; and (c) the nature and extent of the limitation; and (d) the relationship between the limitation and its purpose; and (e) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve’. Section 7(2) of the Charter embodies a proportionality test.
38. In this matter a primary consideration under s 7(2) is that the relevant Charter rights were very significantly limited by the transfer.
39. On the other side of the ledger are the purposes for which the child was transferred. I observe that one of the purposes of the transfer was ‘denunciation or deterrence’. Denunciation is not a defensible purpose for significant limits on a child’s right to humane treatment; treatment appropriate to their age; to protection in their best interests; or religious and cultural rights. However it appears that the primary purpose of the transfer was the safety of staff, which is clearly a very important purpose (including in circumstances where lack of staff safety leads to staff shortages which has resulted in lockdowns within youth justice centres).
40. There does appear to be a relationship between the limitation and the valid purpose of staff safety. However, the transfer did not provide a long term solution to that issue – it only resolved it for the six week period of the transfer. The child was required to be returned to Parkville Youth Justice Centre after six weeks, whilst he was on remand.
41. Section 7(2)(e) requires consideration of whether there are any less restrictive means that are reasonably available to achieve the purpose that the limitation seeks to achieve. The Department’s assessment states that the purpose of the transfer 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. There are two potentially less restrictive options that may have been available to achieve this purpose – isolation at Parkville Youth Justice Centre or transfer to Cherry Creek Youth Justice Centre.

42. The assessment contains no consideration of why the purpose of staff safety could not be achieved by the use of isolation within Parkville Youth Justice Centre, under s 488 of the CYFA, on the basis that the child's behaviour presented an immediate threat to the safety of staff. The child had previously had a six week period of separation to function without peers to focus on behaviour modification and anger management. Presumably this was under the isolation power in s 488. It is not clear why isolation within a youth justice centre, as opposed to being transferred into solitary confinement within an adult prison, was not preferred on this occasion.
43. If the child remained in a youth justice centre under isolation he would have retained the entitlements and protections that the CYFA attaches to that detention setting. In circumstances where the transfer to prison involved the child being held in solitary confinement, in close proximity with adult management prisoners, on a handcuff regime, with no access to outdoor spaces, I consider that it would have been less restrictive to detain the child in isolation under s 488 of the CYFA.
44. If the child's behaviour was not severe enough to meet the threshold for the isolation of a child in a youth justice centre, set by Parliament in s 488 of the CYFA, it was arguably not proportionate to transfer him into solitary confinement in a prison.
45. I am instructed that Cherry Creek Youth Justice Centre was designed to be better suited to young people with complex needs. It has smaller units of four children, so staff can provide more targeted and individual support in a safer environment – including modern security systems. When it was opened the Minister for Youth Justice made a statement that it would provide better safety for staff. There is a brief unexplained statement in the assessment that [REDACTED] exclude him from placement at Cherry Creek'. Whilst [REDACTED] are a rational placement consideration, it is not evident that there was any consideration of whether it would be preferable for the child to be transferred to Cherry Creek notwithstanding this placement consideration, in order to avoid transferring him to prison.

D-2 Did the delegate give proper consideration to relevant Charter rights?

46. The Charter does not stipulate what ‘proper consideration’ involves, nor what form it should take. In what has come to be known as ‘the *HJ* test’, the Court of Appeal has confirmed that in order to give proper consideration to a relevant human right a decision-maker must:
- 46.1 understand in general terms which of the rights of the person affected by the decision may be relevant and whether, and if so how, those rights will be interfered with by the decision;
 - 46.2 seriously turn their mind to the possible impact of the decision on a person’s human rights and the implications for the affected person;
 - 46.3 identify the countervailing interests or obligations; and
 - 46.4 balance competing private and public interests as part of the exercise of justification.
47. Prior to the transfer application the Department prepared a human rights assessment, which included a table that contained a column for each of the factors listed in s 7(2) of the Charter, and rows for each of the Charter rights that would be limited by the transfer (although only the s 17(2) right was addressed, with the entries for subsequent rights merely stating ‘As above re s 17’). I have considered whether the consideration reflected in this assessment satisfies the requirement to give proper consideration to Charter rights.
48. I have been provided with an internal Departmental email from [REDACTED] in which the author of the human rights assessment observes that ‘It’s relatively short, but I think the numbers of previous assaults and number of previous warnings really speaks for itself in this case.’ There is then a comparison of the bare numbers of assaults and warnings with those numbers for another child who was transferred to prison in 2022. The author then notes that:

The one missing piece is what other measures may be open to YJ to take before going to transfer – though if he has progress[ed] through the full hierarchy of warnings, I would assume YJ have also been considering all other options as well.

Assuming other options have also already been explored, then it appears there would be no reasonably available less restrictive means available.

49. The human rights assessment itself, and the Departmental correspondence reflecting what was taken into account in conducting the assessment, suggests that the consideration was focussed on justifying the transfer (the third and fourth steps of the *HJ* test) rather than on understanding the impact on the child (the first two steps in the *HJ* test). There is nothing in the Department's documents to support the assumption that all other options had been considered.
50. I do not consider that the human rights assessment reflected a genuine understanding of how the child's rights would be interfered with by the transfer and the implications of the transfer for the child, including because the assessment did not give any consideration to the conditions in which the child was to be imprisoned (nor did Departmental officers consider these matters when undertaking the assessment). This was information that was readily available to the Secretary, who is responsible for both prisons and youth justice centres, and which should have been requested by the delegate when exercising the Secretary's delegated powers.
51. In *Certain Children (No 2)* the Court found that proper consideration had not been given – including because the assessment undertaken was based on a number of wrong factual assumptions:

The balancing decision was significantly impaired by these wrong factual assumptions. As a result, it was unreal.

52. In this case there was no consideration of the following important matters which could have been identified by the delegate prior to the application for transfer:

52.1 Upon transfer to prison the child would be treated as a 'protection' prisoner, and a 'major offender' and placed in a management unit.

52.2 Management units have internal 'yards' with no access to the outdoors.

52.3 The child would not be able to mix with other prisoners and would effectively be held in solitary confinement for six weeks.

52.4 The child would be placed on a handcuff regime requiring him to be handcuffed when out of his cell.

52.5 The child would not be allowed to have contact visits with his family or any other visitor, given that he would be placed on a handcuff regime.

52.6 The child would no longer be able to attend weekend services.

52.7 The child was required to be returned to a youth justice centre only six weeks after transfer, because his sentence ended and he was remanded in relation to new offences. Transferring the child for only six weeks was potentially destabilising and did not provide a long term solution to the ongoing issue of managing his behaviour within a youth justice setting.

D-3 What can be done to strengthen the human rights assessment?

53. It appears from the Department's internal correspondence that the human rights assessment was focused solely on justifying a decision to apply for transfer of the child that had already been made. This meant that there was not a genuine application of the first two steps of the *HJ* test – with the focus solely on justification and countervailing interests.

54. The human rights assessment would be strengthened by:

- 54.1 undertaking the assessment before the application for transfer is inevitable, so that it is possible for the assessment to affect the outcome of the decision;
- 54.2 engaging genuinely and thoroughly with the impact of the transfer on the child (for example by seeking expert advice from a child psychologist who is aware of the child's background and circumstances);
- 54.3 ensuring that information about the conditions that the child will be held in if they are transferred to an adult prison is considered in the assessment; and
- 54.4 ensuring that the purpose of the limitation of Charter rights is consistent with the Secretary's legislative duties towards the child.

E. Additional Matter

55. The issue of whether particular yards in the management units at Barwon Prison and the Metropolitan Remand Centre constitute 'the open air' for the purposes of s 47(1)(a) of the *Corrections Act 1986* (Vic) has been considered by the Supreme Court of Victoria in *Marrogi v Secretary Department of Justice and Community Safety & Ors* [2026] VSC 4, and is the subject of an appeal to the Court of Appeal. The yards in the management units at MAP are similar to those that have been considered by the Supreme Court in this judgment. I do not consider that during times when the child had access to the airing yards the child was 'in the open air' as required by s 47(1)(a) of the *Corrections Act 1986* (Vic). It appears from the 'Out of Cell Hours' register that during the entire six week period that the child was imprisoned he was denied his entitlement to an hour 'in the open air' under s 47(1)(a) of the *Corrections Act 1986* (Vic).

21 May 2026

SARALA FITZGERALD
Market Chambers

Appendix 4: The 2026 human rights assessment



Department of Justice and Community Safety

Commissioner, Youth Justice

121 Exhibition Street
Melbourne, Vic, 3000

Annexure A - Charter Assessment for decision to apply to the Youth Parole Board under s 467 of the *Children, Youth and Families Act 2005* for a direction that [REDACTED] be transferred to a prison

Purpose

Section 38 of the *Charter of Human Rights and Responsibilities Act 2006* (**Charter**) requires that public authorities, including Secretary (and or delegate), give proper consideration to relevant human rights when making decisions.

This document has been prepared by the Department to provide information for the decision-maker to take into account in addition to their own subject-matter knowledge, experience and expertise.

Context

This is an application to the Youth Parole Board (**Board**) for transfer [REDACTED] [REDACTED] from Parkville Youth Justice Centre to prison under section 467 of the *Children, Youth and Families Act 2005*, following [REDACTED].

As the Board is not a 'public authority' for the purpose of the Charter, it is an open question as to whether the Charter applies to the making of this application. Nonetheless, given the significant impact on rights effected by a transfer decision, it is appropriate to consider human rights in these circumstances.

The transfer application is accompanied by a report to the YPB, as required by s 467, which sets out:

- the antecedents and [REDACTED] behaviour relevant to this application;
- [REDACTED] age and maturity;
- the conduct of [REDACTED] that threatens the good order and safe operations of Youth Justice centres;
- the attempts made to properly control [REDACTED] within Youth Justice Custodial Services (YJCS); and
- the steps taken to avoid the need to transfer [REDACTED] to prison.

The transfer application also relies on the following documents:

- [REDACTED] offending history
- a report dated [REDACTED] requesting a warning from the Board in relation to an incident that occurred on [REDACTED];
- a report dated [REDACTED] requesting a warning from the Board in relation to an incident that occurred on [REDACTED];
- an earlier s 467 report dated [REDACTED];
- [REDACTED];

- [REDACTED]

Proper consideration

Table 1 outlines the relevant matters that should be considered by the decision-maker in accordance with the four step test for giving 'proper consideration' to human rights. The decision-maker must:

1. understand in general terms the rights of the person (or cohort of persons) affected by the decision (**columns 1 & 2**);
2. seriously turn their mind to the possible impact of the decision on a person's human rights and the implications for that person (**column 3**);
3. identify the countervailing interests or obligations (**column 4**); and
4. balance competing private and public interests as part of the exercise of justification (**column 4, Conclusion**).

Table 1: Relevant rights, impact of decision, and countervailing interests

Human right	Relevance	Impact	Countervailing interests/Justification
Protection of children Section 17(2) of the Charter provides that every child has the right, without discrimination, to such protection as is in their best interests and is needed by them by reason of being a child. 'Child' is defined in the Charter as a person under the age of 18 years.	This is an important right recognising the particular vulnerability of children within custodial settings. It seeks to ensure that children are treated in a way that takes into account their best interests. [REDACTED] is 18 years old, and therefore this right does not expressly apply to him. However, it is acknowledged that [REDACTED] was convicted of his offences as a child, under the <i>Children Youth and Families Act</i>, and therefore was anticipated to complete his sentence within a youth custodial facility, with the rights and protections of legislation and procedure tailored to children and young people.	If [REDACTED] were to be transferred to adult prison, he would no longer be subject to the frameworks and services that prioritise the protection of his best interests as a child, to which he was entitled to as a sentenced child. The impacts on his existing services, which will be significant, is as follows: <u>Current engagement with Youth Justice services</u> These are the services currently available to [REDACTED] as a young person at Parkville: • education/clinical support/recreation: [REDACTED] services in Youth Justice includes Education, Offence Specific Treatment, Cultural and Religious programs, primary and mental health care and dedicated supports [REDACTED] • focus on rehabilitation: [REDACTED] Statewide Rehabilitation Service for offence specific treatment. [REDACTED]	<u>The importance of the decision:</u> The purpose of the decision is 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. Both the Secretary and DJCS have legislative and common law duties to provide safe working environments for DJCS staff, and a safe and secure custodial environment for young people and children in the State's care. The information provided indicates [REDACTED] cannot be properly controlled in a youth justice centre [REDACTED] [REDACTED] [REDACTED] he can no longer be properly controlled in a youth justice setting.

Human right	Relevance	Impact	Countervailing interests/Justification
		Access to friends/family: [REDACTED] access personal visits daily, however, this is via a strict endorsement process which does not allow for friends and associates [REDACTED] access to Zoom's with approved visitors. access to peers of a similar age [REDACTED] mental health services [REDACTED] [REDACTED] care team [REDACTED] <u>Impact of transfer on services</u> Access to programs offered in youth justice are designed to meet the needs of adolescents and in the event a transfer to prison occurs, [REDACTED]'s progress with these services will be impacted. His reintegration opportunities and earlier access to parole will be impacted and require [REDACTED] to self-advocate and engage with services available in adult custody.	[REDACTED] was transferred to adult prison in [REDACTED] for 6 weeks following two significant staff assaults in [REDACTED]. Following an expiry of his YJCO and reverting to child remand, [REDACTED] was transferred back to Parkville [REDACTED]. The transfer application request 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. <u>The relationship between the limitation and its purpose</u> 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. This will ensure the safe operation and good order of youth justice centres generally.

Human right	Relevance	Impact	Countervailing interests/Justification
		Should [REDACTED] transfer adult custody, he will continue to have access to services including education, offence specific treatment and mental health supports, in addition to having access to different trades to assist him explore his future employment opportunities. He will initially have limited access to these services until his level of risk is assessed before developing his individual sentence management plan and goals. [REDACTED] will also be able to continue having support from his family whilst in adult custody. Subject to placement decisions, [REDACTED] will be entitled to one in person, one box visit and three Zoom visits per week which is a decrease from his entitlements in youth custody. He will have access to mental health services on entry into the adult system which will be offered to him. Should [REDACTED] transfer to prison, his care team will handover all relevant information to support his goal setting and planning forward. [REDACTED] previous experience in adult custody as a 16 years old (as a result of a prior transfer decision) saw the continuation of Youth Justice Services meeting with him regularly as a child and in preparation for his return to youth justice. [REDACTED] is 18 years old, this will not occur aside from Parkville College Transitions, the Cultural Liaison Officers [REDACTED]	<u>Any less restrictive means reasonably available</u> There are no less restrictive means reasonably available to achieve the purpose served by the transfer application. <u>Warnings</u> [REDACTED] has progressed through the hierarchy of warnings [REDACTED] [REDACTED] was transferred to prison on [REDACTED] following a serious staff assault. [REDACTED] was given a Unit Manager warning for [REDACTED]

Human right	Relevance	Impact	Countervailing interests/Justification
Right for convicted child to be treated in an age-appropriate manner Section 23(3) provides that a child who has been convicted of an offence must be treated in a way that is appropriate for that child's age.	This is an important right recognising the particular vulnerability of children within custodial settings. It seeks to ensure that children are treated separately, including being segregated from adults, and treated in a way that is appropriate for their age. As above, while it is acknowledged that [REDACTED] is now over 18 years of age, he remains within the younger age range. [REDACTED] was convicted under <i>Children Youth and Families Act</i>, and has been experiencing legislative and practice frameworks designed for children.	In addition to the impacts [REDACTED] may experience to his services, as outlined above, the transfer decision will affect his entitlements to be segregated from adults and treated in an age appropriate way. <u>Placement with adults</u> Due to [REDACTED] being 18 years of age, [REDACTED] It is likely that he may be exposed to a much older, more entrenched adult cohort.	[REDACTED] matters were escalated directly to a transfer under s 467 of the CYF Act [REDACTED] <u>Separation / isolation</u> [REDACTED] has previously been separated [REDACTED] [REDACTED] Isolation is not alternative measure that is available to mitigate against the risk posed by [REDACTED]. The use of isolation as a long-term management strategy is not permitted under the CYFA. Further, extended periods of isolation would have a poor impact on [REDACTED] overall wellbeing, mental health, capacity to engage in education and recreation, or function appropriately within a unit. <u>Remaining at Parkville</u>

Human right	Relevance	Impact	Countervailing interests/Justification
		[REDACTED] If [REDACTED] is transferred he will likely be received to [REDACTED] where he will be separated to allow for interviews to be completed to assess where he will be placed within the Corrections Victoria system. [REDACTED] The Classification and Placement Unit will conduct a case conference with key stakeholders in adult custody, including operations from the location sharing all risks, needs and documentation to support [REDACTED] if transferred to prison. Due to the nature of the proposed transfer, [REDACTED] will be reviewed quarterly before the Young Offenders Transfer Review Group which includes Youth Parole Board members, Youth Justice Executives, Sentence Management Operations and the Children's Commission.	[REDACTED] The above is not reasonably sustainable due to the limitations of safe functioning locations across the site due to [REDACTED] <u>Alternative placement options:</u> Other placement options within the Youth Justice system are extremely limited: • Cherry Creek: [REDACTED] • Parkville: [REDACTED] • Malmesbury: [REDACTED]

Human right	Relevance	Impact	Countervailing interests/Justification
		██████████ The High-Risk Panel will no longer be available to ██████████ in the event he is transferred. <u>Conditions of custody</u> ██████████ will no longer be subject to the management framework of the CYF Act (including the protection of the 'prohibited actions' in s 487), and will instead be subject to the management powers under the Corrections Act. This will include being managed by prison officers as opposed to youth justice officers, who do not have the same specialised training and experience of managing children. He will be subject to the security arrangements of adult prison, including being subject to the use of force and restraint provisions of the Corrections Act, which can involve the use of dogs, batons and OC spray, as well as a potentially higher incidence of handcuffs. He will be subject to the security classification scheme of adult prison, and depending on how his risk is assessed by Corrections Victoria, may be subject to restrictions associated with higher security classes of management. He will have some reduced entitlements to visits, including a reduction in in-person contacts. ██████████ ██████████ CPU will support his family in navigating how to book visits were he to be transferred.	██████████ The safety and security of these precincts / units could not be appropriately managed if ██████████ was transferred there. <u>Conclusion</u> While an application for a transfer, if granted by the Board, will likely have significant and varied impacts on ██████████ human rights (as outlined in this assessment), these impacts on rights are considered appropriate in the circumstances with regard to: • The important and pressing purpose of the decision, to ensure good order and safety of youth justice precincts in circumstances where ██████████ is assessed as posing an uncontrollable risk to safety, which promotes the human rights of others to life, security of person and protection of children; • Less restrictive measures, such as warnings and isolation, have failed to mitigate this risk; • There are no reasonably available alternative placements within the youth justice system; and • ██████████ is now an adult who presents with age-

Human right	Relevance	Impact	Countervailing interests/Justification
		██████████ will likely be subject to a period of restricted movements in the initial stages of his transfer, inclusive of the use of isolations and handcuff regimes while his security considerations are being assessed. ██████████ <u>Parole</u> The decision will transfer ██████████ into the jurisdiction of the Adult Parole Board, which adopts a different focus with regards to parole decisions. While the Youth Parole Board prioritises rehabilitation and the best interests of a young person in parole decisions, the Adult Parole Board is more heavily focussed on community safety and community supervision. To be afforded parole in the adult custody, ██████████ will need to be self-motivated to engage with services and supports available.	Accordingly, the decision to apply for a transfer is assessed as compatible with the Charter.
Humane treatment when deprived of liberty Section 22(1) relevantly provides that all persons deprived of liberty must be treated with humanity and with	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 that 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 may be considered a hardship that goes beyond that which is required to be imposed as a necessary consequence of incarceration.	

Human right	Relevance	Impact	Countervailing interests/Justification
respect for the inherent dignity of the human person.		However the right to humane treatment is subject to conditions and restrictions necessary to ensure security and safe custody. [REDACTED]	
Religious and cultural rights (ss 14 and 19) Section 14 of the Charter protects the freedom to have or adopt a religion or belief of one's choice and to demonstrate one's religion or belief either individually or as part of a community. Section 14(2) provides that a person must not be coerced in a way that limits this freedom. Section 19(1) provides that all	This is an important right recognising the particular vulnerability of prisoners. It seeks to ensure that prisoners have access to and a means of practicing culture and religion whilst subject to custody. Imprisonment in an adult prison has the consequence that young people may not have access to religious and cultural programs pursuant to their age and developmental needs. Freedom of culture and religion is restricted as such inclusive of limitations in dress, the wearing of cultural or religious items, and access to religious and cultural gathering which is required to be imposed as a necessary consequence of	[REDACTED] [REDACTED] has access to religions and cultural supports in Youth Justice [REDACTED] [REDACTED] Currently, [REDACTED] access to programs is [REDACTED] [REDACTED] Were [REDACTED] to be transferred to prison, the restrictions he is subject to within youth custody would no longer be relevant, and he would be assessed as per the adult system. It is noted that when transferred to prison as a 16-year-old, [REDACTED] declined to engage with the cultural and religious supports offered to him by Youth Justice, which included people he had strong relationships with. Given [REDACTED] the lack of familiarity	

Human right	Relevance	Impact	Countervailing interests/Justification
persons with a particular cultural, religious, racial or linguistic background must not be denied the right, in community with other persons of that background, to enjoy their culture, declare and practise their religion, and use their language.	incarceration so as to engage s 14 and s 19.	with service providers within the adult prison system may present as a barrier to [REDACTED]'s engagement with this right. Accordingly, while [REDACTED] will not be denied the rights to practice his religion and culture in adult prison [REDACTED] will have access to cultural and religious supports dependent on where he is assessed to be best placed within the system), the decision has the potential to interfere with his current enjoyment of these rights. [REDACTED] may experience initial restrictions whilst risk assessments are completed, and consideration is required for [REDACTED].	

The following rights were considered not to be engaged by this decision:

- **Recognition and Equality before the law (s 8)** – [REDACTED] will be provided equality before the law which protects enjoyment of human rights without discrimination and equal and effective protection from discrimination, including in relation to age and disability.
- **Protection from torture and cruel, inhuman or degrading treatment (s 10)** - There are appropriate systems and processes in place to ensure that [REDACTED] would not be subject to ill-treatment or punishment that amounts to humiliation or debasement if he were transferred to prison. These include independent visitors, the Victorian Ombudsman and his community support services.
- **Liberty and security of the person (s 21)** – As [REDACTED] is currently detained in Youth Justice custody, a transfer to prison would not constitute any greater restriction on his right to liberty. [REDACTED] right to security of the person would be protected by limits on the use of force and restraint that apply in prisons and the obligation of correctional authorities to comply with the Charter.
- **Rights in criminal proceedings (s 25)** – If transferred to prison, [REDACTED] would have continued access to his legal representatives.

Endorsed By [REDACTED]

Appendix 5: Response to our recommendations from the then Minister for Youth Justice



The Hon. Paul Hamer MP

Minister for Local Government
Minister for Youth Justice
Minister for Corrections

Level 16, 121 Exhibition Street
Melbourne Victoria 3000
Telephone: 1300 315 189

Our ref: [REDACTED]

Marlo Baragwanath
Ombudsman
Victorian Ombudsman

By email: [REDACTED]

Dear Ombudsman

RESPONSE TO DRAFT REPORT RECOMMENDATIONS

Thank you for your recent letter to the former Minister for Youth Justice and the Attorney-General on your investigation into the human rights assessment supporting transfer of a child from youth justice to adult prison.

I acknowledge the seriousness of your concerns and note that you have drafted eight recommendations aimed at strengthening the protection of children's human rights and administrative decision making related to the *Charter of Human Rights and Responsibilities Act 2006* (Charter). This response relates to the recommendations 1-3, which are directed at legislative or regulatory amendments. A specific response to each draft recommendation is provided in Enclosure A. I note that the Secretary of the Department of Justice and Community Safety (department) will provide a response regarding recommendations 4-8.

The legislative transfers framework is an important mechanism that helps ensure our youth justice facilities remain secure, safe and conducive to rehabilitating vulnerable children and young people. I note that the Victorian Parliament recently considered these settings in detail as part of debating the *Youth Justice Act 2024* (Act).

As you are aware, the Act commences in full on 30 September 2026. The Act makes changes to the transfers framework to ensure that young people (particularly aged 18 and over) who are seriously disruptive while in custody are able to be transferred or prevented from returning to youth justice custodial centres. The Act maintains the Youth Parole Board (Board) as the decision maker for transfer decisions, in recognition of the Board's long history of commitment to rehabilitation and best outcomes for children and young people.

The Board's exemption from the Charter is critical to allow transfer decisions to be made quickly and in response to dynamic and changing custodial environments. The Act introduces a new safeguard for children and young people facing a transfer decision, requiring the Secretary to provide the child or young person with an opportunity to obtain

1 of 2

Note: The Victorian Premier announced a new Cabinet on 4 August 2026. This response was provided by the former Minister for Youth Justice.

legal advice prior to a transfer application being heard and determined. It also allows a young person subject to a transfer decision a right of reply to the Board.

The Act also introduces additional safeguards for children aged under 18 years, including a requirement on the Secretary, as part of a transfer application, to advise the Board of steps taken to avoid the need to transfer the child. This advice will be balanced against whether the child has engaged in conduct that seriously impacts the health, wellbeing or safety of any person in a youth justice facility. As these changes are yet to commence, it is important that government takes the necessary time to monitor and assess the efficacy of the updated transfers framework before any further legislative or regulatory change is considered.

In addition to legislative changes, a clear oversight and coordination process has been established in relation to transfers to adult prison. The Board and Sentence Management Division of Corrections Victoria have jointly established the Young Offenders Transfer Review Group to monitor and consider young people who have been, or will potentially be, transferred between a youth justice facility and prison. This group reviews the status of each young person until they complete their sentence or turn 21 years of age and are no longer eligible for return to a Youth Justice Centre, ensuring both jurisdictions maintain contemporary knowledge about these young people and the service system response.

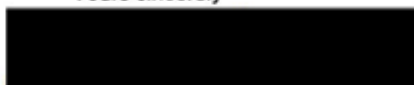
More broadly, Victoria has oversight mechanisms in place that are designed to ensure that people in custody are treated with dignity and respect. This includes both internal and independent oversight regimes that comprise the department's Justice Assurance Review Office, the Commission for Children and Young People and independent custodial facility visitor schemes. These are designed to ensure that people in detention are treated fairly, humanely and consistently with Charter.

I acknowledge that independent oversight is an important part of ensuring the safety and integrity of the youth justice system. I thank the Victorian Ombudsman and other agencies with oversight functions for the important work they do to ensure that children and young people in custody are treated fairly, humanely and consistently with the Charter.

The department will continue to work constructively with your office to respond to complaints raised about youth justice operations, and government will continue to monitor the impacts of the Act once it commences.

Thank you again for investigating this important matter.

Yours sincerely



The Hon. Paul Hamer MP
Minister for Local Government
Minister for Youth Justice
Minister for Corrections

4/6/2026

Cc: The Hon. Sonya Kilkenny
Attorney-General

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