

INVESTIGATION SUMMARY

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

September 2026

Summary



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.

Child transferred to adult prison

What we investigated

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

An application to transfer is made by the Secretary of the Department of Justice and Community Safety ('the Department'), or their delegate, to the Youth Parole 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 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 is whether, alongside that duty to ensure safety, the Department properly considered what the transfer would mean for the child's rights.

Why it matters

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.

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. This includes those who have committed criminal offences.

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

What we found

- **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 decision to apply to transfer the child limited several of the child's rights.** The child lost important legal protections that apply in youth justice and was exposed to harsher conditions – isolation, use of handcuffs, lack of access to education, lack of cultural support and no physical family contact.
- **The limits on the child's rights were not reasonable under law.** A particularly problematic element of the human rights assessment was its reference to 'denunciation or deterrence'. Denunciation – understood as moral condemnation of conduct – is not an appropriate purpose for determining the form of a child's detention. By introducing this concept, the Department's human rights assessment considered irrelevant factors.
- **The human rights assessment failed to demonstrate that the limitations on the child's rights were reasonable or demonstrably justified.** 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 conditions that risk long-term developmental harm. The assessment emphasised the child's behaviour and the risks to safety but did not demonstrate that the limitation of rights was a proportional response.

- **The Department has the capacity to meaningfully consider human rights as part of its processes.** In 2026, the child – now 18 – was involved in another incident and the Department again applied to transfer them to adult prison. The way the Department considered their human rights this time – after seeing a draft of this report – was a distinct improvement. Its assessment provided a more defensible rationale for the transfer.

Overall, we found that the 2025 human rights assessment did not explore or weigh how the limitations on the child's rights would impact them. It was not used as a decision-making tool but was completed to support a decision that had already been made.

The Department's response

Ultimately, the Department disagreed with our position and findings and defended its actions. It acknowledged the impact of the transfer on the child but said it was a 'last resort' amid safety risks to other young people in its care, and to custodial staff.

The Department stated: 'It is clear the delegate who made the Application did give proper consideration to Charter rights'. It maintained that any limitations on the child's rights which occurred because of the application 'were reasonable and demonstrably justified'.

The Department also provided several legal arguments concerning the application of the Charter to decisions to transfer a child into adult custody.

It asserted that the Charter does not require a detailed, technical or exhaustive human rights analysis, and argued that the Ombudsman's role does not extend to making findings of unlawfulness in relation to Charter compliance.

The expert human rights lawyer we consulted for this investigation did not agree with the Department's position, noting that some of its legal arguments did not reflect the current and authoritative position. The Ombudsman agrees with the expert's advice.

What needs to change

We made eight recommendations. Three for legislative change were not accepted by the Victorian Government. They were intended to:

- remove the power to transfer children into the adult prison system
- make the Youth Parole Board subject to the Charter when deciding on transfers into the adult prison system
- boost children's access to legal representation when dealing with the Youth Parole Board.

The Department accepted four of the five recommendations aimed at improving:

- the rigour of human rights assessments for transfers to the adult prison system
- staff understanding of their obligations under the Charter
- guidance for children at risk of being transferred to the adult prison system.



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