

**Judge Amanda Chambers
President of the Children’s Court of Victoria**

**Speech delivered at the Community Opening of the Legal Year
Waldron Hall, County Court of Victoria
Monday 30 January, 2017**

It is with pleasure that I acknowledge the traditional owners and custodians of the land, the people of the Kulin nations, and pay my respects to their elders, past and present.

Judicial colleagues, distinguished guests, ladies and gentlemen. I am delighted and honoured to be asked to speak to you today at the ICJ Community Opening of the Legal Year for 2017.

For me, today presents an opportunity to reflect on the oath that I, and every other judicial officer in Victoria, makes upon our appointment. It is a promise to discharge our duties without fear, favour or affection, to the best of our knowledge and ability, according to law.

Eloquently, and succinctly, the oath reflects the central tenets of the rule of law. Often taken for granted, but shockingly absent in many parts of the world, the rule of law is a vital and precious attribute of a fair and just society.

That is not to say that the law, decisions of the judiciary and the performance of the justice system should be immune from public debate or scrutiny. To the contrary. But equally and importantly, the community must be properly informed so that real and effective reform is achieved concerning the very complex issues that confront the justice system. In no area is this more important, I would suggest, than in the area of youth justice.

The past 18 months have seen an unprecedented, and unrelenting focus in the mainstream media on youth offending. Headlines such as “Teen thugs receive kid glove justice” call for a “tough on crime” response. The events late last week also contribute to a community concern that there are increasing numbers of lawless young people and that our society is more dangerous than ever.

So how big is the problem of violent youth offending?

In fact, it is notable that apprehension rates for children and young people in Victoria have seen a continuing downward trajectory. In the past five years, the number of young people sentenced in the Children's Court of Victoria has decreased by 42%, from 5,844 in 2010 to 3,341 in 2015. The precise cause of this dramatic reduction in the number of children and young people appearing before the Court is not clear, although we at the Court believe it is due in part to an increased emphasis on police cautioning, diversion and early intervention.

A Sentencing Advisory Council Report in July 2016 analysed the number of children involved in Victoria's criminal justice system in 2015. Of around 550,000 young people aged between 10-17 living in Victoria, only approximately 1.4% are processed by the police, 0.6% sentenced by the Court and a mere 0.02% or 103 ordered by the Children's Court to be detained.

However, data also tell us that in Victoria, as in many other jurisdictions, we are experiencing increased rates of apprehension for a small but significant number of recidivist offenders, many of whom are committing serious violent offences. This is rightly concerning to the community and justifies special attention.

It is hard to find a simple, straightforward answer to why this small cohort of young people are violent and why youth violence is increasing. In fact, there is a lot of research in this area but most studies find "co-relationships" rather than causes. One thing is clear however, that not all youth offenders are the same. But the characteristics of these young offenders point to the complexity of the problem.

The Youth Parole Board reported in 2016 that of 167 males and nine females detained on sentence and remand in October that year:

- 63% had themselves been victims of abuse, trauma or neglect;
- 45% had been subject to a previous child protection order;
- 62% had previously been suspended or expelled from school;

- 30% presented with mental health issues and 24% with concerns regarding intellectual functioning;
- 66% had a history of alcohol and drug misuse;
- 18% had a history of self-harm or suicidal ideation;
- 38% had a family history of parental or sibling imprisonment;
- 10% were homeless or in insecure housing; and
- 12% were themselves parents.

There is a wealth of research from Australia and worldwide on the causes of youth offending. The research indicates that while many of the causes of offending generally are also the causes of violent offending, there are some special factors when considering violent offending.

In general, the research tells us there are, broadly speaking, two types of youth offender.

The first is the life-course persistent offender. Of concern to us as a community, these are young people who usually begin offending before the age of 10 years and their entire lives are often marked by anti-social behaviour. Consistent with this research, the Victorian Sentencing Advisory Council reported last year that young people who commit their first offence between 10-12 years of age have an overall reoffending rate of 86%, with 62% being for offences of violence. We know that for this small group, their lives from a very young age have been marked by multiple adverse influences, including family dysfunction.

The second type of youth offender is the adolescent onset offender. This is a much larger group where the offending is primarily caused by situational factors such as anti-social peers, drugs and alcohol, disengagement from education and family.

A good understanding of the risk and protective factors associated with youth offending, and the types of young offenders, is perhaps the closest we can get to an understanding of the causes of violent offending by young people. Comprehensive risk assessments and

screening tools in the Children's Court are increasingly vital to provide the Court with essential information about the children appearing before them. Targeting early intervention with at-risk families, multi-agency interventions and addressing peer influences, are shown by research to be the best ways of tackling violent youth offending, and in turn protecting the community. These are community problems. They require a whole of government response to tackle effectively. The courts play a critical role in that response but are just one element of the equation.

Last year, Chief Justice Marilyn Warren AC chose the topic of youth offending in giving The Hon Austin Asche AC QC Oration in Law and Governance at Charles Darwin University. Her Honour said this:

Children and young people are the 'tomorrow'. So far, there has been some, but limited success at addressing their needs and rights. Let me venture into the order of things: the future of children and young people is in the top order of priorities. The challenge is how to confront it. The priority is very, very high for judges and magistrates. The judiciary is removed from the maelstrom of current public affairs. The judiciary does not shape policy, rather it encounters the consequences. If governments and policy-makers embrace the future of children and young people, the courts, I fully expect, will help.

So, what does the law say about the sentencing of children and young people who offend?

Consistent with principles outlined in international human rights instruments and with Victoria's *Charter of Human Rights and Responsibilities Act 2006*, the *Children Youth and Families Act 2005* articulates processes and considerations clearly differentiated from the adult criminal justice system. It does this by providing for specialist and therapeutic responses to children and young people with a clear emphasis on sentencing outcomes that promote the rehabilitation of the young person, connect them to family, education and training, that avoid stigmatisation, and where appropriate, ensuring they bear responsibility for their actions and serve to protect the community.

The Children's Court of Victoria has been at the forefront of innovative approaches aimed at promoting these sentencing objectives:

- The Children’s Koori Court – aimed at interrupting the cycle of intergenerational offending and incarceration by providing critical connections to community and cultural identity;
- The Education Justice Initiative – placing education at the heart of the work of the Children’s Court;
- Diversionary programs – aimed at providing early and effective interventions and to prevent further progression into the criminal justice system;
- Specialist sex offence lists – with therapeutic treatment programs attached; and
- Group conferencing – to promote an understanding of the impact of criminal behaviour on victims and the community and develop comprehensive plans to address offending.

Unlike the adult sentencing regime, considerations of punishment, denunciation and general deterrence have no application when sentencing young people. They form no part of the principles of law that apply when dealing with children.

The difficult task that confronts Courts when imposing a sentence for serious crimes committed by young offenders was most recently discussed by the Court of Appeal in *Webster v the Queen* [2016] VSCA 66, where Maxwell P and Redlich JA observed:

On the one hand, conventional considerations of just punishment and denunciation point towards a custodial penalty, because serious offences are seen to require the uniquely punitive sanction of loss of liberty. On the other hand, the public interest in the rehabilitation of an offender is never greater than in the case of a young offender.

It is the judicial officers working in the specialist jurisdiction of the Children’s Court who undertake this difficult but critically important task each and every day. They, as with every other judge, magistrate and tribunal member in this State, do so without fear, favour or affection.

To the best of their knowledge and ability.

According to law.