

## **Protocol: Principles for Managing Children in Custody in the Children's Court of Victoria**

### **Statement of Purpose**

1. This Protocol applies to matters heard by the Children's Court of Victoria involving a child accused who appears in the Criminal Division of the Court at any venue of the Children's Court of Victoria or of the Magistrates' Court of Victoria sitting as the Children's Court.
2. The Court recognises the rights of children and the obligations it has under the *Charter of Human Rights and Responsibilities Act 2006* (Vic) and adopts the following practices and procedures in the management of children appearing in any venue across the State.
3. In its management of these children, the Court is guided by the general principle that it should take reasonable and necessary steps to ensure that children are not exposed to avoidable intimidation, humiliation and distress and that they are assisted to effectively participate in proceedings before the Court. The Court acknowledges that particular in-court procedures may be needed to make them age-appropriate and possible adjustments will be considered by the Court on a case by case basis.

### **Detention of a child whilst in custody before the court**

4. When held in custody, a child accused must be segregated from adults.
5. The requirement for segregation of children from adults in custody is mandatory pursuant to s.23(1) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic). Further, under s.23(3) of that Act, a child charged with a criminal offence has the right

to a procedure that takes in to account his or her age and the desirability of promoting the child's rehabilitation. The right to age-appropriate procedures also arises as an aspect of the right to equality in s.8(3) of that Act.

**In-court procedures for hearings (including bail hearings) involving a child accused**

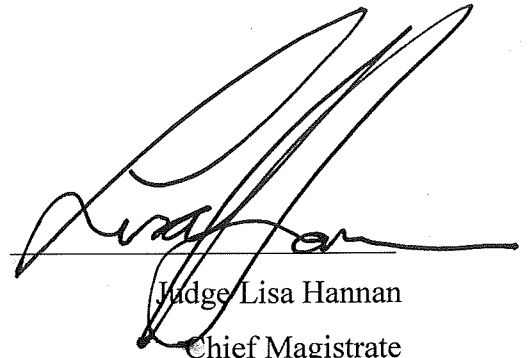
6. Possible adjustments to in-court procedures should be considered and adopted wherever practicable. Subject to the direction of the presiding judicial officer, these include that:
  - (a) the child is not to be handcuffed in court;
  - (b) where the child remains in the dock, that the dock is not enclosed by secure glass;
  - (c) where practicable, there is continuity of both judicial officer and court room;
  - (d) consideration is given to the need for breaks to take in to account the child's age and ability to concentrate for long periods;
  - (e) all practitioners are to speak from a seated position at the bar table;
  - (f) the child is referred to by his or her first name by all the practitioners and not by any other term such as "accused" or "the prisoner";
  - (g) each step in the proceeding is explained to the child in a manner they can understand and that the matter is conducted, so far as practical, in language that they can understand having regard to their age or other cognitive limitations;
  - (h) for Children's Koori Court sittings, the child accused is permitted to sit before the Elders and Respected Persons at the bar table and is not to remain in the dock.

7. This Protocol is issued by the President of the Children's Court of Victoria and the Chief Magistrate of the Magistrates' Court of Victoria and is intended to outline clearly the principles to be applied in the management of children in custody in all venues at which the Children's Court of Victoria sits.

Dated this day *10<sup>th</sup>* of *December* 2019



Judge Amanda Chambers  
President  
Children's Court of Victoria



Judge Lisa Hannan  
Chief Magistrate  
Magistrates' Court of Victoria