# **INDEX**

|  |
| --- |
| **THIS FILE CONTAINS A LIST OF HEADINGS FOR CHAPTERS, PARTS, SECTIONS AND SUB-SECTIONS IN EACH OF THE 12 CHAPTERS OF THESE RESEARCH MATERIALS.****PROVIDED THAT THE READER IS ON-LINE, PLACING THE CURSOR ON THE RED CHAPTER HEADING AND PRESSING CTRL+CLICK WILL ENABLE THE READER TO DOWNLOAD THE TARGET CHAPTER.****THEN PLACING THE CURSOR ON ANY LINE IN THE CONTENTS OF THE DOWNLOADED CHAPTER AND PRESSING CTRL+CLICK WILL TAKE THE READER TO THE SELECTED PART, SECTION OR SUB-SECTION IN THAT CHAPTER.** |

# **[1. ACTS, REGULATIONS, RULES](https://www.childrenscourt.vic.gov.au/research-materials/chapter-1-acts-rules-and-regulations)**

**1.1 Acts**

 **1.1.1 Children and Young Persons Act 1989 (Vic) [Act No.56/1989]**

 **1.1.2 Children, Youth and Families Act 2005 (Vic) [Act No.96/2005]**

**1.1.3 Amendments to Children, Youth and Families Act 2005 (Vic) from March 2016**

**1.1.4 COVID-19 amendments to relevant legislation [2020/21] and their aftermath**

 **1.1.5 CYFA amendments in the Aboriginal Self-determination etc Act 2023**

[**1.1.6 Relevant amendments made by the Justice Legislation Amendment Act 2023**](#_1.1.6_Amendments_to)

[**1.1.7 Youth Justice Act 2024**](#_1.1.6_Amendments_to)

**1.2 Regulations**

 **1.2.1 Children, Youth and Families Regulations 2017**

 **1.2.2 Intervention Orders Regulations**

 **1.2.3 COVID-19 temporary Regulations**

 **1.2.4 Criminal Procedure Regulations 2020**

 **1.2.5 Bail Regulations 2022**

**1.3 Rules**

**1.4 Practice Directions/Notes, Court Guidelines & Court Information Guides**

 **1.4.1 Practice Directions & Practice Notes**

 **1.4.2 Court Guidelines**

 **1.4.3 Court Information Guides**

**1.5 Charter of Human Rights and Responsibilities Act 2006 [Act No.43/2006]**

 **1.5.1 Human Rights**

 **1.5.2 Interpretation of Laws**

 **1.5.3 Application of the Charter to child protection and associated VCAT proceedings**

**1.6 Towards an electronic Court [eCourt]**

 **1.6.1 Remote hearings using Webex**

 **1.6.2 Courtlink & Bridge**

 **1.6.3 Case Management System (CMS), including eDocs**

**1.7 Yoorrook Justice Commission’s Second Interim Report and Govt response**

**1.8 Severe Substance Dependence Treatment Act 2010 [Magistrates’ Ct only]**



# **[2. COURT OVERVIEW](https://www.childrenscourt.vic.gov.au/research-materials/chapter-2-court-overview)**

[**2.1**](#_2.1_Establishment,_Vision) **Establishment, Role, Strategic Priorities & Purpose**

[**2.2 Judicial & Administrative officers of the Court**](#_2.2_Judicial_&)

[**2.3 Organisational Structure of the Children's Court at Melbourne**](#_2.3_Organisational_structure)

[**2.4 Divisions of the Court**](#_2.4_Divisions_of)

[**2.5 Venues of the Court**](#_2.5_Venues_of)

 [**2.5.1 Sections 505 & 505A of the CYFA**](#_2.7.1_Section_523)

 [**2.5.2**](#_2.7.2_Sections_28) **Victorian Children’s Court venues**

 [**2.5.3 Children’s**](#_2.7.3_Pseudonym_orders) **Court Weekend Online Remand Court [WORC]**

 [**2.5.4 The Court Security Act 1980**](#_2.7.2_Sections_28)

[**2.6 A specialist court**](#_2.6_A_specialist)

[**2.7 The Court is generally open to the public**](#_2.7_The_Court)

 [**2.7.1 Section 523 of the CYFA**](#_2.7.1_Section_523) **and sections 1, 4, 8A & 8B of the Open Courts Act 2013**

 [**2.7.2 Sections 28-30 Open Courts Act 2013 and s.93.2 Criminal Code Act 1995 (Cth)**](#_2.7.2_Sections_28)

 [**2.7.3 Pseudonym orders**](#_2.7.3_Pseudonym_orders)

 **[2.7.4 Media applications for copies of court documents in Criminal Division cases](#_2.7.4_Media_applications)**

 **[2.7.5 Media applications for copies of audio or audiovisual recordings of police int’s](#_2.7.5_Media_applications_1)**

 **[2.7.6 Recording of proceedings in the Children’s Court](#_2.7.5_Media_applications_1)**

[**2.8 Restriction on publication of proceedings**](#_2.8_Restriction_on)

 [**2.8.1 Statutory prohibition on publication of identifying particulars–s.534 of CYFA**](#_2.8.1_Statutory_prohibition)

 [**2.8.2 Suppression orders**](#_2.8.2_Suppression_orders)

 [**2.8.3 ‘Take-down’ orders**](#_2.8.3_Section_10(5))

 [**2.8.4 Relationship**](#_2.8.2_Suppression_orders) **between s.534 CYFA and the Open Courts Act 2013**

 [**2.8.5 Section 10(5) of the Witness Protection Act**](#_2.8.3_Section_10(5))

[**2.9 Bail justices**](#_2.9_Bail_justices)

[**2.10 Court services**](#_2.10_Court_services)

 [**2.10.1 Juvenile Justice**](#_2.10.1_Youth_Justice)

 [**2.10.2 Child Witness Service**](#_2.10.2_Child_Witness)

 **[2.10.3 Court Network](#_2.10.3_Court_Network_1)**

 [**2.10.4 Victoria Legal Aid**](#_2.10.4_Victoria_Legal)

 [**2.10.5 Interpreters**](#_2.10.5_Interpreters)

 **[2.10.6 Mental Health Advice and Response Service [MHARS]](#_2.10.6_Salvation_Army)**

 [**2.10.7 Education**](#_2.10.2_Child_Witness) **Justice Initiative**

 **[2.10.8 Court Support Coordinators](#_2.10.3_Court_Network_1)**



# **[3. COURT OPERATION](https://www.childrenscourt.vic.gov.au/research-materials/chapter-3-court-operation)**

**3.1 Roles of judicial officers**

 **3.1.1 Procedural fairness (natural justice) generally**

 **3.1.2 Actual or apprehended judicial bias**

**3.2 Judicial Independence & Immunity**

 **3.2.1 Judicial Independence**

 **3.2.2 Immunity of judicial officers and court officials**

**3.3 Children’s Court Judicial Powers**

 **3.3.1 Contempt powers conferred by the Magistrates’ Court Act 1989**

 **3.3.2 Powers conferred by the Vexatious Proceedings Act 2014**

 **3.3.3 Powers conferred by the CYFA or any other legislation**

 **3.3.4 Implied powers to govern the process of the Court**

**3.3.4.1 Power to prevent an abuse of the Court’s own judicial process**

**3.3.4.2 Res judicata & cause of action, issue, claim or Anshun estoppel**

**3.3.4.3 Requirement of leave by CCV to withdraw a protection application**

**3.3.4.4 Implied power to reinstate a proceeding which was struck out**

**3.4 Procedural guidelines**

 **3.4.1 Comprehensibility etc.**

 **3.4.2 Program for Intermediaries and Ground Rules Hearings**

 [**3.4.3 Standing to participate as a party**](file:///D%3A%5CCHCTWEBSITE%5CResearch%20Materials%20-%203%20-%20Court%20Operation.doc#B343)

 **3.4.4 Interpreter**

 **3.4.5 Representation of adults in the Family Division**

[**3.4.6 Duty of judicial officer to assist self-represented litigant in the Family Division**](#_3.4.6_Duty_of)

**3.5 What happens in Court**

 **3.5.1 Preparation**

 **3.5.2 Mention**

 **3.5.3 Evidence**

**3.5.3.1 Admissibility of evidence generally**

**3.5.3.2 Admissibility of evidence in a contested criminal case**

**3.5.3.3 Admissibility of evidence in a Family Division case**

**3.5.3.4 The hearsay rule and exceptions thereto**

**3.5.3.5 Expert evidence**

**3.5.3.6 Illegally or improperly obtained evidence**

**3.5.3.7 Admissibility of tendency evidence and coincidence evidence**

**3.5.3.8 Conflicting evidence – Dangers of demeanour – Fallibility of human memory**

**3.5.3.9 Adducing evidence of confidential communication or protected health information**

**3.5.3.10 Common knowledge**

**3.5.3.11 Admissibility of evidence of distress**

**3.5.3.12 Tendering of documents**

 [**3.5.4 Contested Criminal Division cases**](#_3.5.4_Contested_Criminal)

**3.5.4.1 The usual procedure**

**3.5.4.2 Application of Part 8.2 of the Criminal Procedure Act 2009**

 [**3.5.5 Use of recorded evidence [VARE] in certain criminal cases**](#_3.5.5_Use_of)

[**3.5.5.1 Use of recorded evidence-in-chief of a child or cognitively impaired witness**](#_3.5.5.1_Evidence-in-chief_in)

[**3.5.5.2 Use of recorded evidence of complainants more generally**](#_3.5.5.2_Evidence_in)

 [**3.5.6 Contested Family Division cases**](#_3.5.6_Contested_Family)

[**3.5.6.1 The usual procedure**](#_3.5.6.1_The_usual)

**[3.5.6.2 Informal procedure – s.215(1) of the CYFA](#_3.5.6.2_Informal_procedure)**

**[3.5.6.3 Management of child protection proceedings – s.215B of the CYFA](#_3.5.6.3_Management_of)**

**[3.5.6.4 Obligation to accord procedural fairness in ‘best interests’ context](#_3.5.6.4_Obligation_to)**

**[3.5.6.5 Tips for advocates and witnesses in contested Family Division cases](#_3.5.6.4_Obligation_to)**

 [**3.5.7 Com**](#_3.5.7_The_Less)**pelling production of prisoner/detainee at court – Remand warrant/Gaol order**

 [**3.5.8 Use of recorded evidence in cases in the Family Division**](#_3.5.8_Use_of)

 [**3.5.9 Production of documents in cases in the Children’s Court**](#_3.5.9_Production_of)

[**3.5.9.1 Production**](#_3.5.6.1_The_usual) **under sub-poena**

[**3.5.9.2 Pre-hearing disclosure in the Criminal Division**](#_3.5.9.2__Pre-hearing)

[**3.5.9.3 Production of “notes” in “apprehension cases” in the Family Division**](#_3.5.9.3__Production)

 [**3.5.10**](#_3.5.10_Children_as) **Witnesses in court cases**

[**3.5.10.1 Ensuring**](#_3.5.6.1_The_usual) **attendance of a witness and/or production of documents or things at Ct**

**[A Witness summonses in the Family Division](#_A_OFFENCES_FOR)**

**[B Witness summonses in the Criminal Division](#_A_OFFENCES_FOR)**

**[C Notice to author of report](#_A_OFFENCES_FOR)**

[**3.5.10.2 Competence and Compellability**](#_3.5.10.2__Compellability)

**[A Competence](#_A_OFFENCES_FOR)**

**[B Compellability](#_A_OFFENCES_FOR)**

**3.5.10.3 Children as witnesses in court cases**

**3.5.10.4 Claim of privilege by a witness**

 [**3.5.11 Oaths and affirmations**](#_3.5.11_Oaths_and)

 [**3.5.12 Appearance or giving evidence in other than the traditional manner**](#_3.5.12_Appearance_or)

[**3.5.12.1 Appearance etc. by a person other than an accused**](#_3.5.12.1__Appearance)

[**3.5.12.2 Appearance etc. by an accused in a criminal or associated proceeding**](#_3.5.12.2__Appearance)

[**3.5.12.3 Alternative arrangements for giving evidence in criminal proceedings**](#_3.5.12.3__Alternative)

 [**3.5.13 The rule in Browne v Dunn**](#_3.5.13_The_rule)

 [**3.5.14 The rule in Jones v Dunkel**](#_3.5.14_The_rule)

 [**3.5.15 Unfavourable witnesses**](#_3.5.15_Unfavourable_witnesses)

[**3.6 Statutory interpretation**](#_3.6_Statutory_interpretation)

[**3.7 Judgments & Orders**](#_3.7_Judgments_-)

 [**3.7.1 Explanation of and reasons**](#_3.7.1_Explanation_&) **for orders**

 [**3.7.2 Provision**](#_3.7.2_Judgments) **of orders to parties**

 [**3.7.3 Judgments**](#_3.7.2_Judgments)

[**3.8 Amending a judgment / Reopening a case**](#_3.8_Amending_judgments)

 [**3.8.1 The ‘slip rule’**](#_3.9.1_Criminal_Division)

[**3.8.2 Reopening a case**](#_3.9.2_Criminal_Division)

[**3.9 Costs**](#_3.9_Costs)

 [**3.9.1 Criminal Division (costs of defendant / *amicus curiae*)**](#_3.9.1_Criminal_Division)

[**3.9.2 Criminal Division (costs of prosecution)**](#_3.9.2_Criminal_Division)

 [**3.9.3 Family Division (protection proceedings)**](#_3.9.3_Family_Division)

 [**3.9.4 Family Division (intervention order proceedings)**](#_3.9.4_Family_Division)

 [**3.9.5 Very limited entitlement of self-represented litigants to costs**](#_3.9.5_Very_limited)

 **[3.9.6 Enforcement of costs orders made in the Family Division](#_3.9.6_Enforcement_of)**

 **[3.9.7 Costs against the Court](#_3.9.6_Enforcement_of)**

 **[3.9.8 Costs indemnity certificates under the Appeal Costs Act](#_3.9.6_Enforcement_of)**

[**3.9.9 Costs of an intervener/contradictor**](#_3.9.9_Costs_of)

[**3.9.10 Costs in applications for suppression orders**](#_3.9.9_Costs_of)

[**3.10 Appeals/Reviews**](#_3.10_Appeals_-)

 [**3.10.1**](#_3.9.1_Criminal_Division) **Appeals to higher courts**

 [**3.10.2 Reviews**](#_3.9.2_Criminal_Division) **of judicial registrars’ determinations**

 [**3.10.3 Dismissal of appeal proceeding for want of prosecution**](#_3.9.2_Criminal_Division)

[**3.11 Case stated**](#_3.11_Case_stated)

[**3.12 The**](#_3.11_Case_stated) **Children’s Court information-sharing role**

[**3.13 Interstate execution of warrants issued by Australian state courts**](#_3.11_Case_stated)

[**3.14 Victorian Civil and Administrative Tribunal’s child protection jurisdiction**](#_3.11_Case_stated)



# **[4. FAMILY DIVISION – GENERAL](https://www.childrenscourt.vic.gov.au/research-materials/chapter-4-family-general)**

**[4.1 The Child Protection Service [‘DFFH’]](#_4.1_The_Child)**

 [**4.1.1 Functions of the Child Protection Service**](#_4.1.1_Functions_of)

 [**4.1.2 Duty of care of the Child Protection Service**](#_4.1.2_Duty_of)

 [**4.1.3 Principles governing decision-making by the Child Protection Service**](#_4.1.3_Principles_governing)

 [**4.1.4 Voluntary intervention**](#_4.1.4_Voluntary_intervention)

 [**4.1.5 Statutory intervention**](#_4.1.5_Statutory_intervention)

 [**4.1.6 The Child Protection Service as a model litigant**](#_4.1.6_The_Child)

 [**4.1.7 DFFH may authorise Aboriginal agency to carry out DFFH functions**](#_4.1.6_The_Child)

[**4.2 Role of the Children’s Court in Child Protection in Victoria**](#_4.2_Role_of)

[**4.3 Jurisdiction of Family Division**](#_4.3_Jurisdiction_of)

 [**4.3.1 Jurisdiction under the CYFA**](#_4.3.1_Jurisdiction_under)

 [**4.3.2 Jurisdiction under the Family Law Act 1975 (Cth) [as amended]**](#_4.3.2_Whether_jurisdiction)

 [**4.3.3 Jurisdiction under the**](#_4.3.2_Whether_jurisdiction) **Terrorism (Community Protection) Act 2003**

 **4.3.4 Limited jurisdiction under the Births, Deaths etc Registration Act 1996**

 [**4.3.5 Jurisdiction under the Firearms Act 1996**](#_4.3.5_Jurisdiction_under)

[**4.4 Definitions of ‘child’ & 'parent'**](#_4.4_Definitions_of)

[**4.5 Parental responsibility & contact**](#_4.5_Parental_responsibility)

 [**4.5.1 Parental responsibility – Major long-term issue**](#_4.5.1_Parental_responsibility)

 [**4.5.2 Where carer may exercise parental responsibility**](#_4.5.2_Where_carer)

 [**4.5.3 Contact**](#_4.5.3_Contact)

 [**4.5.4 Terms used in the Family Law Act**](#_4.5.4_Terms_used)

[**4.6 Protective intervention reports [previously termed “Notifications”]**](#_4.6_Protective_intervention)

 [**4.6.1 Anonymity of protective intervention reporter [notifier]**](#_4.6.1_Anonymity_of)

 [**4.6.2 Mandatory protective intervention report**](#_4.6.2_Mandatory_protective)

 [**4.6.3 Child protection report statistics (Victoria & Australia) – 1989 to 2023**](#_4.6.3_Child_protection)

[**4.7 Representation of children in the Family Division of the Court**](#_4.7_Representation_of)

 [**4.7.1 Obligation to afford child a fair hearing**](#_4.7.1_Obligation_to)

 [**4.7.2 Models of child representation**](#_4.7.2_Models_of)

 [**4.7.3 Child usually represented if aged 10 years or more**](#_4.7.3_Child_usually)

 [**4.7.4 Represent’n of child under 10 or not mature enough to give instructions**](#_4.7.4_Representation_of)

 [**4.7.5 Representing more than one child in a proceeding**](#_4.7.5_Representing_more)

 [**4.7.6 Child representation in Children's Court and Family Court compared**](#_4.7.6_Child_representation)

 [**4.7.7 Recommendations by Australian Law Reform Commission**](#_4.7.7_Recommendations_by)

 [**4.7.8 Recommendations by Victorian Law Reform Commission**](#_4.7.8_Recommendations_by)

 [**4.7.9 Recommendations by the “Cummins Inquiry”**](#_4.7.9_Recommendations_by)

 [**4.7.10 Representation of child who is not respondent or applicant under FVPA**](#_4.7.10_Representation_of)

[**4.8 Conduct of proceedings in Family Division**](#_4.8_Conduct_of)

 [**4.8.1 Informal procedure**](#_4.8.1_Informal_procedure)

 [**4.8.2 Whether an adult party may be represented by a ‘litigation guardian**](#_4.8.2_Court_may)**’**

 [**4.8.3 Court may inform itself as it thinks fit – Rules of evidence not mandatory**](#_4.8.2_Court_may)

 [**4.8.4 Impact of the “best interests” principle on the Court’s procedure**](#_4.8.3_Impact_of)

 [**4.8.5 Findings on balance of probabilities**](#_4.8.4_Findings_on)

 [**4.8.6 Attendance of child at Court**](#_4.8.6_Attendance_of)

[**4.9 Family Division Court hearings**](#_4.9_Family_Division)

 [**4.9.1 Apprehension – Hearing after child placed in emergency care**](#_4.9.1_Apprehension_–)

 [**4.9.2 Mention**](#_4.9.2_Mention)

 [**4.9.3 Conciliation**](#_4.9.3_Conciliation)

 [**4.9.4 Readiness Hearing**](#_4.9.4A_Readiness_Hearing)

 [**4.9.5 Directions hearing preceding a contest**](#_4.9.4_First_directions)

 [**4.9.6 Contested hearing**](#_4.9.5_Contested_hearing)

 [**4.9.7 Throughput**](#_4.9.5_Contested_hearing) **of applications in the Family Division child protection jurisdiction**

 [**4.9.8 Marram-Ngala Ganbu Program**](#_4.9.6_Marram-Ngala_Ganbu)

[**4.10 Alternative Dispute Resolution**](#_4.10_Alternative_Dispute)

 [**4.10.1 Conciliation Conferences**](#_4.10.1_Conciliation_Conferences) **[NO LONGER AVAILABLE]**

 [**4.10.2 Jurisdiction & Purpose of CC**](#_4.10.2_Jurisdiction_&)

 [**4.10.3 Convenor**](#_4.10.3_Convenor)

 [**4.10.4 Repeal of advisory conference provisions**](#_4.10.4_Repeal_of)

 [**4.10.5 Attendance at CC**](#_4.10.5_Attendance_at)

 [**4.10.6 Guidelines & Procedure**](#_4.10.6_Guidelines_&)

 [**4.10.7 Reports & Confidentiality**](#_4.10.7_Reports_&)

 [**4.10.8 Court orders**](#_4.10.8_Court_orders)

 [**4.10.9 Statistics**](#_4.10.9_Statistics)

 [**4.10.10 Judicial Resolution Conferences**](#_4.10.10__Judicial)

[**4.11 Children's Court & Family Court compared & contrasted**](#_4.11_Children's_Court)

 [**4.11.1 Public law versus private law**](#_4.11.1__Public)

 [**4.11.2 Responsibilities and obligations of the Family Court to children**](#_4.11.2__Responsibilities)

 [**4.11.3 Notification by the Family Court to State welfare authorities**](#_4.11.3__Notification)

 [**4.11.4 Representation of children**](#_4.11.4__Representation)

 [**4.11.5 Priority of orders**](#_4.11.5__Priority)

 [**4.11.6 Sharing**](#_4.11.5__Priority) **of materials between Children’s Court & Family Court**

[**4.12 Relationship between attachment and child's emotional wellbeing**](#_4.12_Relationship_between)

[**4.13 Shared care of a young child**](#_4.13_Shared_care)

[**4.14 Frequency of contact between young child and parent**](#_4.14_Frequency_of)

 [**4.14.1 The**](file:///D%3A%5CCHCTWEBSITE%5CBaby#_4.14.1__) **Victorian case of *DOHS v Ms B & Mr G***

 [**4.14.2 American judicial guidelines 2009**](#_4.14.3__American)

[**4.15 Cumulative harm**](#_4.15_Cumulative_harm)

[**4.16 Family**](#_4.15_Cumulative_harm) **Drug Treatment Court**

**4.17 Working with children checks**



# **[5. FAMILY DIVISION – CHILD PROTECTION](https://www.childrenscourt.vic.gov.au/research-materials/chapter-51-child-protection-after-1-march-2016)**

**THIS CHAPTER APPLIES FROM 01/03/2016. OLD CHAPTER 5 DETAILS CHILD PROTECTION LAW BEFORE 01/03/2016 AND IS AVAILABLE ON REQUEST.**

[**5.1 Child abuse**](#_5.1_Child_abuse)

 [**5.1.1 The four overlapping categories**](#_5.1.1_The_four)

 [**5.1.2 Emotional/psychological abuse**](#_5.1.2_Emotional/psychological_abuse)

[**5.2 Parent, Parental responsibility, Custody & Guardianship**](#_5.2_Parent,_Parental)

 [**5.2.1 Custody & guardianship [abolished concepts]**](#_5.2.1_Custody_&)

 [**5.2.2 Parental responsibility & major long-term issue**](#_5.2.2_Parental_responsibility)

 [**5.2.3 Definition of ‘parent’**](#_5.2.3_Definition_of)

[**5.3 Jurisdiction & Applications**](#_5.3_Jurisdiction_&)

 [**5.3.1 Primary Applications**](#_5.3.1_Primary_Applications)

 [**5.3.2 Secondary Applications**](#_5.3.2_Secondary_Applications)

 [**5.3.3 No inconsistency between *Migration Act* 1958 (Cth) & CYFA provisions**](#_5.3.3_No_inconsistency)

[**5.4 Temporary assessment order**](#_5.4_Temporary_assessment)

 [**5.4.1 Application**](#_5.4.1_Application)

 [**5.4.2 Procedure for hearing of application**](#_5.4.2_Procedure_for)

 [**5.4.3 Matters to be considered by the Court**](#_5.4.3_Matters_to)

 [**5.4.4 Pre-conditions for making of TAO**](#_5.5.4_Pre-conditions_for)

 [**5.4.5 What TAO may provide for**](#_5.4.5_What_TAO)

 [**5.4.6 Report**](#_5.4.6_Report)

 [**5.4.7 Duration**](#_5.4.7_Duration)

 [**5.4.8 Application for variation or revocation of an *ex parte* TAO**](#_5.4.8_Application_for)

 [**5.4.9 Appeal**](#_5.4.9_Appeal)

 [**5.4.10 Statistics**](#_5.4.10_Statistics)

[**5.5 Protection application**](#_5.5_Protection_application)

 [**5.5.1 Grounds for initiating protection proceedings**](#_5.5.1_Grounds_for)

 [**5.5.2 Actual or likely harm**](#_5.5.2_Actual_or)

 **[5.5.3 Determination whether a child is in need of protection](#_5.5.3_Determination_of)**

 [**5.5.4 Meaning of ‘likely to suffer harm’ and ‘unlikely to protect’**](#_5.5.4_Meaning_of)

 [**5.5.5 Meaning of ‘significant damage’ & ‘significant harm’**](#_5.5.5_Meaning_of)

 [**5.5.6 Meaning of ‘sexual abuse’**](#_5.5.6_Meaning_of)

 [**5.5.7 Abusive**](#_5.5.7_Statistics) **Head Trauma / Shaken Baby Syndrome [AHT]**

 [**5.5.8 Statistics**](#_5.5.7_Statistics)

[**5.6 Irreconcilable difference applications**](#_5.6_Irreconcilable_difference)

**[5.7 Application for permanent care order](#_5.7_Application_for)**

[**5.8 Applications for therapeutic treatment order and therapeutic treatment (placement) order**](#_5.8_Applications_for)

 [**5.8.1 Applications only by the Secretary – Referral by the Court to the Secretary**](#_5.8.1_Applications_only)

 [**5.8.2 Therapeutic Treatment Board**](#_5.8.2_Therapeutic_Treatment)

[**5.9 Service of applications**](#_5.9_Service_of) **& other documents**

 [**5.9.1 Service of notices generally on parent, child or other person**](#_5.9.1_Service_of)

 [**5.9.2 Application for temporary assessment order on notice**](#_5.9.2_Application_for)

 [**5.9.3 Protection application**](#_5.9.3_Protection_application)

 [**5.9.4 Irreconcilable difference application**](#_5.9.4_Irreconcilable_difference)

 [**5.9.5 Permanent care application**](#_5.9.5_Permanent_care)

 **[5.9.6 Application for therapeutic treatment order/](#_5.9.6_Application_for)**

 **[therapeutic treatment (placement) order](#_5.9.6_Application_for)**

 [**5.9.7 Secondary applications**](#_5.9.7_Secondary_applications)

 [**5.9.8 Default service provisions**](#_5.9.8_Default_service)

 [**5.9.9 Substituted service**](#_5.9.9_Substituted_service)

 [**5.9.10 Proof of service**](#_5.9.10_Proof_of)

 [**5.9.11 Dispensation with service**](#_5.9.11_Dispensation_with)

 [**5.9.12 Consequence of failure to serve a relevant party**](#_5.9.12_Consequence_of)

[**5.10 Decision-making principles for Family Division matters**](#_5.10_Decision-making_principles)

 [**5.10.1 Principles governing the Court’s decision-making**](#_5.10.1_Principles_governing)

 [**5.10.2 Principles governing decision-making by the Secretary & a community service**](#_5.10.2_Principles_governing)

 [**5.10.3 ‘Best interests’ principle – ‘The paramountcy principle’**](#_5.10.3_‘Best_interests’)

 [**5.10.4 Child not to be removed from parent unless unacceptable risk of harm**](#_5.10.4_Section_10(3)(g)–Child)**/s.10(3)(g)**

 [**5.10.4A Effect**](#_5.10.5_‘Aboriginal_Child) **on a child of separation from the child’s primary attachment figure(s)**

 [**5.10.4B ‘Good enough’ parenting**](#_5.10.5_‘Aboriginal_Child)

 [**5.10.5 Aboriginal Child Placement Principles**](#_5.10.5_‘Aboriginal_Child)

 [**5.10.6 Additional decision-making principles for the Secretary & a community service**](#_5.10.6_Additional_decision-making)

 [**5.10.7 The United Nations Convention on the Rights of the Child**](#_5.10.7_The_United)

 [**5.10.8 Application of ‘best interests’ principles where there are multiple siblings**](#_5.10.8_Application_of)

[**5.11 Interim accommodation order**](#_5.11_Interim_accommodation)

 [**5.11.1 Power of the Court to make an IAO**](#_5.11.1_Power_of)

 **[5.11.2 Power of Bail Justice to make an IAO](#_5.11.2_Power_of)**

 [**5.11.3 Placement of a child under an IAO**](#_5.11.3_Placement_of)

 [**5.11.4 Parent versus stranger**](#_5.11.4_Parent_versus)

 [**5.11.5 When placement may be undisclosed**](#_5.11.5_When_placement)

 [**5.11.6 Matters to which the Court must have regard in determining IAO applications**](#_5.11.6_Matters_to)

 [**5.11.7 Conditions**](#_5.11.7_Conditions)

 [**5.11.8 Duration**](#_5.11.8_Duration)

 [**5.11.9 Extension**](#_5.11.9_Extension)

 [**5.11.10 Statistics**](#_5.11.10_Statistics)

 [**5.11.11 Hearings [evidence-based or by submissions]**](#_5.11.11_Hearings_[evidence-based)

 [**5.11.12 Variation of IAO**](#_5.11.12_Variation_of)

 [**5.11.13 Breach of IAO**](#_5.11.13_Breach_of)

 [**5.11.14 New IAO**](#_5.11.14_New_IAO)

 [**5.11.15 An additional statutory consequence of an IAO**](#_5.11.15_An_additional)

 [**5.11.16 Appeal**](#_5.11.16_Appeal)

[**5.12 Findings leading to a protection order**](#_5.12_Findings_leading)

 [**5.12.1 Conditions precedent to making a protection order**](#_5.12.1_Conditions_precedent)

 [**5.12.2 Restrictions on removing parental care rights**](#_5.12.2_Restrictions_on)

 [**5.12.3 Matters to be considered in determining Family Division applications generally**](#_5.12.3_Matters_to)

[**5.13 Protection order**](#_5.13_Protection_orders)

[**5.14 Undertaking**](#_5.14_Undertaking)

 [**5.14.1 Undertaking – protection order under s.278(1) of the CYFA**](#_5.14.1_Undertaking_–)

 [**5.14.2 Undertaking under s.272(1) of the CYFA & ‘common law undertaking’**](#_5.14.2_Undertaking_under)

 [**5.14.3 Conditions**](#_5.14.3_Conditions)

 [**5.14.4 Consent mandatory**](#_5.14.4_Consent_mandatory)

 [**5.14.5 Departmental withdrawal**](#_5.14.5_Departmental_withdrawal)

 [**5.14.6 Variation/Revocation of undertaking**](#_5.14.6_Variation/Revocation_of)

 [**5.14.7 Breach**](#_5.14.7_Breach)

 [**5.14.8 Statistics**](#_5.14.7_Breach)

[**5.15 Family preservation order [formerly supervision order]**](#_5.15_Family_preservation)

 [**5.15.1 Effect of a family preservation order**](#_5.15.1_Effect_of)

 [**5.15.2 Direction if family preservation order is longer than 12 months**](#_5.15.2_Direction_if)

 [**5.15.3 Conditions on a family preservation order**](#_5.15.3_Conditions_on)

 [**5.15.4 Powers of Secretary**](#_5.15.4_Powers_of)

 [**5.15.5 Extension of family preservation order**](#_5.15.5_Extension_of)

 [**5.15.6 Variation/Revocation of family preservation order**](#_5.14.6_Variation/Revocation_of)

 [**5.15.7 Breach of family preservation order**](#_5.15.7_Breach_of)

[**5.16 Custody to third party order & supervised custody order [abolished]**](#_5.16_Custody_to)

[**5.17 Family reunification order [formerly custody to Secretary order]**](#_5.17_Family_reunification)

 [**5.17.1 Effect of a family reunification order**](#_5.17.1_Effect_of)

 [**5.17.2 Reunification is the ultimate objective of a family reunification order**](#_5.17.2_Reunification_is)

 [**5.17.3 Conditions on a family reunification order**](#_5.17.3_Conditions_on)

 [**5.17.4 Maximum length of a family reunification order**](#_5.17.4_Maximum_length)

 **5.17.4/6 Temporary increase in maximum length of FRO/FRO extens’n due to COVID-19**

 **[5.17.5 Administrative reunification with parent during period of family reunific’n order](#_5.17.5_Administrative_reunification)**

 [**5.17.6 Extension of family reunification order**](#_5.17.6_Extension_of)

 [**5.17.7 Suspension/Lapse/Revival**](#_5.17.7_Suspension/Lapse/Revival)

 [**5.17.8 Variation & interim variation of family reunification order**](#_5.17.8_Variation_&)

 [**5.17.9 Revocation of family reunification order**](#_5.17.9_Revocation_of)

 [**5.17.10 No breach of family reunification order**](#_5.17.10_No_breach)

[**5.18 Care by Secretary order [formerly guardianship to Secretary order]**](#_5.18_Care_by)

 [**5.18.1 Effect of a care by Secretary Order**](#_5.18.1_Effect_of)

 [**5.18.2 Non-reunification is the usual basis for a care by Secretary order**](#_5.18.2_Non-reunification_is)

 [**5.18.3 No conditions on a care by Secretary order**](#_5.18.3_No_conditions)

 [**5.18.4 Applications upon which a care by Secretary order can be made**](#_5.18.4_Applications_upon)

 [**5.18.5 Other orders can be made on an application for a care by Secretary order**](#_5.18.5_Other_orders)

 [**5.18.6 Administrative reunification with parent during period of care by Sec order**](#_5.18.6_Administrative_reunification)

 [**5.18.7 Extension of care by Secretary order**](#_5.18.7_Extension_of)

 [**5.18.8 Suspension/Lapse/Revival**](#_5.18.8_Suspension/Lapse/Revival)

 [**5.18.9 Revocation of care by Secretary order**](#_5.18.9_Revocation_of)

 [**5.18.10 No variation or breach of care by Secretary order**](#_5.18.10_No_variation)

[**5.19 Long-term care order [formerly long-term guardianship to Sec order]**](#_5.19_Long-term_care)

 [**5.19.1 Effect of a long-term care order**](#_5.19.1_Effect_of)

 [**5.19.2 Pre-conditions for making a long-term care order**](#_5.19.2_Pre-conditions_for)

 [**5.19.3 Secretary must review operation of order annually**](#_5.19.3_Secretary_must)

 [**5.19.4 Applications upon which a long-term care order can be made**](#_5.19.4_Applications_upon)

 [**5.19.5 Other orders can be made on an application for a long-term care order**](#_5.19.5_Other_orders)

 [**5.19.6 Suspension/Lapse/Revival**](#_5.19.6_Suspension/Lapse/Revival)

 **[5.19.7 Revocation of long-term care order](#_5.19.7_Revocation_of)**

 [**5.19.8 No variation or breach of long-term care order**](#_5.19.8_No_variation)

[**5.20 Interim protection order [abolished]**](#_5.20_Interim_Protection)

[**5.21 Consent orders**](#_5.22.1_Effect_of)

[**5.22 Permanent care order**](#_5.22_Permanent_care)

 [**5.22.1 Effect of a permanent care order**](#_5.22.1_Effect_of)

 [**5.22.2 Application for a permanent care order**](#_5.22.2_Application_for)

 **[5.22.3 Pre-conditions for and restrictions on making a permanent care order](#_5.22.3_Pre-conditions_for)**

 [**5.22.4 Conditions on a permanent care order**](#_5.22.4_Conditions_on)

 [**5.22.5 Other orders can be made on an application for a permanent care order**](#_5.22.5_Other_orders)

 [**5.22.6 Suspension/Lapse/Revival**](#_5.22.6_Suspension/Lapse/Revival)

 **[5.22.7 Administrative conversion of permanent care order to care by Secretary order](#_5.22.7_Administrative_conversion)**

 [**5.22.8 Variation/Revocation/Breach of permanent care order**](#_5.22.8_Variation/Revocation/Breach_)

 [**5.22.9 Statistics**](#_5.22.9_Statistics)

[**5.23 Therapeutic treatment & therapeutic treatment (placement) orders**](#_5.23_Therapeutic_treatment)

 [**5.23.1 Rationale**](#_5.23.1_Rationale)

 [**5.23.2 Power of the Court to make a therapeutic treatment order [‘TTO’]**](#_5.23.2_Power_of)

 [**5.23.3 The meaning of ‘sexually abusive behaviours’**](#_5.23.3_The_meaning)

 [**5.23.4 Power of the Court to make a therapeutic treatment (placement) order [‘TTPO’]**](#_5.23.4_Power_of)

 [**5.23.5 Variation/revocation of TTO/TTPO**](#_5.23.5_Variation/revocation_of)

 [**5.23.6 Extension of TTO/TTPO**](#_5.23.6_Extension_of)

 [**5.23.7 Therapeutic treatment planning by DFFH**](#_5.23.7_Therapeutic_treatment)

 [**5.23.8 Effect of TTO or similar voluntary program on associated criminal proceedings**](#_5.23.8_Effect_of)

[**5.23.9 Statistics**](#_5.23.9_Statistics)

 [**5.23.10 Therapeutic treatment service providers**](#_5.23.10_Therapeutic_treatment)

[**5.24 Reports to the Court**](#_5.24_Reports_to)

 [**5.24.1 Protection report**](#_5.24.1_Protection_report)

 [**5.24.2 Access to protection report**](#_5.24.2_Access_to)

 [**5.24.3 Disposition report**](#_5.24.3_Disposition_report)

 [**5.24.4 Access to disposition report**](#_5.24.4_Access_to)

 [**5.24.5 Additional report – Children’s Court Clinic report**](#_5.24.5_Additional_report)

 [**5.24.6 Whether Court power to compel DFFH to provide an ‘external’ additional report**](#_5.24.6_Whether_Court)

 [**5.24.7 Access to additional report not prepared by Children’s Court Clinic**](#_5.24.7_Access_to)

 [**5.24.8 Access to Children’s Court Clinic report**](#_5.24.8_Access_to)

 [**5.24.9 Therapeutic treatment application & TT (placement) reports**](#_5.24.9_Therapeutic_treatment)

 [**5.24.10 Access to therapeutic treatment application & TT (placement) reports**](#_5.24.10_Access_to)

 [**5.24.11 Restriction on access to reports**](#_5.24.11_Restriction_on)

 [**5.24.12 Confidentiality of contents of reports**](#_5.24.12_Confidentiality_of)

 [**5.24.13 Admissibility & relevance of prior reports**](#_5.24.13_Admissibility_&)

 [**5.24.14 Caution re**](#_5.24.13_Admissibility_&) **use of artificial intelligence (AI) tools in preparation of sensitive docs**

[**5.25 Summary of Family Division orders**](#_5.25_Summary_of)

 [**5.25.1 Blue form – Minutes of proposed Family Division orders**](#_5.25.1_Blue_form)

 [**5.25.2 Mauve form – Minutes of proposed Family Division orders (supplementary)**](#_5.25.2_Mauve_form)

 **5.25.3 Orange form – Minutes of proposed order for appointment of BIL**

 **5.25.4 Minutes of terms of reference for assessments by the Children’s Court Clinic**

[**5.26 Family Division (Child Protection) standard conditions**](#_5.26_Family_Division)

[**5.27 Emergency care search warrants**](#_5.27_Emergency_care)

 [**5.27.1 Warrant types & pre-conditions for issue**](#_5.27.1_Warrant_types)

 [**5.27.2 Warning: Bail justices must not issue emergency care search warrants**](#_5.27.2_Warning:_Bail)

 [**5.27.3 Statistics**](#_5.27.3_Statistics)

 [**5.27.4 Form for Children’s Court Search Warrant**](#_5.27.4_Form_for)

 [**5.27.5 Authority & Directions**](#_5.27.5_Authority_&)

 [**5.27.6 Multiple entries authorised**](#_5.27.6_Multiple_entries)

 [**5.27.7 IAO endorsement**](#_5.27.7_IAO_endorsement)

 [**5.27.8 Protocols**](#_5.27.8_Protocols)

 **5.27.9 Execution of a warrant under the Service and Execution of Process Act 1992 (Cth)**

[**5.28 Interstate transfer of child protection orders and proceedings**](#_5.28_Interstate_transfer)

[**5.29 Case planning responsibilities of the Secretary**](#_5.29_Case_planning)

 [**5.29.1 Preparation of case plan**](#_5.29.1_Preparation_of)

 [**5.29.2 Permanency objective of case plan**](#_5.29.2_Permanency_objective)

 [**5.29.3 Review of case plan**](#_5.29.3_Review_of)

 [**5.29.4 The role of the Children’s Court in relation to case planning decisions**](#_5.29.4_The_role)

[**5.30 Aboriginal agencies under the CYFA**](#_5.30_Victorian_Aboriginal)

 [**5.30.1 Details**](#_5.30.1_‘Aboriginal_person') **of Victorian Aboriginal agencies declared under s.6 CYFA**

 [**5.30.2 Role of VACCA**](#_5.30.3_Role_of)

[**5.31 Statements**](#_5.31_Protocol_between) **of Acknowledgement & Recognition and Recognition Principles**

**5.32 Additional provisions applicable to Aboriginal children**

 [**5.32.1 Cultural**](#_5.31.1_Bases_of) **plans for Aboriginal children**

 [**5.32.2 Aut**](#_5.31.2_Other_principles)**horisation of Aboriginal agency to act**

 [**5.32.3 Other relevant**](#_5.31.2_Other_principles) **provisions**

**[5.33 Orders in the original jurisdiction of the Supreme Court](#_5.32_Additional_provisions)**

 [**[5.33.1](#_5.32_Additional_provisions)**](#_5.31.1_Bases_of) **[The](#_5.32_Additional_provisions) *[‘parens patriae’](#_5.32_Additional_provisions)* [jurisdiction](#_5.32_Additional_provisions)**

 [**[5.33.2](#_5.32_Additional_provisions)**](#_5.31.2_Other_principles) **[The writ of](#_5.32_Additional_provisions) *[‘habeas corpus’](#_5.32_Additional_provisions)***

**[5.34 ‘Watch List’ order/request to prevent child being removed from Australia](#_5.34_Border_control)**

**5.35 Protocol between DFFH and Federal Circuit Court**



#

# **[6. FAMILY DIV'N – INTERVENTION ORDERS](https://www.childrenscourt.vic.gov.au/research-materials/chapter-6-intervention-orders)**

**LEGISLATION**

**PSIA: Personal Safety Intervention Orders Act 2010 (Vic) [No.53/2010]**

**FVPA: Family Violence Protection Act 2008 (Vic) [No.52/2008]**

**SIOA: Stalking Intervention Orders Act 2008 (Vic) [No.68/2008]**

**VPA: Vexatious Proceedings Act 2014 (Vic) [No.53/2014]**

**DVOA: National Domestic Violence Order Scheme Act 2016 (Vic) [No.53/2016]**

**CYFA: Children, Youth and Families Act 2005 (Vic) [No.96/2005]**

**CFVA: Crimes (Family Violence) Act 1987 (Vic) [No.19/1987]**

**FLA: Family Law Act 1975 (Cth) [No.53/1975]**

**REGULATIONS & RULES**

**PSIR: Personal Safety Intervention Orders Regulations 2011 [No. 89/2011]**

**FVPR: Family Violence Protection Regulations 2018 [No.161/2018]**

**CPSR: Children’s Court (Personal Safety Intervention Orders) Rules 2011 [No. 94/2011]**

**CFVR: Children’s Court (Family Violence Protection) Rules 2018 [No.169/2018]**

**CATR: Children’s Court Authentication & Electronic Transmission Rules 2020[No.126/2020]**

## **[6. GENERAL PROVISIONS RELATING TO INTERVENTION ORDERS](#_6.__GENERAL_2)**

[**6.1 Intervention order**](#_6.1_Intervention_order)

 [**6.1.1 Powers of court until 07/12/2008 derive from the CFVA**](#_6.1.1_Powers_of)

 [**6.1.2 Powers of court from 08/12/2008 derive from the FVPA and the SIOA/PSIA**](#_6.1.2_Powers_of)

 [**6.1.3 Transitional provisions in the FVPA and the PSIA**](#_6.1.3_Transitional_provisions)

[**6.2 Jurisdiction of the Children’s Court of Victoria**](#_6.2_Jurisdiction_of)

 **[6.2.1 Under the CFVA 01/12/1987 – 28/05/1990 & 29/05/1990 – 07/12/2008](#_6.2.1_Under_the)**

 **[6.2.2 Current jurisdiction under the FVPA and the PSIA](#_6.2.2_Current_jurisdiction)**

 **[6.2.3 Transfer of applications from Magistrates’ Court to Children’s Court or v.v.](#_6.2.3_Transfer_of)**

[**6.3 Concurrent criminal proceedings no bar to making intervention order**](#_6.3_Concurrent_criminal)

[**6.4 Proceedings for intervention orders are civil in nature**](#_6.4_Proceedings_for)

[**6.5 Relationships between the FVPA and the PSIA**](#_6.5_Relationships_between)

 [**6.5.1 Concurrent applications may be heard together**](#_6.5.1_Concurrent_applications)

 [**6.5.2 Family violence intervention order/DVO to prevail in event of inconsistency**](#_6.5.2_Family_violence)

 [**6.5.3 Where applications under FVPA become applications under PSIA or v.v.**](#_6.5.3_Where_applications)

[**6.6 Relationships between the FVPA/PSIA and other Acts**](#_6.6_Relationships_between)

 [**6.6.1 “Best interests” principles in the CYFA are not mandatory**](file:///D%3A%5CCHCTWEBSITE%5CBest_interests#_6.6.1_)

 [**6.6.2 Intervention orders prevail over inconsistent child protection orders**](#_6.6.2_Intervention_orders)

 [**6.6.3 Relationship between bail conditions**](#_6.6.3_Bail_conditions) **and orders/notices under the FVPA**

 **[6.6.4 Relationship between orders under Sentencing Act and under FVPA/PSIA](#_6.6.4_Relationship_between)**

[**6.7 Service of documents & orders / Substituted service**](#_6.7_Service_of)

 [**6.7.1 Manner of service**](#_6.7.1_Manner_of)

 [**6.7.2 Service of application for intervention order**](#_6.7.2_Service_of)

 [**6.7.3 Service of application to vary, revoke or extend intervention order**](#_6.7.3_Service_of)

 [**6.7.4 Preparation, filing and service of interim or final intervention orders**](#_6.7.4_Preparation,_filing)

 [**6.7.5 Copy of personal safety intervention order may be given to school**](#_6.7.5_Copy_of)

[**6.8 Procedure under the FVPA and the PSIA – General**](#_6.8_Procedure_under)

 [**6.8.1 Filing – Content and form of documents – Refusal to accept documents**](#_6.8.1_Filing_-)

 [**6.8.2 Request for further and better particulars of application**](#_6.8.2_Request_for)

 [**6.8.3 Whether withdrawal of application requires leave of the court**](#_6.8.3_Withdrawal_of)

 [**6.8.4 Hearings – Directions - Mention date - Adjournment to seek legal advice**](#_6.8.4_Hearings_–)

 [**6.8.5 Informal procedure – Role of the rules of evidence – Balance of probabilities**](#_6.8.5_Informal_procedure)

 [**6.8.6 Evidence by affidavit**](#_6.8.6_Evidence_by)

 [**6.8.7 Evidence by children – Restriction on the presence of children**](#_6.8.7_Evidence_by)

 [**6.8.8 Alternative arrangements for a proceeding**](#_6.8.8_Alternative_arrangements)

 [**6.8.9 Court may be closed to the public**](#_6.8.9_Court_may)

 [**6.8.10 Restriction on publication of proceedings**](#_6.8.10_Restriction_on)

[**6.9 Assessment reports in proceedings in the Children’s Court**](#_6.9_Assessment_reports)

[**6.10 Representation of children in intervention order proceedings**](#_6.10_Representation_of)

 [**6.10.1 Under s.524 of the CYFA**](#_6.10.1_Under_s.524)

 [**6.10.2 Under s.62 of the FVPA where child is not an applicant or respondent**](#_6.10.2_Under_s.62)

 [**6.10.3 Under the PSIA**](#_6.10.3_Under_the)

## [**6FV. FAMILY VIOLENCE PROTECTION ACT 2008**](#_6FV_FAMILY_VIOLENCE)

**[6FV.1 Background to the FVPA](#_6FV.1_Background_to)**

[**6FV.2 Preamble & Purpose Provisions of the FVPA**](#_6FV.2_Preamble_&)

[**6FV.3 Meaning of “family violence”**](#_6FV.3_Meaning_of)

 [**6FV.3.1 Meaning of “economic abuse**](#_6FV.3.1_Meaning_of)**”**

 [**6FV.3.2 Meaning of “emotional or psychological abuse”**](#_6FV.3.3_Meaning_of)

 [**6FV.3.3 Meaning of “safety” & “property”**](#_6FV.3.3_Meaning_of)

[**6FV.4 Affected family member/Protected person**](#_6FV.4_Affected_family)

 [**6FV.4.1 Family member**](#_6FV.4.1_Family_member)

 [**6FV.4.2 Child subjected to violence – Additional protection of children**](#_6FV.4.2_Child_subjected)

[**6FV.5 Associates and associated final orders**](#_6FV.5_Associates_and)

[**6FV.5.1 Associate of the affected family member or protected person**](#_6FV.5.1_Associate_of)

[**6FV.5.2 Associate of the respondent**](#_6FV.5.2_Associate_of)

[**6FV.6 Additional Police Powers**](#_6FV.6_Additional_Police)

 [**6FV.6.1 Holding Powers**](#_6FV.6.1_Holding_Powers)

 [**6FV.6.2 Family Violence Safety Notices**](#_6FV.6.2_Family_Violence)

[**6FV.7 Application for family violence intervention order**](#_6FV.7_Application_for)

 [**6FV.7.1 Who may make application?**](#_6FV.7.1_Who_may)

 [**6FV.7.2**](#_6FV.7.2_Application_for) **Joint applications**

 [**6FV.7.3**](#_6FV.7.3_Joint_applications) **Substitution of an applicant**

 [**6FV.7.4 Summons or warrant**](#_6FV.7.4_Summons_or)

 [**6FV.7.5 Family Violence Safety Notice deemed to be application & summons**](#_6FV.7.5_Family_Violence)

 [**6FV.7.6 After-hours application for interim intervention order or warrant**](#_6FV.7.6_After-hours_application)

[**6FV.8 Procedure – Applications under the FVPA**](#_6FV.8_Procedure_–)

 [**6FV.8.1 Expert evidence about family violence**](#_6FV.8.1_Expert_evidence)

 [**6FV.8.2 Cross-examination of “protected witness” – Consequential legal represen**](#_6FV.8.2_Cross-examination_of)**tation**

[**6FV.9 Interim family violence intervention order**](#_6FV.9_Interim_family)

 [**6FV.9.1 Power to make interim order**](#_6FV.9.1_Power_to)

 **[6FV.9.2 Interim order for protection of children](#_6FV.9.2_Interim_family)**

[**6FV.9.3 Interim order made on electronic communication**](#_6FV.9.3_Interim_order)

[**6FV.9.4 Procedural pre-requisite**](#_6FV.9.4_Procedural_pre-requisite)

[**6FV.9.5 Duration of interim order**](#_6FV.9.5_Duration_of)

[**6FV.9.6 No power to make associated interim order**](#_6FV.9.6_No_power)

[**6FV.10 Final family violence intervention order**](#_6FV.10_Final_family)

[**6FV.10.1 Power to make final order to protect family member**](#_6FV.10.1_Power_to)

[**6FV.10.2 Power to make associated final orders**](#_6FV.10.2_Power_to)

 [**6FV.10.3 Consent or unopposed orders**](#_6FV.10.3_Consent_or)

 [**6FV.10.4 Final order for protection of children**](#_6FV.10.4_Protection_of)

 [**6FV.10.5 Duration of final order**](#_6FV.10.5_Duration_of)

[**6FV.10.6 No power to make final FV order if existing equivalent PS order**](#_6FV.10.6_No_power)

[**6FV.11 Conditions in family violence intervention orders**](#_6FV.11_Conditions_in)

 [**6FV.11.1 A non-exhaustive list of conditions**](#_6FV.11.1_A_non-exhaustive)

[**6FV.11.2 Restriction on conditions in absence of affected family member’s consent**](#_6FV.11.2_Restriction_on)

 [**6FV.11.3 Exclusion of respondent from residence**](#_6FV.11.3_Exclusion_of)

 [**6FV.11.4 Exclusion of child respondent from residence**](#_6FV.11.4_Exclusion_of)

[**6FV.11.5 New address for service for excluded person**](#_6FV.11.5_New_address)

 [**6FV.11.6 Conditions about personal property**](#_6FV.11.6_Conditions_about)

 [**6FV.11.7 Decision about contact with child – Inconsistency with other court order**](#_6FV.11.7_Decision_about)

 [**6FV.11.8 Suspension or cancellation of firearms authority or weapons approval**](#_6FV.11.8_Suspension_or)

 [**6FV.11.9 Courtlink conditions**](#_6FV.11.9_Courtlink_conditions)

[**6FV.12 Counselling orders**](#_6FV.12_Counselling_orders)

[**6FV.13 Relationship between FV intervention order and Family Law Act order**](#_6FV.13_Relationship_between)

 [**6FV.13.1 Existing**](#_6FV.13.1_FLA_contact) **FV intervention order prevails over later inconsistent FLA ‘spend time’ order**

[**6FV.13.2 Declaration in relation to inconsistency and effect thereof**](#_6FV.13.2_Declaration_in)

[**6FV.13.3 Suspension etc. of existing FLA ‘spend time’ order, plan etc. by FV intervention order**](#_6FV.13.3_Suspension_etc.)

[**6FV.13.4**](#_6FV.13.4_Whether_power) **Suspension etc. of existing FLA ‘live with’ order by family violence intervention order**

[**6FV.14 Variation, revocation or extension of family violence intervention order**](#_6FV.14_Variation,_revocation)

 [**6FV.14.1 Variation,**](#_6FV.13.1_FLA_contact) **revocation or extension generally**

[**6FV.14.2 When**](#_6FV.13.2_Declaration_in) **consent of protected person or guardian is not required**

**[6FV.15 The Family Violence Information Sharing Scheme](#_6FV.15_The_Family)**

[**6FV.16 The Family Violence Risk Assessment & Risk Management Framework**](#_6FV.16_The_Family)

**[6FV.17 Court’s own motion interim orders in bail or criminal proceedings](#_6FV.17_Court’s_own)**

[**6FV.18 Family Violence related**](#_6FV.14_Variation,_revocation) **services at Melbourne Children’s Court**

 [**6FV.18.1 Family Violence Practitioner**](#_6FV.13.1_FLA_contact)

[**6FV.18.2**](#_6FV.13.2_Declaration_in) **RESTORE Program**

[**6FV.19 National Domestic and Family Violence Bench Book**](#_6FV.19_National_Domestic)

## **[6PS. PERSONAL SAFETY INTERVENTION ORDERS ACT 2010](#_6PS_PERSONAL_SAFETY)**

[**6PS.1 Background to the PSIA**](#_6PS.1_Background_to)

[**6PS.2 Purposes of the PSIA**](#_6PS.2_Purposes_of)

[**6PS.3 The PSIA does not apply to certain conduct involving official duties**](#_6PS.3_The_PSIA)

[**6PS.4 Meaning of “prohibited behaviour”**](#_6PS.4_Meaning_of)

[**6PS.4.1 Meaning of “assault” / “sexual assault”**](#_6PS.4.1_Meaning_of)

[**6PS.4.2 Meaning of “harassment”**](#_6PS.4.2_Meaning_of)

[**6PS.4.3 Meaning of “property damage or interference”**](#_6PS.4.3_Meaning_of)

[**6PS.4.4 Meaning of “serious threat”**](#_6PS.4.4_Meaning_of)

[**6PS.5 “Stalking”**](file:///D%3A%5CCHCTWEBSITE%5CStalking#_6PS.5_)

 [**6PS.5.1 Statutory definition in s.10 of the PSIA**](#_6PS.5.1_Statutory_definition)

 [**6PS.5.2 Comparison with definition in s.21A of the Crimes Act 1958**](#_6PS.5.2_Comparison_with)

 [**6PS.5.3 Relevant case law**](#_6PS.5.3_Relevant_case)

 [**6PS.5.3.1 “Harm”, “Apprehension”, “Fear”**](#_6PS.5.3.1__)

 **[6PS.5.3.2 “Likely to cause harm or arouse apprehension or fear”](#B6PS532)**

 **[6PS.5.3.3 Requisite intent under s.10(2) of the PSIA & s.21A(3) of the Crimes Act 1958](#_6PS.5.3.3__)**

 **[6PS.5.3.4..“Course of conduct”](#_6PS.5.3.4__)**

 **[6PS.5.3.5..Stalking by surveillance](#_6PS.5.3.5__)**

[**6PS.6 Extra-territorial operation of the PSIA**](#_6PS.6_Extra-territorial_operation)

[**6PS.7 Application for personal safety intervention order**](#_6PS.7_Application_for)

 [**6PS.7.1 Who may make application?**](#_6PS.7.1_Who_may)

 [**6PS.7.2**](#_6PS.7.2_Application_for) **Application for leave to apply for order**

 [**6PS.7.3 Joint applications**](#_6PS.7.3_Joint_applications)

 [**6PS.7.4 Applications against children aged under 10 years**](#_6PS.7.4_Applications_against)

 [**6PS.7.5 Summons or warrant**](#_6PS.7.5_Summons_or)

 [**6PS.7.6 After-hours application for interim intervention order or warrant**](#_6PS.7.6_After-hours_application)

[**6PS.8 Mediation**](#_6PS.8_Mediation)

 [**6PS.8.1 Mediation directions**](#_6PS.8.1_Mediation_directions)

 [**6PS.8.2 Mediation assessment certificate**](#_6PS.8.2_Mediation_assessment)

 [**6PS.8.3 Mediation certificate**](#_6PS.8.3_Mediation_certificate)

 [**6PS.8.4 Court may take certificates and lack of attendance into account**](#_6PS.8.4_Court_may)

 [**6PS.8.5 Mediation guidelines**](#_6PS.8.5_Mediation_guidelines)

[**6PS.9 Interim personal safety intervention order**](#_6PS.9_Interim_personal)

 [**6PS.9.1 Power to make interim order**](#_6PS.9.1_Power_to)

 **[6PS.9.2 Interim PS intervention order where existing FV intervention order or DVO](#_6PS.9.2_Interim_PS)**

[**6PS.9.3 Interim order made on electronic communication**](#_6PS.9.3_Interim_order)

[**6PS.9.4 Procedural pre-requisite**](#_6PS.9.4_Procedural_pre-requisite)

 [**6PS.9.5 Duration of interim order**](#_6PS.9.5_Duration_of)

[**6PS.10 Final personal safety intervention order**](#_6PS.10_Final_personal)

 [**6PS.10.1 Power to make final order**](#_6PS.10.1_Power_to)

[**6PS.10.2 No associated orders or orders protecting children on own initiative**](#_6PS.10.2_No_Power)

 [**6PS.10.3 Consent or unopposed orders**](#_6PS.10.3_Consent_or)

 [**6PS.10.4 Duration of final order**](#_6PS.10.4_Duration_of)

 [**6PS.10.5 No power to make final PS order if existing equivalent FV order**](#_6PS.10.5_No_power) **or recognised DVO**

[**6PS.11 Conditions in personal safety intervention orders**](#_6PS.11_Conditions_in)

 [**6PS.11.1 A non-exhaustive list of conditions**](#_6PS.11.1_A_non-exhaustive)

[**6PS.11.2 Restriction on conditions in absence of affected person’s consent**](#_6PS.11.2_Restriction_on)

[**6PS.11.3 Exclusion of respondent from residence**](#_6PS.11.3_Exclusion_of)

[**6PS.11.4 Conditions preventing a respondent attending school**](#_6PS.11.4_Conditions_preventing)

 [**6PS.11.5 Conditions about personal property**](#_6PS.11.5_Conditions_about)

 [**6PS.11.6 Contact with child**](#_6PS.11.6_Contact_with)

 [**6PS.11.7 Suspension or cancellation of firearms authority or weapons approval**](#_6PS.11.7_Suspension_or)

 [**6PS.11.8 Courtlink conditions**](#_6PS.11.8_Courtlink_conditions)

[**6PS.12 Variation, revocation and extension of personal safety intervention order**](#_6PS.12_Variation,_revocation)

 **[6PS.12.1 Variation or revocation](#_6PS.12.1_Variation_or)**

 **[6PS.12.2 Extension](#_6PS.12.2_Extension)**

 [**6PS.12.3 When consent of protected person**](#_6PS.12.3_If_applicant) **or guardian is not required**

## [**6. GENERAL PROVISIONS RELATING TO INTERVENTION ORDERS [continued]**](#_6.__GENERAL_1)

[**6.11 Explanation of intervention order**](#_6.11_Explanation_of)

 [**6.11.1 Interim order**](#_6.11.1_Interim_order)

 [**6.11.2 Final order**](#_6.11.2_Final_order)

 [**6.11.3 Consequence of failure to provide explanation or written notice**](#_6.11.3_Consequence_of)

 [**6.11.4 No requirement for explanation or written notice upon variation or extension**](#_6.11.4_No_requirement)

[**6.12 Costs in intervention order proceedings**](#_6.12_Costs_in)

[**6.13 Rehearing**](#_6.13_Rehearing)

[**6.14 Appeal**](#_6.14_Appeal)

[**6.15 Vexatious Proceedings Act 2014**](#_6.15_Vexatious_Proceedings)

 [**6.15.1 Extended Litigation Restraint Order**](#_6.15.1_Extended_Litigation)

 [**6.15.2 Acting in Concert Order**](#_6.15.2_Acting_in)

 [**6.15.3 Appeal Restriction Order**](#_6.15.3_Appeal_Restriction)

 [**6.15.4 Application for leave to proceed under ELRO**](#_6.15.4_Application_for)

 [**6.15.5 Variation / Revocation of ELRO**](#_6.15.5_Variation_/)

 [**6.15.6 Variation or Revocation Application Prevention Order**](#_6.15.6_Variation_or)

 [**6.15.7 Publication of orders under the VPA**](#_6.15.7_Publication_of)

[**6.16 Intervention-type orders made in other jurisdictions**](#_6.16_Effect_of)

 **[6.16.1 National Domestic Violence Order [DVO] Scheme](#_6.16.1_National_Domestic)**

 [**6.16.2 Registration of corresponding New Zealand orders under the FVPA**](#_6.16.2_Registration_of)

 **[6.16.3 Registration of corresponding interstate & New Zealand orders under PSIA](#_6.16.3_Registration_of)**

[**6.17 Enforcement & related powers**](#_6.17_Enforcement_powers)

 [**6.17.1 General power to enter and search premises without warrant**](#_6.17.1_General_power)

 [**6.17.2 Directions and powers in relation to firearms etc.**](#_6.17.2_Directions_and)

 [**6.17.3 Issue of warrant to enter, search and seize**](#_6.17.3_Issue_of)

 [**6.17.4 Issue of warrant to arrest witness who fails to appear**](#_6.17.4_Issue_of)

 [**6.17.5 Application**](#_6.17.4_Issue_of) **by ‘prohibited person’ for a declaration under s.189 Firearms Act 1996**

[**6.18 Contravention of intervention order**](#_6.18_Contravention)

 [**6.18.1 Proof & consequences**](#_6.18.1_Proof_&)

 [**6.18.2 Procedure applicable in certain contravention proceedings**](#_6.18.2_Procedure_applicable)

 [**6.18.3 Sentencing for contravention or for offences constituting contravention**](#_6.18.3_Sentencing_for)

 [**6.18.4 The importance of treatment for stalkers**](#_6.18.4_The_importance)

[**6.19 Regulations, Rules, Practice Directions & Forms**](#_6.19_Regulations,_Rules,)

 [**6.19.1 Regulations**](#_6.19.1_Regulations)

 [**6.19.2 Rules & Practice Directions for the Children’s Court**](#_6.19.2_Rules_&)

 [**6.19.3 Rules & Practice Directions for the Magistrates’ Court**](#_6.19.3_Rules_&)

 [**6.19.4 Forms**](#_6.19.4_Forms)

[**6.20 Statistics**](#_6.20_Statistics)

[**6.21 Undertakings**](#_6.21_Undertakings)

[**6.22 Power**](#_6.21_Undertakings) **to bind over to keep the peace**



# **[7. CRIMINAL DIVISION – GENERAL](https://www.childrenscourt.vic.gov.au/research-materials/chapter-7-criminal-general)**

**[7.1 Jurisdiction of Criminal Division](#_7.1_Jurisdiction_of)**

[**7.1.1 Classification of offences**](#_7.1.1_Classification_of)

[**7.1.2 Age of ‘child’ for hearing of a charge**](#_7.1.2_Age_of)

 [**7.1.3 No criminal responsibility of a child under 10**](#_7.1.3_No_criminal)

 [**7.1.4 Transfer of the hearing of a charge to or from Magistrates’ Court**](#_7.1.4_Transfer_of)

 [**7.1.5 Proceedings for breach**](#_7.1.5_Age_of) **of sentencing order**

 [**7.1.6 Proceedings for variation or revocation of sentencing order**](#_7.1.5_Age_of)

**[7.2 General powers of arrest](#_7.2_General_powers)**

[**7.3 Victoria Police Powers to search children & adults**](#_7.3_Victoria_Police)

[**7.3.1 Personal searches of adults and children generally**](#_7.3.1_Personal_searches)

 [**7.3.2 Legal analysis of police powers to search adults and children**](#_7.3.2_Legal_analysis)

 [**7.3.3 Three types of personal search described**](#_7.3.3_Three_types)

 [**7.3.4 Statutory police powers to search a child whether or not under arrest**](#_7.3.4_Statutory_police)

 [**7.3.5 Personal searches of persons under arrest**](#_7.3.5_Personal_searches)

 [**7.3.6 Personal searches of children in custodial institutions**](#_7.3.6_Personal_searches)

[**7.4 "Police Cautioning Program" as a means of diversion from court**](#_7.4_"Police_Cautioning)

**[7.5 Commencement of ordinary process – Securing attendance of child](#_7.5_Commencement_of)**

 [**7.5.1 Charge-sheet**](#_7.5.1_Charge-sheet)

 [**7.5.2 Time limits for filing a charge-sheet**](#_7.5.2_Time_limits)

 [**7.5.3 Notice to Appear**](#_7.5.3_Notice_to)

 [**7.5.4 Securing attendance of accused**](#_7.5.4_Securing_attendance)

 [**7.5.5 Amendment of charge-sheet**](#_7.5.5_Amendment_of)

 [**7.5.6 Venue of the Court**](#_7.5.6_Venue_of)

 [**7.5.7 Criminal Division processing statistics (excluding CAYPINS)**](#_7.5.7_Criminal_Division)

[**7.6 Children and Young Persons Infringement Notice System (CAYPINS)**](#_7.6_Children_and)

[**7.7 Youth and adult offending statistics**](#_7.7_Youth_and)

[**7.7.1 Youth and adult offending in 2008/09, 2009/10 & 2010/11**](#_7.7.1_Youth_and)

 [**7.7.2 Youth offending from 2008/09 to 2022/23**](#_7.7.2_Youth_offending)

 **7.7.3 Aboriginal and Torres Strait Islander young people – YJ trends since 2017**

[**7.7.4 Criminal Division statistics involving children aged 10-13 inclusive**](#_7.7.3_Youth_offending)

[**7.8 Warrant to arrest for failing to appear (Bench warrant)**](#_7.8_Warrant_to)

**[7.9 Representation of children in the Criminal Division of the Court](#_7.9_Representation_of)**

[**7.10 Referral for investigation by protective services**](#_7.10_Referral_for)

 [**7.10.1 Referral re protection application investigation**](#_7.10.1_Referral_re)

 [**7.10.2 Referral re therapeutic treatment application investigation**](#_7.10.2_Referral_re)

 [**7.10.3 Report of investigation**](#_7.10.3_Report_of)

 [**7.10.4 Report on outcome of application**](#_7.10.4_Report_on)

 [**7.10.5 Pre-sentence report**](#_7.10.5_Pre-sentence_report)

[**7.11 The Children’s Koori Court (Criminal Division)**](#_7.11_The_Children’s)

 [**7.11.1 Jurisdiction & powers**](#_7.11.1_Jurisdiction_&)

 [**7.11.2 Procedure**](#_7.11.2_Procedure)

 [**7.11.3 Sentencing procedure**](#_7.11.3_Sentencing_Procedure)

 [**7.11.4 Sitting times and locations**](#_7.11.4_Sitting_times)

 [**7.11.5 Case law**](#_7.11.5_Case_law)

 [**7.11.6 Statistics**](#_7.11.6_Statistics)

[**7.12 Cases on selected offences**](#_7.12_Cases_on)

 [**7.12.1 Offensive behaviour**](#_7.12.1_Offensive_behaviour)

 [**7.12.2 Insulting words in a public place**](#_7.12.2_Insulting_words)

 [**7.12.3 Arson**](#_7.12.3_Arson)

 [**7.12.4 Sexual**](#_7.12.3_Arson) **touching**

 [**7.12.5 Dangerous**](#_7.12.3_Arson) **driving causing death/serious injury**

 [**7.12.6 Committing an act that outrages public decency**](#_7.12.3_Arson)

[**7.13 ‘Crossover kids’ & impact of a child’s mental development on offending**](#_7.12_‘Crossover_kids’)



# **[8. CRIMINAL DIVISION – INVESTIGATION](https://www.childrenscourt.vic.gov.au/research-materials/chapter-8-criminal-investigation)**

[**8.1 Search warrants**](#_8.1_Search_warrants)

[**8.2 Record of interview/Confessional statement**](#_8.2_Records_of)

 [**8.2.1 Voluntariness**](#_8.2.1_Voluntariness)

 [**8.2.2 Regulation of conduct by investigating official**](#_8.2.2_Regulation_of)

 [**8.2.3 Tape-recording of confessions and admissions**](#_8.2.3_Tape-recording_of)

 [**8.2.4 Whether a person in custody is a 'suspect'**](#_8.2.4_Whether_the)

 [**8.2.5** **Questioning within reasonable time, information re offence and right to silence**](#_8.2.5_Questioning_within)

 [**8.2.6 Questioning or investigation of a person already held in custody for anor matter**](#_8.2.6_Questioning_or)

 [**8.2.7 Right to communicate**](#_8.2.7_Right_to)

 [**8.2.8 Right to an interpreter**](#_8.2.8_Right_to)

 [**8.2.9 Right of person under 18 to presence of parent/guardian/independent person**](#_8.2.9_Right_of)

 [**8.2.10 Consequence of failure to comply with the statutory requirements**](#_8.2.10_Consequence_of)

 [**8.2.11 *Pollard v R* (1992) 176 CLR 177**](#_8.2.11_Pollard_v)

 [**8.2.12 Unfairness & public policy in absence of direct illegality**](#_8.2.12_Unfairness_&)

 [**8.2.13 Reliability**](#_8.2.13_Reliability)

[**8.3 Fingerprinting**](#_8.3_Fingerprinting)

 [**8.3.1 Adult or child aged 15 or above**](#_8.3.1_Adult_or)

 [**8.3.2 Child aged under 10**](#_8.3.2_Child_aged)

 [**8.3.3 Child aged 10 to 14**](#_8.3.3_Child_aged)

 [**8.3.3.1 Application for an order for fingerprinting**](#_8.3.3.1_Application_for)

 [**8.3.3.2 Procedure at hearing of application**](#_8.3.3.2_Procedure_at)

 [**8.3.3.3 Order for fingerprinting**](#_8.3.3.3_Order_for)

 [**8.3.3.4 Warrant to arrest for fingerprinting**](#_8.3.3.4_Warrant_to)

 **[8.3.3.5 Mandatory reasons](#_8.3.3.5_Mandatory_reasons)**

 [**8.3.3.6 Taking of fingerprints**](#_8.3.3.6_Taking_of)

 **[8.3.4 Other relevant provisions](#_8.3.4_Other_relevant)**

[**8.4 Forensic procedure – Compulsory procedure**](#_8.4_Forensic_procedure)

 [**8.4.1 Whether there is any difference between the terms**](#_8.4.1_Whether_there)

 [**8.4.2 Child aged under 10**](#_8.4.2_Child_aged)

 [**8.4.3 Child aged 10 to 17**](#_8.4.3_Child_aged)

 **[8.4.3.1 Application for an order for compulsory procedure](#_8.4.3.1_Application_for)**

 [**8.4.3.2 Procedure at hearing of application**](#_8.4.3.2_Procedure_at)

 [**8.4.3.3 Order for compulsory procedure**](#_8.4.3.3_Order_for)

 [**8.4.3.4 Child must be present**](#_8.4.3.4_Child_must)

 [**8.4.3.5 Warrant to arrest for compulsory procedure**](#_8.4.3.5_Warrant_to)

 [**8.4.3.6 Mandatory reasons & explanation**](#_8.4.3.6_Mandatory_reasons)

 [**8.4.3.7 Application for interim order for compulsory procedure**](#_8.4.3.7_Application_for)

 [**8.4.3.8 Interim order for compulsory procedure**](#_8.4.3.8_Interim_order)

 [**8.4.3.9 Conduct of forensic procedure or compulsory procedure**](#_8.4.3.9_Conduct_of)

 [**8.4.3.10 Statistics**](#_8.4.3.10_Statistics)

[**8.5 DNA profile sampling**](#_8.5_DNA_profile)

 [**8.5.1 Police request for DNA profile sample from a child aged 15-17**](#_8.5.1_Police_request)

 [**8.5.2 Senior police officer authorisation for DNA profile sample from child aged 15-17**](#_8.5.2_Senior_police)

[**8.6 Use of evidence from DNA samples**](#_8.6_Use_of)

**[8.7 Retention of information following finding of guilt](#_8.7_Other_relevant)**

**[8.8 Other relevant provisions relating to DNA samples & forensic procedures](#_8.7_Other_relevant)**



# **[9. CRIMINAL DIVISION – CUSTODY & BAIL](https://www.childrenscourt.vic.gov.au/research-materials/chapter-9-custody-and-bail)**

**[9.0 Amendments to the Bail Act in 2018 and in 2024](#_9.0_Major_amendments_1)**

 [**9.0.1 Major amendments to the Bail Act in 2018**](#_9.0.1_Major_amendments) **+ some associated definitions**

 [**9.0.2 Coronial criticism of the 2018 amendments**](#_9.0.2_Coronial_criticism)

 **[9.0.3 The Bail Amendment Act 2023 (as from 25/03/2024)](#_9.0.3_Amendments_to)**

 **9.0.4 Amendments to the Bail Act in 2024 & 2025**

[**9.1 Child in custody**](#_9.1_Child_in)

 [**9.1.1 Prescribed regions for 2 day bail justice remand**](#_9.1.1_Prescribed_regions)

 [**9.1.2 Placement of remanded child**](#_9.1.2_Placement_of)

 **[9.1.3 Breach of Children’s Court sentencing order](#_9.1.3_Breach_of)**

[**9.2 Bail – Legislation**](#_9.2_Bail_-)

 [**9.2.1 Differences between child & adult**](#_9.2.1_Differences_between)

[**9.2.2 Additional considerations in bail determinations for children**](#_9.2.2_Additional_considerations)

[**9.2.3 Powers**](#_9.2.2_Additional_considerations) **& duties of a bail decision maker**

 [**9.2.4 *Prima facie* entitlement to bail and exceptions thereto – Flow charts**](#_9.2.3_Prima_facie)

 [**9.2.5 Step 1 – exceptional circumstances test**](#_9.2.4_Step_1)

 [**9.2.6 Step 1 – show compelling reason test**](#_9.2.5_Step_1)

 [**9.2.5/6 Meaning of ‘serving a sentence’ for the tests in 9.2.4 & 9.2.5**](#_9.2.4/5_Meaning_of)

 **9.2.7 Relevance of ‘risk’ in determining ‘exceptional circs’/’compelling reason’**

 **9.2.8 Meaning of ‘strength of the prosecution case’**

 [**9.2.9 Bail application where possible family violence issue**](#_9.2.7_Bail_application)

 [**9.2.10 Requirement for reasons when bail granted**](#_9.2.8_Requirement_for)

 [**9.2.11 Bail**](#_9.2.10_Accused_with) **Regulations 2022**

[**9.3 Bail - History, Questions, Factors & Principles**](#_9.3_Bail_–)

**[9.4 Bail – 'Exceptional circumstances', 'Show compelling reason', 'Unacceptable risk'](#_9.4_Bail_-_1)**

 [**9.4.1 Exceptional circumstances**](#_9.4.1_Exceptional_circumstances)

 [**9.4.1.1 CASES:EXCEPTIONAL CIRCUMSTANCES FOUND – BAIL GRANTED**](#_9.4.1.1_SOME_CASES)

 **[9.4.1.2 CASES:EXCEPTIONAL CIRCUMSTANCES NOT FOUND – BAIL REFUSED](#_9.4.1.2_SOME_CASES_1)**

[**9.4.1.3 CASES: EXCEPTIONAL CIRCUMSTANCES FOUND BUT UNACC. RISK**](#_9.4.1.3_SOME_CASES_1)

 **[9.4.2 Show compelling reason (previously show cause) / Unacceptable risk](#_9.4.2_Show_compelling)**

 [**9.4.2.1 How does an accused show compelling reason (show cause)**](#_9.4.4.1_How_does)

 [**9.4.2.2 CASES: COMPELLING REASON FOUND – BAIL GRANTED**](#_9.4.4.4_SOME_CASES)

 [**9.4.2.3 CASES: COMPELLING REASON FOUND BUT UNACCEPTABLE RISK**](#_9.4.4.5_SOME_CASES)

 [**9.4.2.4 CASES: COMPELLING REASON NOT FOUND – BAIL REFUSED**](#_9.4.4.6_SOME_CASES)

 **[9.4.3 Where likelihood of sentence is less than time likely to be spent in custody](#_9.4.3_Where_likelihood)**

 **[9.4.4 Unacceptable risk](#_9.4.4_Unacceptable_risk)**

 [**9.4.4.1 Otherwise unacceptable risk deemed acceptable due to particular circs**](#_9.4.4.1_Where_unacceptable)

 [**9.4.4.2 CASES: PRIMA FACIE RIGHT/ACCUSED NOT UNACCEPTABLE RISK**](#_9.4.4.7_SOME_CASES)

 [**9.4.4.3 CASES: PRIMA FACIE RIGHT/ACCUSED AN UNACCEPTABLE RISK**](#_9.4.4.8_SOME_CASES)

[**9.4.5 Whether bail conditions an element of exceptional circs/compelling reason**](#_9.4.5_Whether_or)

 [**9.4.6 Refusal of bail where person seriously injured**](#_9.4.6_Refusal_of)

 [**9.4.7 Bail pending pre-sentence or other report**](#_9.4.7_Bail_pending)

 [**9.4.8 Bail pending appeal against conviction or sentence**](#_9.4.8_Bail_pending)

 [**9.4.9 Relevance of the standard of medical care in custodial facility**](#_9.4.9_Relevance_of)

 [**9.4.10 Relevance of the Charter of Human Rights and Responsibilities Act 2006**](#_9.4.10_Relevance_of)

 [**9.4.11 Relevance of Aboriginality**](#_9.4.11_Relevance_of)

 [**9.4.12 Relevance of youth**](#_9.4.12_Relevance_of)

[**9.5 Bail - A Miscellany**](#_9.5_Bail_-)

 [**9.5.1 Whether the principle of ‘parity’ applies to bail applications**](#_9.5.1_Whether_the)

 [**9.5.2 Bail**](#_9.5.2_Evidence_in) **undertaking, conduct conditions and electronic monitoring conditions**

 [**9.5.3 Bail**](#_9.5.3_Bail_undertaking,) **guarantees/guarantors (formerly known as sureties) & deposits of money**

 [**9.5.4 Extension of bail**](#_9.5.4_Extension_of)

 [**9.5.5 Reasons and sufficiency thereof**](#_9.5.5_Reasons_and)

 [**9.5.6 Further application for bail – New facts or circumstances**](#_9.5.6_Further_application)

[**9.5.6.1 CASES IN WHICH NEW FACTS/CIRCUMSTANCES WERE DISCUSSED**](#_9.5.6.1_SOME_CASES)

 [**9.5.7 Application to vary bail**](#_9.5.7_Application_to)

 [**9.5.8 Application to revoke bail**](#_9.5.8_Application_to)

 [**9.5.9 Appeal**](#_9.5.9_Appeal_to)

 [**9.5.9.1 Appeal to**](#_9.5.9.1_Appeal_by) **the Supreme Court**

 [**9.5.9.2 Appeal to**](#_9.5.9.2_Appeal_by) **the Court of Appeal**

 [**9.5.10 Breach**](#_9.5.10_No_power) **of bail**

 [**9.5.11 Arrest of person released on bail**](#_9.5.11_Arrest_of)

 [**9.5.12 Extradition bail**](#_9.5.12_Breach_of)

 [**9.5.13 No concept of being ‘owed bail’**](#_9.5.13_No_concept)

 [**9.5.14 Bail applications by children compared with adults**](#_9.5.14_Bail_applications)

 [**9.5.15 Bail applications by persons aged 18 or over in a remand centre**](#_9.5.15_Bail_applications)

 [**9.5.16 Power to return accused to youth justice centre**](#_9.5.16_Power_to)

 [**9.5.17 Bail support services**](#_9.5.17_Limited_bail)

 [**9.5.17.1 CISP**](#_9.5.9.1_Appeal_by) **– Bail support service for adults**

 [**9.5.17.2 Bail**](#_9.5.9.1_Appeal_by) **support program & service for children**

 [**9.5.17.3 The**](#_9.5.9.1_Appeal_by) **dangers of detoxification by ‘drying out’ in custody**



# **[10. CRIMINAL DIVISION – PROCEDURE](https://www.childrenscourt.vic.gov.au/research-materials/chapter-10-criminal-procedure)**

[**10.0 Preamble**](#_10.0_Consistent_magistrate)

[**10.0.1 Consistent magistrate to oversee criminal proceedings**](#_10.0.1_Consistent_magistrate)

[**10.0.2 ‘Model litigant’ obligations of police informants and prosecutors**](#_10.0.2_Obligations_of)

[**10.0.3 Consequence of incompetence of defence counsel**](#_10.0.2_Obligations_of)

[**10.1 Indictable offences tried summarily**](#_10.1_Indictable_offences) **or tried on indictment**

[**10.1.1 Sections 356(3), 356(4) & 356A of the CYFA**](#_10.1.1_Sections_356(3),)

[**10.1.2 Sections 356(6), 356(7) & 356(8) of the CYFA**](#_10.1.2_Serious_youth)

[**10.1.3 Summary of uplift provisions via committal – Section 356 of the CYFA**](#_10.1.3_Summary_of)

### **[10.1.4 Whether Uplift – Caselaw re Category A & Category B serious youth offences](#_10.1.4_Whether_Uplift)**

###  **[10.1.5 Whether Uplift – Caselaw relating to ‘exceptional circumstances’](#_10.1.5_Whether_Uplift_1)**

###  **[10.1.6 Transfer back from Supreme or County Court to Children’s Court](#_10.1.6_Transfer_back_1)**

###  **[10.1.7 Transfer of a related summary offence to a higher court](#_10.1.6_Transfer_back_1)**

### [**10.2 Committal proceedings**](#_10.2_Committal_proceedings)

[**10.2.1 Purposes**](#_10.2.1_Purposes)

[**10.2.2 Nature**](#_10.2.2_Nature_of)

### [**10.2.3 Hearings, case direction and procedure**](#_10.2.3_Hearings,_case)

### [**10.2.4 Joint committal proceedings for adult and child co-accused**](#_10.2.4_Joint_committal)

[**10.2.5 Determination of committal proceeding – Test for committing for trial**](#_10.2.5_Determination_of)

 **[10.2.6 Effect of discharge after committal](#_10.2.6_Effect_of)**

[**10.2.7 Taking evidence after accused committed for trial – “Basha” inquiry**](#_10.2.7_Taking_evidence)

 **10.2.8 Fast-tracking of homicide matters to the Supreme Court**

[**10.2.9 Committal and ‘uplift’ statistics**](#_Committal_and_‘uplift’)

[**10.3 Criminal Division summary proceedings**](#_10.3_Criminal_Division)

[**10.3.1 Jurisdiction**](#_10.3.1_Jurisdiction)

 **[10.3.2 Transfer of proceedings from Supreme or County Court to Children’s Court](#_10.3.13_Transfer_of)**

[**10.3.3 Hearings**](#_10.3.2_Hearings)

[**10.3.3.1 Mention**](#_10.3.5_Summary_case)

[**10.3.3.2 Diversion**](#_10.3.5_Summary_case)

[**10.3.3.3 Summary case conference**](#_10.3.5_Summary_case)

[**10.3.3.4 Contest**](#_10.3.5_Summary_case) **mention**

[**10.3.3.5 Contested**](#_10.3.5_Summary_case) **hearing**

 **A** [**Procedure**](#_A_INTENTIONALLY_CAUSING)

 **B Standard & onus of proof**

 **C** [**Application**](#_A_INTENTIONALLY_CAUSING) **of the Jury Directions Act 2015**

 **D** [**Alternative verdicts**](#_A_INTENTIONALLY_CAUSING)

 **E** [**Inconsistent verdicts**](#_A_INTENTIONALLY_CAUSING)

[**10.3.4 ‘No-case’ procedure**](#_10.3.3_‘No-case’_procedure)

[**10.3.5 Sentence indication**](#_10.3.4_Sentence_indication)

[**10.3.6 Plea agreements**](#_10.3.6_Plea_agreements)

[**10.3.7 Withdrawal of guilty plea**](#_10.3.7_Withdrawal_of)

[**10.3.8 Duplicity, Uncertainty & Unanimity**](#_10.3.8_Duplicity,_Uncertainty)

 **[10.3.9 “Representative” counts & "Rolled-up" counts](#_10.3.9_\“Representative\”_counts)**

[**10.3.10 Right to a fair trial – Stay of proceedings**](#_10.3.10_Right_to)

 **[10.3.11 Abuse of process for DPP to present directly to circumvent summary hearing](#_10.3.11_Abuse_of)**

 [**10.3.12 Joinder or severance of charges or cases**](#_10.3.12_Orders_for)

[**10.4 *Doli incapax***](#_10.4_Doli_incapax)

[**10.4.1 The principle of age incapacity – The so-called rebuttable presumption**](#_10.4.1_The_principle)

[**10.4.2 Earlier Australian authorities**](#_10.4.2_Earlier_Australian)

[**10.4.3 Demise of *doli incapax* in England**](#_10.4.3_Demise_of)

[**10.4.4 History of presumption-The principle re-stated by the Victorian Court of Appeal**](#_10.4.4_History_of)

[**10.4.5 The principle stated by the High Court of Australia**](#_10.4.5_The_principle) **and its application**

[**10.5** **Effect of therapeutic treatment order or similar voluntary treatment on criminal proceedings**](#_10.5_Effect_of)

 **[10.5.1 Mandatory adjournment](#_10.1.3_Summary_of_1)**

[**10.5.2 Hearing of adjourned case**](#_10.5.2_Hearing_of)

 **[10.5.3 Privilege against self-incrimination](#_10.5.3_Privilege_against)**

**[10.6 Unfitness to be tried & Mental impairment](#_10.6_Unfitness_to)**

[**A Background**](#_A_BACKGROUND_)

[**B Amendments to the CMIA**](#_B_AMENDMENTS_TO)

[**C Application of the CMIA to the Children’s Court**](#_C_APPLICATION_OF)

[**D Constitution of the Children’s Court**](#_D_CONSTITUTION_OF)

[**E When is a child unfit to be tried?**](#_E_WHEN_IS)

[**F Presumptions, standard of proof etc re fitness**](#_F_PRESUMPTIONS,_STANDARD)

[**G Question of fitness to stand trial or mental impairment in committal proceeding**](#_G_QUESTION_OF)

[**H Investigation of question of fitness to stand trial**](#_H_INVESTIGATION_OF)

[**I Orders pending investigation into fitness to stand trial**](#_I_ORDERS_PENDING)

[**J Procedure on investigation into fitness to stand trial**](#_J_PROCEDURE_ON)

[**K What happens after an investigation into fitness?**](#_K_WHAT_HAPPENS)

**[L Special hearing when child found unfit to be tried](#_L_SPECIAL_HEARING)**

[**M Defence of mental impairment**](#_M_DEFENCE_OF)

[**N Disposition of child declared to be liable to supervision**](#_N_DISPOSITION_OF)

[**O Reports as to supervision & victim impact statements**](#_O_REPORTS_AS)

[**P Certificate of available services**](#_P_CERTIFICATE_OF)

[**Q Variation, revocation, review of supervision order**](#_Q_VARIATION,_REVOCATION,)

[**R Non-compliance with non-custodial supervision order; arrest of child**](#_R_NON-COMPLIANCE_WITH)

[**S Age jurisdiction**](#_S_AGE_JURISDICTION|CMIA-s.38ZG)

[**T Principles on which Court is to act**](#_T_PRINCIPLES_ON)

[**U Matters to which Court is to have regard**](#_U_MATTERS_TO)

[**V Appeals**](#_V_APPEALS|CMIA-Part_5A)

[**W Suppression**](#_V_APPEALS|CMIA-Part_5A) **order**

[**10.7 Court diversion of child offender**](#_10.7_Court_diversion)

**[A Offences for which diversion is not available](#_A_OFFENCES_FOR)**

[**B Purposes of diversion**](#_B_PURPOSES_OF)

[**C Pre-conditions for diversion**](#_C_PRE-CONDITIONS_FOR)

[**D Adjournment to undertake diversion program**](#_D_ADJOURNMENT_TO)

[**E Matters to consider in determining the type of diversion program**](#_E_MATTERS_TO)

[**F The Children’s Court Youth Diversion Service**](#_F_THE_CHILDREN’S)

[**G Extension of adjournment for diversion program**](#_G_EXTENSION_OF)

**[H Conclusion of diversion program](#_H_CONCLUSION_OF)**

[**I**](#_I_INCOMPATIBILITY_OF) **Diversion statistics**

[**J No negative Working with Children assessment for diverted charges**](#_J_SECRETARY_HAS)

**[K Statutory Review of the Court diversion program & Recommendations](#_L_STATUTORY_REVIEW)**

[**10.8 The “ROPES” Program**](file:///D%3A%5CCHCTWEBSITE%5CROPES#_10.8_The_)

[**10.8.1 The program**](#_10.8.1_The_program)

[**10.8.2 The target group & eligibility criteria**](#_10.8.2_The_target)

[**10.8.3 The aims & objectives of the program**](#_10.8.3_The_aims)

[**10.8.4 The content of the program**](#_10.8.4_The_content)

[**10.8.5 The consequence of a positive completion of the program**](#_10.8.5_The_consequence)



# **[11. CRIMINAL DIVISION – SENTENCING](https://www.childrenscourt.vic.gov.au/research-materials/chapter-11-sentencing)**

[**11.1 Sentencing principles & sentencing orders**](#_11.1_Sentencing_principles)

 [**11.1.1 Sentencing models**](#_11.1.1_Sentencing_models)

 [**11.1.2 Sentencing of adults**](#_11.1.2_Sentencing_of)

 [**11.1.3 Sentencing of children**](#_11.1.3_Sentencing_of)

 [**11.1.4 Some general sentencing principles**](#_11.1.4_Some_general)

 [**11.1.4.1 General deterrence is not applicable as a sentencing principle in ChCV**](#_11.1.4.1__General)

 [**11.1.4.2 Powers of the Supreme Court and County Court in sentencing a child**](#_11.1.4.2__Powers)

 **[11.1.4.3 Principle of Proportionality – Relevance of other convictions](#_11.1.4.3__Principle)**

 **[11.1.4.4 Principle of Totality](#_11.1.4.4__Principle_1)**

 **[11.1.4.5 Community correction orders under Part 3A of the Sentencing Act 1991](#_11.1.4.5__Combination)**

 [**11.1.5 Sentencing orders – Sentencing hierarchy**](#_11.1.5_Sentencing_orders)

 [**11.1.6 The community supervisory orders detailed and compared**](#_11.1.6_The_community)

 [**11.1.7 Power to impose an aggregate sentence of YRC/YJC detention under the CYFA**](#_11.1.7_Power_to)

 [**11.1.8 Restitution/Compensation/Costs**](#_11.1.8_Restitution/Compensation/Cos)

 [**11.1.9 Additional orders including disqualification & forfeiture**](#_11.1.9_Additional_orders)

 [**11.1.9.1 Licence suspension/cancellation and disqualification from driving**](#_11.1.9.1__)

 [**11.1.9.2 Incompatibilty of diversion and licence cancellation/suspension**](#_11.1.9.2__)

 [**11.1.9.3 Forfeiture and other orders**](#_11.1.9.3__)

 [**11.1.10 Distinction**](#_11.1.10_Struck_out) **between dismissing a charge and striking out a charge**

 [**11.1.11 Children’s Court has no direct power to impose community work/service**](#_11.1.11_Children’s_Court)

 [**11.1.12 Order for forensic procedure on finding of guilt**](#_11.1.12_Order_for)

 [**11.1.13 Sentencing of children for Commonwealth offences**](#_11.1.13_Sentencing_of)

 [**11.1.14 Sentencing powers of Supreme Court or County Court**](#_11.1.14_Sentencing_powers)

 [**11.1.15 Relevance to sentencing of agreement between Crown and defence**](#_11.1.15_Relevance_to)

 [**11.1.16 Procedural fairness**](#_11.1.16_Procedural_fairness)

 [**11.1.17 Relevance of United Nations Convention on the Rights of the Child**](#_11.1.17_Relevance_of)

 [**11.1.18 Sentencing for conspiracy compared with sentencing for completed offence**](#_11.1.18_Sentencing_for)

 [**11.1.19 Offending in a custodial setting is a relevant sentencing consideration**](#_11.1.19_Offending_in)

 [**11.1.20 Vigilantism**](#_11.1.20_Vigiliantism)

 [**11.1.21 Relevance of cultural practice to sentencing for a Commonwealth offence**](#_11.1.20_Vigiliantism)

[**11.2 Selected cases on sentencing**](#_11.2_Selected_cases)

 [**11.2.1 Young adults & children sentenced under the Sentencing Act**](#_11.2.1_Young_adults)

 [**11.2.2 Children and young persons sentenced under the CYPA & CYFA**](#_11.2.2_Children_and)

 [**11.2.3 Sentencing hierarchy**](#_11.2.3_Sentencing_hierarchy)

 [**11.2.4 Factual basis of sentencing – Relevance of uncharged acts**](#_11.2.4_Factual_basis)

 [**11.2.5 Purpose of a Youth Justice Centre sentence [formerly YTC]**](#_11.2.5_Purpose_of)

 [**11.2.6 Parity of sentencing**](#_11.2.6_Parity_of)

 [**11.2.6A Current sentencing practices**](#_11.2.6_Parity_of)

 [**11.2.7 Double jeopardy**](#_11.2.7_Double_Jeopardy)

 [**11.2.8 Effect of guilty plea, remorse, admission of offence, assistance to authorities**](#_11.2.8_Effect_of)

[**11.2.8.1 Remorse**](#_11.2.8.1__)

[**11.2.8.2 Discount for guilty plea and/or admission of offence**](#_11.2.8.2__)

[**11.2.8.3 Assistance to authorities (Informer’s discount)**](#_11.2.8.3__)

[**11.2.8.4 Undertaking to give evidence against co-accused**](#_11.2.8.4__)

 **[11.2.9 Relevance of risk to offender’s safety while in custody /](#_11.2.9_Relevance_of)**

 **[Relevance of protective custody](#_11.2.9_Relevance_of)**

 **[11.2.10 Effect of forgiveness by the victim](#_11.2.10_Effect_of)**

 [**11.2.11 Effect of mental illness / mental disorder / intellectual disability**](#_11.2.11_Effect_of)

 [**11.2.11.1 Cases prior to R v Verdins (2007) 16 VR 269**](#_11.2.11.1__Effect)

 [**11.2.11.2 R v Verdins (2007) 16 VR 269 & later cases**](#_11.2.11.2__Effect)

 [**11.2.11.3 Effect of intellectual disability**](#_11.2.11.3__Effect)

 [**11.2.11.4 Effect of personality disorder**](#_11.2.11.4__Effect)

 [**11.2.12 Effect of deprived/disadvantaged background**](#_11.2.12_Effect_of)

 [**11.2.13 Effect of ill health and/or age**](#_11.2.13_Effect_of)

 **[11.2.14 Effect of delay](#_11.2.14_Effect_of)**

 [**11.2.15 Relevance of gambling addiction**](#_11.2.15_Relevance_of)

 [**11.2.16 Relevance of drug addiction**](#_11.2.16_Relevance_of)

 [**11.2.17 Relevance of intoxication**](#_11.2.17_Relevance_of)**/drug ingestion**

 [**11.2.18 Relevance of hardship on offender's family**](#_11.2.18_Relevance_of)

 [**11.2.19 Relevance of Aboriginality**](#_11.2.19_Relevance_of)

 [**11.2.20 Relevance of recall or risk of recall by Parole Board**](#_11.2.20_Relevance_of)

 [**11.2.21 Relevance of likely forfeiture under the Confiscation Act**](#_11.2.21_Relevance_of)

 [**11.2.22 Sentencing for manslaughter / defensive homicide / attempted murder / murder**](#_11.2.22_Sentencing_for)

 [**11.2.22.1 Sentencing for manslaughter**](#_11.2.22.1__)

 [**11.2.22.2 Sentencing for defensive homicide [now abolished]**](#_11.2.22.2__)

 [**11.2.22.3 Sentencing for attempted murder**](#_11.2.22.3__)

 [**11.2.22.4 Sentencing for murder**](#_11.2.22.4__)

 [**11.2.22.5 Sentencing for statutory murder**](#_11.2.22.5__)

 [**11.2.22.6 Sentencing for incitement to murder**](#_11.2.22.6___1)

 [**11.2.22.7 Sentencing for being accessory to murder**](#_11.2.22.7__)

 [**11.2.22.8 Sentencing for homicide by firearm**](#_11.2.22.7__)

 [**11.2.23 Sentencing for culpable driving / dangerous driving causing death/serious inj.**](#_11.2.23_Sentencing_for)

[**11.2.24 Sentencing for inflicting injury / endangerment / affray / violent disorder etc**](#_11.2.24_Sentencing_for)

[**11.2.24.1 Sentencing for-**](#_11.2.24.1__)

 **A** [**intentionally causing serious injury**](#_A_INTENTIONALLY_CAUSING)

 **B** [**intentionally causing serious injury in circumstances of gross violence**](#_B_INTENTIONALLY_CAUSING)

 **C** [**recklessly causing serious injury in circumstances of gross violence**](#_C_RECKLESSLY_CAUSING)

 **[11.2.24.2 Sentencing for recklessly causing serious injury](#_11.2.24.2___1)**

 **[11.2.24.3 Sentencing for negligently causing serious injury](#_11.2.24.3__)**

 **[11.2.24.4 Sentencing for intentionally causing injury / recklessly causing injury](#_11.2.24.4__)**

 **[11.2.24.5 Sentencing for affray / riot / violent disorder](#_11.2.24.5___2)**

 [**11.2.24.6 Sentencing for-**](#_11.2.24.6__)

 **A** [**reckless conduct endangering life/serious injury**](#_A_RECKLESS_CONDUCT)

 **B** [**recklessly exposing emergency worker to risk by driving**](#_B_RECKLESSLY_EXPOSING)

 **[11.2.25 Sentencing for drug trafficking / cultivation / importation etc](#_11.2.25_Sentencing_for)**

 **[11.2.26 Sentencing for armed robbery / robbery / agg carjacking / carjacking](#_11.2.26_Sentencing_for)**

 [**11.2.26.1 Sentencing for-**](#_11.2.26.1__)

 **A** [**armed robbery**](#_A_ARMED_ROBBERY)

 **B** [**attempted armed robbery**](#_B_ATTEMPTED_ARMED)

 **C** [**robbery**](#_C_ROBBERY)

 [**11.2.26.2 Sentencing for-**](#_11.2.26.2__)

 **A** [**aggravated carjacking**](#_A_AGGRAVATED_CARJACKING)

 **B** [**carjacking**](#_B_CARJACKING)

 **[11.2.27 Sentencing for-](#_11.2.27_Sentencing_for_1)**

 **A** [**burglary**](#_A_BURGLARY)

 **B** [**aggravated burglary | home invasion**](#_B_AGGRAVATED_BURGLARY)

 **C aggravated** [**home invasion**](#_C_HOME_INVASION)

 **[11.2.28 Sentencing for rape / other sexual offences](#_11.2.28_Sentencing_for_1)**

 [**11.2.28.1 Sentencing for rape**](#_11.2.28.1__)

 [**11.2.28.2 Sentencing for other sexual offences**](#_11.2.28.2__)

 [**11.2.29 Sentencing for offences against the person committed on public transport**](#_11.2.29_Sentencing_for)

 [**11.2.30 Sentencing for attempting to pervert the course of justice**](#_11.2.30_Sentencing_for) **/ perjury**

 [**11.2.31 Sentencing for property damage**](#_11.2.31_Sentencing_for) **/ arson / arson with intent to endanger life**

 [**11.2.32 Sentencing for child homicide**](#_11.2.32_Sentencing_for)

 [**11.2.33 Sentencing for terrorism offence**](#_11.2.33_Sentencing_for)

 **[11.2.34 Sentencing for firearms offences-](#_11.2.34_Sentencing_for)**

 **A** [**importation of firearms**](#_A_IMPORTATION_OF)

 **B** [**trafficking in / possession of / discharge of firearms**](#_B_TRAFFICKING_IN)

 **C** [**in**](#_B_TRAFFICKING_IN) **conjunction with drug offence**

 [**11.2.35 Sentencing for theft, theft of firearms, theft of motor vehicle and deception**](#_11.2.35_Sentencing_for)

 [**11.2.36 Sentencing for offences involving family violence**](#_Sentencing_for_offences)

 [**11.2.36.1 Sentencing considerations for contravention of an intervention order**](#_11.2.36.1__)

 [**11.2.36.2 Some relevant cases**](#_Some_relevant_cases)

 [**11.2.37 Sentencing for stalking**](#_11.2.35_Sentencing_for)

 [**11.2.38 Sentencing for servitude offences**](#_11.2.35_Sentencing_for)

**[11.3 Some mechanics of sentencing](#_11.3_Some_mechanics)**

 **[11.3.1 “Instinctive synthesis” or “two-tiered approach”](#_11.3.1_\“Instinctive_synthesis\”)**

 [**11.3.2 Use of sentencing statistics and sentencing snapshots**](#_11.3.2_Use_of)

 [**11.3.3 The Sex Offenders Registration Act 2004 and its relevance to sentencing**](#_11.3.3_The_Sex)

 [**11.3.4 Power to direct time held in detention before trial be reckoned as already served**](#_11.3.4_Power_to)

 [**11.3.5 Exercise of mercy**](#_11.3.5_Exercise_of)

 [**11.3.6 Conviction or non-conviction**](#_11.3.6_Conviction_or)

 [**11.3.7 Effect of an injury sustained by offender while committing a crime**](#_11.3.7_Effect_of)

 [**11.3.8 Effect of the COVID-19 pandemic on sentencing**](#_11.3.8_Effect_of)

**[11.4 Material admissible in sentencing hearings under the CYFA](#_11.4_Material_admissible_1)**

 [**11.4.1 Pre-sentence & group conference reports**](#_11.4.1_Pre-sentence_&)

 [**11.4.2 Report, submission & evidence on behalf of child**](#_11.4.2_Report,_submission)

 [**11.4.3 Prior finding of guilt**](#_11.4.3_Prior_findings)

 [**11.4.4A Submissions & duty of prosecutor**](#_11.4.4A_Submissions_&)

[**11.4.4B Submissons of accused**](#_11.4.4B_Duty_of)

 [**11.4.5 Victim impact statements**](#_11.4.5_Victim_impact)

**[11.5 Deferral of sentencing](#_11.5_Deferral_of)**

**[11.6 Group conference](#_11.6_Group_Conference)**

 [**11.6.1 Restorative justice**](#_11.6.1_Restorative_justice)

 [**11.6.2 The Victorian Group Conference program**](#_11.6.2_The_Victorian)

 [**11.6.3 Goal**](#_11.6.3_Goal)

 [**11.6.4 Consultation with Youth Justice**](#_11.6.4_Consultation_with)

 [**11.6.5 Mechanics**](#_11.6.5_Mechanics)

 [**11.6.6 Conference Outcomes**](#_11.6.6_Conference_Outcomes)

[**11.7 Criminal Division Statistics**](#_11.7_Criminal_Division)

 [**11.7.1 Victorian statistics**](#_11.7.1_Victorian_statistics)

 [**11.7.2 Australian & world statistics**](#_11.7.2_Australian_&)

[**11.8 Parole & Remissions**](#_11.8_Parole_&)

 [**11.8.1 Parole**](#_11.8.1_Parole)

 [**11.8.2 Remissions**](#_11.8.2_Remissions)

**[11.9 Temporary leave from detention](#_11.9_Temporary_leave)**

[**11.10 Transfers between custodial institutions**](#_11.10_Transfers_between)

[**11.11 Further custodial sentence imposed on detainee**](#_11.11_Further_custodial)

[**11.12 Breach of sentencing orders made under the CYFA**](#_11.12_Breach_of)

 **[11.12.1 “Generic” provisions governing commencement, hearing and transfer of breach proceedings](#_11.12.1_\“Generic\”_provisions)**

 [**11.12.2 Powers upon proof of breach of CYFA sentencing order (other than YCO & fine default)**](#_11.12.2_Powers_upon)

 [**11.12.3 Revocation of YCO and consequences thereof**](#_11.12.3_Revocation_of)

 [**11.12.4 Fine defaults**](#_11.12.4_Fine_defaults)

[**11.13 Sunset provision for Children's Court priors – Spent convictions**](#_11.13_Sunset_provision)

 **[11.13.1 Section 584 CYFA](#_11.13.1_Section_584)**

 [**11.13.2 Spent Convictions Act 2021**](#_11.13.2_Spent_Convictions)

[**11.14 The MAPPS Program**](#_11.14_The_MAPPS)

[**11.15 Sentencing of adults for child abuse**](#_11.15_Sentencing_of)

 [**11.15.1 Sexual abuse**](#_11.15.1_Sexual_abuse)

 [**11.15.1.1 Sexual abuse in a family setting**](#_11.15.1.1_Sexual_abuse)

 [**11.15.1.2 Sexual abuse by a person in authority**](#_11.15.1.2_Sexual_abuse)

 **[11.15.2 Use of the internet to procure sex](#_11.15.2_Use_of)**

 [**11.15.3 Possession/production/transmission of child pornography**](#_11.15.3_Possession/production/trans)

 [**11.15.4 Other sexual offending against children**](#_11.15.4_Other_sexual)

[**11.15.5 Relevance of consent in sentencing for unlawful sexual activity with a child**](#_11.15.5_Relevance_of)

 **[11.15.6 Physical abuse](#_11.15.6_Physical_abuse)**

 **[11.15.7 Causing death [including infanticide]](#_11.15.7_Causing_death)**

[**11.16 Sentencing for child sexual abuse committed as a child**](#_11.16_Sentencing_for)

[**11.17 Sentencing of adults for offence against protective worker**](#_11.17_Sentencing_of)

[**11.18 Relevance of prospect of deportation**](#_11.18_Relevance_of)

[**11.19 The ‘standard sentence’ scheme**](#_11.19_The_‘standard)

[**11.20**  **Alcohol exclusion orders**](#_11.20_Alcohol_exclusion)

[**11.21**  **Mandatory sentencing**](#_11.21_Mandatory_sentencing)



[**12. CHILDREN'S COURT CLINIC**](https://www.childrenscourt.vic.gov.au/research-materials/chapter-12-childrens-court-clinic)

[12.1 Statutory basis and functions of the Clinic](#_12.1_Statutory_basis)

[12.2 Referral to the Clinic](#_12.2_Referral_to)

 [12.2.1 Referral from Family Division for a report](#_12.2.1_Referral_from)

 [12.2.2 Referral from Criminal Division for a report](#_12.2.2_Referral_from)

 **12.2.3 Terms of reference for Family Division assessments by the Clinic**

 **12.2.4 Terms of reference for Criminal Division assessments by the Clinic**

[12.3 Operation of the Clinic](#_12.3_Operation_of)

 [12.3.1 Ethos](#_12.3.1_Ethos)

 [12.3.2 Qualifications and experience of clinicians](#_12.3.2_Qualifications_&)

 [12.3.3 Clinical assessments](#_12.3.3_Clinical_assessments)

 [12.3.4 Statistics](#_12.3.3_Clinical_assessments)

 [12.3.5 Research](#_12.3.3_Clinical_assessments) role

[12.4 Children’s Court Clinic reports](#_12.4_Distribution_of)

 [12.4.1 The competing principles](#_12.4.1_The_competing)

 [12.4.2 Distribution of and access to Family Division reports](#_12.4.2_Distribution_of)

 [12.4.3 Distribution of and access to Criminal Division reports](#_12.4.3_Distribution_of)

 [12.4.4 Confidentiality of Children’s Court Clinic reports](#_12.4.4_Confidentiality_of)

