

# Changes to Sentencing Practice: Young Adult Offenders Report

**The Sentencing Advisory Council bridges the gap between the community, the courts, and the government by informing, educating, and advising on sentencing issues.**

The Sentencing Advisory Council is an independent statutory body established in 2004 under amendments to the *Sentencing Act 1991*. The functions of the Council are to:

- provide statistical information on sentencing, including information on current sentencing practices
- conduct research and disseminate information on sentencing matters
- gauge public opinion on sentencing
- consult on sentencing matters
- advise the Attorney-General on sentencing issues
- provide the Court of Appeal with the Council's written views on the giving, or review, of a guideline judgment.

Council members come from a broad spectrum of professional and community backgrounds. Under the *Sentencing Act 1991*, Council members must be appointed under eight profile areas:

- two people with broad experience in community issues affecting the courts
- one senior academic
- one highly experienced defence lawyer
- one highly experienced prosecution lawyer
- one member of a victim of crime support or advocacy group
- one person involved in the management of a victim of crime support or advocacy group who is a victim of crime or a representative of victims of crime
- one member of the police force of the rank of senior sergeant or below who is actively engaged in criminal law enforcement duties
- the remainder must have experience in the operation of the criminal justice system.

For more information about the Council and sentencing generally, visit:

**[www.sentencingcouncil.vic.gov.au](http://www.sentencingcouncil.vic.gov.au)**

# Changes to Sentencing Practice: Young Adult Offenders Report

Published by the Sentencing Advisory Council  
Melbourne, Victoria, Australia

This report reflects the law as at 31 January 2015.

© Copyright State of Victoria, Sentencing Advisory Council, April 2015.

This publication is protected by the laws of copyright. No part may be reproduced by any process except in accordance with the provisions of the *Copyright Act 1968* (Cth).

ISBN 978-1-925071-10-8 (Online)

Authorised by the Sentencing Advisory Council,  
Level 3, 333 Queen Street, Melbourne VIC 3000

Publications of the Sentencing Advisory Council follow the Melbourne University Law Review Association Inc *Australian Guide to Legal Citation* (3rd ed., 2010).

# Contents

**Contributors** vii

**Acknowledgements** vii

**Glossary** viii

**Abbreviations** viii

## **1. Sentencing young adult offenders in Victoria and legislative change** 1

### **Sentencing young adult offenders in Victoria** 1

Legislation governing the sentencing of young offenders in Victoria 1

Principles of sentencing young adult offenders 2

Previous Council research into sentencing young adult offenders in Victoria 3

### **Legislative change and the introduction of community correction orders** 3

Changes to sentencing legislation in Victoria 3

Council research on CCOs and young adult offenders 5

## **2. Data specifications** 7

## **3. Results** 8

### **Changes in the number of young offenders being sentenced** 8

Changes in Victoria's demographics 9

Changes in behaviour of this group 9

Changes to police charging practices 10

Changes to diversion practices in the Magistrates' Court 13

### **Changes to sentencing outcomes** 13

Changes to sentencing outcomes in the Magistrates' Court 13

Changes to sentencing outcomes in the higher courts 15

Changes to sentencing in the Magistrates' Court and the higher courts 15

## **4. Discussion and conclusions** 17

**References** 18

**Bibliography** 18

**Legislation** 19

**Case law** 19

**Quasi-legislative materials** 19



# Contributors

## Authors

Dr Joe Clare  
Cynthia Marwood  
Dennis Byles

## Sentencing Advisory Council

### Chair

Arie Freiberg AM

### Deputy Chair

Lisa Ward

### Council Members

Carmel Arthur  
Hugh de Kretser  
Fiona Dowsley  
Helen Fatouros  
David Grace QC  
John Griffin PSM  
Peter Kidd SC  
Barbara Rozenes  
Geoff Wilkinson OAM  
Kornelia Zimmer

## Chief Executive Officer

Cynthia Marwood

## Acknowledgements

The Council would like to thank the Crimes Statistics Agency for their assistance in providing data for this report.

# Glossary

<b>Higher courts</b>	For the purposes of this report, the County Court and the Supreme Court.
<b>Intermediate sentencing options</b>	In the Magistrates' Court and higher courts, any sentence on the sentencing hierarchy above a fine and below a sentence of incarceration.
<b>Percentage points</b>	The arithmetic difference between two percentages. For example, a starting value of 10% and a finishing value of 15% mean that the value has increased by 5 percentage points.
<b>Reference period</b>	The period of time for which sentences are examined. In this report, the reference period is the five financial years from 2009–10 to 2013–14.
<b>Suspended sentence (Sentencing Act 1991 (Vic) ss 27–31)</b>	A term of imprisonment that is suspended (i.e., not activated), wholly or in part, for a specified period (the 'operational period') subject to the condition to be of good behaviour (i.e., not reoffend). A suspended sentence may be imposed for a maximum of two years in the Magistrates' Court or three years in the County and Supreme Courts. Now abolished in Victoria, suspended sentences cannot be imposed in the higher courts for any offence committed on or after 1 September 2013 and in the Magistrates' Court for any offence committed on or after 1 September 2014.
<b>Young adult offender</b>	For the purposes of this report, an offender who is aged 18 years or over and under 21 years at the time of sentencing. This group of offenders is a subset of young offenders, as defined by the <i>Sentencing Act 1991</i> (Vic) s 3.
<b>Young offender (Sentencing Act 1991 (Vic) s 3)</b>	An offender who is under the age of 21 years at the time of sentencing.
<b>Youth justice centre order (Sentencing Act 1991 (Vic) ss 32–35)</b>	A sentence requiring a young offender (15 to 21 years old) to be detained in a youth justice centre. A youth justice centre order may be imposed for a maximum of two years in the Magistrates' Court or three years in the County and Supreme Courts.

# Abbreviations

<b>BOCSAR</b>	Bureau of Crime Statistics and Research
<b>CCO</b>	community correction order
<b>CJDP</b>	Criminal Justice Diversion Program
<b>YJCO</b>	youth justice centre order



# 1. Sentencing young adult offenders in Victoria and legislative change

- I.1 This report examines the extent to which recent changes to intermediate sentencing options in Victoria have influenced sentencing practices for young adult offenders (18 years or over and under 21 years at the time of sentencing) in Victoria. This group of offenders is a subset of the group of offenders aged under 21 that are defined as 'young offenders', by section 3 of the *Sentencing Act 1991* (Vic).
- I.2 The analysis examines the longitudinal trends for sentencing for this age group in two ways. First, the variations in the number of young adult offenders sentenced are considered. Second, the differences in the sentencing outcomes for those offenders are explored.
- I.3 This report demonstrates that there has been a large decline in the number of young adult offenders sentenced in Victoria in recent years. The analysis also demonstrates that, for young adult offenders who are sentenced, there has been a notable increase in the use of the recently introduced community correction order (CCO). The report concludes by discussing some possible reasons for these trends and outlining directions for future research.

## Sentencing young adult offenders in Victoria

- I.4 This section briefly examines three aspects of sentencing young adult offenders in Victoria:
  - legislation governing sentencing of this age group;
  - principles of sentencing applicable to this age group; and
  - prior research examining sentencing of young adult offenders in Victoria.

## Legislation governing the sentencing of young offenders in Victoria

- I.5 While the *Sentencing Act 1991* (Vic) defines a 'young offender' as someone aged under 21 years at the time of sentencing, this report focuses on offenders aged over 18 years but under 21 years when sentenced in the Magistrates', County, or Supreme Court.<sup>1</sup>
- I.6 In sentencing a young adult offender, these courts have all the options available to them that apply to an adult offender:
  - dismissal, discharge, or adjournment;
  - fine;
  - CCO;<sup>2</sup>
  - drug treatment order;
  - suspended sentence;<sup>3</sup> and
  - imprisonment.

1. The *Children, Youth and Families Act 2005* (Vic) s 3 defines a 'child' as someone aged 10 years or over but under 18 years at the time of the alleged offence and aged under 19 years when court proceedings begin. See further Sentencing Advisory Council, *Sentencing Children and Young People in Victoria* (2012).

2. CCOs were introduced in January 2012 replacing community-based orders and intensive correction orders.

3. A wholly or partially suspended sentence was available as a sentencing option during the reference period. However, the power to suspend a sentence of imprisonment has been phased out in Victoria. The higher courts have no power to suspend a sentence of

- I.7 Although young adult offenders appear in adult courts, they have access to Victoria's unique 'dual track' system, which allows the courts to sentence young adult offenders to serve custodial sentences in a youth justice centre instead of an adult prison.
- I.8 To qualify for a youth justice centre order (YJCO), the court must be convinced that the young adult offender has reasonable prospects of rehabilitation or that he or she is particularly impressionable, immature, or likely to be subjected to undesirable influences in an adult prison.<sup>4</sup>
- I.9 While detained under a YJCO, young people participate in education and programs that address the offending behaviour. Temporary leave may be granted during the sentence, allowing a young person to leave the youth justice centre to engage in employment, attend training, or visit family and friends.

## Principles of sentencing young adult offenders

- I.10 Young adult offenders often receive less severe sentences than adult offenders do because young adult offenders are considered less culpable due to their immaturity. In many cases, the rehabilitation of the young adult offender is considered the most important of the sentencing purposes, recognising that positive behavioural change is still possible and in the community's long-term interests. These general propositions are set out in *R v Mills*:

Youth of an offender, particularly a first offender, should be a primary consideration for a sentencing court where that matter properly arises.

In the case of a youthful offender, rehabilitation is usually far more important than general deterrence. This is because punishment may in fact lead to further offending. Thus, for example, individualised treatment focusing on rehabilitation is to be preferred. (Rehabilitation benefits the community as well as the offender.)

A youthful offender is not to be sent to an adult prison if such a disposition can be avoided especially if he is beginning to appreciate the effect of his past criminality. The benchmark for what is serious as justifying adult imprisonment may be quite high in the case of a youthful offender; and, where the offender has not previously been incarcerated, a shorter period of imprisonment may be justified. (This proposition is a particular application of the general principle expressed in s. 5(4) of the Sentencing Act.)<sup>5</sup>

- I.11 The Victorian Court of Appeal recently cited these propositions with approval in its guideline judgment on CCOs.<sup>6</sup> The court, in citing *DPP v Anderson*,<sup>7</sup> also reaffirmed that:

it is a 'cardinal principle of sentencing law' that, when a young offender is to be sentenced, the sentencing disposition should be tailored – so far as possible consistently with other applicable sentencing principles – to promote the offender's rehabilitation.<sup>8</sup>

---

imprisonment for any offence committed on or after 1 September 2013. Similarly, the Magistrates' Court is not able to impose a suspended sentence for any offence committed on or after 1 September 2014.

4. *Sentencing Act 1991* (Vic) s 32(1).

5. *R v Mills* [1998] 4 VR 235, 241.

6. *Boulton v The Queen; Clements v The Queen; Fitzgerald v The Queen* [2014] VSCA 342 (22 December 2014) [183].

7. *DPP v Anderson* (2013) 288 A Crim R 128.

8. *Boulton v The Queen; Clements v The Queen; Fitzgerald v The Queen* [2014] VSCA 342 (22 December 2014) 184.

- I.12 Youth and rehabilitation are, however, not always the overriding considerations. As the seriousness of the offending increases, the mitigating effect of youth decreases.<sup>9</sup> Furthermore:

Tension exists concerning the extent to which rehabilitative objectives should give way to punitive ones once the offender no longer enjoys the solicitude for children found in the *Children, Youth and Families Act 2005* (Vic).<sup>10</sup>

## Previous Council research into sentencing young adult offenders in Victoria

- I.13 The Sentencing Advisory Council ('the Council') has released a previous report that examines sentencing outcomes for young offenders in Victoria.<sup>11</sup>
- I.14 Research from the report demonstrated that on average 400 young adult offenders were given a custodial sentence in the Magistrates', County, or Supreme Court in each of the five years between 2005 and 2009 (roughly 5% of all sentences imposed on this age group over this period).<sup>12</sup>
- I.15 Approximately half of the young adult offenders given a custodial sentence were sentenced to a youth detention facility while the other half were sentenced to an adult custodial facility.<sup>13</sup>

## Legislative change and the introduction of community correction orders

- I.16 This section examines some recent legislative changes in Victoria and how they have changed sentencing outcomes for young adult offenders. The relevant research findings relating to this issue are then discussed.

## Changes to sentencing legislation in Victoria

- I.17 In January 2012, CCOs were introduced as a new sentencing option in Victoria. CCOs came into effect as part of a series of major changes to the sentencing landscape, including:
- the abolition of community-based orders, intensive correction orders, and combined custody and treatment orders; and
  - the phasing out of partially and wholly suspended sentences.
- I.18 The purpose of the CCO is 'to provide a community based sentence that may be used for a wide range of offending behaviours while having regard to and addressing the circumstances of the offender'.<sup>14</sup> The CCO is a sanction, independent of imprisonment, providing a significant and proportionately punitive response to offences falling within the mid range of seriousness.<sup>15</sup>

9. *Azzopardi v The Queen; Baltatzis v The Queen; Gabriel v The Queen* [2011] VSCA 372 (18 November 2011).

10. Arie Freiberg, *Fox & Freiberg's Sentencing: State and Federal Law in Victoria* (3rd ed., 2014) 922.

11. Sentencing Advisory Council (2012), above n 1.

12. *Ibid* 192. Additional data analysis undertaken for the purposes of this report demonstrated that custodial sentences represented between 3.8% and 5.7% of all sentences imposed between 2005 and 2009.

13. *Ibid*.

14. *Sentencing Act 1991* (Vic) s 36.

15. Victoria, 'Sentencing Amendment (Community Correction Reform) Bill 2011', *Parliamentary Debates*, Legislative Assembly, 15 September 2011, 3291–3295 (Robert Clark, Attorney-General).

- I.19 A CCO can only be imposed if the offending is punishable by more than five penalty units, a pre-sentence report has been received (if required) and considered by the court, and the offender consents to the order.<sup>16</sup>
- I.20 The intent of the CCO is to provide a non-custodial sentencing option that is more flexible than the intermediate orders it replaced. CCOs can be imposed in the higher courts for a period up to the maximum penalty for an offence.<sup>17</sup> The CCO can be imposed with or without a conviction being recorded and in combination with other sanctions, including a fine<sup>18</sup> and a term of imprisonment not exceeding two years.<sup>19</sup>
- I.21 A broader range of mandatory terms<sup>20</sup> and conditions<sup>21</sup> may be attached to CCOs relative to previous community-based orders. In deciding which combination of conditions to impose, the court must consider the principle of proportionality, the purposes for which a sentence may be imposed, and the purpose of a CCO.<sup>22</sup>
- I.22 The CCO is a sanction that can contain:
- punitive elements, such as compulsory unpaid work and loss of leisure time;
  - incapacitative elements, such as curfews and movement restrictions;
  - specific deterrence elements, such as the intensive compliance period; and
  - rehabilitative elements, such as assessment and treatment.

These elements have the goal of constraining the offender's time, behaviour, and freedom of choice while still permitting the person to remain within the community.

- I.23 Overall, the CCO is uniquely flexible and adaptive in relation to its length, its combination with other sentences, and its capacity to meet different sentencing purposes simultaneously through different conditions while avoiding the criminogenic effects of imprisonment.<sup>23</sup> This was highlighted in the guideline judgment on CCOs delivered by the Court of Appeal:

The availability of the CCO dramatically changes the sentencing landscape. The sentencing court can now choose a sentencing disposition, which enables all of the purposes of punishment to be served simultaneously, in a coherent and balanced way, in preference to an option (imprisonment) which is skewed towards retribution and deterrence... In short, the CCO offers the sentencing court the best opportunity to promote, simultaneously, the best interests of the community and the best interests of the offender and those who are dependent on him/her.<sup>24</sup>

16. *Sentencing Act 1991* (Vic) s 37.

17. *Sentencing Act 1991* (Vic) s 38(1)(b).

18. *Sentencing Act 1991* (Vic) s 43.

19. *Sentencing Act 1991* (Vic) s 44(1). When first introduced in 2012, a CCO could be imposed in combination with a term of imprisonment not exceeding three months. The increase to a term of imprisonment not exceeding two years was the result of amendments in the *Sentencing Amendment (Emergency Workers) Act 2014*, which also specifies that this restriction does not apply to the sentencing of serious arson offenders; in this case, the court may impose a CCO in addition to any sentence of imprisonment. In all cases, where the court imposes a CCO in addition to a term of imprisonment, the *Sentencing Amendment (Emergency Workers) Act 2014* provides that the CCO is to commence at the completion of the offender's non-parole period (if one is ordered).

20. *Sentencing Act 1991* (Vic) s 45(1).

21. *Sentencing Act 1991* (Vic) ss 48, 48C, 48D–48K, 48LA, 80.

22. *Sentencing Act 1991* (Vic) s 48A.

23. Sentencing Advisory Council, *Reoffending Following Sentencing in the Magistrates' Court of Victoria* (2013).

24. *Boulton v The Queen; Clements v The Queen; Fitzgerald v The Queen* [2014] VSCA 342 (22 December 2014) 113–115.

- I.24 This flexibility allows the CCO to be tailored to a broad range of offender characteristics. Therefore, the CCO is particularly well suited to young offenders – there can be a tension in sentencing considerations for young offenders, but rehabilitation is often the overriding purpose. This was highlighted in *Community Correction Orders: Guidelines for Sentencing Courts* where the Court of Appeal stated:

A CCO is likely to be a particularly important sentencing option in the case of a young offender, where there may be a perceived conflict between the need to punish the offender and the importance — both to the community and to the offender — of rehabilitating the offender.

Since the CCO can be used to rehabilitate and punish simultaneously, the conflict is likely to be reduced. Instead of needing to give less weight to denunciation or specific or general deterrence, in order to promote the young offender's rehabilitation, the court will be able to fashion a CCO, which adequately achieves all of those purposes at once.<sup>25</sup>

## Council research on CCOs and young adult offenders

- I.25 The Council has produced two previous reports examining issues associated with the introduction of CCOs in Victoria.<sup>26</sup>
- I.26 In 2014, the Council conducted a time series analysis<sup>27</sup> of the longitudinal trends in the percentage of offenders who received a community sentence in the higher courts, relative to suspended sentences and terms of imprisonment. The analysis showed that from January 2010 to June 2013 there was:
- a decrease in the rate at which offenders received a suspended sentence (8.4 percentage points in 2012 and 6.1 percentage points in the first half of 2013);
  - an increase in the rate at which offenders received imprisonment (3.6 percentage points in 2012 and 1.7 percentage points in the first half of 2013); and
  - an increase in the rate at which offenders received a CCO (4.4 percentage points in 2012 and 0.6 percentage points in the first half of 2013).
- I.27 When the Council undertook its analysis of the imposition of CCOs in the Magistrates' Court, suspended sentences were still available as a sentencing option in that jurisdiction. Consequently, it was found that CCOs had been 'used simply as a replacement for the older community sentences in the Magistrates' Court', and that there was 'little evidence of any shift away from suspended sentences towards CCOs in the Magistrates' Court'.<sup>28</sup>
- I.28 The longitudinal analysis did not look at specific age groups, but it did find that the median age of offenders receiving a CCO in the Magistrates' Court was 30 years, while nearly one-third (30.1%) was aged under 25 years.<sup>29</sup> The analysis also found that the median age of offenders receiving a CCO in the higher courts was 26 years, with almost 45% aged less than 25 years.<sup>30</sup>

25. Ibid app 1, 9–10.

26. Sentencing Advisory Council, *Community Correction Orders*, Monitoring Report (2014); Sentencing Advisory Council, *Community Correction Orders in the Higher Courts: Imposition, Duration, and Conditions* (2014).

27. Sentencing Advisory Council, *Community Correction Orders*, Monitoring Report (2014) 45–47.

28. Ibid 11.

29. Ibid 12.

30. Ibid 34.

- I.29 In addition, in another 2014 study<sup>31</sup> the Council undertook both a quantitative and a qualitative analysis to identify which case variables were influencing the imposition of a CCO relative to a short term of imprisonment. The quantitative analysis found that the likelihood of a CCO being imposed for offenders charged with aggravated burglary or armed robbery increased significantly if the offender was under the age of 25<sup>32</sup> (although youth was not predictive of the imposition of a CCO in cases involving cause serious injury). Consistent with this, the qualitative analysis also identified examples of cases in which the offender's youth influenced the imposition of a CCO rather than a short term of imprisonment.<sup>33</sup>
- I.30 In light of these reforms and this research, the current report examines to what extent, if any, the changes to intermediate sentencing options have altered sentencing practices for young adult offenders in Victoria. It specifically examines whether there have been any variations in sentencing outcomes for young adult offenders. In doing so, the report considers possible reasons for the overall drop in the number of young adult offenders sentenced over the reference period.

---

31. Sentencing Advisory Council, *Community Correction Orders in the Higher Courts: Imposition, Duration, and Conditions* (2014).

32. Ibid 12, 23.

33. Ibid 15, 19.

## 2. Data specifications

- 2.1 The primary sources of data for this report were the Higher Courts Conviction Returns database for the County and Supreme Courts<sup>34</sup> and Courtlink data extracts for the Magistrates' Court. In addition, the Crime Statistics Agency<sup>35</sup> provided the Council with data on the outcomes of Victoria Police involvement with young adult offenders over the reference period. The Council also examined demographic data from the Australian Bureau of Statistics<sup>36</sup> and the Australian Institute of Health and Welfare.<sup>37</sup>
- 2.2 The reference period for this analysis covers data for sentences imposed during the five financial years from 2009–10 to 2013–14.
- 2.3 The sentences imposed relate to the total effective sentence types given for a case and not for individual charges within a case.
- 2.4 Offender age at sentencing has been calculated by determining the difference between the date of sentencing and the offender's date of birth, and then rounding the value down to the lowest complete year (e.g., offenders aged 18 years and 11 months are aged 18 years in this analysis).
- 2.5 Within the results, there are instances where group names have been used to capture a number of different sentence types. The groupings are based on the following rules:
  - sentences labelled 'community orders' include community-based orders, CCOs, and intensive correction orders;
  - sentences labelled 'adjourned undertakings and other low-end orders' include adjourned undertakings (with or without conviction), convicted and discharged, or proven and dismissed; and
  - sentences labelled 'all other orders' include custodial orders for combined custody and treatment orders, custodial supervision orders, hospital security orders, non-custodial supervision orders, and residential treatment orders.<sup>38</sup>

34. The data were provided by Strategic Analysis and Review, Court Services Victoria.

35. Crime Statistics Agency (2015) <[www.crimestatistics.vic.gov.au](http://www.crimestatistics.vic.gov.au)>.

36. Australian Bureau of Statistics, *Population Projections, Australia 2012 (Base) to 2101*, cat. no. 3222.0 (2013); Australian Bureau of Statistics, *Population by Age and Sex, Australian States and Territories Jun 2010*, cat. no. 3201.0 (2010).

37. Australian Institute of Health and Welfare, *National Drug Strategy Household Survey Detailed Report 2013*, Drug Statistics Series 28 (2014); Australian Institute of Health and Welfare, *Youth Detention Population in Australia 2014*, Juvenile Justice Series 16 (2014).

38. Custodial treatment orders, non-custodial supervision orders, and residential treatment orders are not strictly sentencing orders but have been included in the grouping because they are an important form of disposition of criminal charges.

## 3. Results

- 3.1 The analysis examined the changes in the number of young adult offenders sentenced during the reference period and the possible relationship between these changes and changes to sentencing options.

### Changes in the number of young offenders being sentenced

- 3.2 The *Children, Youth and Families Act 2005* (Vic) defines a 'child' as someone aged 10 years or over but under 18 years at the time of the alleged offence and aged under 19 years when court proceedings begin.<sup>39</sup> The Criminal Division of the Children's Court has jurisdiction to deal summarily with all offences committed by a child, including indictable offences, but with some exceptions.<sup>40</sup> Consequently, some cases involving young offenders who are 18 years but not yet 19 years can be dealt with in the Children's Court. Because of this overlap, any increase in the number of 18 year old offenders sentenced in the Children's Court over the reference period could be relevant to the decrease in the total number of young adult offenders sentenced in the Magistrates' Court and the higher courts.
- 3.3 Across all courts, 39,749 young adult offenders were sentenced during the reference period (see Table 1). Of these, 14.5% (5,767 cases) were sentenced in the Children's Court as 18 year olds, 83.2% (33,053 cases) were sentenced in the Magistrates' Court, 2.3% (898 cases) were sentenced in the County Court, and 0.1% (31 cases) were sentenced in the Supreme Court. For the purposes of this analysis, the County Court and Supreme Court cases were combined to reflect sentencing in the higher courts (n = 929 cases or 2.3% of cases in the reference period).
- 3.4 Table 1 shows that there was a large decrease in the number of young adult offenders sentenced in Victoria over the reference period. Across all courts, there was a decrease of 2,570 offenders (26.4%) between 2009–10 and 2013–14. The relative decrease within each court was 39.1% in the Children's Court, 24.3% in the Magistrates' Court, and 14.7% in the higher courts.

**Table 1: Total number of sentences imposed on young adult offenders, 2009–10 to 2013–14**

Jurisdiction	Total number of sentences over time				
	2009–10	2010–11	2011–12	2012–13	2013–14
Higher courts	177	209	194	198	151
Magistrates' Court	8,014	6,655	6,386	5,928	6,070
Children's Court (offenders aged 18 years)	1,536	1,247	1,059	989	936
<b>All courts combined</b>	<b>9,727</b>	<b>8,111</b>	<b>7,639</b>	<b>7,115</b>	<b>7,157</b>

39. *Children, Youth and Families Act 2005* (Vic) s 3.

40. *Children, Youth and Families Act 2005* (Vic) s 516.



- 3.5 There are a number of possible explanations for this decrease, including:
- changes in Victoria's demographics (a decrease in the size of this section of the population);
  - changes in the behaviour of this age group;
  - changes to Victoria Police charging practices for this age group; and
  - changes in the number of young adult offenders participating in the Criminal Justice Diversion Program (CJDP).

Through analysis of additional sources of data, the evidence to support each of these possibilities is examined briefly below.

### Changes in Victoria's demographics

- 3.6 Data from the Australian Bureau of Statistics indicate that there was a 3.0% decrease in the number of young people aged 18–20 years in Victoria over the reference period.<sup>41</sup>
- 3.7 Consequently, while a change in age demographics may account for some of the decrease in the number of young adult offenders sentenced over the reference period, this factor alone does not account fully for the observed decrease in the number of young adult offenders being sentenced.

### Changes in behaviour of this group

- 3.8 In an analysis of key issues relating to alcohol and violence in Australia, Morgan and McAtamney summarised the available research, highlighting findings that demonstrate the strong evidence for an association between alcohol and violence.<sup>42</sup>
- 3.9 Findings from the *National Drug Strategy Household Survey*<sup>43</sup> demonstrate that there was a substantial decline in risky alcohol consumption behaviour in this age group in 2013 compared with 2007. Although this survey still found that adults aged 18–24 years were 'more likely to drink at harmful levels on a single occasion than the rest of the adult population',<sup>44</sup> the results also showed that at a national level in Australia:
- the average age that 14–24 year olds commenced drinking increased from 14.4 years in 1998 to 15.7 years in 2013;<sup>45</sup>
  - the percentage of 18–24 year olds drinking daily decreased from 1.5% in 2010 to 1.1% in 2013;<sup>46</sup>
  - the percentage of 18–24 year olds abstaining from drinking<sup>47</sup> increased from 14.6% in 2010 to 17.2% in 2013;<sup>48</sup>
  - the percentage of 18–24 year olds exceeding the lifetime risk guidelines for drinking<sup>49</sup> decreased from 31.0% in 2010 to 21.3% in 2013;<sup>50</sup> and
  - the percentage of 18–24 year olds who reported being single occasion risky drinkers<sup>51</sup> decreased from 54.0% in 2010 to 47.0% in 2013.<sup>52</sup>

41. Australian Bureau of Statistics (2013), above n 36; Australian Bureau of Statistics (2010), above n 36.

42. Anthony Morgan and Amanda McAtamney, 'Key Issues in Alcohol-Related Violence', *Research in Practice: Summary Paper* 04 (2009).

43. Australian Institute of Health and Welfare, *National Drug Strategy Household Survey Detailed Report 2013*, Drug Statistics Series 28 (2014).

44. Ibid 31.

45. Australian Institute of Health and Welfare, *National Drug Strategy Household Survey 2013: Alcohol Chapter Online Data Tables* (2014) <[www.aihw.gov.au/publication-detail?id=60129549469&tab=3](http://www.aihw.gov.au/publication-detail?id=60129549469&tab=3)> at 17 March 2015, Table 4.10.

46. Ibid Table S4.14.

47. Defined in terms of having not consumed alcohol in the previous 12 months.

48. Australian Institute of Health and Welfare (2014), above n 45, Table 4.5.

49. Defined in terms of having, on average, consumed more than two standard drinks per day.

50. Australian Institute of Health and Welfare (2014), above n 45, Table 4.5.

- 3.10 Furthermore, the *National Drug Strategy Household Survey* also demonstrates that this decrease in alcohol consumption has not simply been displaced with the use of other drugs. From 2010 to 2013, the percentage of 18–24 year olds smoking tobacco decreased by 2.3 percentage points to 13.4%, and the percentage abstaining from smoking tobacco increased by 4.7 percentage points to 76.8%.<sup>53</sup>
- 3.11 Over the same period, illicit drug use by 18–20 year olds declined by 0.8 percentage points to 26.1%,<sup>54</sup> and the percentage of 14–19 year olds reporting illicit drug use was stable, with recent use<sup>55</sup> of:
- cannabis declining by 0.9 percentage points to 14.8%;<sup>56</sup>
  - ecstasy increasing by 0.2 percentage points to 3.0%;<sup>57</sup>
  - meth/amphetamines increasing by 0.4 percentage points to 2.0%;<sup>58</sup> and
  - cocaine declining by 0.2 percentage points to 1.1%.<sup>59</sup>
- 3.12 The age ranges covered by these data do not match perfectly with the 18–20 year old offenders who are the subject of the current research. However, these survey findings demonstrate that there was a significant change in the drinking behaviour of the 18–24 year old age group in Australia between 2010 and 2013 and that there was no corresponding increase in the use of other drugs.
- 3.13 Given the connection between alcohol consumption and offending,<sup>60</sup> the decrease in alcohol consumption by the 18–24 year old age group may help explain the decrease in offending behaviour.

## Changes to police charging practices

- 3.14 Not all young offenders are charged. While 18–20 year olds, as adults, are not eligible for the general cautions available to children over the age of 10 years, they are still eligible for cannabis cautions and drug diversions.
- 3.15 As an adult, an 18–20 year old will be eligible for a cannabis caution if:
- he or she was in possession of a small amount of cannabis (up to 50 g) for personal use;
  - he or she admits to the offending;
  - there are no concurrent offences (unless these are immediately dealt with by way of another caution or infringement notice); and
  - he or she consents to the caution.<sup>61</sup>

51. Defined in terms of having had more than four standard drinks at least once a month.

52. Australian Institute of Health and Welfare (2014), above n 45, Table 4.8.

53. Australian Institute of Health and Welfare, *National Drug Strategy Household Survey 2013: Tobacco Chapter Online Data Tables* (2014) <[www.aihw.gov.au/publication-detail?id=60129549469&tab=3](http://www.aihw.gov.au/publication-detail?id=60129549469&tab=3)> at 17 March 2015, Table 3.4.

54. Australian Institute of Health and Welfare, *National Drug Strategy Household Survey 2013: Illicit Use of Drugs Chapter Online Data Tables* (2014) <[www.aihw.gov.au/publication-detail?id=60129549469&tab=3](http://www.aihw.gov.au/publication-detail?id=60129549469&tab=3)> at 17 March 2015, Table S5.32. See also *ibid* Table 5.6, which shows that illicit use of drugs by 14–19 year olds has also declined by 0.6 percentage points to 17.6%.

55. Where 'recent use' is defined within the survey as having used within the previous 12 months.

56. Australian Institute of Health and Welfare (2014), above n 54, Table 5.15.

57. *Ibid* Table 5.17.

58. *Ibid* Table 5.18.

59. *Ibid* Table 5.21.

60. See for example, David Collins and Helen Lapsley, *The Costs of Tobacco, Alcohol and Illicit Drug Abuse to Australian Society in 2004/05* (2008); Graham, Kathryn and Ross Homel, *Raising the Bar: Preventing Aggression in and around Bars, Pubs, and Clubs*. (Willan, 2008).

61. Victoria Police, *Victoria Police Manual: Disposition of Offenders* (2014) 4.

- 3.16 Similarly, a young adult offender may be eligible for a drug diversion on the same basis if he or she has used or is in possession of a small quantity of an illicit drug for personal use. In addition, the offender must participate in a drug diversion program involving assessment and appropriate treatment with an approved service provider.<sup>62</sup>
- 3.17 An offender will not be considered eligible for a cannabis caution or drug diversion if he or she has received more than one previous caution or drug diversion.<sup>63</sup>
- 3.18 Victoria Police may also issue an official warning under the *Infringements Act 2006* (Vic).<sup>64</sup> Young adult offenders may be eligible for an official warning for a number of minor offences.<sup>65</sup> Eligibility criteria and limitations are applicable.<sup>66</sup>
- 3.19 To examine the potential variations in criminal activity and the variations in police practices, the Council requested data from the Victorian Crime Statistics Agency. Although arrests (which comprised 38.6% of all outcomes) were relatively consistent over the reference period, declining by less than 1%, the results of this analysis did demonstrate patterns indicating a decrease in recorded offending behaviour for this age group (see Table 2). For example, over the reference period:
- the total number of young adult offenders dealt with by police over this period decreased by 5.2%, from 14,962 to 14,177;
  - summons (35.5% of all outcomes) decreased by 12.2% (this finding should be interpreted in light of the point raised in [3.21]);
  - penalty infringement notices (13.9% of all outcomes) decreased by 20.7%; and
  - official warnings (1.9% of all outcomes) decreased by 18.2%.

**Table 2: Most serious police outcomes per person for offenders aged 18–20 years during the reference period (n = 71,823 outcomes)**

Most serious outcome per person	% total	2009–10	2010–11	2011–12	2012–13	2013–14	% change 5 years
Arrests	38.6%	5,596	5,292	5,663	5,654	5,544	–0.9%
Summons	35.5%	5,519	5,210	5,020	4,924	4,848	–12.2%
Cautions	5.3%	704	666	642	903	916	30.1%
Penalty infringement notices	13.9%	2,178	2,253	2,008	1,806	1,728	–20.7%
Official warnings	1.9%	340	260	277	241	278	–18.2%
All other outcomes*	0.1%	< 4	11	27	11	4	300.0%
Intent to summons	4.6%	624	585	583	648	859	37.7%
All outcomes combined	100.0%	14,962	14,277	14,220	14,187	14,177	–5.2%

\* Includes notice to appear, presentment, and 'other' outcomes.

62. Ibid.

63. Ibid.

64. Ibid 5.

65. Failure by a person who is drunk, violent, or quarrelsome to leave a licensed premises when requested (*Liquor Control Reform Act 1998* s 114); consuming or having liquor on unlicensed premises (*Liquor Control Reform Act 1998* s 113); shop theft under \$600 (*Crimes Act 1958* s 74A); wilful damage (*Summary Offences Act 1966* s 9); indecent or obscene language (*Summary Offences Act 1966* s 17); offensive behaviour (*Summary Offences Act 1966* s 17). Official warnings are also available for traffic infringements but can only be issued by the Traffic Camera Office on review.

66. Victoria Police, *Victoria Police Manual* (2014), above n 61, 5.

- 3.20 In addition to this decrease in offending, the data also revealed a change in the use of cautions (which comprised 5.3% of all policing outcomes), with a 30.1% increase in the number of cautions issued over the reference period (see Table 2).
- 3.21 The decrease in the number of summons discussed at [3.19] needs to be interpreted in light of the 37.7% increase in the number of intent to summons filed by Victoria Police over the same period.<sup>67</sup> Intent to summons is a category that reflects the pending status of the case and that a final legal action against an alleged offender has not yet taken place. An intent to summons links recorded crimes to a person who may be charged by summons for those crimes in the future. However, further investigation and approval of evidence are required before proceeding with legal action against an alleged offender. As such, intent to summons figures for 2013–14 may decrease over time, and the figures presented in Table 2 for other outcomes for 2013–14 may increase. Consequently, the relationship between the increase in intent to summons and the decrease in young adult offenders coming before the courts during the reference period is unclear. Regardless, the 37.7% increase comprises 235 individuals, which is only 1.7% of Victoria Police outcomes involving young adult offenders in 2013–14.
- 3.22 In summary, with respect to the decrease in the number of young adult offenders sentenced over the reference period, the Victorian Crime Statistics Agency data indicate that less offending behaviour involving the 18–20 year age group was recorded by Victoria Police over the reference period. Further, when Victoria Police did encounter offender behaviour involving this age group, there was an increase in the use of cautions.
- 3.23 A recent Bureau of Crime Statistics and Research (BOCSAR) report<sup>68</sup> that examined age-specific offending in New South Wales demonstrates that the trends relating to declining criminal activity for young people are not unique to Victoria. Based on an analysis of police records and on the appendix tables included in the BOCSAR report, Table 3 displays large decreases in the rates of offending behaviour recorded for offenders aged 18–20 years between 2008 and 2012 (with rate decreases ranging between 17% and 32%).
- 3.24 In addition to discussing a range of policing, prevention-focused, and legislative changes that have been implemented in New South Wales, the BOCSAR report concludes that the continuation of the downward trend in serious assaults would likely depend on ‘whether the current fall in alcohol misuse by young people continues’.<sup>69</sup>

**Table 3: Rates (per 100,000) of offending by 18–20 year olds for four offences proceeded against in New South Wales, 2008 and 2012<sup>70</sup>**

Offence type	Age group	2008	2012	Rate decrease
Break and enter	18–20 years	333.4	256.5	–23%
Motor vehicle theft	18–20 years	107.1	88.6	–17%
Robbery	18–20 years	183.6	142.5	–22%
Serious assault	18–20 years	407.4	275.9	–32%

67. For further information regarding intent to summons, see Office of Police Integrity, *Report of Investigation into Victoria Police Crime Records and Statistical Reporting* (2011) 44–61.

68. Don Weatherburn, Karen Freeman, and Jessie Holmes, ‘Young but Not So Restless: Trends in the Age-Specific Rate of Offending’, *Crime and Justice Statistics: Bureau Brief, Issue Paper 98* (2014).

69. *Ibid* 1.

70. *Ibid* Table A1 (Break and enter), Table A2 (Motor vehicle theft), Table A3 (Robbery), Table A4 (Serious assault).

## Changes to diversion practices in the Magistrates' Court

- 3.25 The CJDP has become an important option for the Magistrates' Court in dealing with low-level offending. The CJDP is governed by section 59 of the *Criminal Procedure Act 2009* (Vic), and diversion is not considered a sentence.
- 3.26 Offenders participating in the program are able to avoid prosecution and a criminal record by undertaking conditions<sup>71</sup> in accordance with a plan developed by a magistrate or a judicial registrar.<sup>72</sup>
- 3.27 To be eligible for the program:
- the offence must be triable summarily and not subject to a minimum or fixed sentence or penalty (except demerit points);
  - the accused must acknowledge responsibility for the offence; and
  - the prosecution must consent to the matter proceeding by way of diversion.<sup>73</sup>
- 3.28 The imposition of conditions on the defendant can fulfil purposes such as punishment and denunciation, and the fact that participation in the program does not result in a criminal record can have a rehabilitative effect.
- 3.29 An increase in the number of young adult offenders participating in the CJDP could help explain the decrease in the number of 18–20 year olds sentenced during the reference period. However, this was not the case as there was a 34% decrease in the absolute number of young adult offenders participating in the CJDP over the reference period (from 1,428 in 2009–10 to 944 in 2013–14).

## Changes to sentencing outcomes

- 3.30 In combination, it appears that population change, attitudinal change towards alcohol by young adults, and police practices all possibly contributed to the large decrease in the number of young adult offenders appearing before the courts during the reference period. Furthermore, there has been a large decrease in the number of 18 year olds sentenced in the Children's Court and in the numbers of young adult offenders participating in the CJDP, meaning that these factors cannot account for the decrease in the number of young adult offenders being processed by the Magistrates' Court and the higher courts.
- 3.31 The remainder of the results section examines the sentencing outcomes for those young adult offenders who did come before the courts during the reference period, with particular interest in the use of the CCO. In order of offending severity, the Magistrates' Court sentencing outcomes are examined first, followed by the sentencing outcomes in the higher courts.

## Changes to sentencing outcomes in the Magistrates' Court

- 3.32 The Council examined the use of the different sentence types in the Magistrates' Court for young adult offenders within each year of the reference period as a percentage of all sentences

71. Conditions may include apologising to the victim in a letter or in person, compensating the victim, attending counselling and/or treatment, performing voluntary work, donating money to a charitable cause, attending a defensive driving course and/or road trauma awareness seminar; or any other condition the magistrate or judicial registrar deems appropriate. See Sentencing Advisory Council, *The Criminal Justice Diversion Program in Victoria: A Statistical Profile* (2008).

72. Magistrates' Court of Victoria, *Criminal Justice Diversion Program* (2013) <[www.magistratescourt.vic.gov.au/jurisdictions/criminal-and-traffic/criminal-justice-diversion-program](http://www.magistratescourt.vic.gov.au/jurisdictions/criminal-and-traffic/criminal-justice-diversion-program)> at 1 January 2015.

73. Ibid.

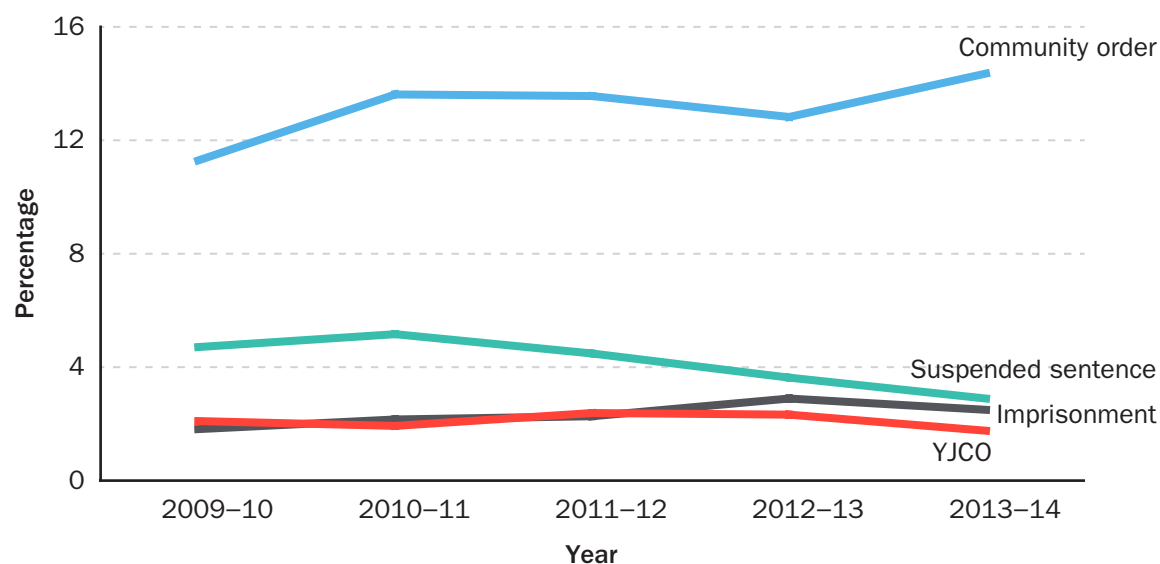
imposed (to control for the variation resulting from the reducing number of sentences over time). Table 4 displays the results of this analysis, showing that over the reference period:

- orders of imprisonment increased slightly (up 0.7 of a percentage point from 1.8% to 2.5%);
- YJCOs decreased slightly (down 0.3 percentage points from 2.1% to 1.8%);
- partially suspended sentences decreased slightly (down 0.1 of a percentage point from 0.4% to 0.3%);
- wholly suspended sentences decreased (down 1.7 percentage points from 4.3% to 2.6%);
- community orders increased (up 3.1 percentage points from 11.3% to 14.3%);
- fines (which comprise over 50% of all sentences imposed) decreased (down 6.1 percentage points from 56.7% to 50.6%); and
- adjourned undertakings and other low-end orders (which made up over 25% of all sentences imposed) increased (up 4.4 percentage points from 23.4% to 27.8%).

**Table 4: Magistrates' Court sentencing outcomes (%) imposed on young adult offenders, 2009–10 to 2013–14**

Sentence type	2009–10 (n = 8,014)	2010–11 (n = 6,655)	2011–12 (n = 6,386)	2012–13 (n = 5,928)	2013–14 (n = 6,070)
Imprisonment	1.8%	2.2%	2.3%	2.9%	2.5%
YJCO	2.1%	1.9%	2.4%	2.3%	1.8%
Partially suspended term of imprisonment	0.4%	0.5%	0.5%	0.6%	0.3%
Wholly suspended term of imprisonment	4.3%	4.7%	3.9%	3.1%	2.6%
Community order	11.3%	13.6%	13.6%	12.8%	14.3%
Fine	56.7%	51.4%	51.3%	51.8%	50.6%
Adjourned undertakings and other low-end orders	23.4%	25.7%	26.0%	26.5%	27.8%
Total of all sentences in Magistrates' Court	100.0%	100.0%	100.0%	100.0%	100.0%

**Figure 1: Specific Magistrates' Court sentences (%) imposed on young adult offenders, 2009–10 to 2013–14**



- 3.33 As discussed at [3.3], 83.2% of all cases involving young adult offenders were concluded in the Magistrates' Court. Relative to the cases sentenced in the higher courts, the cases concluded in the Magistrates' Court resulted in a much greater imposition of fines as well as adjourned undertakings and other low-end orders.
- 3.34 Focusing on the introduction of CCOs in 2011–12, Figure 1 (page 14) shows the increase in the imposition of community orders during the reference period (Figure 1 illustrates the percentages in Table 4).

### Changes to sentencing outcomes in the higher courts

- 3.35 As it did with the Magistrates' Court outcomes, the Council examined the use of the different sentence types in the higher courts for young adult offenders within each year of the reference period as a percentage of all sentences imposed (to control for the variation resulting from the decreasing number of sentences over time). Table 5 (page 16) displays the results of this analysis, indicating that over the reference period:
- community orders increased substantially (up 24 percentage points from 16.4% to 40.4%) with the increase commencing in 2011–12, coinciding in time with the introduction of CCOs;
  - orders of imprisonment decreased (down 1.3 percentage points from 27.1% to 25.8%);
  - YJCOs decreased (down 7.4 percentage points from 29.9% to 22.5% and with a 12.3 percentage point decrease between 2012–13 and 2013–14, from 34.8% to 22.5%);
  - partially suspended sentences decreased (down 3.1 percentage points from 5.1% to 2.0%);
  - wholly suspended sentences decreased substantially (down 13.5 percentage points from 17.5% to 4.0%, which was unsurprising given the legislative change phasing out the use of suspended sentences in Victoria); and
  - the combined category of 'all other orders' increased (up 1.3 percentage points from 4.0% to 5.3%.
- 3.36 Figure 2 (page 16) illustrates the percentages in Table 5 highlighting the changes to the imposition of YJCOs and community orders.

### Changes to sentencing in the Magistrates' Court and the higher courts

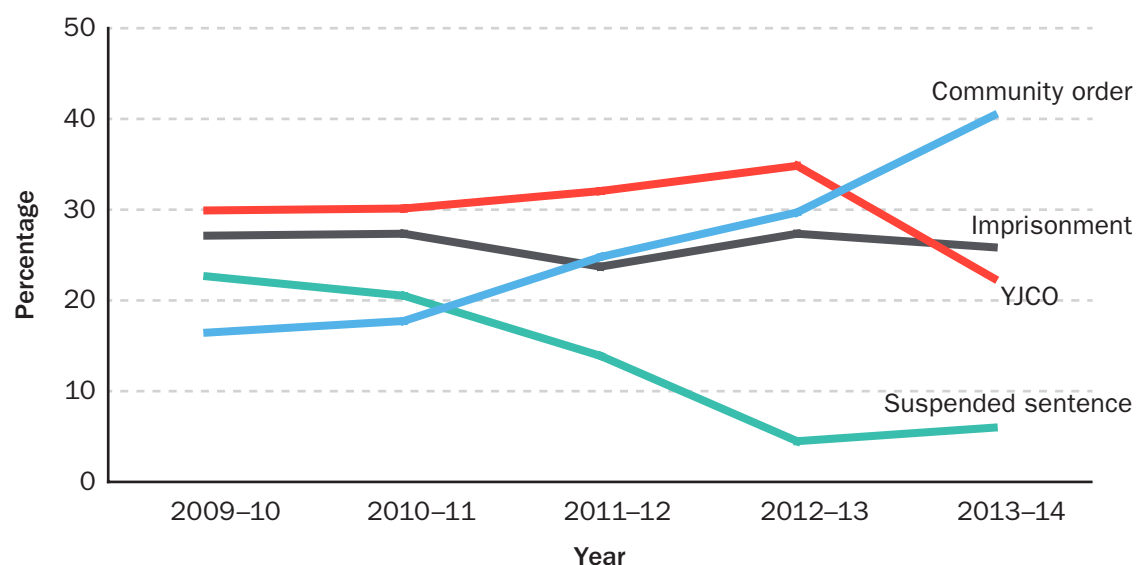
- 3.37 Overall, looking at the Magistrates' Court and the higher courts and controlling for the decrease in the number of young adult offenders coming before the courts, there was an increased use of community orders for young adult offenders during the reference period. This increase was most notable between 2012–13 and 2013–14 coinciding with the introduction of CCOs as a new sentencing option.
- 3.38 In addition to this (and as a consequence of the decrease in the number of 18–20 year old offenders being sentenced by the courts), when the number of young adult offenders sentenced to YJCOs during the reference period were aggregated across courts, another interesting trend emerged. In 2009–10, 220 young adult offenders were sentenced to a YJCO (53 in the higher courts and 167 in the Magistrates' Court). In comparison, during 2013–14, 142 young adult offenders were sentenced to a YJCO (34 in the higher courts and 108 in the Magistrates' Court). This translates to a decrease of 35% in the absolute number of young adult offenders sentenced to YJCOs during this time.

3.39 These YJCO findings for 18–20 year olds in Victoria are consistent with recent research into the youth detention population in Australia published by the Australian Institute of Health and Welfare.<sup>74</sup> These data focused on offenders aged 10–17 years and not the 18–20 year old group that is the focus of the current report. However, the findings indicate that over the four-year period to June 2014, there was a small but steady decline in the numbers and rates of offenders aged 10–17 years held in custody in New South Wales, Western Australia, Tasmania, the Australian Capital Territory, and Victoria. As with the BOCSAR data, these data suggest that the patterns being observed in Victoria are consistent with broader trends occurring across other Australian jurisdictions.

**Table 5: All sentence types (%) imposed by the higher courts on young adult offenders, 2009–10 to 2013–14**

Sentence type	2009–10 (n = 177)	2010–11 (n = 209)	2011–12 (n = 194)	2012–13 (n = 198)	2013–14 (n = 151)
Imprisonment	27.1%	27.3%	23.7%	27.3%	25.8%
YJCO	29.9%	30.1%	32.0%	34.8%	22.5%
Partially suspended term of imprisonment	5.1%	1.4%	1.0%	2.0%	2.0%
Wholly suspended term of imprisonment	17.5%	19.1%	12.9%	2.5%	4.0%
Community order	16.4%	17.7%	24.7%	29.8%	40.4%
All other orders	4.0%	4.3%	5.7%	3.5%	5.3%
Total of all sentences in higher courts	100.0%	100.0%	100.0%	100.0%	100.0%

**Figure 2: Specific sentences (%) imposed by the higher courts on young adult offenders, 2009–10 to 2013–14**



74. Australian Institute of Health and Welfare, *Youth Detention Population in Australia 2014*, Juvenile Justice Series 16 (2014).



## 4. Discussion and conclusions

### 4.1 In summary, over the reference period in Victoria:

- approximately 83% of young adult offenders were sentenced in the Magistrates' Court;
- the number of young adult offenders sentenced in the Children's Court, the Magistrates' Court, and the higher courts decreased by approximately 26%;
- the decrease in the number of young adult offenders sentenced appears to be the result of a range of factors, including a decrease in offending behaviour coming to the attention of police and an increased use of cautions by Victoria Police;
- the decrease in the number of young adult offenders sentenced in the Magistrates' Court and the higher courts cannot be explained by either an increase in the number of 18 year olds sentenced in the Children's Court or an increase in offenders participating in the CJD;P;
- when sentences were imposed in the higher courts, as a percentage of sentences imposed each year, there was a decrease in imprisonment, YJCOs, and suspended sentences, and a large increase in community orders, which coincided with the introduction of CCOs;
- when sentences were imposed in the Magistrates' Court, as a percentage of sentences imposed each year, there was a decrease in fines and suspended sentences, and a comparable increase in the imposition of CCOs and 'adjourned undertakings and other low-end orders';
- overall, in the Magistrates' Court and the higher courts:
  - community orders were imposed more often for young adult offenders, and this increase coincided with the introduction of CCOs as a new sentencing option; and
  - there was a 35% decrease in the absolute number of young adult offenders sentenced to YJCOs.

### 4.2 Given that the most serious examples of offending are heard in the higher courts, these findings suggest that the recent changes to intermediate sentences have resulted in the higher courts using CCOs as an alternative to YJCOs and suspended sentences.

### 4.3 The increased use of the CCO is consistent with the principles underpinning sentencing of young adult offenders. These patterns suggest that the higher courts are utilising the new community sanction to respond to offending that might have previously received a period of youth detention.

### 4.4 Based on changes to the sentencing patterns and the relative position of sentences in the sentencing hierarchy over the reference period, it appears that in the Magistrates' Court:

- community orders are being used as an alternative to some suspended sentences and fines; and
- adjourned undertakings are being used as an alternative to some fines.

### 4.5 This analysis is limited in its scope to draw causal links, as a range of factors has not been examined. Such factors include changes to liquor licensing laws and policing practices such as 'hot spot' policing. It is not clear from this analysis how the nature of offending has changed over time and how these patterns relate to any other legislative change that took effect during the reference period. This is worthy of further research.

# References

## Bibliography

Australian Bureau of Statistics, *Population Projections, Australia 2012 (Base) to 2101*, cat. no. 3222.0 (2013).

Australian Bureau of Statistics, *Population by Age and Sex, Australian States and Territories Jun 2010*, cat. no. 3201.0 (2010).

Australian Institute of Health and Welfare, *National Drug Strategy Household Survey Detailed Report 2013*, Drugs Statistics Series 28 (Australian Institute of Health and Welfare, 2014).

Australian Institute of Health and Welfare, *National Drug Strategy Household Survey 2013: Alcohol Chapter Online Data Tables* (2014) <[www.aihw.gov.au/publication-detail/?id=60129549469&tab=3](http://www.aihw.gov.au/publication-detail/?id=60129549469&tab=3)>.

Australian Institute of Health and Welfare, *National Drug Strategy Household Survey 2013: Illicit Use of Drugs Chapter Online Data Tables* (2014) <[www.aihw.gov.au/publication-detail/?id=60129549469&tab=3](http://www.aihw.gov.au/publication-detail/?id=60129549469&tab=3)>.

Australian Institute of Health and Welfare, *National Drug Strategy Household Survey 2013: Tobacco Chapter Online Data Tables* (2014) <[www.aihw.gov.au/publication-detail/?id=60129549469&tab=3](http://www.aihw.gov.au/publication-detail/?id=60129549469&tab=3)>.

Australian Institute of Health and Welfare, *Youth Detention Population in Australia 2014*, Juvenile Justice Series 16 (Australian Institute of Health and Welfare, 2014).

Collins, David and Helen Lapsley, *The Costs of Tobacco, Alcohol and Illicit Drug Abuse to Australian Society in 2004/05* (Department of Health and Aging, 2008).

Crime Statistics Agency (2015) <[www.crimestatistics.vic.gov.au](http://www.crimestatistics.vic.gov.au)>.

Freiberg, Arie, Fox & Freiberg's *Sentencing: State and Federal Law in Victoria* (3rd ed., Thomson Reuters, 2014).

Graham, Kathryn and Ross Homel, *Raising the Bar: Preventing Aggression in and around Bars, Pubs, and Clubs* (Willan, 2008).

Magistrates' Court of Victoria, *Criminal Justice Diversion Program* (2013) <[www.magistratescourt.vic.gov.au/jurisdictions/criminal-and-traffic/criminal-justice-diversion-program](http://www.magistratescourt.vic.gov.au/jurisdictions/criminal-and-traffic/criminal-justice-diversion-program)>.

Morgan, Anthony and Amanda McAtamney, 'Key Issues in Alcohol-Related Violence', *Research in Practice: Summary Paper 04* (Australian Institute of Criminology, 2009).

Office of Police Integrity, *Report of Investigation into Victoria Police Crime Records and Statistical Reporting* (Victorian Government Printer, 2011).

Sentencing Advisory Council, *The Criminal Justice Diversion Program in Victoria: A Statistical Profile* (Sentencing Advisory Council, 2008).

Sentencing Advisory Council, *Sentencing Children and Young People in Victoria* (Sentencing Advisory Council, 2012).

Sentencing Advisory Council, *Reoffending Following Sentencing in the Magistrates' Court of Victoria* (Sentencing Advisory Council, 2013).

Sentencing Advisory Council, *Community Correction Orders, Monitoring Report* (Sentencing Advisory Council, 2014).

Sentencing Advisory Council, *Community Correction Orders in the Higher Courts: Imposition, Duration, and Conditions* (Sentencing Advisory Council, 2014).

Victoria Police, *Victoria Police Manual: Disposition of Offenders* (Victoria Police, 2014).

Weatherburn, Don, Karen Freeman, and Jessie Holmes, 'Young but Not So Restless: Trends in the Age-Specific Rate of Offending', *Crime and Justice Statistics: Bureau Brief*, Issue Paper 98 (NSW Bureau of Crime Statistics and Research, 2014).

## Legislation

*Children, Youth and Families Act 2005* (Vic)

*Crimes Act 1958* (Vic)

*Criminal Procedure Act 2009* (Vic)

*Infringements Act 2006* (Vic)

*Liquor Control Reform Act 1998* (Vic)

*Sentencing Act 1991* (Vic)

*Sentencing Amendment (Emergency Workers) Act 2014* (Vic)

*Summary Offences Act 1966* (Vic)

## Case law

*Azzopardi v The Queen; Baltatzis v The Queen; Gabriel v The Queen* [2011] VSCA 372 (18 November 2011)

*Boulton v The Queen; Clements v The Queen; Fitzgerald v The Queen* [2014] VSCA 342 (22 December 2014)

*R v Mills* [1998] 4 VR 235

*DPP v Anderson* (2013) 288 A Crim R 128

## Quasi-legislative materials

Victoria, *Parliamentary Debates*, Legislative Assembly, 15 September 2011 (Robert Clark, Attorney-General).

**Sentencing Advisory Council**

Level 3, 333 Queen Street  
Melbourne VIC 3000

[contact@sentencingcouncil.vic.gov.au](mailto:contact@sentencingcouncil.vic.gov.au)

[www.sentencingcouncil.vic.gov.au](http://www.sentencingcouncil.vic.gov.au)

Follow us on Twitter @SACvic