The Adultification of the Youth Justice System: The Victorian Experience

By **Natalia Antolak-Saper**, Orcid: <https://orcid.org/0000-0002-2680-546X>, Natalia.Antolak-Saper@monash.edu

Faculty of Law, Monash University, Melbourne, Australia

ABSTRACT

In early 2018, an *Inquiry into Youth Justice Centres in Victoria* (**Inquiry**) found that a combination of a punitive approach to youth justice, inadequate crime strategies, and a lack of appropriately trained and experienced staff at youth justice centres, greatly contributed to the hindrance of the rehabilitation of young persons in detention in Victoria, Australia. In addition to identifying these challenges, the Inquiry also determined that the way in which young offenders have been described by politicians and portrayed in the media in recent times, has had a significant impact on shaping youth justice policies and practices. This article specifically examines the role of the media in the adultification of the Victorian youth justice system. It begins with a historical examination of youth justice, drawing on the welfare model and the justice model. This is followed by a discussion of the perception and reality of youth offending in Victoria. Here, it is demonstrated that through framing, the media represents heightened levels of youth offending and suggests that only a 'tough on crime' approach can curb such offending; an approach that has been adopted by the Victorian State Government in recent years. Finally, the article considers how recent youth justice reforms are examples of adultification, and by not adequately distinguishing between a child and adult offender, these reforms are inconsistent with the best interests of the child.

Keywords – *youth justice, criminal law and procedure, welfare model, justice model*

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1. INTRODUCTION

In May 2017, the Victorian State Government introduced significant reforms to the youth justice system to, *inter alia*, ensure that ‘serious young offenders are held accountable for their actions and punished for their crimes’ (White 2017, p.12). These reforms were introduced predominantly through the enactment of the *Children and Justice Legislation (Youth Justice Reform) Act 2017 (Vic) (YJR)* and included the following changes to the youth justice system: the introduction of youth control orders which would facilitate the imposition of curfews and restrict a youth offender’s use of social media;¹ increase the maximum penalties for certain offences from three to four years;² ensure that young offenders who commit serious crimes be heard in adult court rather than the Children’s Court of Victoria;³ and disclose information pertaining to the identity of youth offenders in certain circumstances.⁴ Heralding a shift towards the increasing *adulthoodification* of the youth justice system (Alida and Benekos 2010, p.5) these changes pose a significant challenge to an effective youth justice system that recognises that children who offend, ought to be treated differently to adults (Taylor 2016, [6]–[9]). A key contributing factor in shaping this adultified youth justice system was said to be the way in which young offenders were described by politicians and how they were portrayed in the media, in particular between the years of 2016–2018, a period of heightened reporting on youth justice matters.⁵

This article examines the role of the media in this context. It begins with a brief historical discussion of the Victorian youth justice system. In particular, this section discusses the two dominant theoretical models that underpin the

youth justice system – the welfare model and the justice model. This is then followed by an examination of the perception and reality of youth offending in Victoria, with a particular emphasis on the years of 2016–2018. The purpose of this, is to demonstrate that youth offending does not necessarily warrant the ‘tough on crime’ approach that has been adopted by the Victorian State Government in recent years. Further, this article suggests that the laws and policies that were enacted in response to media reports and community concerns about youth offending are in line with the two waves of adulthoodification; the tough on crime wave and the due process wave, which results in the introduction of a number of due process protections. Although the introduction of due process protections may appear to be *prima facie* positive, the effect of providing youth offenders with due process alters the nature of the youth justice system. Both of these ‘waves’ and examples of them are discussed further below. Finally, the article suggests that the introduction of such reforms do not adequately distinguish between a child and adult offender and thereby, are inconsistent with the best interests of the child.⁶

2. THE FRAMEWORK OF THE YOUTH JUSTICE SYSTEM

The idea of distinguishing children from adults is a relatively modern concept. According to Ariès, ‘in medieval society the idea of childhood did not exist’ (Ariès 1979, p.128). For a large period of history, children were simply viewed as ‘mini adults’. In the context of the criminal justice system specifically, this meant that children were convicted and sanctioned as adults with no

¹ *Children and Justice Legislation (Youth Justice Reform) Act 2017 (Vic)*, Part 3.

² *Children and Justice Legislation (Youth Justice Reform) Act 2017 (Vic)*, Part 8, Division 2.

³ *Children and Justice Legislation (Youth Justice Reform) Act 2017 (Vic)*, Part 2, Division 2.

⁴ *Children and Justice Legislation (Youth Justice Reform) Act 2017 (Vic)*, Part 7.

⁵ This trend of media reporting appears to have continued in the years since. For example, news reporting on the Malmsbury Youth Justice Centre lockdown in 2019 emphasised the violent and ‘wild’ nature of the young offenders detained at the Centre: see, Rohan Smith, ‘Inside Melbourne’s wild youth prison’ *news.com.au* (9 September 2019). However, a detailed analysis of these incidents is beyond the scope of this article.

⁶ Although the concept of the ‘best interest of the child’ is readily adopted in the context of child welfare decisions, in the youth justice area it is relatively uncommon. Nonetheless, the concept is contextualised by art 3 of the *United Nations Convention on the Rights of the Child* which requires that, *inter alia*, ‘in all actions concerning children, whether undertaken by ... courts of law... the best interests of the child shall be a primary consideration.’ Because of the various factors that can contribute to determining whether the best interest of the child is satisfied, assessing what the concept is intended to mean includes an evaluation of ‘all the elements necessary to make a decision in a specific situation for a specific individual child or group of children.’ (Committee on the Rights of the Child, General Comment No 14 (2013) par. 47). In the context of this article, this includes factors such as situations of vulnerability; the development of the child and their gradual transition into adulthood life; and factors that are governed by section 23 of the *Charter of Human Rights and Responsibilities 2006 (Vic)*: that a child offender who is detained must be segregated from all detained adults; that an accused child must be brought to trial quickly and that a child who has been convicted of an offence must be treated in a way that is appropriate for their age.

separate processes or principles governing their trial or sentencing (Feld 2013, p.1-21). The social construction of 'childhood' and 'children' as it is now understood in most western countries – innocent, less mature and in need of protection – developed slowly. The institutionalisation of 'childhood' did not occur until the Industrial Revolution (Dolgin 1997, p.348), and the additional distinction of adolescence was not recognised until the early 20th century (Monahan and Young 2008, p.32).

This emerging need to recognise children as distinct from adults was reflected in the two theoretical models that predominantly underpin youth justice today; the 'welfare model' and the 'justice model'. The welfare model focusses on the rehabilitation needs of the young offender, whereas the justice model is concerned with providing a young offender with appropriate formalities, such as due process (O'Connor 1997, p.1). Although the two models developed separately they have, over time, been conflated; '[y]oung people are seen as being in need of guidance and assistance (the welfare aspect), whilst at the same time offending is said to be the result of calculated decisions by rational actors' (Palmer and Walters 1995, p.161).

The welfare model originated in the United States at the beginning of the 20th century and was the prevalent theory of influence until the development of the justice model in the mid-20th century (Sentencing Advisory Council 2012, p.44). The focus of the welfare model is on the needs of an offender and emphasises the treatment and rehabilitation of an offender, rather than punishing them (Sentencing Advisory Council 2012, p.44). For this reason, the welfare model is not largely concerned with the imposition of criminal justice procedures. According to this model, the commission of a crime is a by-product of external influences, rather than the result of free moral choice. Typically, pursuant to this model, a young offender is dealt with informally, privately and distinctly differently from adult offenders (Freiberg, Fox and Hogan 1989, p.283).

Partly as a response to the disillusionment with rehabilitation the justice model on the other hand, places significant emphasis on 'retribution and deterrence' (Cunneen and White 2011, p.107). According to this model, young offenders are 'rational, responsible and accountable'

(Sentencing Advisory Council 2012, p.44). Any offence committed is a result of free choice. Consequently, the appropriate criminal justice response is to impose a sanction that reflects the seriousness of the crime. This model does promote due process in that the rules governing adult criminal trial processes are provided to young offenders. The justice model is reactive, whereas the welfare model is future-oriented (Freiberg, Fox and Hogan 1989, p.283).

The evolution of the two models brought about a philosophical debate as to which of the two – or a combination of both – is most appropriate as a guiding principle for the youth justice system. In this context, Freiberg suggests that the debate cannot simply be a 'needs vs deeds' debate, but rather, that an adequate youth justice system ought to address the various underlying problems (Freiberg 2002, p.2-3) such as 'drugs and alcohol use, poverty, mental illness and unemployment' (Sentencing Advisory Council 2012, p.45). Travers on the other hand, believes that the 'needs vs deeds' debate 'remains central to policy debates on youth justice' (Travers 2010, p.99). However, Travers limits the application of this debate to only those young offenders who repeatedly commit serious offences (Travers 2010, p.111). There may be therefore a large number of young offenders to whom this debate proves to be less relevant.

Finally, the Australian Law Reform Commission (ALRC) suggests that a third model has emerged in relatively recent years; a model that is based on restorative justice principles (Australian Law Reform Commission 1997, [18.34]). According to the ALRC, this model is a 'contextual [one] that acknowledges the desirability of balancing young offenders' rights against their responsibilities to the community' (Australian Law Reform Commission 1997, [18.34]). The purpose behind this model is for a young offender to take individual responsibility, but for the response to the commission of the crime be rehabilitative in nature with a particular focus on reparation for harm done, rather than the imposition of punitive sanctions.

Although Australia never embraced the welfare model as robustly as the United States did, youth justice has evolved to be distinct from the adult criminal justice system (Cunneen and White 2011, p.111). The youth justice landscape in Australia broadly has undergone significant

reforms over the last thirty years. What should be noted is that these changes are not simply dichotomous – it is not the case that a reform is clearly in the ambit of either the progressive or welfare model. Notwithstanding, the overall trend of youth justice reforms in Australia has been towards punitive policies, in particular, in the area of sentencing. This next section considers the Victorian youth justice system specifically, to provide greater context for the 2017 reforms discussed further below.

2.1 THE VICTORIAN YOUTH JUSTICE SYSTEM

Currently, the Victorian youth justice system adopts elements of each of the models discussed above. Both the *Children, Youth and Families Act 2005* (Vic) (**CYFA**) – the key legislative instrument governing youth justice in Victoria – and youth justice policies, place strong emphasis on diversion and restorative justice, impose what may be described as ‘punitive’ sanctions, and ensure that a young offender is provided with due process. Conflating these models appears to be the ideal, as they are not to be regarded as ‘opposite ends of a continuum’ but rather can operate as a compromise to each other (Fox and Freiberg 1985, p.828).

2.1.1 THE CHILDREN, YOUTH AND FAMILIES ACT 2005 (VIC)

The *CYFA* begins by distinguishing the capacity of a child by reference to his or her biological age. Pursuant to section 3 of the *CYFA* child is defined as ‘a person who at the time of the alleged commission of the offence was under the age of 18 years but of or above the age of 10 years’. This age threshold has been criticised by the United Nations Committee on the Rights of the Child, who argue that the criminal age of responsibility should be 12 years of age. Anything below that is considered as internationally unacceptable. Raising the age of criminal responsibility to 12 years of age, would be consistent with existing brain development research, and with the experience in other comparative jurisdictions. For example, the minimum age of criminal responsibility ‘is 12 years in Canada and the Netherlands; 13 years in France; 14 years in Austria,

Germany, Italy and many Eastern European countries; 15 years in Denmark, Finland, Iceland, Norway and Sweden; 16 years in Portugal, and 18 years in Belgium and Luxembourg’ (Youth Justice Fact Sheet 2011-2012, p.2). In an international study of over 90 countries it appeared that a significant majority (68%) had a minimum age of criminal responsibility of 12 years of age or higher (Youth Justice Fact Sheet 2011-2012, p.2).

Many key stakeholders have therefore advocated for raising the minimum age of criminal responsibility in Victoria, and more broadly, Australia (Crofts 2019, p.26-40). For example, as recently as July 2020 media advocates across Australia called for states and territories to enact legislation that would raise the age of criminal responsibility from the age of 10, to the age of at least 14 years through the ‘#RaiseTheAge’ campaign.⁷ This campaign coincided with the Council of Attorneys-General meeting on 27 July 2020 where the issue of the age of criminal responsibility was on the agenda. The campaign consisted of advocates using both mainstream and social media to urge the Attorneys-General to raise the age of criminal responsibility to 14 as a matter of priority. Between January and August 2020 there were 106 print media articles⁸ referencing the issue of raising the age of criminal responsibility with 60 of those articles published in July. The slogan ‘#RaiseTheAge’ appeared in hundreds upon hundreds of tweets on the social media platform Twitter with a significant grouping of the phrase in July and August 2020. Unfortunately, the Council of Attorneys-General held that further review was required before replacing ‘the current system should the age be lifted’ and therefore no change to the age of criminal responsibility was made Australia wide (SBS News 2020). Only the Australian Capital Territory has announced its commitment to raise the age of criminal responsibility from 10 to 14 in accordance with United Nations standards (Allam 2020).

Therefore, pursuant to the current framework in Victoria, a child under the age of 10 years of age cannot be charged with a criminal offence. For those children aged between 10 and 14 years of age there is a rebuttable presumption – referred to at common law as *doli incapax*

⁷ See Raise The Age, ‘Keep Kids in the Community’ <https://www.raisetheage.org.au>.

⁸ This analysis was limited to mainstream publications in Australia and did not include an analysis of alternative mediums.

– which deems the young person as being incapable of committing a criminal act.⁹ The prosecution may rebut this presumption by demonstrating that the young accused is capable of distinguishing between right and wrong.¹⁰ For the prosecution to do so, several elements need to be established. The first is that there must be evidence that the young accused had enough appreciation of the wrongness of the act in general terms (Crofts 2018). The second requirement is that such evidence may not simply be the same that will demonstrate that the offence was committed (Crofts 1998). The final requirement is that the evidence must demonstrate that the young accused understood that the act in question was ‘seriously wrong, as opposed to something merely naughty or mischievous’ (Crofts 1998, p.186). In Australia, this is the typical formulation of the *doli incapax* presumption, however some jurisdictions focus on the young accused’s capacity to know right from wrong, rather than actual knowledge.¹¹

The *CYFA* further contains provisions that stipulate the relevant trial procedures and standard of proof¹² sentencing orders¹³ and governs the appeals process,¹⁴ and parole.¹⁵ Embedding the legislative framework for youth justice into the *CYFA* does raise a number of challenges. The *CYFA* is predominantly concerned with the welfare interests of children and a significant part of the Act is dedicated to the welfare needs of young persons through provisions that govern child and family services, child protection and out of home care. This means that the welfare tone of the *CYFA* permeates into the discussion of youth offending. Although this may seem innocuous, integrating issues of welfare and offending may result in a far longer ‘sentence’ being imposed on a young offender than an adult would receive. Should the court for example, ‘determine that the young person appearing for a criminal

matter was in need of wardship, and thus declare them a ward of state until their eighteenth birthday’ (Cunneen and White 2011, p.108).

Further, the incorporation of the youth justice system provisions into the *CYFA* also indicates that the legislation was not designed to address the justice element of youth justice (Ogloff and Armytage 2017, [6.1.1]). The lack of a clear and comprehensive youth justice framework means that there is no express statement of the principles and objectives that are intended to govern youth criminal justice. Where the *CYFA* does refer to principles – for example, where a decision maker has to consider the best interests of the child – these do not appear to apply to those parts that deal with young offenders and the criminal law. This split approach influences the policies and practices adopted by relevant parties in the youth justice system. For an efficient system however, there is a crucial need to overhaul the current framework in Victoria – and other jurisdictions that do not separate their child protection legislation from their youth criminal justice legislation¹⁶ – and devise a system that is first, separate from the *CYFA* and secondly, appropriately articulates the objectives and principles of youth justice by drawing on the welfare, justice and restorative justice models as needed.

Enacting separate legislation dedicated to the Victorian youth justice system would also bring Victoria in line with other Australian jurisdictions, and other cognate international jurisdictions, such as Canada. The majority of states and territories in Australia have independent youth justice legislation enacted.¹⁷ For example, in Western Australia, the *Young Offenders Act 1994* (WA) is specifically concerned with ‘the administration of juvenile justice’. Section 6 of the *Young Offenders Act 1994* (WA) states that the Act:

⁹ *CC v DPP* [1995 2 All ER 43 at 48; *R (a child) v Whitty* (1993) 66 A Crim R 462 (Harper J).

¹⁰ *C v DPP* [1995 2 All ER 43 at 48; *R (a child) v Whitty* (1993) 66 A Crim R 462 (Harper J).

¹¹ Criminal Code Act 1899 (Qld), s 29(2).

¹² *Children, Youth and Families Act 2005* (Vic), Part 5.2.

¹³ *Children, Youth and Families Act 2005* (Vic), Part 5.3.

¹⁴ *Children, Youth and Families Act 2005* (Vic), Part 5.4.

¹⁵ *Children, Youth and Families Act 2005* (Vic), Part 5.5.

¹⁶ See, *Children and Young People Act 1999* (ACT).

¹⁷ *Young Offenders Act 1997* (NSW); *Juvenile Justice Act 1992* (Qld); *Young Offenders Act 1994* (WA); *Young Offenders Act 1993* (SA); *Youth Justice Act 1997* (Tas) and *Juvenile Justice Act 2005* (NT). The Australian Capital Territory does not have a separate juvenile justice from the welfare framework, see *Children and Young People Act 1999* (ACT).

‘embodies the general principles of juvenile justice, for dealing with young persons who have, or are alleged to have, committed offences; ensures that the legal rights of young persons involved with the criminal justice system are observed... minimises the incidence of juvenile crime; punish and manage young persons who have committed offences; rehabilitates young persons who have committed offences; integrates young persons who have committed offences into the community and ensures that young persons are dealt with in a manner that is culturally appropriate and which recognises their cultural identity’.¹⁸

Other examples of youth justice legislation also include references to restorative justice. For example, the objectives of the *Youth Justice Act 1997* (Tas) are, *inter alia*, designed to ‘ensure that, wherever practicable, a youth who has committed an offence is provided with appropriate opportunities to repair any harm caused by the commission of the offence to the victim of the offence and the community and to reintegrate himself or herself in the community’.¹⁹

In Canada, youth justice is governed by the *Youth Criminal Justice Act* (S.C. 2002, c.1) (*YCJA*). Pursuant to section 3 of the *YCJA*, the principles that are to govern the operation of the Act are that: ‘the youth criminal justice system is intended to protect the public; the criminal justice system for young persons must be separate from that of adults, must be based on the principle of diminished moral blameworthiness or culpability; must be within the limits of fair and proportionate accountability and special considerations apply in respect of proceedings against young persons.’²⁰ The *YCJA* for the large part, adopts the welfare model, reflecting the fact that young offenders possess a reduced level of maturity and therefore accountability mechanisms for such offenders need to be response to that level. Further, the Canadian youth justice framework emphasises rehabilitation and reintegration, and timely intervention. What is notable about the *YCJA* is that it contains a Preamble and a Declaration of Principle, both of which are designed to facilitate the interpretation of legislation in line with a number of relevant values

and statements that Parliament wishes to prioritise. The Preamble includes the following values and statements: ‘Society has a responsibility to address the developmental challenges and needs of young persons ...[and that] the youth justice system should take into account the interests of victims and ensure accountability through meaningful consequences, rehabilitation and reintegration.’ The Declaration of Principles includes the following principles: ‘[t]he youth justice system must be separate from the adult system and must be based on the principle of diminished moral blameworthiness or culpability...[and] within the limits of fair and proportionate accountability, interventions should reinforce respect for societal values; encourage the repair of harm done; be meaningful to the young person; respect gender, ethnic, cultural and linguistic differences; and respond to the needs of Aboriginal young persons and young persons with special requirements.’²¹ What is notable about these principles and values is that they draw on research that prioritises the best interests of the child and, that they are periodically reviewed to ensure that they are sufficiently contemporary.

The existing provisions under the Victorian *CYFA* on the other hand, have not been modernised (Ogloff and Armytage 2017, [6.1.1]). For example, the Act does not expressly incorporate international covenants, such as the UNCRC to which Australia is a signatory. The UNCRC includes guidelines for dealing with children in the criminal justice system. Instruments such as these could be described as fitting the welfare model in terms of responses, and in line with the justice model in terms of processes governing youth justice.

Some principles are made express in section 23 of the *Charter of Human Rights and Responsibilities 2006* (Vic). These include that an accused child who is detained must be: segregated from adults; brought to trial as quickly as possible; and treated in a way that is appropriate for his or her age.²² However, it is notable that the *CYFA* omits any reference to these or comparable rights. Equally, the *CYFA* is silent on incorporating Australia’s broader human

¹⁸ *Young Offenders Act 1994* (WA), s 6.

¹⁹ *Youth Justice Act 1997* (Tas), s 4(i).

²⁰ *Youth Criminal Justice Act* (S.C. 2002, c.1), s 3.

²¹ *Youth Criminal Justice Act* (S.C. 2002, c.1), s 3.

²² *Charter of Human Rights and Responsibilities 2006* (Vic), s 23.

rights obligations under the *International Convention on the Elimination of All Forms of Racial Discrimination* and the International Covenant on Civil and Political Rights which can also play a role in shaping the youth justice system (Victorian Law Reform Commission 2009, p.116).

Although the *CYFA* has undergone significant reform since its enactment, these reforms have been focussed narrowly, enacting changes to the child protection and out of home care provisions (Ogloff and Armytage 2017, [6.1.1]). In respect of its criminal law framework, the *CYFA* has largely been ignored. Since its introduction the only change in respect of the criminal law jurisdiction has been the introduction of group referencing (Ogloff and Armytage 2017, [6.1.1]). This is partly because the consensus is that the current system operates well (Ogloff and Armytage 2017, [6.1.1]).

However, in addition to the challenges identified above, it should be noted that the existing system is not reflective of best practice. For example, according to the *2016 Lancet Commission on Adolescent Health and Wellbeing*, criminal offending by youth requires a scaled and graduated response in recognition of the developmental needs of adolescence (Patton et al., 2016, p.242). The *CYFA* does not attempt to provide graduated responses to offending, and thereby fails to recognise the ‘understanding of brain development’ (Ogloff and Armytage 2017, [6.1.1]).

3. THE MORE THINGS CHANGE ...YOUTH OFFENDING IN VICTORIA: PERCEPTION VS REALITY

3.1 YOUTH OFFENDING: PERCEPTION

In 1988, Freiberg, Fox and Hogan wrote that ‘notions of a “juvenile crime wave” about to engulf the community have wide popular currency. It seems to be commonly believed that youth commit a disproportionately large number of serious personal and property offences, or that new legislation and programs lead to an increase in youth crime, or that society is getting soft on its delinquents, and that tougher institutions and harsher penalties would help curb youth crime’ (Freiberg, Fox and Hogan 1989, p.283). Thirty years later, one would be forgiven for thinking that the comments had been uttered recently to describe the Victorian experience of the youth justice

system, media reporting of it and reforms being enacted by the State Government.

Media reporting on issues relating to youth justice and youth crime is not a new phenomenon, but the frequency in which such reporting occurs has arguably increased in recent years in Victoria. This may be explained in part by notable characteristics of youth offending, such as visibility. Young persons are easily noticed and may therefore easily gain attention by media outlets (Clifford and White 2017, p.128).

Further, in a news environment saturated with violence, acts of violence involving children – and particularly where the children are offenders – are deemed to be newsworthy. Historically, discussions of children and crime in the media emphasised the children’s inherent innocence. As discussed above, once ‘childhood’ was socially constructed, the notion of children as ‘evil’ was not prominent (Jewkes 2015, p.67). However, with time, this perception of youth shifted, and the mainstream media developed stereotypes of young people. These ranged from the ‘ideal young person’ – someone who is ‘healthy, wealthy and fun-loving’ to ‘young people as victims’ (Clifford and White 2017, p.128). Of particular interest, is the media stereotype of ‘young people as threats’ which includes narratives of young persons ‘challenging convention: lack of respect for authority, drugs and alcohol, alternative dress/hair/music, juvenile offenders: vandals, hoons, larrikins, youth gangs’ (Clifford and White 2017, p.128). These labels are not new and have been adopted by mainstream media for several decades. Interestingly, they tend to be based on ‘myths that go back several centuries’ (Clifford and White 2017, p.139).

In Victoria - as the 2018 State election drew nearer - reports of a youth crime epidemic and out of control young offenders reached a heightened level. This extensive media coverage resulted in a negative influence on the community’s perception of youth offenders and of the youth justice system more broadly (Legislative Council Parliament of Victoria 2018, [1.4.2]). Further, as reported in the 2018 ‘Inquiry into youth justice centres in Victoria’ erroneous media narratives can ‘perpetuate negative stereotypes that case young people as something to be

feared and youth offending as an overwhelming problem' (Legislative Council Parliament of Victoria 2018, [1.4.2]).

In particular, between the years of 2016- 2018 there was an emphasised focus by the *Herald Sun* and *The Age* - the two largest mainstream forms of print media in Melbourne, Victoria's capital - on young offenders and the youth justice system, with consistent calls for a 'tougher' on crime approach to be adopted by both State Government and criminal justice officials. The *Herald Sun* is a tabloid newspaper whereas *The Age* is in 'compact form'; a term used to describe the printing of broadsheet quality newspapers in a tabloid format (Rowe 2011, p.454). Table 1 demonstrates the total number of stories published by the *Herald Sun* and *The Age* from January 2016 to January 2018 on issues relating to youth justice:²³

TABLE 1. Total number of reports on issues relating to youth justice

Herald Sun	267 (81% of which presented young offenders in a negative light (n=217))
The Age	162 (73% of which presented young offenders in a negative light (n=119))

The articles published on issues concerning youth justice overwhelmingly presented young offenders as 'juvenile thugs' (Quill 2016, p.23), 'out of control' (Hudson and Hosking 2016, p.1), 'young crims' (White 2016, p.21), 'hard core youths' (Butler 2016, p.1), and 'jailed teens' (Willingham, Hall and Lee 2016, p.1). Further, these newspaper reports typically present youth offending as a 'sausage machine...arresting the same, again and again' (Hudson and Hosking 2016, p.1) and that the 'extreme nature of [youth] offending' has increased (Buttler 2016, p.1).

In this context, it is interesting to note that such newspaper reports attribute youth offending to a broken criminal justice system, suggesting that the only appropriate solution is for the State Government to respond immediately by enacting reforms that are tougher. This in turn reflects the political discourse. For example, in an article entitled 'Andrews slammed for soft treatment of thugs', Opposition spokesperson Georgie Crozier is quoted

as often criticising the current Premier of Victoria Daniel Andrews: 'Once again youth offenders are calling the shots, and Daniel Andrews goes weak at the knees' (Minear 2016, p.1). Policy solutions are offered - longer terms of imprisonment; sending young offenders to adult prison; doing away with policies that are too focused on the welfare of the young accused (Willingham, Hall and Lee 2016, p.1).

Interestingly, the Victorian experience of youth offending even attracted attention from federal politicians who have limited responsibilities for youth offending. For example, Minister for Home Affairs Peter Dutton, has stated that 'Andrews should consider resigning if he does not admit Victoria has a problem with African gang violence and commit to solutions' and that his 'left-wing approach to the law and order system' has resulted in youth violence in Victoria (Preiss, Hunter and Koziol 2011, online). Dutton's comments followed criticisms made by Prime Minister Malcolm Turnbull about the way in which the Andrews' government was addressing gang and youth violence in Victoria (Preiss, Hunter and Koziol 2011, online).

This style of reporting on youth offending is consistent with Sasson's Faulty System frame; a frame commonly adopted by newspapers when reporting on crime. According to this frame, offenders perpetrate crime because they 'know they can get away with it' (Sasson 1995, p.14). Those responsible for enforcing the law are typically portrayed as being restrained by 'liberal judges' and prisons as merely 'revolving doors for serious offenders' (Sasson 1995, p.14). Further, the criminal justice system is described as one that is 'riddled with loopholes and technicalities that render punishment neither swift nor certain' (Sasson 1995, p.14). Public safety can therefore only be attained through the increase of swiftness, certainty and severity of punishment. Equally, loopholes and technicalities that prevent the imprisonment of an offender ought to be abolished (Sasson 1995, p.14). Table 2: Faulty System and Youth Justice, demonstrates the frequency of the Faulty System frame adopted by either the *Herald Sun* or *The Age* and the frequency of media advocating for moderate reforms in the context of youth justice.

²³ This information was obtained through a search of the *Factiva* database. Each value represents individual news reports on the issue of youth justice and therefore the data excludes duplications. A date range of 2016 to 2018 was used to ensure that no newspaper article was excluded. The limitation of these research results is that they allow for only a textual analysis, therefore no analysis of images or placing of headlines was omitted.

TABLE 2. Faulty System and Youth Justice

	Number of Uses as a Percentage of Total Number of Articles	
Term advocating for a Faulty System	Herald Sun (Total n = 267)	The Age (Total n = 162)
Lenient	27% (n = 72)	26% (n = 42)
Soft	42% (n = 112)	17% (n = 26)
Weak	67% (n = 178)	46% (n = 75)
Inadequate	31% (n = 83)	17% (n = 27)
	Number of Newspaper Articles	
Terms for 'tougher' reform	Herald Sun (Total n = 267)	The Age (Total n = 162)
Tougher	26% (n = 72)	20% (n = 34)
Accountable	5% (n = 16)	5% (n = 9)
	Number of Newspaper Articles	
Terms advocating for moderate reform	Herald Sun (Total n = 267)	The Age (Total n = 162)
Smarter	0 (0%)	11% (n = 18)
Strengthen	0.4% (n = 13)	2% (n = 4)
Evidence-based analysis	0 (0%)	3% (n = 5)

The culmination of this mainstream media reporting on youth offending leaves the audience believing that youth crime is rising exponentially which can have an effect on legislation, policies and police practices. '[T]he intersection between media reporting and the political use of community fears over law and order constructs a certain reality that inhibits our understanding of the nature of youth offending and constrains our conceptions of possible responses. Within this climate, mandatory sentencing, increased police powers, and restrictions on community-based sentences appear popular, while community development and social justice strategies are portrayed as intellectual and "soft"' (Cunneen and White 2011, p.82).

As discussed in the next section, the media reporting of youth crime does not necessary accord with reality. It draws on, *inter alia*, statistical data from a number of different sources in recognition that such data can be biased.

3.2 YOUTH OFFENDING: REALITY

Despite the media's labelling of crimes involving young people as a 'crime wave' (Chalkley-Rhoden 2017, online), actual youth offending is minimal. In fact, according to the Sentencing Advisory Council, 'the vast majority of children and young people do not commit crime' (Sentencing Advisory Council 2016, p.2). In 2015, only 1.4% (7,507) of persons aged between 10 and 17 years of age were processed by police (Sentencing Advisory Council 2016, p.2). Only 0.6% of these matters, proceeded to the Children's Court and were sentenced, of which 0.2% received a sentence of imprisonment (Sentencing Advisory Council 2016, p.2). In 2015, the total number of young persons sentenced by the Children's Court were 3,341. This number represents a 47% decline since 2008-2009 when 5,385 young persons were sentenced by the Children's Court.

In the year ending June 2017, the Crime Statistics Agency reported that there were 7,497 offenders under the age of 18 which signified an increase of just 1.9% compared to the same period the year before (Crime Statistics Agency, <https://www.crimestatistics.vic.gov.au>). However, it may be interesting to note that offenders under the age of 25 more broadly as a group had been 'decreasing steadily as a proportion over the past five years' (Crime Statistics Agency, <https://www.crimestatistics.vic.gov.au>). Further, the proportion of alleged offenders aged 10-19 has also been steadily decreasing over the last five years:

FIGURE 1. Unique alleged offenders, proportion of unique alleged offenders by age group, July 2012 to June 2017 (Crime Statistics Agency, <https://www.crimestatistics.vic.gov.au>)

It should be noted that youth offending can differ from adult offending in ways that may increase young persons' representation in crime statistics. For example, Cunneen, White and Richards suggest that youth offending tends to be committed in groups in public areas, and typically in close proximity to their place of residence (Cunneen, White and Richards 2015, p.55). Further, the offences tend to be 'public, gregarious, and attention-seeking...episodic, unplanned, opportunistic' (Cunneen, White and Richards 2015, p.55). Consequently, such visible offending is likely to result in arrests. Further, several young persons may be arrested for the one same offence, which may give the appearance that there are more offenders or offences being committed than there are in practice. For example, a group of young offenders could all be arrested with af-fray, giving the appearance of a greater level of offending, despite the fact that actual participation in the offending could vary considerably.

Official police statistics indicate that the most common form of youth offending are property offences such as theft, vandalism, and trespassing, as well as fare evasion (Richards 2011, p.3). Property offences are also more likely to have higher reporting rates, in part because of the need to support insurance claims. In contrast, young persons are under-represented in the more serious offence categories such as homicide and rape (Victoria Police 2013/2014, p.14).

Youth offending is a complex problem which is very much connected with the environment in which children are raised. In a review conducted into youth offending in 2017, Armytage and Ogloff identified relevant characteristics and circumstances including 'poverty/socioeconomic disadvantage, trauma/grief, childhood abuse, disrupted education, family circumstances, including abusive or offending parents, and the involvement of Child Protection involvement and exposure to family violence' (Ogloff and Armytage 2017, p.6-9). These factors are almost entirely outside the child's control and pose significant challenges for the youth justice system. 'It necessitates the need for

holistic, integrated thinking to address health, mental health, disability, education and employment needs in order to reduce reoffending' (Ogloff and Armytage 2017, p.11). What ought to be avoided is the implementation of 'law and order' reform; focusing on police powers, tougher penalties, and the *adultification* of the youth justice system, which does little to address the underlying causes of youth offending. The next section considers the Victorian State Government's 2017 reforms through an 'adultification' lens. It is argued that these reforms are not in the best interests of the young person and do not attempt to address the complicated socioeconomic framework within which youth offending occurs.

4. THE ADULTIFICATION OF THE VICTORIAN YOUTH JUSTICE SYSTEM

In 2017 the Victorian State Government introduced reforms to the youth justice system. The primary piece of legislation, the *YJR*, was designed to implement mechanisms for addressing 'community concerns about crimes committed by children and young people'.²⁴ Although Attorney-General Pakula acknowledged that there was an overall reduction in the youth crime rate, he explained that the focus of the reforms was a small number of youth offenders who were 'entering the criminal justice system early and reoffending more often and in an alarmingly serious manner'.²⁵ The *YJR* reforms included: (a) the creation of a presumption that certain youth offences would not be heard in the Children's Court; (b) that offenders aged between 18-21 years of age who commit serious offences would be sent to adult prison in place of youth detention; and (c) increasing the maximum penalty or period of detention that a Children's Court and other higher courts could impose.²⁶ The *YJR* Act also introduced reforms that would facilitate diversion for young offenders and introduced a new sentencing option that would allow for youth offenders to be subjected to an intense supervision order requiring young offenders to participate in education, training or work.²⁷

²⁴ Attorney-General Martin Pakula, Children and Justice Legislation Amendment (Youth Justice Reform) Bill 2017, 8 June 2017, Assembly, Second Reading Speech, 1818.

²⁵ Attorney-General Martin Pakula, Children and Justice Legislation Amendment (Youth Justice Reform) Bill 2017, 8 June 2017, Assembly, Second Reading Speech, 1818.

²⁶ *Children and Justice Legislation (Youth Justice Reform) Act 2017* (Vic), s 1.

²⁷ *Children and Justice Legislation (Youth Justice Reform) Act 2017* (Vic), s 13.

These reforms exemplify the progressive adultification of the youth justice system that has been particularly experienced in Victoria in recent years, and in similar jurisdictions over recent decades. Adultification is a concept that is commonly utilised in a number of areas concerning children including social work, child psychology and psychiatry, child welfare and youth justice to describe the 'processes that act to impart adult responsibilities, behaviours and treatment upon children' (Arnett 2018, p.410). This adult treatment of children can occur by a number of different individuals and institutions, including communities, media, law enforcement, legal institutions, government policies and even schools (Arnett 2018, p.410). In the context of youth justice, 'adultification' is a framework that helps understand the application of adult criminal justice policies and practices to child offenders, and is commonly made up of two 'waves'. The first, the 'tough on crime' wave, sees the introduction of increased penalties for youth offenders, in particular, for serious young offenders (Bernard and Kurlychek 2010, p.71-94). This wave either follows, or is complementary to, the second or 'due process' wave of adultification. This is typically manifested by the progressive provision of due process protections to young offenders.

Although enacting due process protections may appear to be beneficial to young offenders, it has been observed that doing so alters the nature of the youth justice system (Bolin 2014, p.16). The youth justice system was initially a construct of the *parens patriae* ideology, indicating a level of accountability by the system itself (Ward and Kupchik 2014, p.85). Its focus was largely on facilitating rehabilitation and reintegration concepts that uphold the principle of 'the best interest of the child'. For this reason, the system developed more as a civil proceeding rather than a criminal one, and due process protections were considered largely unnecessary. Providing such protections signals a departure from the traditional objectives of the youth justice system, and increasingly erodes the distinction between it and the adult system.

This trend has been observed in other cognate jurisdictions. For example, in the United States, a number of

Supreme Court decisions granted youth offenders due process rights.²⁸ However, a result of this was a more formalised youth justice system that now closely mirrored the adult criminal justice system. The implicit consequence of this shift was that youth offenders were simply viewed as different criminal defendants.

In the decision of *In re Winship*, the United States Supreme Court further provided a number of due process protections because youth offenders were no longer 'receiving the treatment that was supposed to result from the informality of the juvenile court' (Bolin 2014, p.16). This sentiment was echoed in the decision of *Kent v United States* 'there is evidence, in fact, there may be cause for concern that the child receives the worst of both worlds; that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.'²⁹

The Supreme Court attempted to address this concern by granting due process guarantees to youth offenders. In this way, the youth justice system underwent a transformation from an informal institution with substantial discretion and focusing on the best interests of the child, to a system that was not too dissimilar from the adult criminal justice system and its focus on due process and adversarial proceedings. This instigated the second wave of adultification, the 'tough on crime' wave.

The two 'waves' are typically interrelated. The 'tough on crime' wave of adultification tends to be implemented in response to a group of youth offenders that have committed serious offences. Media reports and community concerns about these group of offenders, alongside with political agendas, culminate in the introduction of new laws that either create new offences or result in more punitive sanctions. These reforms align the youth justice system more closely with the adult criminal justice system and include 'changes to the purpose of the youth justice system, changes to the youth court process, changes to the available dispositional outcomes, and changes to jurisdiction' (Bolin 2014, p.21). These are then accompanied or followed by due process protections that are a reaction

²⁸ See *In Re Gault* 387 U.S 1 (1967); *In Re Winship* 397 U.S 358 (1970); *Breed v Jones* 421 U.S. 519 (1975).

²⁹ *Kent v United States* (1966) 274 F.2d 556, 556-559.

to the increasing adversarial nature of the process, and the severity of its consequences.

Although the Victorian youth justice system attempts to strike a balance between a philosophy that prioritises a child's best interests and one that adequately punishes, laws such as the *YJR Act* may encourage a prioritisation of the tough on crime approach over others. For example, by increasing penalties that could be imposed on youth offenders, the *YJR Act* diminishes the distinction between adult and youth offenders. In creating a presumption against hearing certain matters in the Children's Court, the *YJR Act* exposes young offenders to potentially longer periods of incarceration. Although well-grounded in deterrence and incapacitation theory, such presumptions have negative repercussions because they do not address the specific complexities and cause of youth offending. For example, young offenders whose matters are referred to adult court instead of children's court are typically sentenced for longer periods of time and demonstrate higher recidivism rates than their counterparts (Bishop 2006, p.653). Research in cognate jurisdictions indicates that young offenders sentenced by an adult court are more likely to be imprisoned, and for longer periods than if sentenced in the children's court (see, Kupchik 2006). They also face the potential of being transferred to adult prison, which in turn, can expose the young offender to an increased risk of physical and sexual victimisation (Forst, Fagan and Vivona 1989, p.9).

5. CONCLUSION

With an increased focus on punitiveness and accountability, the tendency is for an adultified youth justice system to punish the young offender rather than to facilitate his or her rehabilitation. In this way, amendments to the youth justice system such as the *YJR Act*, can result in a modification of the original objectives of the youth justice system, and undermine the best interest of the child.

This article has mapped the Victorian youth justice system and, in particular, considered how the two dominant theoretical models – the welfare model and justice model – co-exist in an attempt to provide a holistic framework. An examination of the perception and reality of youth offending in Victoria demonstrates that recent youth justice

policies were partially enacted in response to heightened media reporting, the effect of which is a disproportionately punitive youth justice system. This is specifically exemplified by the 'tough on crime' 2017 reforms which were enacted by the Victorian State Government. This may result in a system that does not clearly differentiate between child and adult offenders, ignoring best practice and undermining the best interests of the child. Far from addressing these concerns, the enactment of due process protections may serve to entrench rather than ameliorate the adversarial nature of the proceedings. It is hoped that this article serves as a caution for those wishing to develop and enact youth justice policies and legislation that adultification of the youth justice system, while superficially appealing, may do little to address the underlying complexities of youth offending. Rather, the focus should be on enacting youth justice policies that draw on both the rehabilitative and restorative justice models, and crucially, encourage a multi-faceted approach to 'address health, mental health, disability, education and employment needs' (Ogloff and Armytage 2017, p.11).

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