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Sentencing of offences committed by children aged under 14 in Queensland

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OVERVIEW

AIM To investigate the sentencing of offences committed by children aged under 14 in Queensland.

METHOD Descriptive analysis of cases sentenced in Queensland's criminal courts between July 2005 and June 2022, where a child was sentenced for an offence committed while aged under 14 years. The analysis focused on understanding the demographics of children sentenced, the types of offences committed, and the sentences imposed.

RESULTS The analysis identified 7,207 unique children who were sentenced over the 17-year period for offences committed while they were under 14 years of age. It also identified 1,087 unique children who were sentenced for offences committed while under the age of 12. Children under the age of 14 were involved in a total of 19,031 cases, and children under the age of 12 were involved in 2,304 sentenced cases. The sentenced cases for the cohort under 14 years represent 0.7% of all sentenced cases involving adults and children during that time.

These numbers equate to an average of 651 unique children sentenced per year for offences committed while under the age of 14. The numbers were smaller for the younger cohort of children under the age of 12, with a yearly average of 87 unique children.

Two-thirds of the sentenced cases involved offences committed by children aged 13 years. Nearly three-quarters of children sentenced for offences committed while aged 10–13 years were boys and slightly more than half were Aboriginal and Torres Strait Islander children, with this percentage increasing where the child committed an offence at a younger age. The proportion of sentenced cases involving girls has increased over time, particularly for Aboriginal and Torres Strait Islander girls.

Children aged under 14 were much more likely to be sentenced for theft offences such as stealing, shoplifting, and unlawful use of a motor vehicle compared to all adults and children sentenced in Queensland. The offence categories of unlawful entry and property damage were also common for this cohort. The most common offence was unlawful entry of non-dwelling premises. This was the most common offence for children under 14, children under 12 and Aboriginal and Torres Strait Islander boys. Wilful damage was in the top 5 offences for all demographic groups. Shoplifting was common among girls, both non-Indigenous and Aboriginal and Torres Strait Islander girls, as well as non-Indigenous boys.

Reprimands, followed by probation and court diversion referrals were the most common sentences made for this cohort. The average length of probation orders was 8.3 months (median 6.0 months). Reprimands and probation orders were both more common for the younger cohort of children under the age of 12, while community service orders were considerably more common for children under the age of 14 due to legislative restrictions on community service for children under the age of 13. Detention orders accounted for 2.1 per cent of sentences (MSO) for the cohort of children aged under 14 (n=379). For the younger children under the age of 12, detention orders comprised 0.5% of sentenced outcomes (n=11, MSO). All cases resulting in a detention order either involved very serious offending, or a young person with at least one prior sentenced court outcome.

CONCLUSION These findings indicate that children sentenced for offences committed while they were under the age of 14 years are a very small proportion of all sentenced cases. Children in this cohort are more likely to be 13 years of age, male and Aboriginal and Torres Strait Islander. The profile of offending committed by this cohort is very different to those offences most sentenced for adults. Most commonly the children in this cohort are sentenced for property-related offences. Children under 14 were rarely sentenced to detention and only make up a small percentage of children subject to community-based supervision.

INTRODUCTION

The purpose of this *Research Brief* is to answer the following question:

What offences are children under 14 being sentenced for and what sentences are being imposed?

This research aims to explore sentencing patterns and the types of offences for which children aged under 14 years are sentenced in Queensland and help inform any future reform proposals to raise the minimum age of criminal responsibility in Queensland.

What is the minimum age of criminal responsibility?

Children must reach a designated age before they are able to be prosecuted, legally held responsible, and punished for committing a criminal offence. This is called the minimum age of criminal responsibility ('MACR'). The two main reasons for the existence of a MACR are that:

- young children do not have the requisite capacity to be held responsible for crime (because they cannot adequately understand what legal rules or morality require, and do not have the ability to reason and control their conduct); and
- the best interests of young children require support and protection rather than criminal intervention.¹

The MACR in Queensland is 10 years.² Children aged 10–13 years are also presumed to not be criminally responsible unless the prosecution can prove that at the time of the offence the child had the capacity to understand that their behaviour was seriously wrong, as opposed to naughty or mischievous.³

Recently, calls to raise the MACR have gained momentum in Queensland, Australia-wide and internationally. This introduction provides an overview of the international position, the calls for reform, arguments for and against raising the MACR and a summary of published data about the cohort of children aged 10–13 years who are involved in the criminal justice system.

The international position

The United Nations *Convention on the Rights of the Child* specifies that each country must establish a MACR.⁴ International consensus has not been reached on the MACR. It ranges between 7 to 16 years of age.⁵ However, the most common MACR internationally is 14 years of age.⁶ In 2007 the United Nations Committee on the Rights of the Child ('UNCRC') commented that the age of 12 should be the absolute minimum.⁷ In 2019, the UNCRC instead asserted that the MACR should be at least 14 years.⁸ This was largely attributed to advances in the understanding of brain development.⁹

Calls for reform in Queensland and establishment of a national working group

A 2018 report on Youth Justice in Queensland recommended that, subject to a number of qualifications, including the establishment of needs-based programs and diversions for 8 to 11-year-old children engaged in offending behaviour, the Queensland Government support in principle raising the MACR to 12 years and in the interim that 10 and 11-year-old children should not be remanded in custody or sentenced to detention except for a very serious offence.¹⁰

In the same year, the Council of Attorneys-General announced that it would establish a working group to examine whether to raise the MACR.¹¹ At its meeting in August 2022, the renamed Meeting of Attorneys-General decided that the working group would continue to develop a proposal to increase the MACR, 'paying particular attention to eliminating the overrepresentation of First Nations' children in the criminal justice system'.¹²

The Australian Greens have released a *Policy Platform* that commits to raising the age of criminal responsibility to 'at least 14 years'.¹³

In September 2021, the Greens Member for Maiwar introduced a Private Member's Bill seeking to raise the MACR in Queensland to 14 years of age.¹⁴ In its report examining that Bill, the Community Support and Services Committee recommended the Bill not be passed. Instead, the Committee reiterated that the Queensland Government should continue to work alongside the other Australian Attorneys-General to consider increasing the MACR 'from 10 to 12, including any caveats, timing and discussion of implementation requirements'.¹⁵ The Bill failed at second reading stage on 16 August 2022.

Developments in other Australian jurisdictions

On 29 November 2022 the Northern Territory parliament passed the *Criminal Code Amendment (Age of Criminal Responsibility) Act 2022* (NT). That Act raised the MACR to 12 years of age and retained a rebuttable presumption of criminal responsibility for children aged 12 or 13 years.

The Australian Capital Territory has committed to raising the MACR to 14¹⁶ and commissioned a review of service system and implementation requirements.¹⁷ The Australian Capital Territory government has expressed that it plans to raise the MACR through a two-stage approach, initially raising it to 12 years of age (without exception) in 2023 and then, within two years, to 14 years of age (with exceptions enabling 12–13-year-olds to be charged if they have committed the most serious offences).¹⁸

In June 2022, the Tasmanian Government announced it intends to raise the minimum age of youth detention from 10 to 14 years as part of its comprehensive reform of the youth justice system. Exceptions for serious crimes and in

the interests of community safety, it announced, will be identified during the development of the reforms.¹⁹

Private Members' Bills were introduced in both New South Wales and Victoria proposing to raise the MACR to 14 years but were not passed.²⁰

A Private Member's Bill to raise the MACR to 14 years was introduced into the South Australian Legislative Council on 6 July 2022.²¹ On the same day, the Attorney-General of South Australia noted that the former Liberal government had committed to raising the age to 12 and that his government is 'looking at what that commitment would entail and how that could work in South Australia.'²²

Reasons to raise the MACR

A justification commonly advanced in favour of raising the MACR relates to advances in scientific knowledge about brain development and other biological factors in children.²³ Adolescence involves significant changes in the brain, which impact on maturation.²⁴ The frontal lobe areas of the brain (especially the pre-frontal cortex), which are responsible for much of the executive functioning relevant to judgment and decision-making, are the slowest to develop.²⁵ The process of cognitive development continues in a person's brain until well into the 20s.²⁶ The ongoing development of the brain's self-regulation and impulse control functions in adolescence, combined with heightened reward seeking and risk taking due to earlier maturation of the socioemotional system leads to developmental instability, undermining children's ability to make rational, informed decisions.²⁷

Some researchers argue that having a fixed arbitrary age of criminal responsibility is not supported by developmental psychology due to the fact that children develop at different ages.²⁸ This may be a more significant concern for children involved in the youth justice system as many of those children have had numerous adverse childhood experiences, such as child abuse and neglect,²⁹ which can impede normal development.³⁰ Research also shows that the population of children in contact with the youth justice system has higher levels of mental illness and cognitive disability than children in the general population.³¹ Research has found that 'where there is high emotional stimulation ... the impact of developmental delays and vulnerabilities are stark and exert a significant impact on the maturity of decision-making'.³²

As noted above, the majority of children engaged with youth justice are often the most vulnerable in society. These children commonly experience poor mental or physical health, suffer socioeconomic disadvantage, have poor educational attainment, have been exposed to drug or alcohol misuse, childhood abuse and neglect and other forms of domestic violence, and/or have experienced homelessness or periods of out-of-home care.³³ Criminal justice intervention, especially at this young age, with its stigma and potential for re-traumatisation, perpetuates disadvantage and criminalises social need.³⁴

A MACR set at a young age is also argued to have detrimental consequences for the community at large. The earlier a child has contact with the criminal justice system, the longer that contact is likely to continue over their lifetime.³⁵ Conversely, children who do not suffer the harm of exposure to the

criminal justice system are more likely to age out of offending.³⁶

Reasons not to raise the MACR

The need to protect and keep the community safe from young offenders is often presented as one of the main reasons not to raise the MACR. In making its recommendation not to raise the age, Queensland's Community Support and Services Committee expressed the importance of 'balancing the welfare of children with community safety'.³⁷

There are also concerns that increasing the MACR may leave vulnerable children in a vacuum as their needs are not brought to the attention of authorities and they are not able to be provided with support until they are involved with the youth justice system.³⁸

Opponents of raising the MACR in Australia point to the presumption of *doli incapax* as a protection for children under 14—that is, children aged 10–13 years are presumed to not be criminally responsible unless the prosecution can prove that at the time of the offence the child had the capacity to understand that their behaviour was seriously wrong, as opposed to naughty or mischievous.³⁹ The UNCRC has criticised this approach, particularly due to its discretionary nature of application, which could lead to discrimination.⁴⁰ Research has found such concerns to be borne out in practice in other states.⁴¹ Further, by the time a presumption of *doli incapax* is being relied upon, the child is already enmeshed in the criminal justice process, which may mean detention while on remand or other negative consequences.⁴²

The cohort of children aged under 14 years in the Queensland criminal justice system

Over the years there have been various legislative amendments to the *Youth Justice Act 1992* (Qld) and other relevant Acts that may have impacted whether and the way children are dealt with in the criminal justice system. Figure 10 in the appendix provides an overview of relevant legislative changes. Although not explored here, changes to administrative procedures, prosecutorial guidelines and reporting practices may also potentially affect the volume and types of cases coming before the courts, independently of any changes to crime patterns.

This section explores existing published and unpublished data and research about children aged under 14 years in Queensland, including demographic information, the offences they commit and sentencing outcomes.

Children aged 10–13 years compared to all children

Data published by the Queensland Government Statisticians Office ('QGSO') showed that between 2018–19 to 2020–21 in Queensland, children aged 10–13 years accounted for 14.9 per cent of all children who had a finalised appearance as a child in a Queensland criminal court.⁴³ This is a slightly higher percentage than in New South Wales, where research identified that children aged 10–13 represent less than 10 per cent of all children proceeded against by police,⁴⁴ and in the United Kingdom

where 'fewer than 10 percent of children within the Youth or Criminal Justice system are aged under 14'.⁴⁵

Children aged 10–11 years

Children under the age of 12 accounted for only 2.2 per cent of all children with a finalised court appearance in 2018–19 to 2020–21 and 14.5 per cent of children with a finalised court appearance aged under 14 years.

Over-representation of Aboriginal and Torres Strait Islander children

Research has found that Aboriginal and Torres Strait Islander children are significantly over-represented in the criminal justice system and that this is particularly the case for children aged under 12 years. This finding is not unique to Queensland.⁴⁶

The current MACR has been criticised as contributing to Aboriginal and Torres Strait Islander over-representation in the youth justice system, and specifically in detention. Explanations offered for this over-representation include the effects of intergenerational trauma and the ongoing experience of racism and discriminatory treatment, including over-policing and the limited use of diversionary options.⁴⁷ Research in New South Wales, Queensland and elsewhere, has found that Aboriginal and Torres Strait Islander children were more likely than non-Indigenous children to be sent to court than be diverted (despite controlling for various factors, such as criminal history and the number and nature of offences).⁴⁸

Structural disadvantage is also cited as a contributing factor to over-representation. Numerous studies have documented the over-representation of children with child protection backgrounds in the youth justice system, in particular for Aboriginal and Torres Strait Islander children.⁴⁹ These children are often referred to as 'cross-over kids'.⁵⁰ '[Y]oung people with experiences of child protection and out-of-home care placements are more likely to come into contact with the youth justice system at a younger age'.⁵¹ Data available from the Department of Children, Youth Justice and Multicultural Affairs shows that Aboriginal and Torres Strait Islander children are over-represented in the child protection system.⁵² It states that as at 30 June 2022 there were 6,793 children aged 10 to 17 on a child protection order in Queensland.⁵³ Nearly half of those were Aboriginal and/or Torres Strait Islander children (44.9%, n=3,048).⁵⁴ The proportion of Aboriginal and/or Torres Strait Islander children is very similar for children aged 10 to 14, at 46.0 per cent (n=1,907/4,141).⁵⁵ As at 30 June 2022, 3.8 per cent of children aged 10 to 17 on a child protection order were also on a youth justice order (which includes probation, graffiti removal, community service, intensive supervision, conditional release, detention/supervised release and restorative justice order).⁵⁶ This was higher for Aboriginal and Torres Strait Islander children at 5.9 per cent.⁵⁷

The interaction between child protection and the youth justice system is prevalent across Australia. The Australian Institute of Health and Welfare reported that, of the 9,275 young people under youth justice supervision (either in the community or in a youth detention centre) in Australia in 2020–21, over half (53%) had an interaction with the child

protection system within the 5 years prior and more than a quarter (28%) of those had an interaction with the children protection system within 2020–21.⁵⁸ Aboriginal and Torres Strait Islander children were over-represented, where almost two-thirds (64%) of those under youth justice supervision had an interaction with the child protection system, compared to less than half for non-Indigenous children under youth justice supervision (46%).⁵⁹ Children who experienced their first youth justice supervision at a young age were more likely to have had a prior interaction with the youth justice system—for those aged 10 at their first supervision, 81 per cent had a prior interaction with the child protection system.⁶⁰

Aboriginal and Torres Strait Islander children are disproportionately represented among the 10–13-year-old cohort of offenders.⁶¹ Criminal justice intervention at this young age is argued therefore to contribute to their continued marginalisation.⁶² The Queensland Family and Child Commission, referring to police data, noted 'that Aboriginal and Torres Strait Islander young people aged 10–14 are more likely to be in contact with police than non-Indigenous children' and this was even more pronounced for the youngest of that cohort.⁶³

Based on data published by the Childrens Court of Queensland, in 2021–22, Aboriginal and Torres Strait Islander children represented 86 per cent of the 10 and 11-year-old children who appeared in court, 81 per cent of the 12-year-old children and 65 per cent of the 13-year-old children.⁶⁴

Aboriginal and Torres Strait Islander children on community-based orders and in detention

Australia-wide, it was reported that in 2020–21 'more than a third (37%) of Indigenous young people under supervision [including in the community and in detention] were first supervised when aged 10–13 compared with about 1 in 7 (14%) non-Indigenous young people'.⁶⁵ In the ACT it has also been found that Aboriginal and Torres Strait Islander children are significantly overrepresented (38%) among those 10–13-year-olds on youth justice orders.⁶⁶ In NSW, between July 2010 and June 2020, the proportion of Aboriginal and Torres Strait Islander children aged less than 14 years in custody was 59 per cent.⁶⁷

The Queensland Family and Child Commission in a 2022 report observed that Aboriginal and Torres Strait Islander children aged between 10–13 years were 61.3 times more likely than non-Indigenous children to be under community-based supervision.⁶⁸ The Australian Productivity Commission's *Report on Government Services 2022*, reporting on data from 2020–21, noted that of the 194 children aged 10–13 years under community-based supervision in Queensland (sentenced and unsentenced), 162 children (83.5 per cent) identified as Aboriginal or Torres Strait Islander.⁶⁹

The Productivity Commission also reported that in 2020–21, 126 children aged 10–13 years spent time in youth detention in Queensland, of which 79.4 per cent identified as Aboriginal and Torres Strait Islander.⁷⁰ Information provided to the Community Support and Services Committee stated that between 2018–19 to 2020–21 the

average proportion of Aboriginal and Torres Strait Islander children aged 10–13 years in youth justice custody was 84 per cent.⁷¹ The Queensland Family and Child Commission found that of the children in this cohort, Aboriginal and Torres Strait Islander children were 50.4 times more likely to be in detention than non-Indigenous children.⁷² These sources considered children in this cohort in detention both on remand and sentence.

Offence types committed by those aged 10–13 years

The most commonly occurring category of principal offence Australia-wide in 2020–21 for 10-year-olds was unlawful entry with intent and for 11–13-year-olds it was acts intended to cause injury.⁷³

In New South Wales in 2020, the main offences for which matters proceeded to court for 12–13-year-olds were breach bail conditions, common assault, and bullying, harassment or intimidation.⁷⁴ For 10–11-year-olds, the most common offence is still breach of bail, followed by bullying, harassment or intimidation and malicious damage.⁷⁵ In the Australian Capital Territory the offences committed by the cohort of 10–13-year-olds have also been observed to be less serious than those committed by older children or adults, with non-sexual assault being the most common serious offence, followed by justice procedure offences and robbery.⁷⁶

In the United Kingdom, the Local Government Association has reported:

most proven offences committed by children aged 10–13 are relatively low-level, for example criminal damage, public order and theft. A significant proportion are involved in violence against the person offences – although this category includes a wide range of offences, from verbal threats through to physical harm and many of the offences committed by younger children may be arguably less serious.⁷⁷

Police diversions for children aged 10–13 years

Unpublished data⁷⁸ obtained from the Queensland Police Service ('QPS') showed that for offending occurring in 2021–22, 1,959 unique children aged between 10 and 13 were diverted from the criminal justice system by police. This included being cautioned, referred to a restorative justice process, given an infringement notice, drug diversion, graffiti diversion or intoxication diversion. These children were primarily aged 13 (55.4%), with 28.9 per cent being aged 12, 11.5 per cent aged 11, and 4.2 per cent aged 10.

As discussed above, research has found that Aboriginal and Torres Strait Islander children were more likely than non-Indigenous children to be sent to court than be diverted (despite controlling for various factors, such as criminal history and number and nature of offences).⁷⁹ Weatherburn and Thomas found that, in New South Wales, Aboriginal and Torres Strait Islander juvenile offenders are less likely to be cautioned and more likely to be prosecuted than their non-Indigenous counterparts.⁸⁰ The odds of being prosecuted for caution-eligible offences are 1.83 times higher for Indigenous children than for non-Indigenous children, controlling for age,

gender, offence seriousness, area of residence, concurrent offences, prior contact with the criminal justice system and index year.⁸¹ For children under the age of 14, 9.3 per cent of Indigenous children were prosecuted (rather than cautioned), compared to 3.1 per cent of non-Indigenous children.⁸² The research notes that there are a variety of potential explanations regarding why Indigenous children are less likely to be cautioned. These include Indigenous children being treated more harshly due to police prejudice—noting that while there is no direct research evidence regarding this, there are a number of Government and media reports which support this view. Another potential explanation is that there are other factors that influence police decisions to divert a child that have not been measured in this research, such as the response of the young person to being apprehended or detained by police, the attitude of the offender toward police, the people the defendant associates with, the family background of the young defendant, the size of the crime problem in the defendant's neighbourhood or the attitude of senior officers toward the use of cautions with juvenile offenders.⁸³

Of the 1,959 unique children identified in the QPS data, 65.2 per cent were boys and 40.7 per cent were Aboriginal and Torres Strait Islander. Both the proportion of boys and the proportion of Aboriginal and Torres Strait Islander children increased as the child's age decreased (see Table 2), with three-quarters of 10-year-olds who were diverted being male (75.6%) and three in five being Aboriginal and Torres Strait Islander (61.0%).

Table 1: Demographics of offenders diverted by Queensland Police Service (offence occurring 2021/22) by age

Age	Boys	Girls	Aboriginal and Torres Strait Islander	Non-Indigenous
10 (n=82)	75.6%	24.4%	61.0%	39.0%
11 (n=225)	72.9%	26.7%	56.4%	47.1%
12 (n=567)	66.3%	33.7%	42.9%	56.8%
13 (n=1,085)	62.3%	37.6%	34.7%	64.4%
TOTAL (n=1,959)	65.2%	34.7%	40.7%	59.2%

Data includes count of unique persons for offences occurring in 2021–22. Totals may add to more than 100% as whether a child identifies as Aboriginal or Torres Strait Islander may vary between contacts with police. Cases excluded where age was unknown.
Source: Queensland Police Service - unpublished data, November 2022.

Between 2017–18 and 2021–22, 20,412 diversions were actioned by QPS on children aged 10 to 13. Just over half of these diversions were actioned on children aged 13 (50.4%). A further 29.3 per cent involved children aged 12, 13.4 per cent aged 11, and 6.9 per cent aged 10. Diversions of children aged 10–13 years represented approximately 26 per cent of diverted children.

Of the 20,412 diversions actioned between 2017–18 and 2021–22, the vast majority of these diversions were cautions (94.0%). Under 5 per cent (4.7%) were referrals to a restorative justice process and 1.2 per cent were a drug diversion.

Property damage was the most common offence type for which a child received a diversion at age 10, 11 and 12. At

age 13 shop lifting was the most common offence that received a diversion.

Sentences ordered for those aged 10–13 years

Previous research has found that children aged 10–13 years represent only a small percentage of children sentenced to detention or subject to supervised orders. While they constitute a relatively small percentage of children appearing before the courts, they are an even smaller proportion of those who receive these more restrictive forms of sentencing orders. The counting rules for this previous research are in some cases different to those adopted for this paper, reporting on the age of the child at the date of sentence (or start of supervision), rather than at the time of the offence.⁸⁴

Australian data indicated that in 2020–21 only 3.3 per cent of young people under community-based supervision were aged 10–13 years, while for detention it was 4.9 per cent, but the highest numbers of young people in this age group under supervision (in the community and in detention) were in Western Australia and Queensland.⁸⁵

In the Australian Capital Territory it was found that the children in this younger cohort were rarely sentenced to detention, but approximately 60 per cent had experienced unsentenced detention.⁸⁶

A report from New South Wales also indicated that children aged 10–13 years comprise only a very small percentage (2%) of all children sentenced to detention (juvenile control order) or a supervised community-based order.⁸⁷

Queensland data showed that in 2020–21, children aged under 14 who were under supervision in the community (on a supervised sentence order, conditional bail program or referred for a restorative justice conference) represented a little less than 5 per cent of the average daily number of total children under community-based supervision.⁸⁸

Further, Queensland data from the Australian Institute of Health and Welfare showed that approximately 13 per cent of the population of children in youth detention (sentenced and unsentenced) in Queensland between 2020–21 were aged 10–13 years.⁸⁹

METHOD

The data used for this analysis was the Courts Database as maintained by the Queensland Government Statistician's Office ('QGSO'), Queensland Treasury. The Courts Database comprises data collected by the Department of Justice and Attorney-General from the administrative information systems used by Queensland's criminal courts. The analysis contained within this report was conducted using data extracted from the Courts Database in October 2022.⁹⁰

An explanation of key data concepts referred to in this paper is contained in a separate technical paper available on the Council website.⁹¹

This research examined cases in which a child was sentenced for an offence committed while under the age of 14 for which they received a sentence under the *Youth Justice Act 1992* (Qld).

This research uses the terminology 'children under 14' to mean children who were under 14 years of age when the sentenced offence was committed—it does not refer to their age at sentence.

A 'case' is the collection of offences for a single offender that are finalised on the same day at the same court level and court location. Where there are multiple offenders dealt with jointly during a court event, the event is recorded as separate cases. A single offender may appear in multiple cases over the reporting period.

This analysis considers only sentenced offences that were committed when the child was under 14 years and does not consider any other offences sentenced within a case that were committed when aged 14 years or more.

The most serious offence ('MSO') is defined as the offence that received the most serious sentence, as ranked by the classification scheme used by the Australian Bureau of Statistics.⁹²

Data was also provided by QPS regarding the number of children aged under 14 who were diverted from the criminal justice system between 2017–18 to 2021–22. The data included the gender and Aboriginal and Torres Strait Islander status of the diverted children, the type of diversion given and the most common offences for which a diversion was given.

Limitations

The data presented in this report is a simplified version of Queensland's complex criminal justice system and is subject to a range of limitations. Caution should therefore be used when interpreting this information. For instance, data is derived from an administrative system that is designed for operational, rather than research purposes. The accuracy of information presented in this *Research Brief* reflects how administrative information is structured, entered, maintained, and extracted from administrative systems.

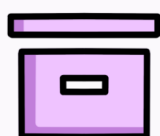
Focus of this report

Unique children sentenced



	Total:	Yearly average:
Under 14 years of age: <small>ages 10, 11, 12 and 13</small>	7,207	651
Under 12 years of age: <small>ages 10 and 11</small>	1,087	87

Court cases



	Total:	Yearly average:
Under 14 years of age: <small>ages 10, 11, 12 and 13</small>	19,031	1,120
Under 12 years of age: <small>ages 10 and 11</small>	2,304	136

sentenced in Queensland courts between 2005–06 and 2021–22.

The yearly average number of unique children is calculated by counting the total number of unique children in each financial year. Children who appear in multiple financial years will be counted multiple times in the numerator, but only once in the denominator.

There were 7,207 unique children sentenced under the *Youth Justice Act 1992* (Qld) for offences committed while they were under 14 years of age from 2005–06 to 2021–22. These children were involved in 19,031 cases.

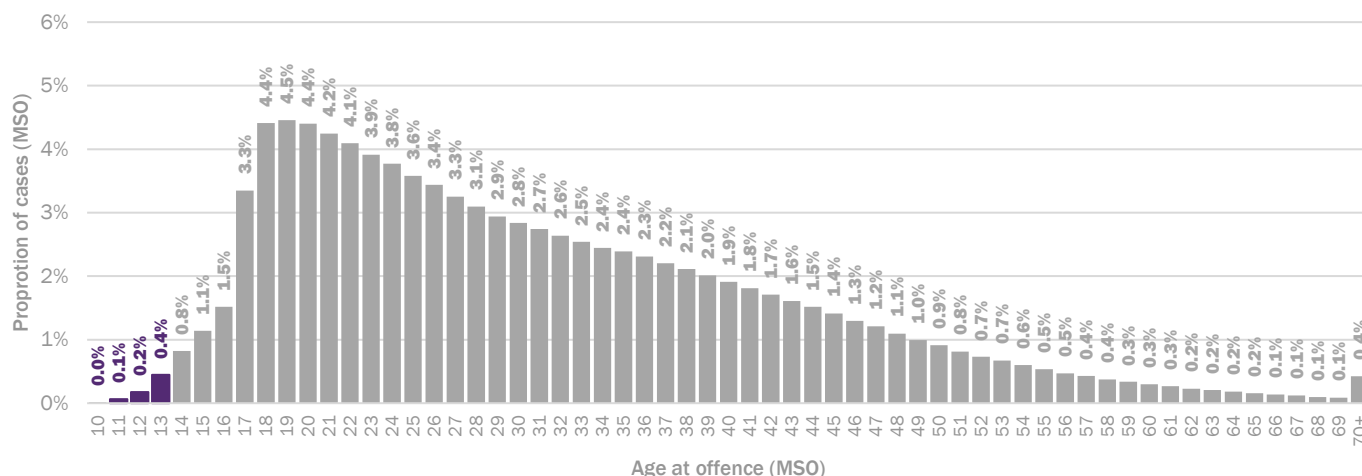
Much of the analysis in this report also focuses on a younger cohort of 1,087 children who were sentenced for offences committed while under the age of 12. These children were involved in 2,304 different cases.

Overall, children under the age of 14 accounted for less than 1 per cent of all sentenced cases in Queensland—see

Figure 1. In total, 0.7 per cent of cases had an MSO that was committed by a child aged under 14 years when taking into account all sentenced cases involving adults and children between 2005–06 and 2021–22.

This proportion has not changed much over time. The proportion of cases committed by children under 14 years of age has ranged from 0.5 per cent of cases in 2008–09 to a high of 1.0 per cent of cases in 2017–18. In the most recent year reported—2021–22—children under 14 years of age accounted for 0.8 per cent of sentenced cases.

Figure 1: Age at offence for all sentenced cases (MSO)



Data includes MSO, sentenced adults and children (excludes companies/organisations), higher and lower courts, cases sentenced 2005–06 to 2021–22.

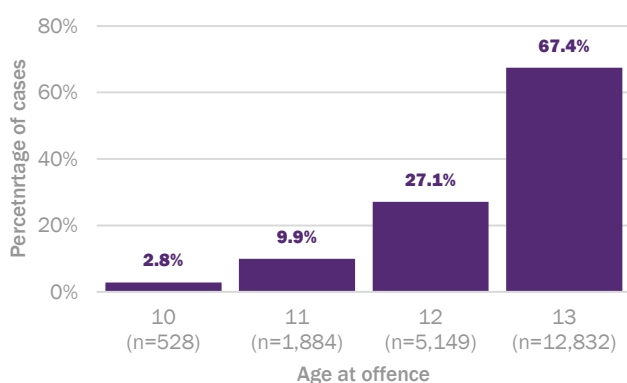
Source: QGSO, Queensland Treasury - Courts Database, extracted October 2022.

Note: excludes cases where age at offence data was not available.

Figure 2 shows a breakdown of cases by age where the child was aged under 14 at the time of offence.

Most offences were committed by children aged 13 years (67.4%), accounting for more than two-thirds of sentenced cases. Children aged 12 years at offence accounted for another 27.1 per cent of sentenced cases. Children aged 10 and 11 at the time of the offence accounted for a small fraction of sentenced cases, with 11-year-old children making up 9.9 per cent of cases and 10-year-old children making up less than 3 per cent of sentenced cases.

Figure 2: Proportion of sentenced cases committed while aged under 14, by age



Data includes case count, sentenced children for offences committed when under age 14, higher and lower courts, sentenced 2005–06 to 2021–22. Cases that involve multiple offences committed at different ages are counted multiple times, therefore percentages add to more than 100% of cases
Source: QGSO, Queensland Treasury - Courts Database, extracted October 2022.

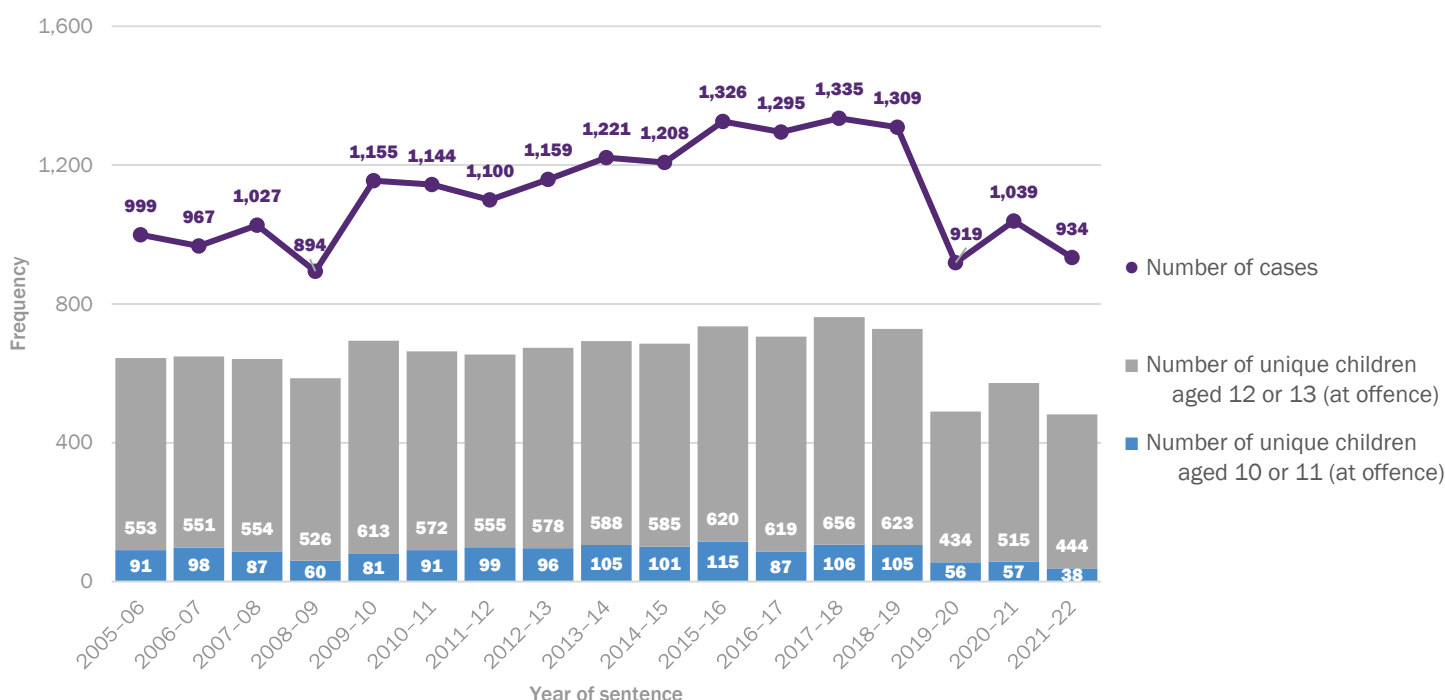
Figure 3 shows changes over time in the number of sentenced cases involving a child aged under 14 years at the time of offending and the number of unique children sentenced in each year.

Overall, the number of sentenced cases showed an upward trend from 2005–06 to 2017–18, where it peaked at 1,335 cases. A slight decline was seen in 2018–19 followed by a dramatic drop in 2019–20, which was likely due to the impact of the COVID-19 pandemic and its aftereffects. Fewer offences were occurring and/or being detected over this period, there was an increase in diversionary practices, and fewer cases were prosecuted and sentenced due to restrictions on court sittings. However, the number of cases involving children aged under 14 in 2020–21 and 2021–22 did not return to pre-pandemic levels seen in earlier years.

The average number of cases per year over the 17-year data period was 1,120, while the average number of unique children per year under the age of 14 was 651. The most recent financial year analysed (2021–22) had fewer children sentenced compared to the average, with 482 unique children under the age of 14, involved in 934 cases.

These numbers were considerably lower for children under the age of 12. On average, there were 136 cases per year involving a child aged 10 or 11 and the average number of unique children was 87 per year. In 2021–22, these numbers were smaller again, with 53 cases involving children aged 10 or 11 in the most recent year analysed, comprising a total of 38 unique children across Queensland.

Figure 3: Number of cases involving children sentenced for offences committed while aged under 14, over time



Data includes case count, sentenced children for offences committed when under age 14, higher and lower courts, sentenced 2005–06 to 2021–22. Children who committed offences while aged both 11 and 12 within the same financial year were coded as being aged 11. Children who offend across multiple financial years will be counted separately in each financial year; therefore, the total sum of counts will add to more than 100% of cases.
Source: QGSO, Queensland Treasury - Courts Database, extracted October 2022.

The overwhelming majority of cases involving a child under the age of 14 years at the time of offending were sentenced in the Childrens Court at the Magistrates Court level (94.5%, n=17,977). The remaining cases were sentenced in the higher courts, with 1,053 cases sentenced in the Childrens Court of Queensland (5.5%), and only 1 case sentenced in the Supreme Court.

In almost all cases analysed, the MSO was an offence committed while the child was under the age of 14 (93.0%, n=17,694). In 7.0% of cases, the MSO was committed while the child was 14 years or older; however, other offences dealt with as part of the same case were committed while the child was younger than 14.

With the number of unique children sentenced being less than the number of cases, this indicates that some of these children were repeat offenders—that is, they were sentenced in court on more than one occasion for offences committed while under 14 years of age during the data period. More than half (n=3,662, 50.8%) of the 7,207 distinct children included in the analysis were sentenced more than once for offences committed while aged under

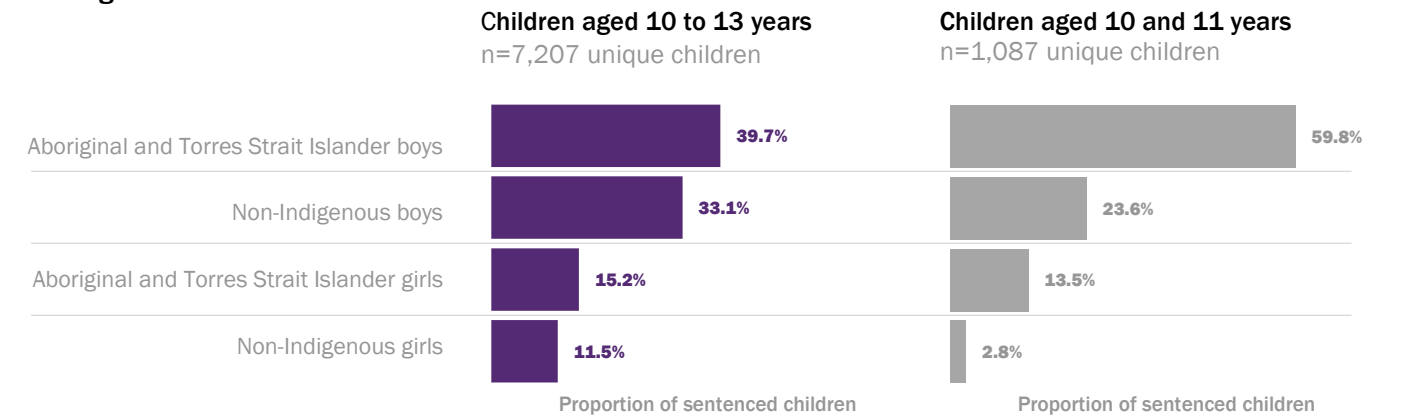
14 years between 2005–06 and 2021–22. For children under the age of 12, 44.0% were sentenced more than once over the data period for offences committed while under the age of 12 (n=479). Repeat offending within this cohort was not investigated in detail but may be considered in a future research project.

Demographics

Nearly three-quarters of children sentenced for offences committed while aged under 14 were boys (73.1%, n=5,265) and slightly more than half were Aboriginal and Torres Strait Islander (54.9%, n=3,959). This proportion of Aboriginal and Torres Strait Islander children is considerably large, considering that Aboriginal and Torres Strait Islander children only make up 7.9 per cent of all children aged 10–13.⁹³

Aboriginal and Torres Strait Islander boys made up the largest demographic group within this cohort (39.7%), closely followed by non-Indigenous boys (33.1%)—see Figure 4. These percentages are proportions of the 7,207 unique children aged under 14 years.

Figure 4: Gender and Aboriginal and Torres Strait Islander status of children under 14 years of age at the time of offending



Data includes unique person count, sentenced children for offences committed when under age 14 (n=7,207) and under age 12 (n=1,087), higher and lower courts, cases sentenced 2005–06 to 2021–22. Totals will add to less than 100% as the demographics of some children was unknown.
Source: QGSO, Queensland Treasury - Courts Database, extracted October 2022.

Figure 5 shows how these demographic groups have changed over time.

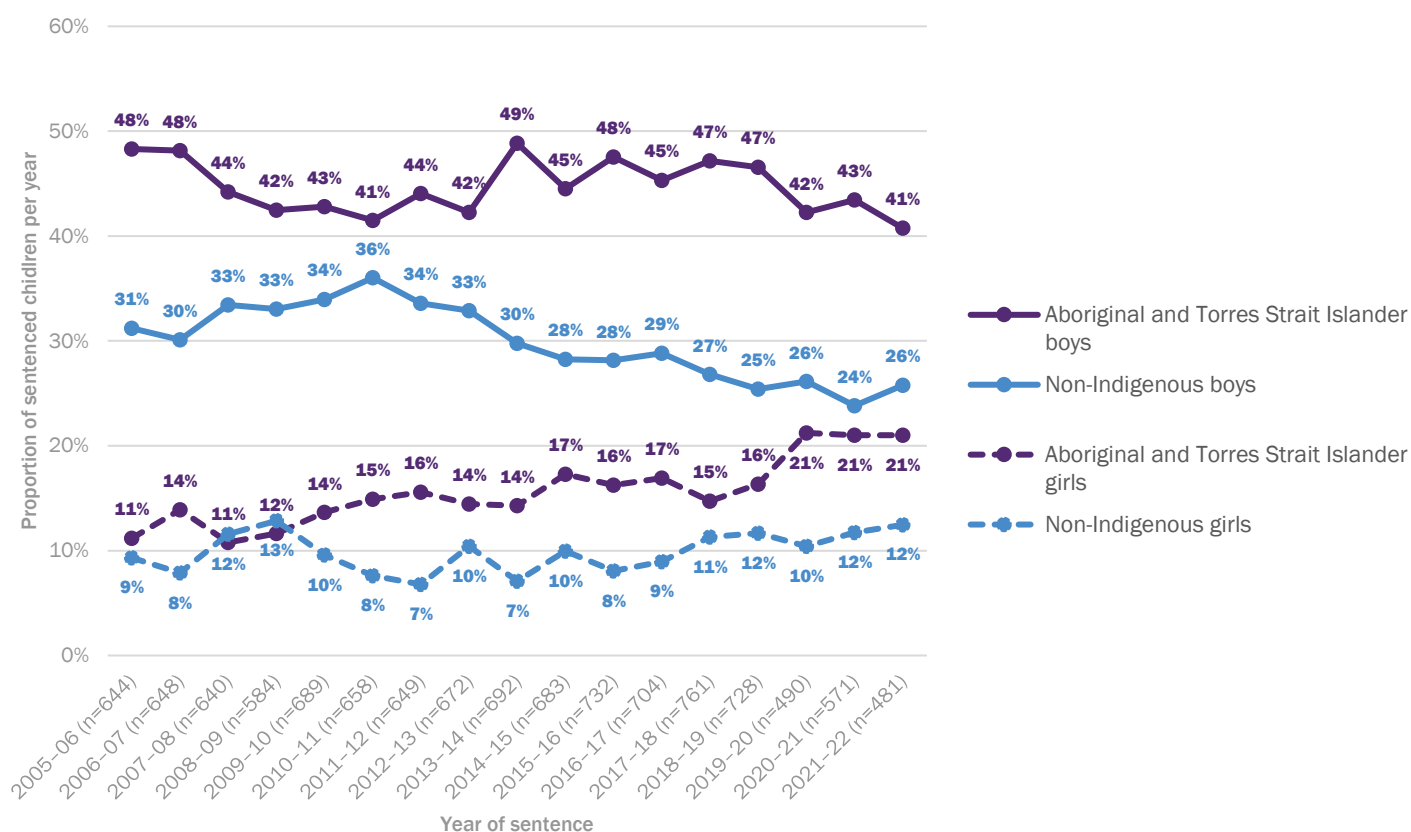
Aboriginal and Torres Strait Islander boys made up the largest proportion of the under 14 cohort each year, making up close to half of all sentenced cases in some years.

However, the proportion of boys (both non-Indigenous as well as Aboriginal and Torres Strait Islander) has decreased, since 2017–18 for Aboriginal and Torres Strait Islander boys and 2010–11 for non-Indigenous boys. Over the same period, the proportion of girls has increased, particularly for Aboriginal and Torres Strait Islander girls.

Children who committed offences while aged under 12 years made up 15.1 per cent (n=1,087) of the 7,207 unique children aged under 14 years. Children aged under 12 were involved in 2,304 sentenced cases between 2005–06 and 2021–22.

In comparison to the whole cohort of children sentenced for offences committed while under 14, this younger group were more likely to be boys (83.7%) and included a higher proportion of Aboriginal and Torres Strait Islander children (73.3%).⁹⁴

Figure 5: Gender and Aboriginal and Torres Strait Islander status of children under 14 years of age at the time of offending, over time

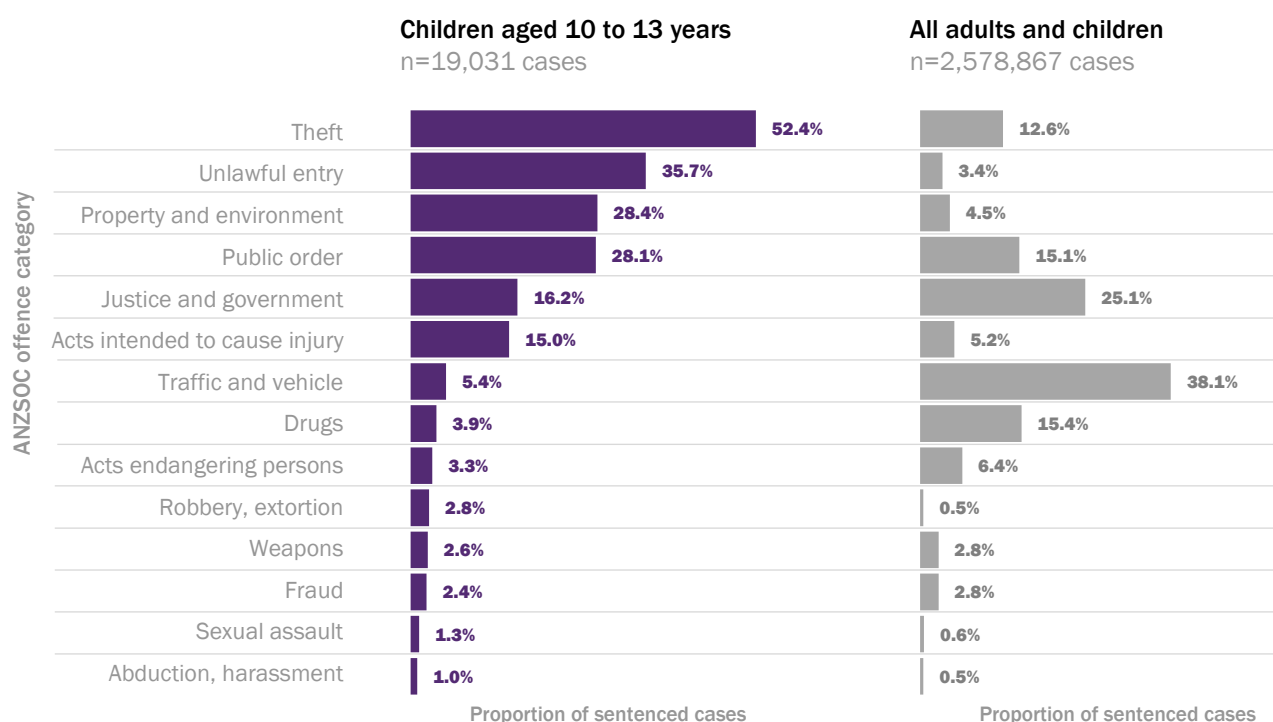


Data includes unique person count by year, sentenced children for offences committed when under age 14, higher and lower courts, cases sentenced 2005–06 to 2021–22.

Source: QGSO, Queensland Treasury - Courts Database, extracted October 2022.

Note: the distinct person count was calculated for each year, with each distinct person counted once per year. If a distinct person was sentenced again in a different year/s, they were counted again (once for each year).

Figure 6: Type of sentenced offences (by ANZSOC category) committed by children under 14 years of age



Data includes case count, sentenced offences committed when under age 14, higher and lower courts, cases sentenced 2005–06 to 2021–22. Note: percentages add to more than 100% as some cases involve multiple charges of different types of offences—these cases will be counted multiple times, once for each offence category. ANZSOC refers to the Australian and New Zealand Standard Offence Classification as published by the ABS, 2011. The ANZSOC categories of homicide and miscellaneous offences have not been displayed due to too few cases being sentenced in these categories. Source: QGSO, Queensland Treasury - Courts Database, extracted October 2022.

What offences are children under 14 at the time of their offence sentenced for?

Offence categories

Theft was the most common type of offence category committed by children aged under 14 years and sentenced in court. Over half of sentenced cases involved at least one offence that was categorised as a theft (52.4%)—see Figure 6. The most common theft offences include stealing, unlawful use of a motor vehicle, and shoplifting (i.e., unauthorised dealing with shop goods).

Unlawful entry offences were the second most common category (sentenced in 35.7% of cases). The unlawful entry category comprises two offences: the most common was unlawful entry of a non-dwelling premises, and the other is the burglary of a person's home.

Property and environment offences were the third most common category (28.4%), most commonly represented in this cohort by the offence of wilful damage. Of the 5,399 cases that involved property and environment offences, 94.6 per cent include at least one wilful damage offence.

Theft offences were consistently the most common offence category each year. It also remained the most common offence category when gender and Aboriginal and Torres Strait Islander status was considered.

The types of offences committed by children under 14 years of age and sentenced in courts is very different to the types of offences sentenced across all age groups. For comparison, traffic and vehicle offences was the most

common offence category across all sentenced cases (adults and children, 38.1%). Next were justice and government offences (25.0% of cases), followed by drug offences (15.5%). Only 12.6 per cent of all sentenced cases (adults and children) involved theft offences, while 3.4 per cent involved unlawful entry offences, and 4.5 per cent involved property and environment offences.

Specific offences

While the previous section looked at broad offence categories, this section explores the specific offences committed by different cohorts of children aged under 14 years. See Table 2 for the top five offences for children under 14, children under 12, for non-Indigenous girls, non-Indigenous boys, Aboriginal and Torres Strait Islander girls and Aboriginal and Torres Strait Islander boys.

The most common offence differed across cohorts; however, unlawful entry of non-dwelling premises was the most common offence for children under 14, children under 12, and Aboriginal and Torres Strait Islander boys. The only cohort that did not have unlawful entry of non-dwelling premises within the top 5 offences was non-Indigenous girls.

Wilful damage was consistently a common offence, ranking within the top 3 most common offences for each cohort.

Stealing was common across all cohorts, as was trespass. Trespass was only not in the top 5 offences for non-Indigenous girls. However non-Indigenous girls was the only cohort to have common assault in the top 5 offences.

Unlawful use of motor vehicles was in the top five for older children (under 14 years), but not for those aged under 12 years. This offence was only in the top 5 for Aboriginal and Torres Strait Islander boys.

Shoplifting, which is a less serious form of theft compared to stealing, was in the top 5 for Aboriginal and Torres Strait






Islander girls, non-Indigenous girls, and non-Indigenous boys.

The offences shown in Table 2 suggest that the sentenced offending by children under 14 years was more commonly property-related, rather than offences against the person, with the exception of non-Indigenous girls where common assault ranked high.

Table 2: Top 5 sentenced offences (case count) by demographic group






All children under 14

n=19,031

1		Unlawful entry (premises) Unlawful entry	28.1%
2		Wilful damage Property and Environment	26.8%
3		Stealing Theft	25.9%
4		Trespass Public order	17.7%
5		Unlawful use of motor vehicles Theft	16.4%






All children under 12

n=2,304

1		Unlawful entry (premises) Unlawful entry	33.5%
2		Wilful damage Property and Environment	31.1%
3		Stealing Theft	26.8%
4		Trespass Public order	20.8%
5		Burglary Unlawful entry	14.5%






Non-Indigenous boys

n=5,093

1		Wilful damage Property and Environment	26.4%
2		Stealing Theft	23.7%
3		Unlawful entry (premises) Unlawful entry	19.7%
4		Trespass Public order	15.3%
5		Shoplifting Theft	14.4%






Non-Indigenous girls

n=1,592

1		Shoplifting Theft	22.9%
2		Stealing Theft	22.3%
3		Wilful damage Property and Environment	21.0%
4		Common assault Acts intended to cause injury	14.3%
5		Public nuisance Public order	13.6%






Aboriginal and Torres Strait Islander boys

n=9,323

1		Unlawful entry (premises) Unlawful entry	38.5%
2		Wilful damage Property and Environment	29.0%
3		Stealing Theft	26.3%
4		Unlawful use of motor vehicles Theft	20.9%
5		Trespass Public order	20.3%

Aboriginal and Torres Strait Islander girls

n=2,990

1		Stealing Theft	30.3%
2		Wilful damage Property and Environment	24.2%
3		Unlawful entry (premises) Unlawful entry	20.0%
4		Shoplifting Theft	19.1%
5		Trespass Public order	16.5%

Data includes case count, sentenced children for offences committed when under age 14, higher and lower courts, sentenced 2005–06 to 2021–22.

Source: QGSO, Queensland Treasury - Courts Database, extracted October 2022.

Note: percentages may add to more than 100% as some cases may involve multiple charges which may involve different types of offences.

Cases sentenced in the higher courts

As discussed above, the majority (94.5%) of cases were sentenced in the lower courts. This section focuses on cases sentenced in the higher courts. There were 919 cases sentenced in the higher courts (the Childrens Court of Queensland or Supreme Court) involving offences committed by children aged under 14 years over the 17-year period.











Table 3 shows the top 10 most common offences sentenced in the higher courts (MSO) for children under 14. Robbery was the most common offence, accounting for 28.4 per cent of cases sentenced in the higher courts. This was followed by assaults occasioning bodily harm (9.7%), indecent treatment of children under 16 (8.1%), rape (7.9%), and attempted robbery (6.6%).

Only 75 cases were sentenced in the higher courts for offences committed by children under 12 over the 17-year

period—see Table 4. The most common offence sentenced in the higher courts (MSO) for children under 12 was robbery (n=16, 21.3%), followed by indecent treatment of children under 16 (n=10, 13.3%), and attempted robbery (n=8, 10.7%).

There are differences in the types of offences sentenced for children aged under 14 years, compared to all offences sentenced in Queensland (including both adults and children). Of all sentenced cases in the higher courts (adults and children), the most common offence (MSO) was assaults occasioning bodily harm. Only 1.1 per cent of these sentenced offences were committed by a child under 14 (n=89/7,995).

Table 3: Top 10 offences (MSO) sentenced in the higher courts committed by children under 14 years

	Offence	Count	Percent
1	 Robbery	260	28.3%
2	 Assaults occasioning bodily harm	89	9.7%
3	 Indecent treatment of children under 16	74	8.1%
4	 Rape	73	7.9%
5	 Attempted robbery	61	6.6%
6	 Arson	46	5.0%
7	 Assault with intent to steal	38	4.1%
8	 Common assault	38	4.1%
9	 Unlawful entry (premises)	38	4.1%
10	 Burglary	25	2.7%

Data includes: MSO, sentenced children for offences committed when under age 14, higher court, cases sentenced 2005–06 to 2021–22. Percentages have been calculated based of all 919 cases sentenced in the higher courts; however, only the top 10 offences are displayed. Source: QGSO, Queensland Treasury – Courts Database, extracted October 2022.

Children aged under 14 years at the time of offending also accounted for a small percentage (3.4%) of all sentenced robbery offences (MSO) (n=260/7,762). For rape offences (MSO), children under 14 accounted for 3.6 per cent of all sentenced cases (n=73/2,050). For grievous bodily harm they made up less than 1 per cent (0.6%, n=21/3,411), 1.0 per cent for torture (n=2/200), and 2.9 per cent for arson (n=46/1,580).











Over the data period, there were no children sentenced for a homicide offence (MSO) committed while the child was aged under 14 years. There were also no children within this cohort sentenced for the offence of trafficking in dangerous drugs (MSO).

Court outcomes for children sentenced for offences committed under 14 years of age

In this section we explore court outcomes for children aged under 14 years at the time of their offence who were sentenced for their offending.

Children sentenced under the *Youth Justice Act 1992* (Qld) are subject to different forms of sentencing orders compared to adults. The court has many different options available to it that are not available when sentencing adults (including reprimands, intensive supervision orders, conditional release orders, and restorative justice orders). Some sentence options for children are age-limited. An intensive supervision order is only available if a child is aged under 13 years at the time of sentence.⁹⁵ Community service can only be ordered for children aged 13 years or more at the time of sentence.⁹⁶ For graffiti offences, graffiti removal orders can only be made where a child aged at least 12 at the time of the offence is found guilty.⁹⁷

Table 4: Top 10 offences (MSO) sentenced in the higher courts committed by children under 12 years

	Offence	Count	Percent
1	 Robbery	16	21.3%
2	 Indecent treatment of children under 16	10	13.3%
3	 Attempted robbery	8	10.7%
4	 Rape	6	8.0%
5	 Arson	4	5.3%
6	 Assault with intent to steal	4	5.3%
7	 Assaults occasioning bodily harm	3	4.0%
8	 Common assault	3	4.0%
9	 Endangering particular property by fire	3	4.0%
10	 Unlawful entry (premises)	3	4.0%

Data includes: MSO, sentenced children for offences committed when under age 12, higher court, cases sentenced 2005–06 to 2021–22. Percentages have been calculated based of all 75 cases sentenced in the higher courts; however, only the top 10 offences are displayed. Source: QGSO, Queensland Treasury – Courts Database, extracted October 2022.

For the purposes of this paper, the court outcome of 'court diversion referral' has been reported as a form of sentence, although this is not the case at law.⁹⁸ The making of the referral brings the court proceeding for the offence to an end, and the child is not liable to be further prosecuted for the offence unless Youth Justice returns the referral back to the court or tells the court that the child has failed to comply with a restorative justice agreement as a result of the referral.⁹⁹ In this case, the matter is returned to court for sentencing. This order has been included in the Council's analysis in the interest of completeness given the large number of these orders made by the Childrens Court.

Over the data period there have been various legislative amendments to the *Youth Justice Act 1992* (Qld) and other relevant Acts¹⁰⁰ that may have impacted court sentencing practices and outcomes—see Figure 10 in the appendix. These amendments include changes to the range of sentencing options available, the principles a court must take into account when sentencing and bail considerations.

It is also noted that unfortunately, the data available did not enable consideration of whether a young person had spent any time on remand prior to their sentenced court outcome.

Most common sentences

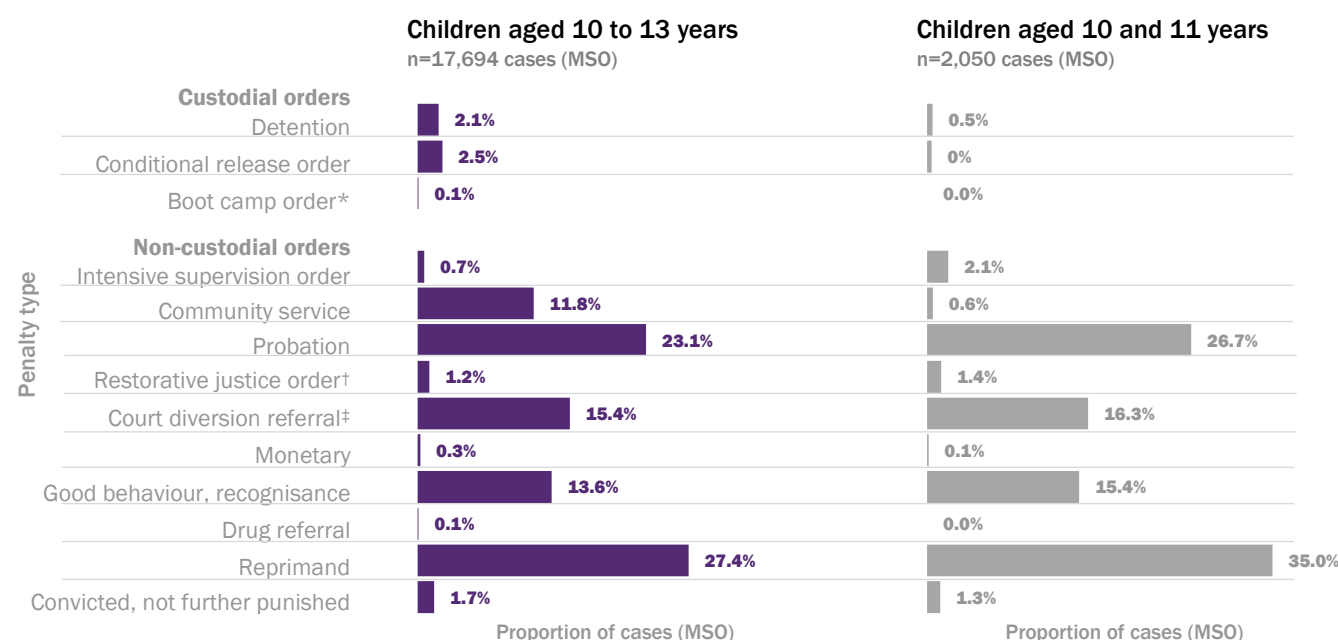
The most common sentences (MSO) given to children for offences committed under 14 years of age were reprimands (27.4%), probation orders (23.1%), and court diversion referrals (15.4%)—see Figure 7. The average length of probation orders (MSO) for offences committed by a child under 14 years was 8.3 months (median 6.0 months).

No differences were found in the order of the top five sentences when gender and Aboriginal and Torres Strait Islander status were considered.

The first four of the top five sentences were the same for children sentenced for offences committed when aged under 12, with intensive supervision orders in the fifth spot (instead of community service) Compared to all children under 14 years, slightly higher proportions of children under 12 years received a reprimand (35.0%) or a probation order (26.7%).

Table 5 highlights the sentences imposed on children aged under 14 years for the three most commonly sentenced offences.

Figure 7: Sentences imposed (MSO) on children for offences committed under 14 years of age



Data includes: MSO, sentenced children for offences committed when under age 14, higher and lower court, cases sentenced 2005–06 to 2021–22.

* Boot camp orders were introduced on 31 January 2013 and were repealed from 1 July 2016. The orders were available in a limited number of geographic locations.

† Restorative justice orders were introduced on 1 July 2016.

‡ A court may refer a matter to conferencing without making a sentencing order. Prior to 11 December 2012, these orders were known as indefinite referrals and resulted in the child being found guilty of the offence without a conviction being recorded. From 1 July 2016, the current Court Diversion Referrals do not include this deemed legislative conviction; however, the making of the referral does bring the court proceedings for the offence to an end. Source: QGSO, Queensland Treasury - Courts Database, extracted October 2022.

Table 5: Sentences imposed (MSO) for the top 3 sentenced offences committed by children under 14

	<p>Unlawful entry of premises (n=3,100)</p> <p>Unlawful entry of premises (MSO) was the most common type of offence sentenced for children aged under 14 years at the time of offending. For this type of offence, the most common type of penalty was probation, with more than a quarter of children sentenced to probation (27.8%) for an average of 7.4 months (median 6.0 months). A further 19.4 per cent received a court diversion referral, and 16.7% received a reprimand.</p>
	<p>Wilful damage (n=1,560)</p> <p>For wilful damage offences (MSO), more than 30 per cent of children who committed the offence aged under 14 were sentenced to community service (31.4%) for an average of 16.5 hours (median 10.0 hours). Over a quarter received a reprimand (27.3%) and a further 15.9% were sentenced to a court diversion referral. Of the 490 community service orders sentenced for wilful damage offences (MSO), 314 (64.1%) were graffiti removal orders. On average, graffiti removal orders were 6.2 hours (median 5 hours).</p>
	<p>Stealing (n=1,420)</p> <p>For stealing (MSO), the third most commonly sentenced offence for children under 14 years of age at the time of offending, over one-third received a reprimand (34.6%). A further 19.5 per cent received a probation order, with an average sentence of 6.7 months (median 6.0 months). A court diversion referral was imposed in a further 16.4 per cent of cases.</p>

Figure 8 presents the information in Figure 7 in a different way to better illustrate the differences in sentences for children aged under 14 years, compared to children aged under 12 years.

While reprimands were the most common penalty for both cohorts, they were used much more frequently for the younger children aged 10 and 11 years. Probation orders were the second most common type of penalty across both cohorts and were used slightly more often for the younger cohort of 10 and 11-year-olds.

Community service orders can only be given to children aged 13 years or more at sentence. As such, very few sentencing orders were made for children who committed an offence while aged 10 or 11 (0.6% of sentenced cases), and likely occurred in situations where the child was sentenced while aged 13 for an offence committed at an earlier age. These orders were used a lot more frequently when considering all children aged 10 to 14, with 11.8% of cases resulting in a community service order (MSO). Detention orders were less common for the younger cohort, with only 0.5% of cases resulting in detention for children aged 10 and 11.

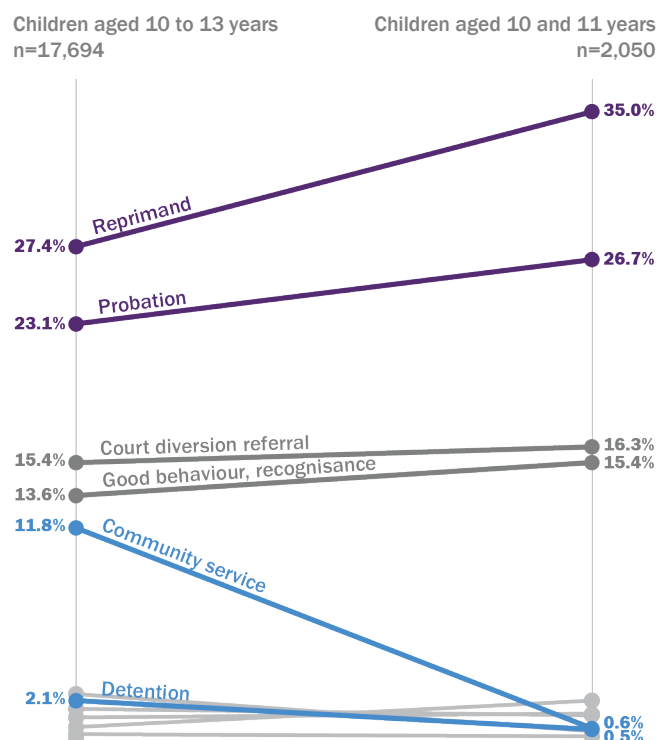
Detention orders imposed on children for offences committed while under 14 years of age

From 2005–06 to 2021–22, a detention order was imposed (MSO) in 379 cases for offences committed while aged under 14 years. As shown in Figure 7, detention accounts for 2.1 per cent of sentences imposed on children for an offence committed while aged under 14 years of age (MSO). The average length of detention orders (MSO) was 5.1 months (median 3.0 months), ranging from 2 days to 42 months.

Almost one-quarter of detention orders (MSO) were imposed for the offence of burglary (24.3%) and a further 21.9 per cent for unlawful entry of non-dwelling premises. Assaults occasioning bodily harm (7.4%), robbery (6.1%) and unlawful use of a motor vehicle (6.1%) completed the top 5 offences for which a child received a detention order for an offence committed while they were aged under 14 years.

The number of cases resulting in a detention order for this cohort (MSO) has fluctuated over the 17-year data period (see Figure 9). Climbing steadily in the first third of the data period, detention sentences then declined in 2011–12, from 36 cases in 2010–11 to 11 cases in 2011–12, a decrease of 69.4 per cent. Overall, the number of detention orders for this cohort has been decreasing steadily from 2013–14. The drop in detention sentences between 2019–20 and 2020–21 is likely related to the decreased number of court cases heard due to the COVID-19 pandemic, due to fewer offences occurring and/or being detected over this period, an increase in diversionary practices, and fewer cases prosecuted and sentenced due to restrictions on court sittings.

Figure 8: Difference in sentences for children under 14 years and children under 12 years (MSO)



Data includes: MSO, sentenced children for offences committed when under age 14, higher and lower court, cases sentenced 2005–06 to 2021–22.

Source: QGSO, Queensland Treasury - Courts Database, extracted October 2022.

Over the 17-year data period, detention orders as a proportion of all sentenced cases for offences committed when the child being sentenced was aged under 14 (MSO) ranged from a peak of 3.4 per cent in 2010–11 to a low of 1.1 per cent in 2011–12—see Figure 9.

Of the 379 MSO cases where a detention order was imposed for an offence committed when the child was aged under 14, the vast majority involved children aged 12 or 13 at offence (97.1%)—78.4 per cent of those sentenced to detention were aged 13 at the time of the offence and 18.7 per cent were aged 12. In less than three per cent of cases, the children receiving a detention order were aged under 12 at the time of the offence—only 2.9 per cent (n=11) were aged 11 at the time they committed the offence, and no children were sentenced to detention for offences committed when they were 10.

Of the 379 cases involving children offending under the age of 14 and receiving a detention order, there were 272 unique children.

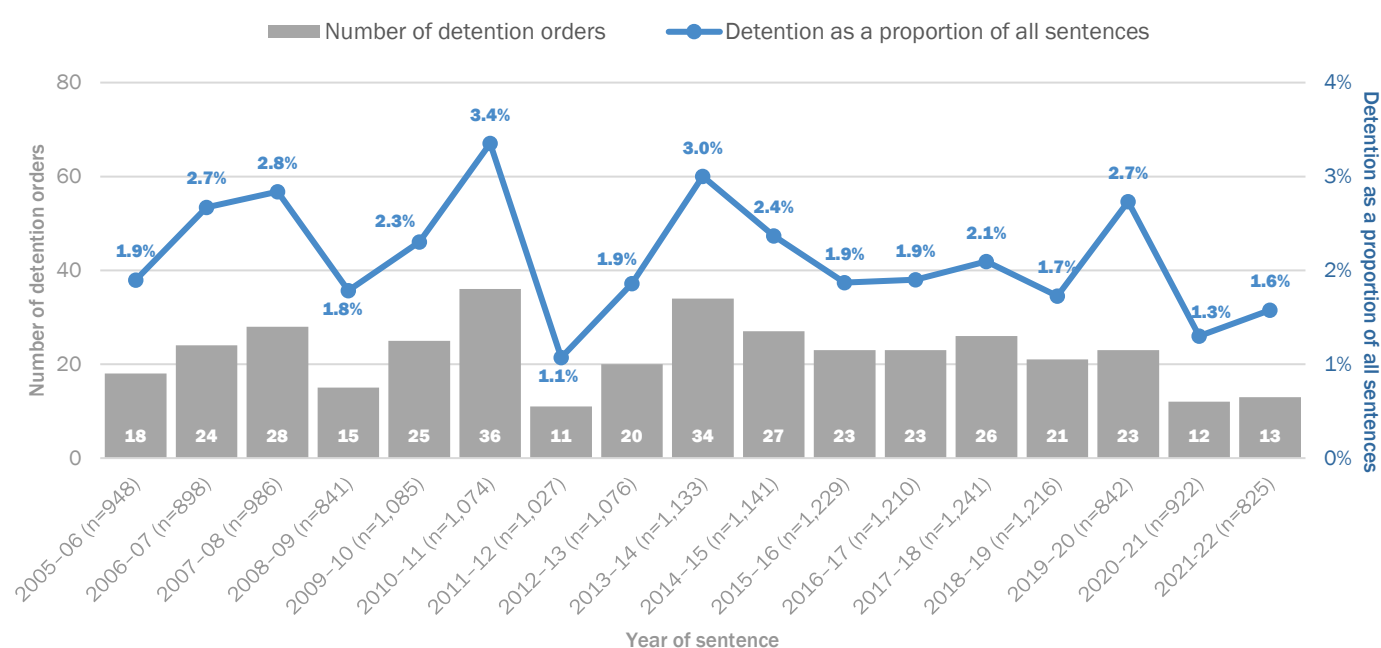
Three-quarters of these children were sentenced to detention only once for offending while under the age of 14 during the 17-year data period (n=202, 74.3%). The remaining children were sentenced to detention on more than one occasion for an offence committed while they were aged under 14. There were 48 children who received a detention order on 2 occasions (17.6%), and 22 children who received a detention order on three or more occasions (8.1%).

For all children under the age of 14 who received a detention order, further analysis was undertaken to determine the number of prior sentenced court cases for this cohort. This analysis looked at a child's first sentence of detention to determine whether there had been any earlier sentenced court appearances. Children sentenced in the earliest four years of the data period were excluded (n=58) as it would not be possible to accurately identify from the dataset if they had any prior court matters. Most children had at least one prior sentenced court case (93.9%, n=201). There were 13 children who did not have any prior sentences in court and received detention as a first-time offender—all of whom committed very serious offences, including rape, grievous bodily harm, arson, burglary, robbery and torture as the MSO.

For the 11 cases (MSO) involving children under the age of 12 that resulted in a detention order, further analysis was undertaken to explore whether any of these children had been sentenced in court for prior offences. Most of these children (n=7) had been sentenced in court for prior offences on 1 to 4 separate occasions, and one child had an extensive history, having 11 prior sentenced court events. Only 1 child had no prior sentenced offences—however, the offences committed by this child were extensive and very serious. The remaining two cases were sentenced in the first year of the data period, so it was not possible to accurately confirm prior court contact.

It is important to note that this analysis of priors only covers prior offences that were sentenced in a court. It does not include, for example, offending that was diverted by police and did not end up in court.

Figure 9: Number and proportion of detention orders (MSO) for offences committed under age 14, over time



Data includes MSO, children sentenced to detention for offences committed under 14 years, higher and lower courts, sentenced 2005-06 to 2021-22. Cases where the MSO was for an offence committed while the child was aged 14 or older have been excluded; as such, counts will total to a smaller count when compared to other totals in this paper. The total count for this chart is n=17,694 cases (MSO).
Source: QGSO, Queensland Treasury - Courts Database, extracted October 2022.

DISCUSSION

This research set out to explore offending by children aged under 14 years by considering the demographics of these children, the type of offences that are being committed, and the sentences that are being imposed by Queensland courts to help inform any future consideration of proposals to raise the MACR to either 12 or 14 years.

The analysis found that the number of sentenced cases involving offences committed by children under age 14 are a very small proportion of the total number of sentenced cases (children and adults), at less than 1 per cent each year. Of those cases involving children who committed an offence when aged under 14 (n=19,031), approximately 12 per cent involved children who were aged under 12 at the time of their offending (n=2,304), representing approximately 0.1 per cent of all sentenced cases (children and adults) each year.

Of the total number of unique children sentenced for offences committed while under the age of 14 (n=7,207), just over 15 per cent of those children were under 12 (n=1,087). This is consistent with the QGSO's findings in relation to those who had a finalised appearance as a child in a Queensland criminal court.¹⁰¹

The data indicates that a change in the MACR to 14 years of age would have resulted in 19,031 fewer cases being sentenced in Queensland courts and 7,207 fewer children being sentenced over the 17-year period (an average of approximately 651 children per year). A change to 12 years of age would have resulted in 2,304 fewer cases being sentenced in Queensland courts and 1,087 fewer children sentenced over the same period (an average of 87 children per year). The data does not extend to children in these cohorts who proceeded through the system and were found not guilty or cases that were discontinued. The data also does not include those children who have been diverted from the criminal justice system, although it does include court diversion referrals.

Looking only at 2021–22, 1,959 unique 10–13-year-olds were diverted by Queensland police, of which 65.2 per cent were boys and 40.7 per cent were Aboriginal and Torres Strait Islander. This is compared to 482 children aged 10–13 years who were sentenced, of which 66.4 per cent were boys and 61.8 per cent were Aboriginal and Torres Strait Islander. This shows that a lower proportion of Aboriginal and Torres Strait children are diverted and higher proportion are sentenced. This is consistent with research conducted in New South Wales by Weatherburn and Thomas, which found that 9.3 per cent of Indigenous children aged 13 and under were prosecuted (rather than cautioned), while 3.1 per cent of non-Indigenous children were prosecuted.¹⁰²

Consistent with existing research in New South Wales and Queensland,¹⁰³ this study has also identified that children within this cohort who are sentenced are more likely to be Aboriginal and Torres Strait Islander people (54.9%). Those

under 12 are even more likely to be Aboriginal and Torres Strait Islander people (73.3%). Children who are diverted while aged 10–13 years though are more likely to be non-Indigenous (59.3%), whereas those under 12 years who are diverted are more likely to be Aboriginal and Torres Strait Islander children.

Raising the age of criminal responsibility (as an absolute bar to investigation and prosecution) would also result in fewer children being detained in watchhouses and remanded in youth detention. This impact was not the subject of this study. However, as noted above,¹⁰⁴ Aboriginal and Torres Strait Islander children represent approximately 80 per cent of children aged 10–13 years in detention in Queensland and in Queensland '[a]lmost 9 in 10 (88.1%) of all children in detention are unsentenced.'¹⁰⁵ Further it has been reported that between 1 September 2021 and 30 September 2022, 40 Aboriginal and Torres Strait Islander children aged 10–11 were detained in Queensland watchhouses, compared to 3 non-Indigenous children of the same age.¹⁰⁶ For children aged 10–13, 590 Aboriginal and Torres Strait Islander children were detained in Queensland watchhouses, compared to 72 non-Indigenous children.¹⁰⁷

Legislating to exclude children under 14 or children under 12 from criminal responsibility would therefore be highly likely to contribute to an overall reduction in the over-representation of Aboriginal and Torres Strait Islander children in the youth justice system.

Increasing the MACR to either 12 or 14 years of age without exception would mean that certain offences would not be able to be prosecuted and potentially leave victims without recourse.¹⁰⁸ In Queensland, similar to findings in the United Kingdom,¹⁰⁹ sentenced offences committed by these children are commonly property-related (unlawful entry (premises), wilful damage, and stealing) rather than offences against the person. The offences for which the children in this age group are mostly commonly diverted are also property related. This differs to New South Wales where commonly occurring offences in this age group include breaching bail conditions and bullying, harassment and intimidation,¹¹⁰ and Australia-wide where the most prevalent offence for 11–13-year-old children was acts intended to cause injury.¹¹¹

The nature of the charges committed by 10–13-year-old children is relevant to potential reforms (such as those advanced in Queensland in the Atkinson report and in Tasmania)¹¹² that suggest that certain groups of children in this cohort should only be detained (either on remand or sentence) for 'very serious' offences or 'serious crimes'.

Differentiation between offences in Queensland do exist, but do not relate to whether or not the child can be held criminally responsible. In the *Youth Justice Act 1992* (Qld) a 'serious offence' is a life offence or one that, if committed by an adult, would make the adult liable to 14 years

imprisonment or more (but excludes certain offences which are able to be heard summarily).¹¹³ This study determined that the top 5 offences for which a detention order was made in Queensland were burglary, unlawful entry (premises), assaults occasioning bodily harm, unlawful use of a motor vehicle, and common assault. Only the first two of those offences meet the criteria for being classified as a serious offence in Queensland (and only in particular circumstances).

Similarly in Tasmania, there are situations where different offences are treated differently dependent on age. Serious offences listed as 'prescribed offences'¹¹⁴ cannot be subject to diversion. Prescribed offences for a child who is under 14 years old are murder, manslaughter, and attempted murder. This study found that there were no children in Queensland in this cohort sentenced for these offences over the 17-year time period.

An alternative approach may be to hold children in this group criminally responsible only for particular offences (sometimes called carve-outs). For example, in New Zealand, although the minimum age of criminal responsibility is 10 years, there are limits as to when children under 14 years of age can be prosecuted. Specifically, those aged 10 and 11 years can only be tried or prosecuted for offences of murder or manslaughter.¹¹⁵ Tasmanian research which reviews the approach in 38 countries notes that '[t]he crimes "carved out" for prosecution at a young age typically include homicide, rape, aggravated sexual assault, and robbery'.¹¹⁶ As stated above, this research found that no child in this cohort has committed a homicide offence in the past 17 years, and for offences against the person, such as robbery and rape, this cohort commits those offences with relative infrequency when compared to all sentenced persons.

The most common sentence imposed in cases involving 10–13-year-old children was a reprimand, probation and court diversion. Like the findings in the ACT,¹¹⁷ 10–13-year-old children in Queensland were rarely sentenced to detention. Further, this study found, like others in New South Wales and Queensland,¹¹⁸ this group only make up a small percentage of children subject to a supervised community-based order.

Should the MACR be raised, these low numbers support the feasibility of a model that puts measures in place to ensure that children in this cohort are properly supported and given the best opportunity to desist from offending.

Reviews in other jurisdictions detail some of the alternative (non-criminal) approaches for dealing with children who commit offences under the MACR. They include:

- the use of youth courts (which are not criminal courts) that can make orders, including for children to undertake certain educative measures or be detained in out-of-home placements/youth care/educational facilities;¹¹⁹
- extensions on powers of first responders, such as police or co-responder teams (including agencies such as child safety);¹²⁰
- the extension of restorative justice diversionary pathways outside of the youth justice system;¹²¹ and
- establishment of panels/boards/committees (such as a multidisciplinary therapeutic panel), which can make referrals to educative and therapeutic measures.¹²²

- 1 Barry Goldson, "'Unsafe, Unjust and Harmful to Wider Society': Grounds for Raising the Minimum Age of Criminal Responsibility in England and Wales' (2013) 13(2) *Youth Justice* 111, 114–116.
- 2 *Criminal Code* (Qld) s 29(1).
- 3 What is required to show the child had capacity depends on the nature of the allegation and the child: *RP v The Queen* (2016) 259 CLR 641; see further discussion in Ian Freckleton, 'Children's Responsibility for Criminal Conduct: The Principle of Doli Incapax under Contemporary Australian Law' (2017) 24(6) *Psychiatry, Psychology and Law* 793.
- 4 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 40(3)(a).
- 5 Don Cipriani, *Children's Rights and the Minimum Age of Criminal Responsibility: A Global Perspective* (Farnham, 2009); and 'The Minimum Age of Criminal Responsibility', CRIN: Child Rights International Network (Web Page, 2022) <<https://home.crin.org/issues/deprivation-of-liberty/minimum-age-of-criminal-responsibility>>.
- 6 Committee on the Rights of the Child, General Comment No 24: Children's Rights in Juvenile Justice, UN Doc CRC/C/GC/24 (18 September 2019) [21].
- 7 Committee on the Rights of the Child, General Comment No 10: Children's Rights in Juvenile Justice, UN Doc CRC/C/GC/10 (25 April 2007) [32].
- 8 Committee on the Rights of the Child (n 6) [22].
- 9 Ibid. See further discussion below.
- 10 Bob Atkinson, *Report on Youth Justice* (8 June 2018) 106 – Recommendations 68 to 70, included the qualification that raising the age be subject to national agreement and implementation by State and Territory Government, a comprehensive impact analysis and establishment of needs-based programs and diversions for 8–11-year-old children engaged in offending behaviour.
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- 12 Meeting of Attorneys-General, *Communique* (12 August 2022) 3.
- 13 The Australian Greens, *Greens 2022 Election Policy Platform* (Web Page) <<https://greens.org.au/platform>>.
- 14 Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021 CI 3.
- 15 Community Support and Services Committee, Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021 (Report No. 16, 57th Parliament, March 2022) 7, 18.
- 16 See Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 20 August 2020, 2051–2064.
- 17 See Morag McArthur, Aino Suomi and Belinda Kendall, *Review of the Service System and Implementation Requirements for Raising the Minimum Age of Criminal Responsibility in the Australian Capital Territory* (Final Report, Australian National University, August 2021).
- 18 ACT Government, 'Raising the Minimum Age of Criminal Responsibility' (Media Release, ACT Government, 3 November 2022).
- 19 Roger Jaensch, Minister for Education, Children and Youth, 'Raising the Minimum Age of Detention' (Media Release, Tasmanian Government, 8 June 2022).
- 20 Children (Criminal Proceedings) Amendment (Age of Criminal Responsibility) Bill 2021 (NSW) introduced into the Legislative Council on 11 November 2021, which also aimed to ensure that children under 16 years of age could not be detained or imprisoned (including on remand); and the Children, Youth and Families (Raise the Age) Amendment Bill 2021 (Vic) introduced into the Victorian Legislative Council in March 2021. In February 2022 the Greens proposed an amendment to the Children Youth and Family Amendment (Child Protection) Bill 2021 (Vic) to achieve the same outcome. This Bill lapsed on the dissolution of the Victorian Parliament on the calling of the 2022 State election.
- 21 Young Offenders (Age of Criminal Responsibility) Amendment Bill 2022 (SA).
- 22 South Australia, *Parliamentary Debates*, Legislative Council, 6 July 2022, 687 (Kyam Maher, Attorney-General).
- 23 Enys Delmage, 'The Minimum Age of Criminal Responsibility: A Medico-Legal Perspective' (2013) 13(2) *Youth Justice* 102, 105–106.
- 24 Hannah Wishart, 'Young Minds, Old Legal Problems: Can Neuroscience Fill the Void? Young Offenders & The Age of Criminal Responsibility Bill — Promise and Perils' (2018) 82(4) *The Journal of Criminal Law* 311, 313.
- 25 Delmage (n 23) 106.
- 26 Anthony Pillay, 'The Minimum Age of Criminal Responsibility, International Variation, and the Dual Systems Model in Neurodevelopment' (2019) 31(3) *Journal of Child & Adolescent Mental Health* 224, 230.
- 27 Ibid; Laurence Steinberg, 'Cognitive and Affective Development in Adolescence' (2005) 9(2) *Trends in Cognitive Sciences* 69; Committee on the Rights of the Child (n 6) [22].
- 28 See discussion in Chris Cunneen, *Arguments for Raising the Minimum Age of Criminal Responsibility* (Comparative Youth Penalty Project Research Report, February 2020) 13.
- 29 Julie Edwards, 'A Just System? How Punitive Youth Justice Systems Increase the Risk of Crime' (2017) 42(4) *Children Australia* 233; McArthur et al (n 17) 18–19.
- 30 Delmage (n 23) 106.
- 31 Cunneen (n 28) 14–18.
- 32 Nicholas Lennings and Chris Lennings, 'Assessing Serious Harm Under the Doctrine of Doli Incapax: A Case Study' (2014) 21(5) *Psychiatry, Psychology and the Law* 791, 795.

- 33 Australian Human Rights Commission, Review of the Age of Criminal Responsibility: Submission to the Council of Attorneys-General Age of Criminal Responsibility Working Group (2020); Chris Cunneen, Barry Goldson and Sophie Russell, 'Juvenile Justice, Young People and Human Rights in Australia' (2016) 28(2) *Current Issues in Criminal Justice* 173.
- 34 Laura Abrams, Sid Jordan and Laura Montero, 'What is a Juvenile? A Cross-National Comparison of Youth Justice Systems' (2018) 18(2) *Youth Justice* 111; Aaron Brown and Anthony Charles, 'The Minimum Age of Criminal Responsibility: The Need for a Holistic Approach' (2021) 21(2) *Youth Justice* 153.
- 35 Human Rights Law Centre, *Process to Raise the Age of Criminal Responsibility: Submission to the Council of Attorneys-General* (2020); Wendy O'Brien and Kate Fitz-Gibbon, 'The Minimum Age of Criminal Responsibility in Victoria (Australia): Examining Stakeholders' Views and the Need for Principled Reform' (2017) 17(2) *Youth Justice* 134.
- 36 Kelly Richards, *What Makes Juvenile Offenders Different from Adult Offenders?* (Trends and Issues in Crime and Criminal Justice No. 416, Australian Institute of Criminology, 2011).
- 37 Community Support and Services Committee (n 15) 7.
- 38 See O'Brien and Fitz-Gibbon (n 35).
- 39 See discussion in *ibid* 140.
- 40 Committee on the Rights of the Child (n 6) [26].
- 41 See O'Brien and Fitz-Gibbon (n 35) in relation to Victoria; and National Legal Aid, Council of Attorneys-General — Age of Criminal Responsibility Working Group Review: Submission from National Legal Aid (2020) in relation to NSW.
- 42 *Ibid*.
- 43 Queensland Government Statistician's Office, *Justice Report, Queensland, 2020–21* (Criminal Justice Statistics, Queensland Treasury, 2022). 2018–2019 was selected as the first year for inclusion as it was during this time that 17-year-olds were included in the youth justice system in Queensland for the full year. The *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016* (Qld) commenced on 12 February 2018.
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- 46 See, for example, Don Weatherburn and Stephanie Ramsay, *Offending Over the Life Course: Contact with the NSW Criminal Justice System Between Age 10 and Age 33* (Issue Paper No. 132, NSW Bureau of Crime Statistics and Research, April 2018) 7.
- 47 Atkinson (n 10) 107; Royal Commission into the Protection and Detention of Children in the Northern Territory, *Report of the Royal Commission into the Protection and Detention of Children in the Northern Territory: Volume 1* (Final Report, November 2017) Ch 4; Garner Clancey, Cindy Wang and Brenda Lin, *Youth Justice in Australia: Themes from Recent Inquiries* (Trends & Issues in Crime and Criminal Justice No. 605, Australian Institute of Criminology, October 2020) 7-8.
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64 Childrens Court of Queensland, *Annual Report 2021–22* (2022) 21 and Figure 8.

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71 Community Support and Services Committee (n 15) 6.

72 Queensland Family and Child Commission (n 68) 9.

73 Australian Bureau of Statistics, *Recorded Crime – Offenders 2020–21: Table 21 Youth offenders, sex and principal offence by age*.

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75 Ibid.

76 McArthur et al (n 17) 27–28.

77 Local Government Association (n 45).

78 Queensland Police Service, unpublished data on youth diversions, November 2022.

79 Above p 5 Aboriginal and Torres Strait Islander children on community-based orders and in detention.

80 Weatherburn and Thomas (n 48) 16.

81 Ibid 11.

82 Ibid 16.

83 Ibid 17.

84 See, e.g., Australian Institute of Health and Welfare (n 65) 52; McArthur et al (n 17).

85 Australian Institute of Health and Welfare, *ibid* 10. Note that supervision in this instance includes both sentenced and unsentenced supervision.

86 McArthur et al (n 17) 28.

87 Centre for Crime, Law and Justice (n 44) 17.

88 Community Support and Services Committee (n 15) 6.

89 Australian Institute of Health and Welfare (n 65) Table s72b.

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93 As of 30 June 2020; Australian Bureau of Statistics, *National, state and territory population – Mar 2022*, Table 7 Estimated resident population, by age and sex—at 30 June 2020; Australian Bureau of Statistics, *Estimates and Projections, Aboriginal and Torres Strait Islander Australians*, Table 5.3 Estimated resident and projected Aboriginal and Torres Strait Islander population, Series B(a), Single year of age, Queensland–2006 to 2031.

94 For context, Aboriginal and Torres Strait Islander children make up 7.8 per cent of all children aged 10–11. Ibid.

95 *Youth Justice Act 1992* (Qld) s 175(1)(f).

96 *Youth Justice Act 1992* (Qld) s 175(1)(e).

97 *Youth Justice Act 1992* (Qld) s 176A(1).

98 These are orders made under section 164 of the *Youth Justice Act 1992* (Qld). If a child enters a plea of guilty, a court must consider making a court diversion referral instead of sentencing the child in accordance with section 162 of that Act, but before doing so, the court must be satisfied of a number of matters set out in the Act including that the child understands the process and is willing to comply, and the referral would allow the offence to be appropriately dealt with without the child being sentenced: s 163.

99 *Youth Justice Act 1992* (Qld) s 164(2).

100 For example, the *Police Powers and Responsibilities Act 2000* (Qld).

101 Queensland Government Statisticians Office (n 43).

102 Weatherburn and Thomas (n 48).

103 Weatherburn and Ramsay (n 46); Queensland Family and Child Commission (n 68); Childrens Court of Queensland (n 64).

104 Above p 5 Aboriginal and Torres Strait Islander children on community-based orders and in detention.

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106 Question on Notice No. 1016 asked on 12 October 2022, Queensland Parliament, <https://documents.parliament.qld.gov.au/tableOffice/questionsAnswers/2022/1016-2022.pdf>.

107 Ibid.

108 However, even in the current system, recourse for victims of child offenders is more limited than for adults, in that a child will usually not have the capacity to pay restitution or compensation.

109 Local Government Association (n 45).

110 Drabsch (n 74) 5, analysing data presented in the Centre for Crime, Law and Justice (n 44). However, it must be noted that children cannot be charged with an offence of breach of bail in Queensland. They can though be charged with failing to appear.

111 Australian Bureau of Statistics (n 73).

112 Atkinson (n 10) and Jaensch (n 19).

113 *Youth Justice Act 1992* (Qld) s 8.

114 Tasmanian Law Reform Institute, *Raising the Minimum Age of Criminal Responsibility: Law Reform Considerations* (Research Report No. 5, April 2022) 45.

115 *Oranga Tamariki (Children's and Young People's Well-being) Act 1989* (NZ) s 272. Also, those aged 10–13 can only be tried and prosecuted if they are accused of murder or manslaughter, accused of an offence for which the maximum penalty includes imprisonment for life or for at least 14 years, or accused of an offence for which the maximum penalty is at least 10 years but less than 14 years, and the child is considered a 'previous offender'.

116 Tasmanian Law Reform Institute (n 114) 115.

117 McArthur et al (n 17).

118 Centre for Crime, Law and Justice (n 44); Community Support and Services Committee (n 15).

119 Centre for Crime, Law and Justice (n 44) 19; Tasmanian Law Reform Institute (n 114) 30–32.

120 McArthur et al (n 17) 53; Tasmanian Law Reform Institute (n 114) 39, 124–127.

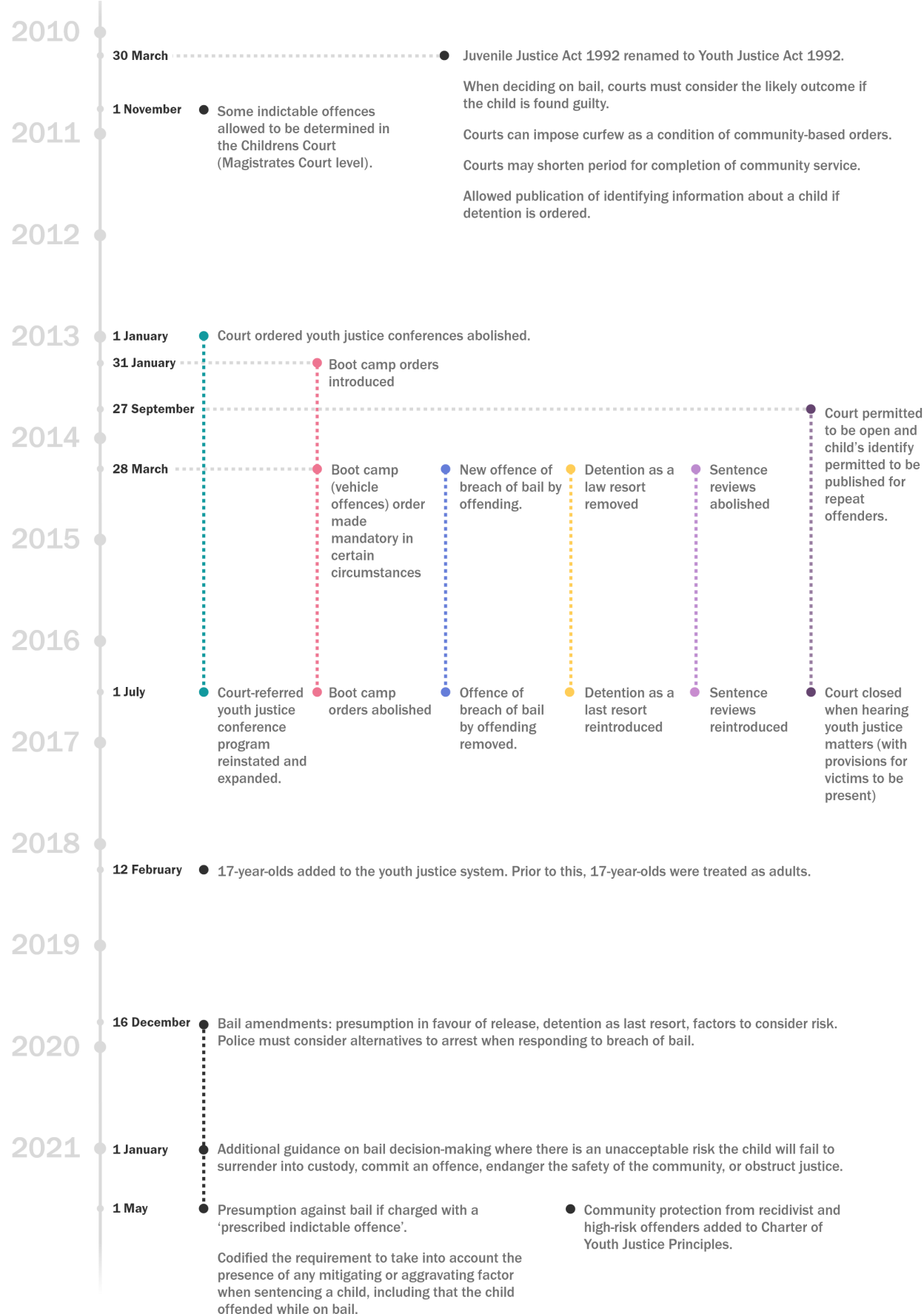
121 Tasmanian Law Reform Institute (n 114) 38–39.

122 For example, see discussion in Centre for Crime, Law and Justice (n 44) 19; McArthur et al (n 17) 63.

123 Amending legislation in accordance with timeline: 30 March 2010: *Juvenile Justice and Other Acts Amendment Act 2009* (Qld); 1 November 2010: *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010* (Qld); 1 January 2013, 31 January 2013: *Youth Justice (Boot Camp Orders) and Other Legislation Amendment Act 2012* (Qld); 27 September 2013: *Criminal Law and Other Legislation Amendments Act 2013* (Qld); 28 March 2014: *Youth Justice and Other Legislation Amendment Act 2014* (Qld); 1 July 2016: *Justice and Other Legislation Amendment Act (No. 1) 2016* (Qld); *Youth Justice and Other Legislation Amendment Act (No. 2) 2016* (Qld); 16 December 2019: *Youth Justice and Other Legislation Amendment Act 2019* (Qld); 1 January 2021: *Community Services Industry (Portable Long Service Leave) Act 2020* (Qld); 1 May 2021: *Youth Justice and Other Legislation Amendment Act 2021* (Qld).

APPENDIX

Figure 10: Legislative amendments to the Youth Justice Act 1992 (Qld) and other relevant Acts¹²³



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