



## Protocol: Principles for Managing Children in the Custody of the Supreme Court

Document Details			
Subject	Managing children in the custody of the Supreme Court of Victoria		
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### Statement of Purpose

1. This protocol applies to matters heard by the Supreme Court of Victoria ('the Supreme Court') involving a child<sup>1</sup> accused who appears in the criminal trial division or a child applicant or respondent who appears in the criminal appeal division.
2. The Supreme Court recognises the rights of children and the obligations it has under the *Charter of Human Rights and Responsibilities Act 2006* (Vic), and adopts the following practices and procedures in the management of child accused or child applicants or respondents during their time in its custody.

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<sup>1</sup> As per the Children, Youth and Families Act 2005 s 3:

*child* means—

- (a) in the case of a person who is alleged to have committed an offence, 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 but does not include any person who is of or above the age of 19 years when a proceeding for the offence is commenced in the Court;...

3. In its management of these children in its custody, the Supreme Court is guided by the general principle that it should take reasonable and necessary steps to ensure that children are not exposed to avoidable intimidation, humiliation and distress and that they are assisted to effectively participate in proceedings before the court.<sup>2</sup> The Court acknowledges that particularised in-court procedures may be needed to make them age appropriate and possible adjustments will be considered by the Court in each case.
4. Whilst many of the in-court procedures used in the Children's Court will serve as an appropriate guide, it must also be recognised that the Supreme Court does not have the same purpose built facilities as the Children's Court.
5. This protocol is strictly confined to matters heard in the Supreme Court.

#### **Detention of a child whilst in the custody of the Supreme Court**

6. When in attendance at the Supreme Court, a child accused or child applicant or respondent must be segregated from adults whilst held in detention.<sup>3</sup>
7. The requirement for segregation of children from adults in custody is mandatory pursuant to s 23(1) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic). Further, under s 23(3) of that Act, a child charged with a criminal offence has the right to a procedure that takes into account his or her age and the desirability of promoting the child's rehabilitation. The right to age- appropriate procedures also arises as an aspect of the right to equality in section 8(3) of the Act.

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<sup>2</sup> *DPP (Vic) v SL* [2016] VSC 714 [12] ('SL').

<sup>3</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 23(1).

**In-court procedures for hearings (including bail hearings)<sup>4</sup> involving a child accused**

8. Possible adjustments to in-court procedures should be considered and adopted whenever practicable. These include:
- (a) that the hearing of the matter is conducted in a courtroom in which all participants are at or near the same level;<sup>5</sup>
  - (b) there is continuity of the judge and courtroom;<sup>6</sup>
  - (c) the child is allowed to familiarise him or herself with the courtroom at an early stage, such as at directions' hearings;<sup>7</sup>
  - (d) each step of the proceeding is explained to the child in a manner they can understand, and similarly ensure the matter is conducted, so far as practical, in language that they can understand;<sup>8</sup>
  - (e) frequent and regular breaks are permitted to account for the child's inability to concentrate for long periods;<sup>9</sup>
  - (f) the child is held in child friendly waiting rooms, such as an anteroom to the courtroom, during the proceeding.<sup>10</sup> The interview rooms outside of Courts 2 and 3 are examples of suitable locations;
  - (g) the child is not handcuffed;<sup>11</sup>
  - (h) the child is permitted to sit near or with counsel and family or friends, and not in the dock;<sup>12</sup>

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<sup>4</sup> See generally *CL (a minor) v Lee* (2010) 29 VR 570, 589-90, [84]-[86]; *DPP (Vic) v SE* [2017] VSC 13 ('SE'); *SL* [17], [25]; *Bail Act 1977* (Vic) ss 12(1AA)-12(1AB), 24(3A).

<sup>5</sup> *SL* [16].

<sup>6</sup> *Ibid* [21], [25(c)].

<sup>7</sup> *Ibid* [20], [25(d)].

<sup>8</sup> *Ibid* [16], [23], [25(f)], [25(h)].

<sup>9</sup> *Ibid* [16], [22].

<sup>10</sup> *Ibid* [11].

<sup>11</sup> *Ibid* [18], [25(a)-(b)].

<sup>12</sup> *Ibid* [14], [16], [19], [22], [25(g)].

- (i) persons responsible for the security of a child are not in uniform and there is no recognisable police presence in the courtroom save for good reason;<sup>13</sup>
- (j) robes are not worn;<sup>14</sup>
- (k) counsel speak from a seated position;<sup>15</sup>
- (l) the number of people in attendance is restricted to only those with an immediate interest in the outcome of the proceeding;<sup>16</sup> and
- (m) the child is referred to by his or her first name and not by any pejorative term such as “the prisoner.”<sup>17</sup>

9. Detention of children on remand is subject to judicial oversight arising from the limitation in the *Bail Act 1977* (Vic) that a child not be remanded in custody for a period longer than 21 clear days.<sup>18</sup>

Please direct any queries regarding trial division matters to the Criminal Division Registry via email to [criminaldivision@supcourt.vic.gov.au](mailto:criminaldivision@supcourt.vic.gov.au) or by telephone on (03) 8600 2059, and any queries regarding appeal division matters to the Court of Appeal Registry via email to [coaregistry@supcourt.vic.gov.au](mailto:coaregistry@supcourt.vic.gov.au) or by telephone on (03) 8600 2001.

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<sup>13</sup> Ibid [16].

<sup>14</sup> Ibid [16], [22], [25(e)].

<sup>15</sup> Ibid [22], [25(e)].

<sup>16</sup> Ibid [16].

<sup>17</sup> Ibid [17].

<sup>18</sup> *SL* [17], [25]; *Bail Act 1977* (Vic) ss 12(1AA)-12(1AB), 24(3A).