

The involvement of young people aged 10 to 13 years in the NSW criminal justice system

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AIM

This paper examines interactions between young people aged 10 to 13 years and the New South Wales (NSW) criminal justice system. It seeks to inform the current discussion on the minimum age of criminal responsibility by examining the number and nature of legal proceedings initiated against young people aged 10 to 13 years, the outcomes and penalties imposed by the NSW Children's Court and the number of young people under 14 years of age held in youth detention.

KEY FINDINGS

Interactions with police

- In 2023 the NSW Police Force initiated 4,662 legal proceeding against young people aged 10 to 13 years.
- The majority (63.4%) of police initiated legal proceedings against young people aged 10 to 13 years were formal court diversions under the Young Offenders Act 1997 (NSW). The most common method of diversion was a caution (36.3%), followed by a warning (20.9%) and youth justice conference (6.2%).
- Over two-thirds (70.1%) of the legal proceedings against young people aged 10 to 13 years were for non-violent offences, with property offences accounting for 36.3 percent of legal proceedings and disruptive conduct, such as trespass and offensive conduct, accounting for a further 12.0 percent of legal proceedings.
- There were 2,144 distinct young people aged under 14 years who were legally proceeded against by the NSW Police Force on at least one occasion in 2023. Of these, 61.1 percent were aged 13 years, 27.8 percent were aged 12, 8.1 percent were aged 11 and 3.0 percent were aged 10 years.
- 41.3 percent of young people aged under 14 years who were legally proceeded against by police at least once in 2023 were Aboriginal.
- The rate of legal proceedings against young people under 14 years of age was more than three times as high in regional/remote/very remote areas compared with major cities (1,171.6 per 100,000 population vs 371.2 per 100,000 population).

KEYWORDS

Minimum age of criminal responsibility

young people

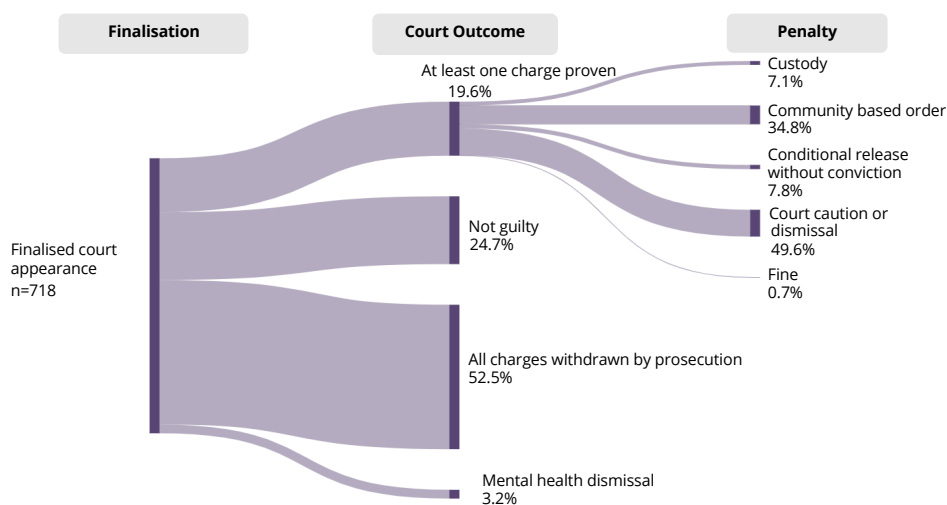
youth detention

youth offending

Interactions with court

- In 2023, there were 719 court appearances finalised in the NSW Children’s Court involving defendants who were under 14 years of age at the time of the offence.
- Of the 718 finalisations with known outcomes, 19.6 percent (141 finalisations) had at least one proven offence, a quarter were found not guilty of any offences (24.7%) and half (52.5% or 377 finalisations) were resolved by all charges being withdrawn by the prosecution.
- The most common ‘penalty’ imposed for a proven court appearance was a Court Dismissal, which includes court-ordered cautions or Youth Justice Conferences (49.6% or 70 finalisations). Ten (7.1%) finalisations resulted in a custodial penalty.

NSW Children’s Court finalisations for defendants aged 10 to 13 years at the time of offence, by outcome and principal penalty, 2023 (n=718)



Interactions with youth detention

- In 2023, 171 distinct young people under the age of 14 experienced at least one episode of youth detention. Of these young people, two were aged 10 years; eight were 11 years; 35 were 12 years and 126 were 13 years old.
- 59.6% of this youth detention cohort were Aboriginal (102 Aboriginal young people aged 10 to 13 years).
- All of these young people were received into detention on remand.
- Most custodial episodes for young people aged under 14 years of age were for 24 hours or less (73.5%).

INTRODUCTION

The minimum age of criminal responsibility (MACR) is an issue of frequent and growing attention across Australia. In recent years submissions have been made to the Australian federal and state governments by a range of human rights organisations, community groups and peak professional bodies, including the Australian Human Rights Commission, the Law Council of Australia, the Australian Medical Association and the National Aboriginal and Torres Strait Islander Legal Services (Australian Human Rights Commission, 2019; Law Council of Australia, 2020; Australian Medical Association, 2023; National Aboriginal and Torres Strait Islander Legal Services, 2020; Cunneen, 2017). Among the concerns raised are the over-representation of Aboriginal young people in the criminal justice system, particularly in custody; the cognitive capacity of young people aged under 14 years to understand the consequences of their actions and to fully engage in the criminal justice process; and the ability of the justice system to adequately respond to the complex needs of many young offenders.

Until 2023, the MACR was 10 years of age in all Australian states and territories. The issue has been considered at a national level through the Standing Council of Attorneys General (SCAG) which drafted a report on the issue in 2020 (released in 2022). The report found that most children under supervision of the justice system are from disadvantaged backgrounds and have often experienced violence, abuse and homelessness. Moreover, Aboriginal and Torres Strait Islander children are disproportionately affected by the entry of children into the justice system (Council of Attorneys-General Age of Criminal Responsibility Working Group, 2022). Suggested options for raising the MACR were provided in the report, including raising it to 14 years of age with no exception. However, the recommendations in the draft report were not supported by all jurisdictions and were not endorsed by the Commonwealth government.

Subsequently, changes to the MACR have been made independently in several jurisdictions. On 1 August 2023 the Northern Territory Government raised the age of criminal responsibility to 12 years. The Australian Capital Territory (ACT) and Victorian governments have made commitments to increase the age of criminal responsibility to 14 years by 2029 or earlier.¹ In New South Wales (NSW) the age of criminal responsibility remains at 10 years of age. This means that currently in NSW a child aged under 10 years cannot be found guilty of a criminal offence.

While the MACR is determined by legislation within each jurisdiction, the common law principle of *doli incapax* is applicable in all Australian states and territories. The *doli incapax* principle presumes that a child aged under 14 years lacks the capacity to be criminally responsible for their acts. This is a rebuttable presumption, with the onus on the prosecution to prove both that the child committed the criminal act **and** that the child knew what they were doing was morally wrong, rather than being merely naughty or mischievous.² The presumption of *doli incapax* is a key means by which young people under 14 years of age avoid court-based sanctions. The application of this principle is made on a case-by-case basis by the NSW Police Force (NSWPF) in determining whether to commence criminal proceedings and also by the courts when court proceedings against a young person have commenced.

In NSW, young people can be diverted from the criminal court system through the use of formal warnings, cautions and youth justice conferences (YJC) under the *Young Offenders Act 1997* (NSW) (YOA). One of the general principles guiding the operation of this legislation is that the least restrictive option is to be applied to a young person who is alleged to have committed an offence. The court diversionary options established by the YOA are available for a select group of offences (excluding sex offences, some drug offences, traffic offences, domestic violence related offences and breach apprehended violence order offences), to young people who are aged under 18 years at the time of the offence, and to those willing to admit to the offence. Warnings are the least severe option, given for minor offences. No conditions can

¹ *Criminal Code Amendment (age of criminal responsibility) Bill 2022* (NT); Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023, ACT; Premier of Victoria, April 2023, <https://www.premier.vic.gov.au/keeping-young-people-out-criminal-justice-system>

² *doli incapax* is discussed in the High Court case of *RP v The Queen* [2016] HCA 53

be attached to the warning. Cautions are considered more serious than a warning, can only be given if the young person admits the offence, and are limited to three cautions per individual. A YJC is a diversionary option if the offending is too serious for a warning or a caution. The outcomes relating to a YJC vary and may include an apology or reparations.

A recent paper by Baidawi et al. (2024) examined justice contacts for a cohort of 1,369 young people aged 10 to 13 years who came to the attention of Victorian police for alleged offending in 2017. They found that 80 percent of the sample were diverted from formal criminal justice processes by having no formal legal proceedings commenced against them or by receiving a caution. Of those that had matters proceed to court, 37 percent had the matter dismissed (including where the child was found *doli incapax*), 45 percent received a court diversion or therapeutic treatment order, while only 10 percent received a sentence involving supervision or detention. An examination of the cohort's characteristics found that Aboriginal young people were over-represented, particularly among 10-year-olds. The authors also found high levels of victimisation among the sample with almost half having been listed a person in need of protection on an intervention order.

The purpose of the current paper is to consider how many young people aged under 14 years come into contact with the NSW criminal justice system for an offence and how the system responds to these young people. Demographic characteristics of this cohort are also described. The report addresses the following questions:

- How many legal proceedings are initiated by the NSWPF against young people aged 10 to 13 years; what is the nature of these legal proceedings; and what types of offences result in these proceedings?
- How many individual young people aged 10 to 13 years are legally proceeded against by the NSWPF and what are their demographic characteristics?
- What are the court outcomes and penalties imposed on young people aged 10 to 13 years that are dealt with by the NSW Children's Court?
- How many young people aged 10 to 13 years are held in youth detention and how long are they detained for?
- What do we know about the complex needs of young people aged 10 to 13 years who appear in court?

METHOD

Data

In trying to examine the ways in which young people interact with the NSW criminal justice system, and the characteristics of these young people, we have drawn from a range of administrative datasets:

- 1. NSWPF's Computerised Operational Policing System (COPS) data:** This dataset includes details on persons legally proceeded against by the NSWPF, either to court or by way of a YJC, caution or warning under the YOA, for a criminal event or for breaching bail. Warnings for transport offences (fare evasion) are excluded from this dataset as they are not a court diversion. COPS is also used to examine bail decisions made by the NSWPF and to identify prior victimisation.
- 2. BOCSAR's reoffending database (ROD):** ROD is used to identify a cohort of distinct persons with a finalised legal action in 2023 and their demographic characteristics. A young person is counted as Aboriginal if they had ever identified as Aboriginal when legally proceeded against by the NSWPF.

- 3. BOCSAR's Criminal Courts database:** This dataset is used to examine NSW Children's Court finalisations in 2023 which involved a person with at least one offence that occurred while the defendant was aged under 14 years, and which was finalised before the defendant turned 16. It is also the source of data for identifying bail decisions made at the person's first court appearance.
- 4. Client Information Management System (CIMS), Youth Justice:** Custody data extracted from CIMS was provided to BOCSAR by Youth Justice, NSW. This data contains the youth detention population on the last day of each month, admissions and discharges from youth detention and the distinct number of young people in juvenile detention. This report uses data on admissions to youth detention in 2023.
- 5. NSW Department of Communities and Justice's (DCJ) Linked Data Asset (LinDA):** This database links the records of individual DCJ clients across a range of criminal justice and human service systems, including court, custody, homelessness, housing and child protection services. For this paper, LinDA output is shown for young people with a finalised court appearance in 2022 who were aged 10 to 13 years at the time of their offence.

FINDINGS

How many legal proceedings are commenced against young people aged 10 to 13 years and for which offences?

Here we look at legal proceedings commenced by the NSWPF against young people, including court proceedings and formal court diversions (i.e. warnings, cautions and YJC referrals). In this section, the age referred to is age at time of the offence, rather than at the time the legal proceedings commenced (however, in most instances these are the same). In 2023, 23,768 proceedings were commenced by the NSWPF against young people aged under 18 years at the time of the offence. The vast majority of these proceedings involved people aged 14 to 17 years (19,106 or 80.4%), with only 4,662 (19.6%) involving a person aged 10 to 13 years.

Figure 1 shows the number and rate per 100,000 population of legal proceedings commenced by the NSWPF between 2010 and 2023 involving young people aged 10 to 13 years at the time of the offence, and the rate per 100,000 population for persons aged 14 to 17 years.³ We can see in Figure 1 that the rate of legal proceedings against young people aged 14 to 17 years declined from 2010 to 2014 then remained relatively stable, falling to the lowest rate of 4,724.4 for every 100,000 young people aged 14 to 17 years in 2022. The rate of proceedings against 10- to 13-year-olds is far lower than for 14- to 17-year-olds. Until recently, the rate of legal proceedings against 10- to 13-year-olds was in sustained decline, with the lowest rate recorded in 2020 (804.6 per 100,000 population), coinciding with the COVID-19 pandemic restrictions. In 2021, 2022 and 2023 the rate of legal actions against 10- to 13-year-olds rose to eventually land at 1,126.8 legal proceedings per 100,000 population in 2023. Despite the recent increase, the rate remains below the peak in 2010. Looking at the *number* of legal proceedings commenced against young people aged 10 to 13 years (also shown in Figure 1), we see a marked increase over the most recent five-year period, from 3,678 in 2019 to 4,662 in 2023.⁴

³ This is a count of instances in which a young person was proceeded against each year. Individuals who were proceeded against multiple times within a particular year are therefore counted more than once.

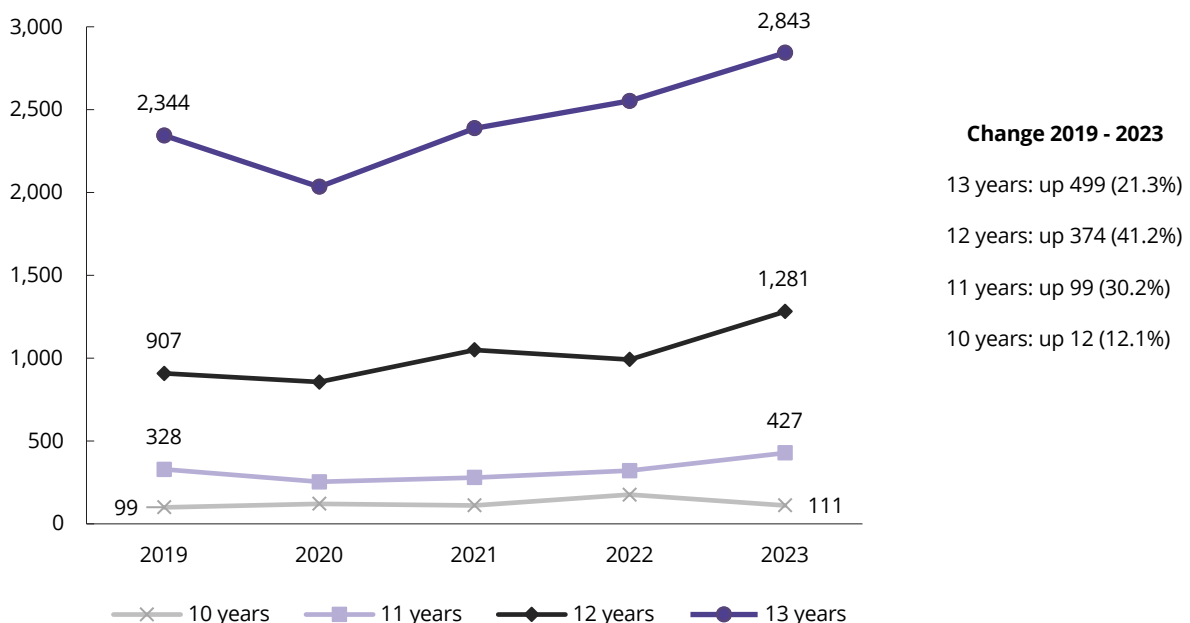
⁴ The drop in the number of legal proceedings recorded in 2020 is likely to be associated with a general reduction in recorded crime associated with COVID-19 related restrictions.

Figure 1. Legal proceedings* by the NSW Police Force against young people aged 10 to 17 years, rate per 100,000 population and number, 2010 to 2023



* Includes young people proceeded against by police to court, or by way of a warning, caution or YJC under the YOA.

Figure 2. Legal proceedings* by the NSW Police Force against young people aged 10 to 13 years, by age, 2019 to 2023 (n=4,662)



* Includes young people proceeded against by police to court, or by way of warning, caution or YJC under the YOA.

We look more closely at the increase in legal proceedings against 10- to 13-year-olds in the five years to 2023 in Figure 2. Here we see that legal proceedings increased for each distinct year of age over this period. The greatest percentage change was among legal proceedings against 12-year-olds (up 41.2% over five years). Figure 2 also shows that the number of proceedings against 13-year-olds far exceeds the other age groups; and the five-year increase for this age group alone accounts for 50.7 percent of the total increase in proceedings against young people under 14 years of age.

Figure 3. Legal proceedings by the NSW Police Force against young people aged 10 to 17 years, by method of proceeding and age, 2023 (n=23,768)

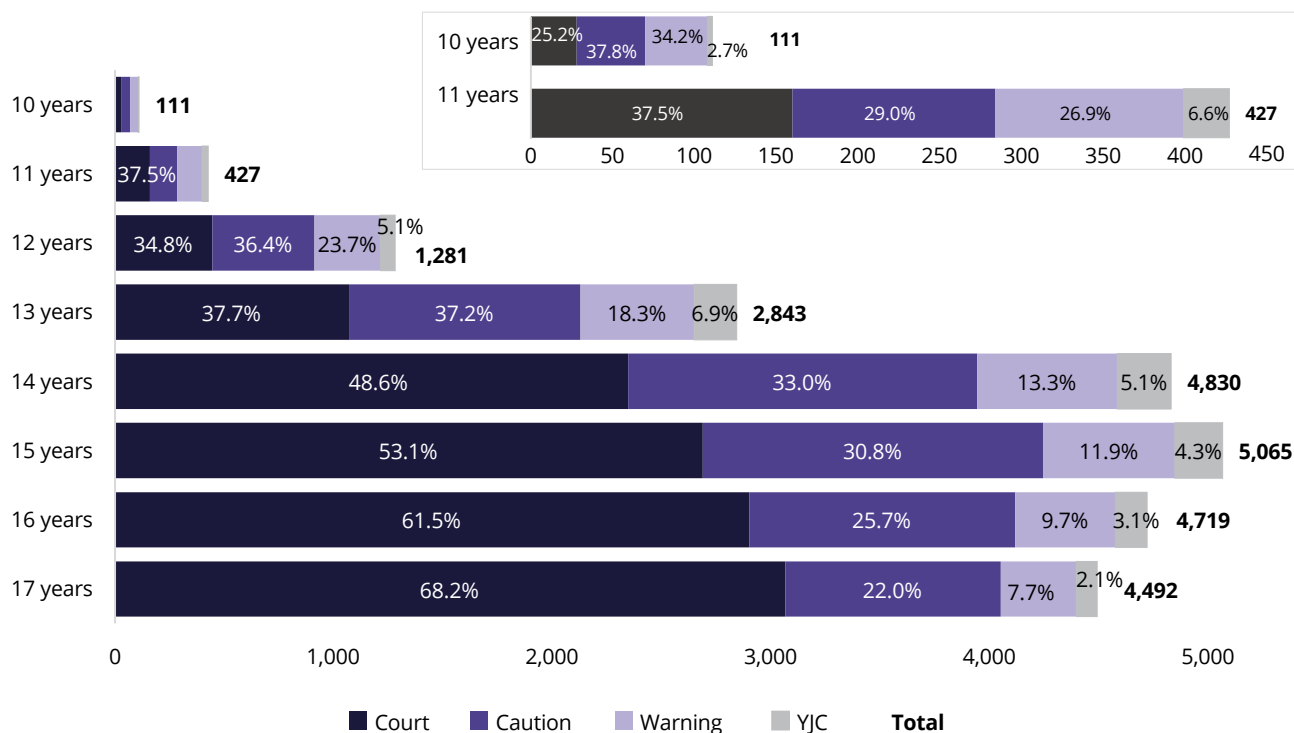


Figure 3 shows the nature of legal proceedings against young people aged 10 to 17 years and how they differ by age. In 2023, a little over half of all NSWPF legal proceedings against people under 18 years of age at the time of the offence were court attendance notices (12,706 legal proceedings or 53.5%). However, the majority (63.4%) of legal proceedings against young people aged 10 to 13 years were a diversion under the YOA. A table showing legal actions taken by the NSWPF in 2023 by method of proceeding for single age categories is available in Appendix Table A1 at the end of this report.

The likelihood that a legal action will be a court diversion (usually in the form of a warning or caution under the YOA), decreases with increasing age. For instance, 74.8 percent of the 111 legal proceedings against young people aged 10 years were diversions; 65.2 percent of the 1,281 legal proceedings against young people aged 12 years were diversions; 51.4 percent of the 4,830 legal proceedings against 14-year-olds were diversions and 31.8 percent of the 4,492 legal proceedings against 17-year-olds were diversions.

We now consider the types of offences which result in legal proceedings against young people aged 10 to 13 years at the time of the offence. Figure 4 shows the number of legal proceedings in 2023 by offence type for young people aged 10 to 13 years at the time of offence, by whether they received a court diversion or a court attendance notice (a breakdown by all offence types for individual ages is available in the Appendix Table A2).⁵

⁵ Where there was more than one offence type in an event, the most serious offence type is shown.

Figure 4. Legal proceedings by the NSW Police Force against young people aged 10 to 13 years and proportion diverted from court, by offence category, 2023 (n=4,662)

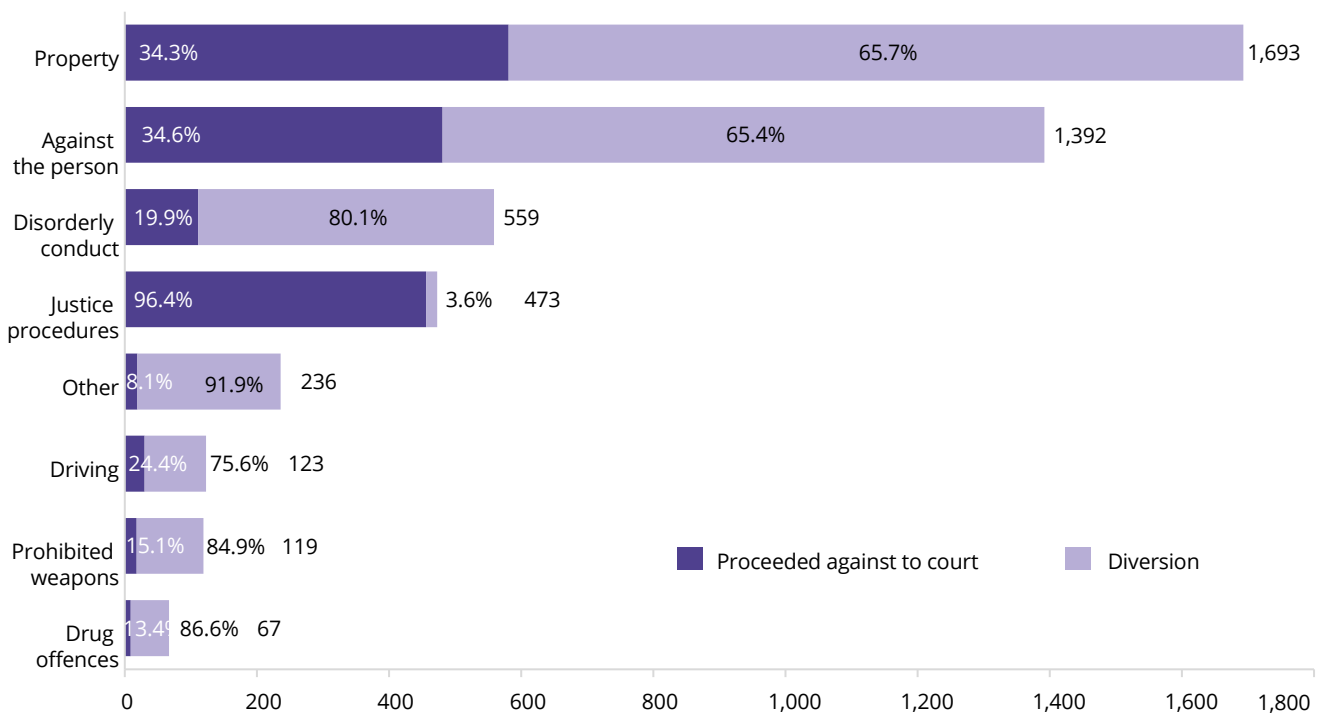


Figure 4 shows that the offending was predominantly of a non-violent nature. The most common category of offending was property offences, accounting for 1,693 or 36.3 percent of the 4,662 legal proceedings for young people aged 10 to 13 years. Disorderly conduct (mostly trespass but also includes offensive conduct, criminal intent and offensive language) was the next most common category of non-violence offence, accounting for 559 or 12.0 percent of proceedings. Offences against the person (characterised by violence) accounted for 29.9 percent (1,392) of all legal proceedings against young people aged 10 to 13 years. We can also see in Figure 4 that while diversion is used more frequently than court attendance notices for all but one offence category (justice procedure offences), the proportion of proceedings diverted is higher for some offence types compared with others. Table 1 provides a more detailed offence break down for the three offence groups with the lowest rate of diversion: property offences, against the person offences and justice procedure offences. Together these three offence groups account for 1,518 of 1,705 (89.0%) of the court proceedings against young people aged 10 to 13 years.

Table 1. Legal proceedings by the NSW Police Force against young people aged 10 to 13 years for selected offences, by offence category and method of proceeding, 2023

Offence group	Method of legal proceeding			
	Court	Diversion	Total	% to court
<i>Property offences</i>	581	1,112	1,693	34.3%
Malicious damage to property	91	333	424	21.5%
Steal from retail store	78	311	389	20.1%
Break and enter non-dwelling	66	136	202	32.7%
Other stealing/theft	79	117	196	40.3%
Motor vehicle theft	102	81	183	55.7%
Break and enter dwelling	108	66	174	62.1%
Receiving or handling stolen goods	30	42	72	41.7%
Fraud	27	26	53	50.9%
<i>Against the person offences</i>	481	911	1,392	34.6%
Non-domestic violence related assault	151	638	789	19.1%
Intimidation, stalking and harassment	156	117	273	57.1%
Domestic violence related assault	54	121	175	30.9%
Robbery	85	13	98	86.7%
Sexual offences	21	11	32	65.6%
Assault Police	13	6	19	68.4%
Other offences against the person	1	5	6	16.7%
<i>Justice procedure offences</i>	456	17	473	96.4%
Breach bail conditions	390	3	393	99.2%
Breach Apprehended Violence Order	61	0	61	100.0%
Resist or hinder officer	4	14	18	22.2%
Escape custody	1	0	1	100.0%

Table 1 shows the very high proportion of justice procedure offences that result in a court action (96.4% overall). Breach of bail conditions, while not a criminal offence per se, account for the vast majority of this offence category, and almost always result in a court proceeding. As such, breach of bail conditions alone accounts for 22.9 percent of the 1,705 court proceedings taken against young people under 14 years in 2023, but only 8.4 percent of all legal proceedings against this age group. All legal proceedings for a breach of a domestic violence order were to court. While 34.6 percent of legal proceedings for all offences against the person were to court, this proportion was much higher for robbery offences (86.7%), sexual offences (65.6%) and intimidation, stalking and harassment offences (57.1%). Similarly, court proceedings account for 34.3 percent of legal proceedings for property offences overall, but account for over half of proceedings for break and enter dwelling (62.1%), motor vehicle theft (55.7%) and fraud (50.9%) offences.

What are the characteristics of young people aged 10 to 13 years who are legally proceeded against?

This section examines selected demographic characteristics of individual young people proceeded against by the NSWPF. Whereas previously we considered the number of legal proceedings against young people, here we examine a cohort of distinct people with a finalised legal proceeding (finalised court appearance or diversion under the YOA) in 2023, who were between 10 and 13 years at the time of the offence. As such, the numbers are lower than were reported in earlier sections as some young people were

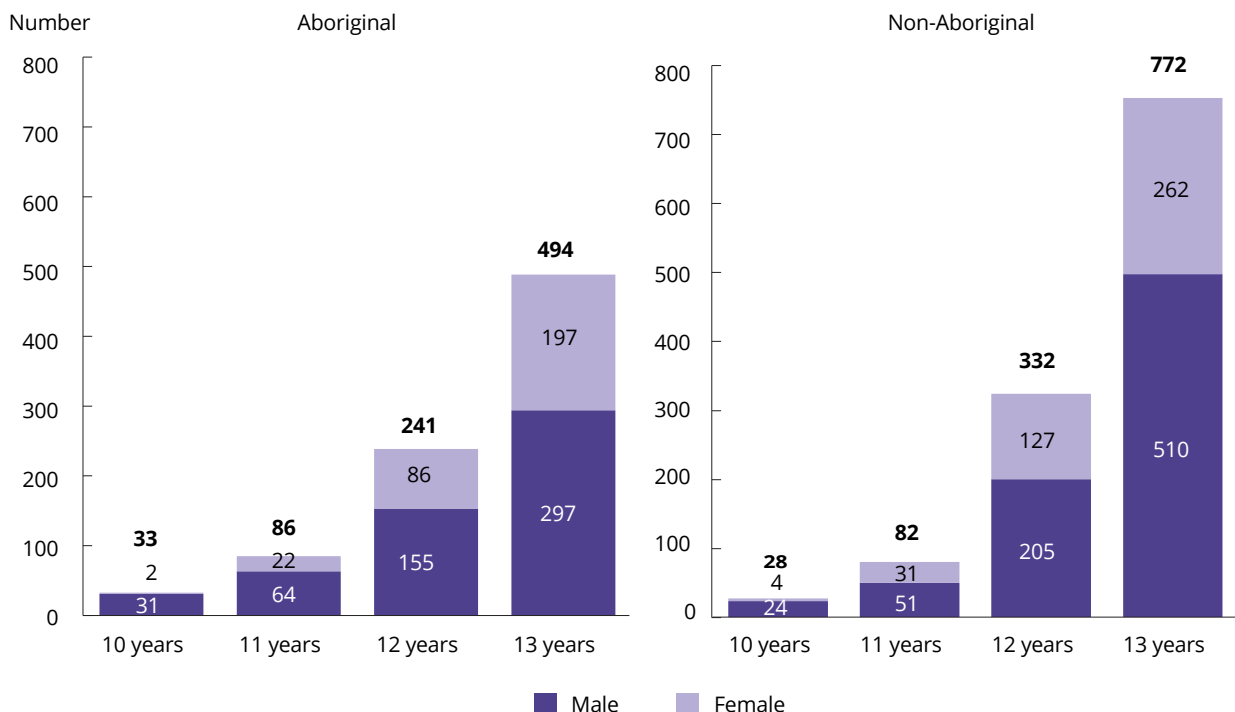
proceeded against multiple times in 2023. For people with more than one finalised proceeding in 2023 we consider their most serious justice contact.⁶ Demographics examined include gender, Aboriginality and remoteness.⁷

There were 2,144 distinct young people with finalised legal proceeding in 2023, who were aged between 10 and 13 years at the time the offence. Of this cohort, 64 (3.0%) were 10 years of age, 173 (8.1%) were 11 years of age, 597 (27.8%) were 12 years of age and over half (61.1% or 1,310 young people) were 13 years of age.

Figure 5 shows the gender and Aboriginality of young people with a finalised legal proceeding in 2023 by age at time of the offence. Of the 2,068 young people in the cohort with Aboriginality and gender recorded, 41.3 percent (854) were Aboriginal. This proportion of Aboriginal young people in the cohort is six times higher than the proportion of Aboriginal young people in the general population (Australian Bureau of Statistics, 2021)⁸. The over-representation of Aboriginal young people is most pronounced for the youngest age group: 54.1 percent of 10-year-olds were Aboriginal while 39.0 percent of 13-year-olds were Aboriginal.

For both Aboriginal and non-Aboriginal young people, boys outnumber girls in every age group, however, the proportion of girls increases with age. For example, among Aboriginal young people, girls account for 6.1 percent of 10-year-olds proceeded against compared with 39.9 percent of 13-year-olds. Similarly, 14.3 percent of non-Aboriginal 10-year-olds were girls compared with 33.9 percent of 13-year-olds. Details on the specific number of young people in each age group by gender, remoteness and Aboriginality is provided in the Appendix in Table A3.

Figure 5. Distinct young people with a finalised legal proceeding, aged 10 to 13 years at time of offence, by age, Aboriginality and gender, 2023 (n=2,068)



Note. Excludes 76 with missing Aboriginality or gender data.

⁶ Being proceeded against to court is considered the most serious justice contact, followed by a Youth Justice Conference, caution (YOA) and a warning (YOA) being the least serious.

⁷ Remoteness Areas is developed by the Australian Bureau of Statistics and divides Australia into five classes of remoteness on the basis of a measure of relative access to services.

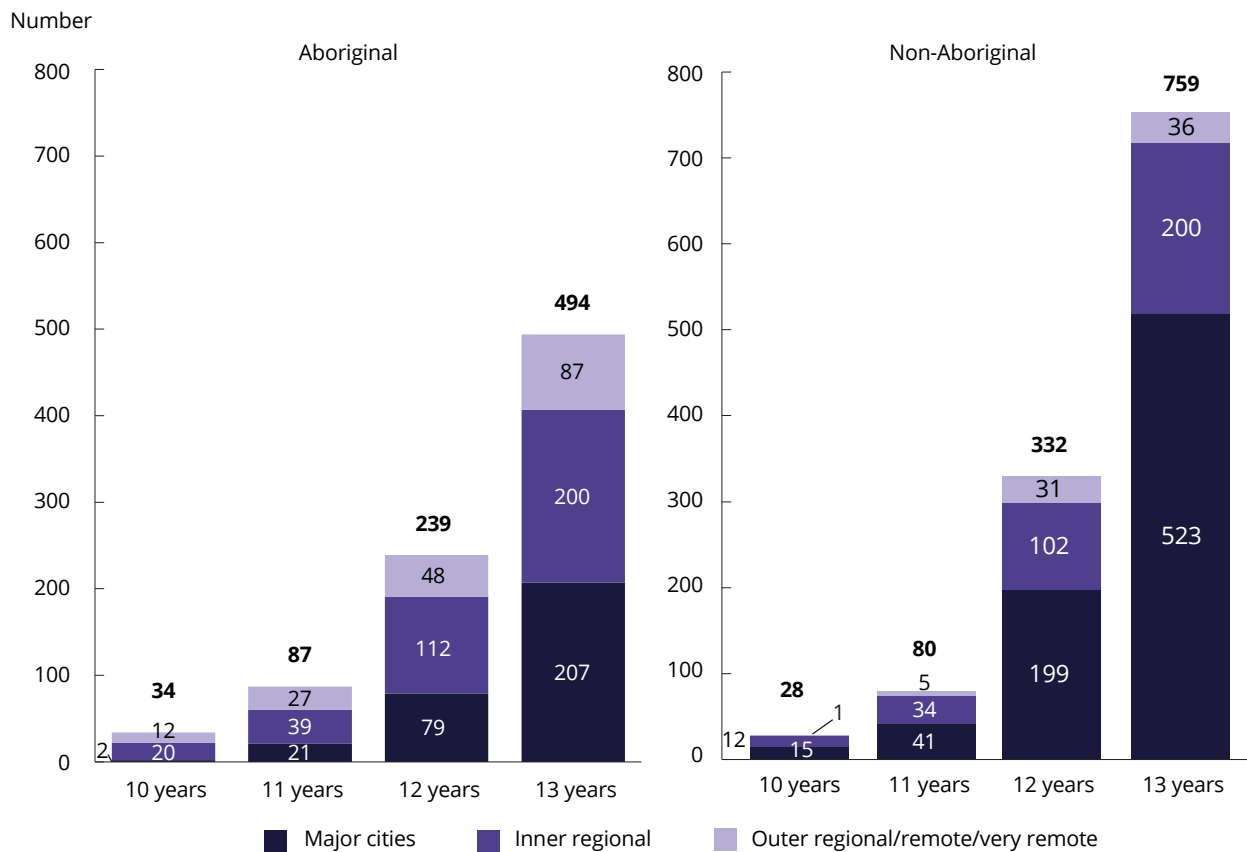
⁸ Aboriginal young people account for 6.2% of the NSW population aged 10 to 13 years of age: 6.1% of the population aged 10 years, 6.2% of the population aged 11 years, 6.2% of the population aged 12 years, and 6.2% of the population aged 13 years of age (Australian Bureau of Statistics, 2021).

Next we look at where the cohort live. Figure 6 charts the remoteness of the residential area for Aboriginal and non-Aboriginal young people in the cohort, showing marked differences between the groups. Of the 2,109 young people with information about residential location, 1,113 lived in a major city (52.8%), 745 in inner regional areas (35.3%) and 251 (11.9%) were from outer regional/remote/very remote locations. While a relatively low proportion of the cohort live in outer regional/remote/very remote locations, when population is taken into account, it is clear that this category is vastly over-represented. Amongst the cohort examined, there were 371.2 per 100,000 population living in a major city compared with 1,171.6 per 100,000 living in outer regional/remote/very remote locations⁹.

Figure 6 shows that the majority of non-Aboriginal young people in the cohort lived in a major city (64.9%). By contrast, the majority of Aboriginal young people in the cohort live in a regional or remote location (63.8%), with 20.4 percent living in an outer regional/remote/very remote location. The comparatively high proportion of Aboriginal young people proceeded against by police in regional/remote/very remote locations is in part a reflection of the comparatively high proportion of the population of Aboriginal young people aged 10 to 13 years living in these regions compared with non-Aboriginal young people (14.6% vs 4.3%).

The high proportion of Aboriginal young people proceeded against by police in outer regional/remote/very remote locations compared with the non-Aboriginal young people in the cohort was consistent across all age groups. Among the Aboriginal young people in the cohort, 35.3 percent of 10-year-olds (n=12) and 31.0 percent of 11-year-olds (n=27) lived in outer regional/remote/very remote areas. By contrast, among the non-Aboriginal young people in the cohort, only 1 of the 28 young people aged 10 years (3.6%) and 5 of the 80 aged 11 years (6.3%) lived in an outer regional/remote/very remote area.

Figure 6. Distinct young people with a finalised legal proceeding, aged 10 to 13 years at time of offence, by age, Aboriginality and remoteness, 2023 (n=2,053)

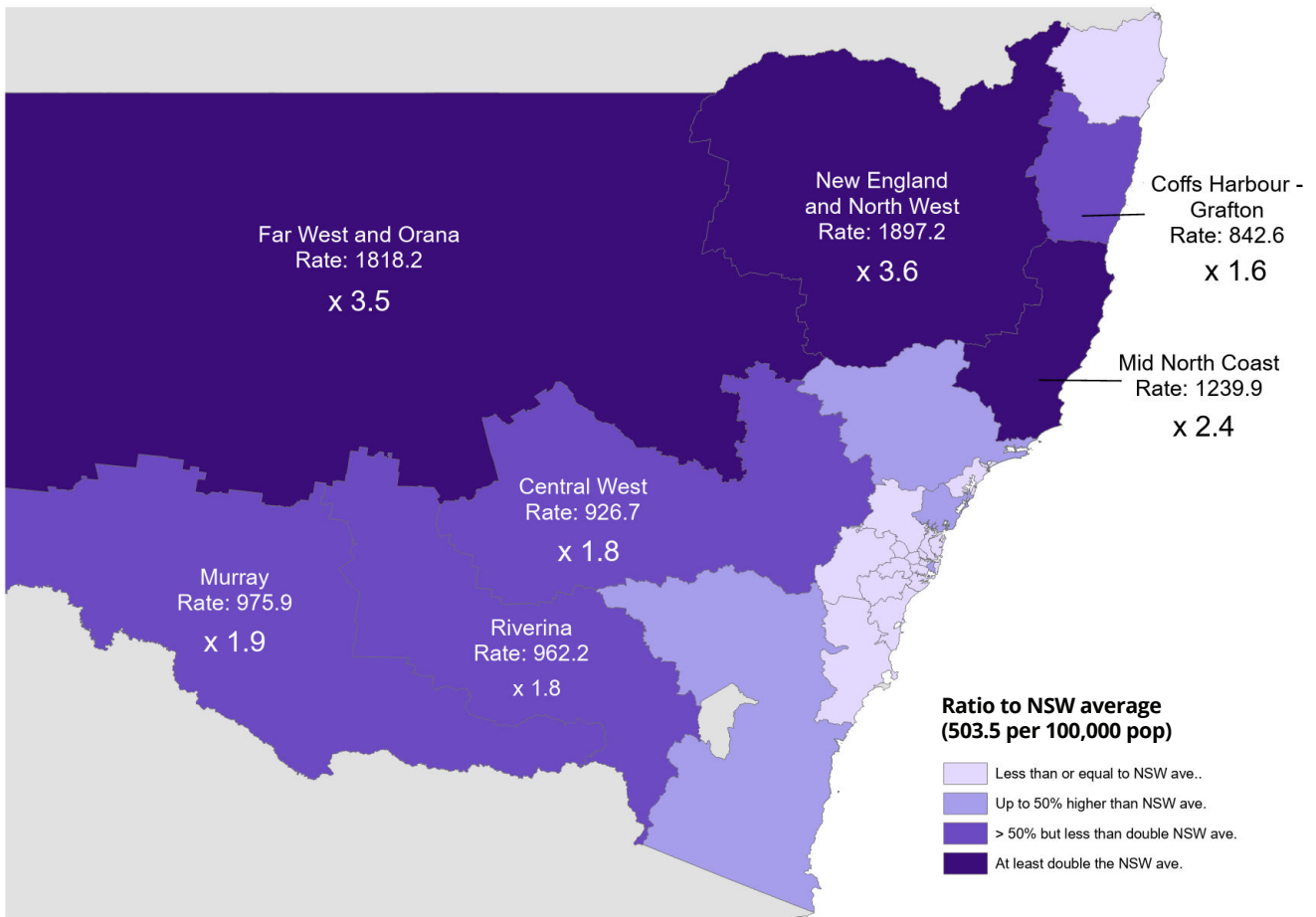


Note. Excludes 91 with missing Aboriginality or area of residence data.

⁹ Population and remoteness data sourced from ABS Table Builder 2021 Census data.

Next we map a regional comparison of the cohort by rate per 100,000 population by their region of residence (Figure 7). Regional and remote areas of NSW recorded much higher rates of legal proceedings against young people aged 10 to 13 years than metropolitan areas. The New England and North West region had the highest rate (1,897.2 per 100,000 population; 196 young people) followed by the Far West and Orana region (1,818.2 per 100,000 population; 116 young people). In both these regions the rate of young people being proceeded against was more than three times the rate of NSW overall (525.3 per 100,000 population). The rate for the Mid North Coast was also high; more than twice the NSW rate (1,239.9 per 100,000 population; 137 young people). Within Greater Sydney, the City and Inner South was higher than NSW (690.2 per 100,000 population: 52 young people) as was the Central Coast (721.2 per 100,000 population: 128 young people).

Figure 7. Distinct young people with a finalised legal proceeding, aged 10 to 13 years at time of offence, by region of residence, rate per 100,000 population, 2023



What happens in court appearances involving young people aged 10 to 13 years?

Outcomes

In the previous section we found that 36.6 percent of legal proceedings commenced against 10- to 13-year-olds in 2023 were to court. Here we look at the outcome of NSW Children's Court appearances which were finalised in 2023 and involved a young person charged with an offence that occurred when they were under 14 years of age.¹⁰ Once NSWPF initiate a court attendance notice the matter needs to be resolved by the court. Sometimes a court attendance notice is issued and subsequently the matter is discontinued by the prosecuting authority; these matters are still finalised by the court but the outcome type is recorded as "withdrawn by prosecution". Almost all court matters involving young people are dealt with in the Children's Court.¹¹

In 2023, there were 719 finalised NSW Children's Court appearances involving defendants who were under 14 years of age at the time of the offence: nine court finalisations involved young people aged 10 years at the offence; 50 court finalisations involved young people aged 11 years; 161 court finalisations involved young people aged 12 years; and 499 court finalisations involved young people aged 13 years (as seen in Table 2). The outcome of the finalisation was available for 718 of these court appearances. Of the known outcomes, we see that only 19.6 percent of finalisations resulted in a proven charge. There were no proven court appearances involving defendants who were 10 years of age at the time of the offence. More than half of all court finalisations involving 10–13-year-olds resulted in all charges being withdrawn by the prosecution (52.5%) and an additional 3.2 percent were dismissed by the court under Sections 14 and 19 of the *Mental Health and Cognitive Impairment Forensic Provision Act 2020* (NSW). Looking at the outcomes in more detail we see that a quarter of the court appearances were resolved at a defended hearing where the defendant pleaded not guilty (200 finalisations). Of these defended hearings, the overwhelming majority resulted in a finding of "not guilty of any charge" (177 or 88.5%). A modest proportion of court appearances were finalised by way of a guilty plea (13.6% or 98) and an additional 1.9 percent (14 defendants) were proven without the defendant being present (proven ex parte).

Table 2. NSW Children's Court finalisations for defendants aged 10 to 13 years at the time of offence, by age at time of offence, and outcome of appearance, 2023 (n=719*)

Outcome of appearance	Age of defendant at time of offence				
	10 years	11 years	12 years	13 years	Total 10 to 13 years
Proceeded to defended hearing	4	14	49	133	200
<i>Not guilty of all charges</i>	4	12	46	115	177
<i>Guilty of at least one charge</i>	0	1	2	13	16
<i>Found not guilty but pleaded guilty to other charge/s</i>	0	1	1	5	7
Sentenced after guilty plea	0	3	14	81	98
Proven offence - not further described	0	0	0	6	6
Proven ex parte	0	1	4	9	14
Dismissed - mental health/cognitive impairment; mentally ill/disordered	0	0	5	18	23
All charges withdrawn by prosecution	5	32	88	252	377
Total	9	50	160	499	718
<i>Number guilty of at least one charge</i>	0	6	21	114	141
Percentage guilty of at least one charge	0.0%	12.0%	13.1%	22.8%	19.6%

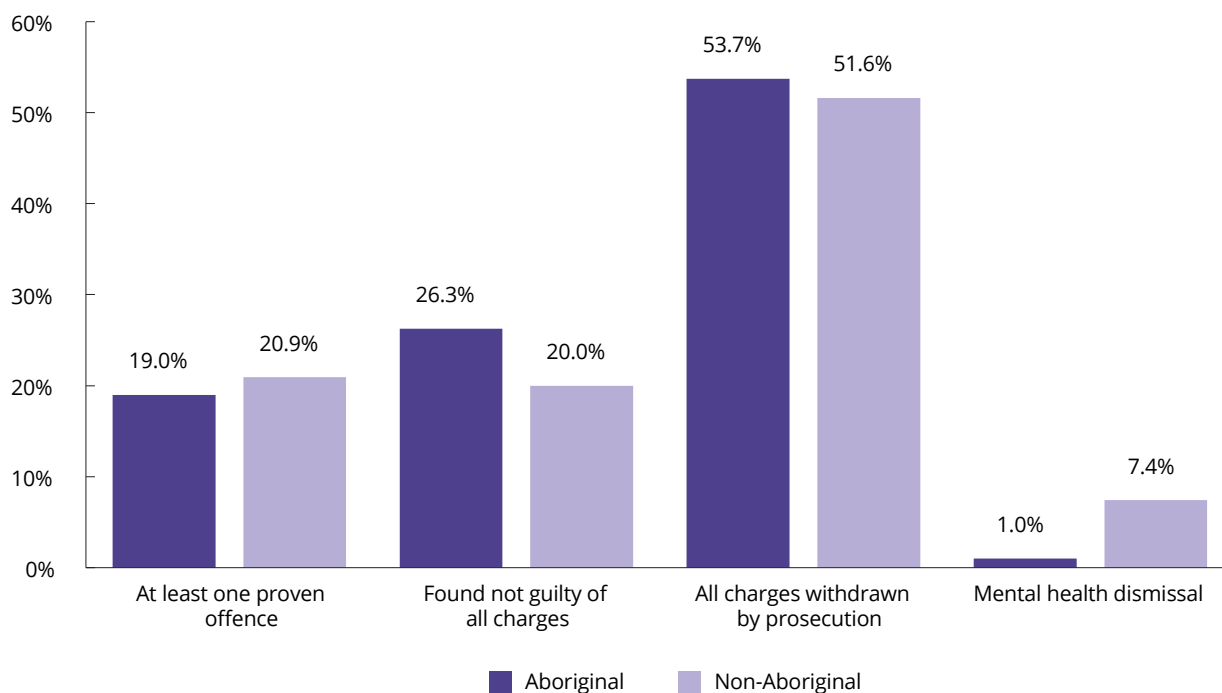
*Outcome data missing for one finalisation

¹⁰ The defendant must also have been under 16 years of age at the time of finalisation. If there was more than one charge in the finalisation the age at the time of the earliest offence in the finalisation is reported.

¹¹ In 2023 there was one finalisation in the NSW Higher Courts for a young person aged under 14 years at the time of the offence and under 16 years at the time of finalisation. This was a defended hearing for a murder charge and resulted in a finding of "not guilty of all charges".

Figure 8 shows the outcome of the court finalisation by the Aboriginality of the defendant. In 2023 there were 495 finalised court appearances involving an Aboriginal young person aged 10 to 13 years at the time of the offence, accounting for 69.7 percent of the 710 finalisations with the relevant data available.¹² Figure 8 shows slight differences in the type of court outcomes received by Aboriginal and non-Aboriginal young people. A slightly higher proportion of charges were withdrawn for young Aboriginal defendants compared with non-Aboriginal defendants (53.7% vs 51.6%). Similarly, a finding of “not guilty of all charges” was more common among finalised appearances involving an Aboriginal defendant compared to those involving a non-Aboriginal defendant (26.3% vs 20.0%). Having the matter dismissed under the Mental Health and Cognitive Impairment Forensic Provision Act was less common for young Aboriginal defendants compared with non-Aboriginal defendants (1.0% vs 7.4%). While approximately one in five court finalisations involving a young person aged 10 to 13 years at the time of the offence resulted in a proven outcome, the proportion was slightly lower for court appearances involving Aboriginal defendants compared with non-Aboriginal defendants (19.0% vs 20.9%).

Figure 8. NSW Children’s Court finalisations for defendants aged 10 to 13 years at the time of offence by age and outcome, 2023 (n=710 total; 495 Aboriginal defendants and 215 non-Aboriginal defendants)



Note. Excludes 8 finalisations with missing data on Aboriginality of the defendant, and one defendant with missing outcome data.

Penalties

We have seen above, for the cohort of young people in question, that only a small proportion of court appearances result in a proven outcome. Now we consider the sentence imposed in these 141 court finalisations with a proven outcome. The court can deliver a range of penalties for a proven offence, graduating in severity from proven but dismissed by the court without a conviction under the *Children (Criminal Proceedings) Act 1987* (NSW), to a custodial penalty. Table 3 shows the penalty imposed for the principal (most serious) proven offence in the finalisation.

¹² Aboriginality was unknown for 8 young people.

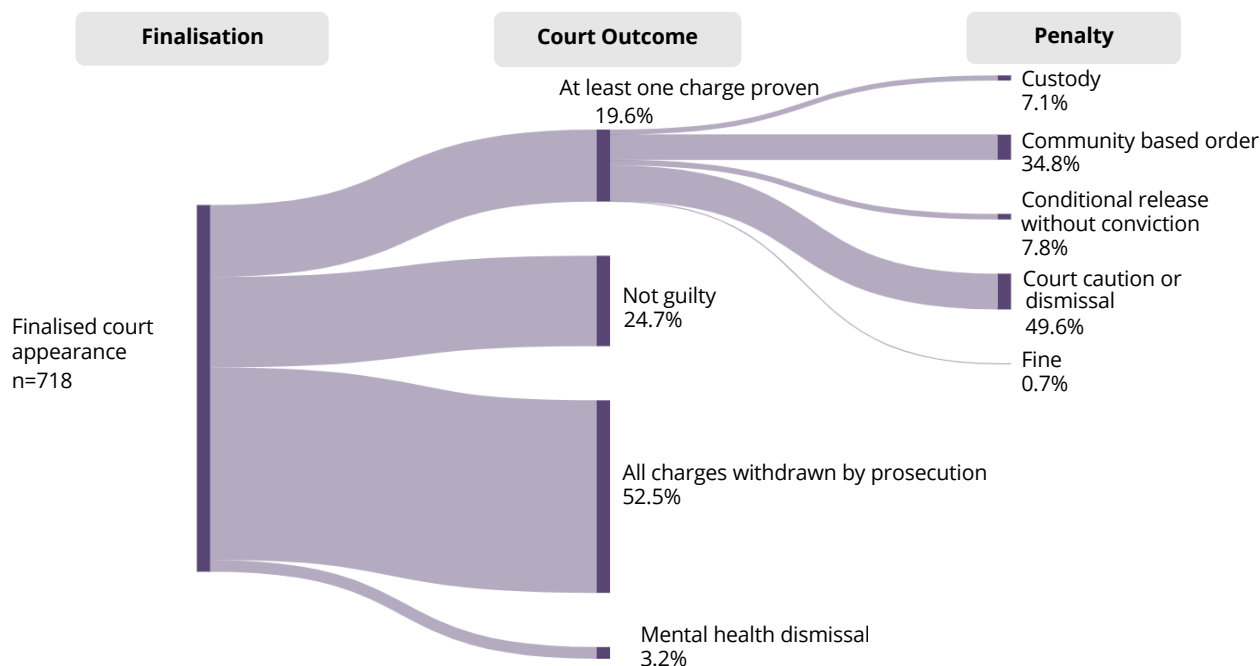
Table 3. NSW Children’s Court proven finalisations for young people aged 10 to 13 years at the time of offence, by principal penalty and age at time offence, 2023 (n=141)

Principal penalty	Age of defendant at time of offence				
	10 years	11 years	12 years	13 years	Total 10 to 13 years
Custody	0	0	3	7	10
Community sentence (with or without supervision)	0	2	6	41	49
Conditional release without conviction	0	0	0	11	11
Fine	0	0	0	1	1
Dismissal (including with caution or YJC)	0	4	12	54	70
Total	0	6	21	114	141

In 2023, ten young persons received a custodial penalty; three were aged 12 years and seven were aged 13 years at the time of the offence. Five of these custodial penalties were for three months or less, three were between three and six months and two were over six months but less than one year. In half (49.6% or 70 finalisations) of the NSW Children’s Court finalisations with at least one proven charge, the court found the offence proven but directed that the charge be dismissed (either with or without a caution or referral to a YJC) or took no further action. An additional 7.8 percent of finalisations (11) were given a conditional release without a conviction being recorded.

Figure 9 summarises the court outcomes and principal penalties for the 718 NSW Children’s Court finalisations involving defendants who were under 14 years of age at the time of the offence information on court outcome.

Figure 9. NSW Children’s Court finalisations for defendants aged 10 to 13 years at the time of offence, by outcome and principal penalty, 2023 (n=718)

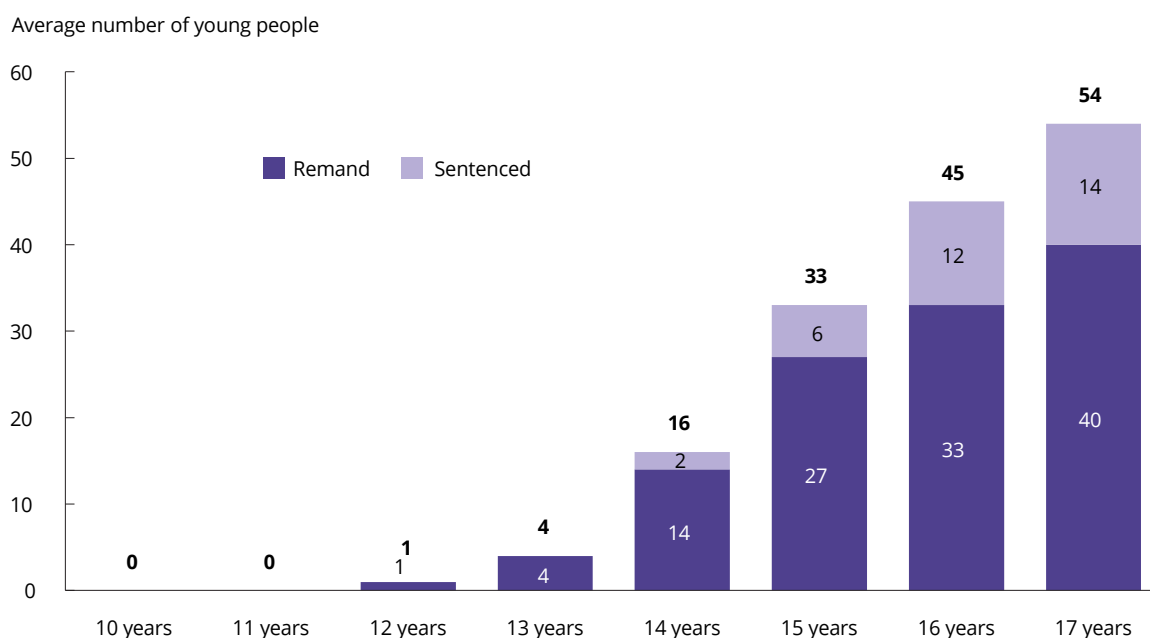


How many young people aged 10 to 13 years are in youth detention and how long are they in detention for?

To understand the experiences of young people aged 10 to 13 years with youth detention, this section considers how many young people are in custody on a single day on average; how many unique individuals are received into custody; how long they stay in custody; and their legal status within custody.

Figure 10 shows the average number of young people in youth detention on the last day of the month in 2023 by age on that day. By including all people aged 17 years and under in youth detention we can see the relatively small proportion who are aged 10 to 13 years. On average, there were 153 people aged between 10 and 17 years in youth detention on the last day of each month; five of these young people were aged 10 to 13 years (3.3%), all of whom were on remand. The number of young people in detention increases rapidly after the age of 13 years, with 10.5 percent of the population aged 14 years, and 35.3 percent aged 17 years.¹³

Figure 10. Average number of young people in NSW youth detention on the last day of the month, by age and legal status, 2023



We have a snapshot of the age distribution of youth detention in a typical day from the data already presented in Figure 10, but this data does not capture the full picture of young people who are exposed to an episode of custody including the high number of young people received into youth detention for a very short stay. Figure 11 shows the total number of receptions into custody for young people aged 10 to 13 years and the number of distinct young people who had at least one custodial episode in 2023.¹⁴ Note that all of these young people were received into remand. While we saw in Figure 10 that, on average, only five young people aged 10 to 13 years were in youth detention in a *single day* in 2023, we see from Figure 11 that the number of distinct young people aged 10 to 13 years received into youth detention at *some point* during 2023 was far higher. In 2023, there were 526 receptions of young people aged 10 to 13 years into youth detention in NSW, consisting of 171 unique individuals. Of the 171 distinct young people who were received into youth detention in 2023 at least once, two were aged 10 years at the time of their first episode in 2023, eight were 11 years old, 35 were 12 years old and 126 (73.7%) were 13 years old. The vast majority of the cohort was male (71.3% or 122 young people) and over half were Aboriginal (59.6% or 102 young people). Eight young people had 10 or more reception episodes in the 2023 calendar year.

¹³ Averages have been rounded to integers.

¹⁴ For reception episode the age is based on age at time of reception. For the count of distinct young people, the age is based on age at first reception in 2023.

Figure 11. Number of distinct young people and number of youth detention reception episodes for young people aged 10 to 13 years, by age, 2023 (n=171 distinct young people)

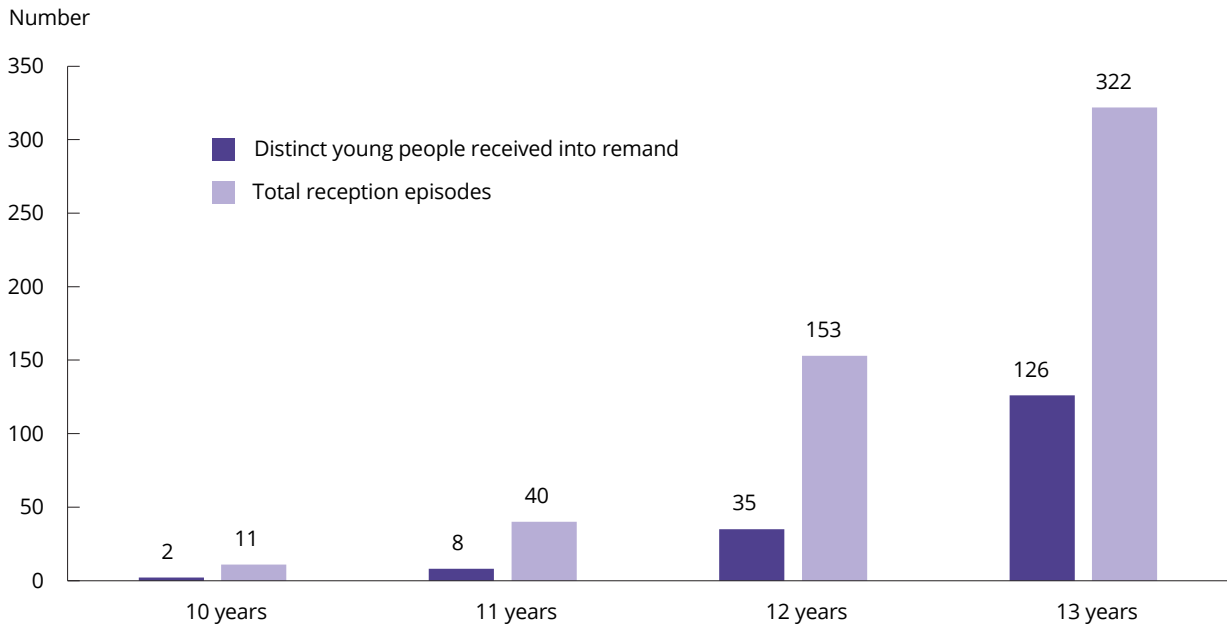
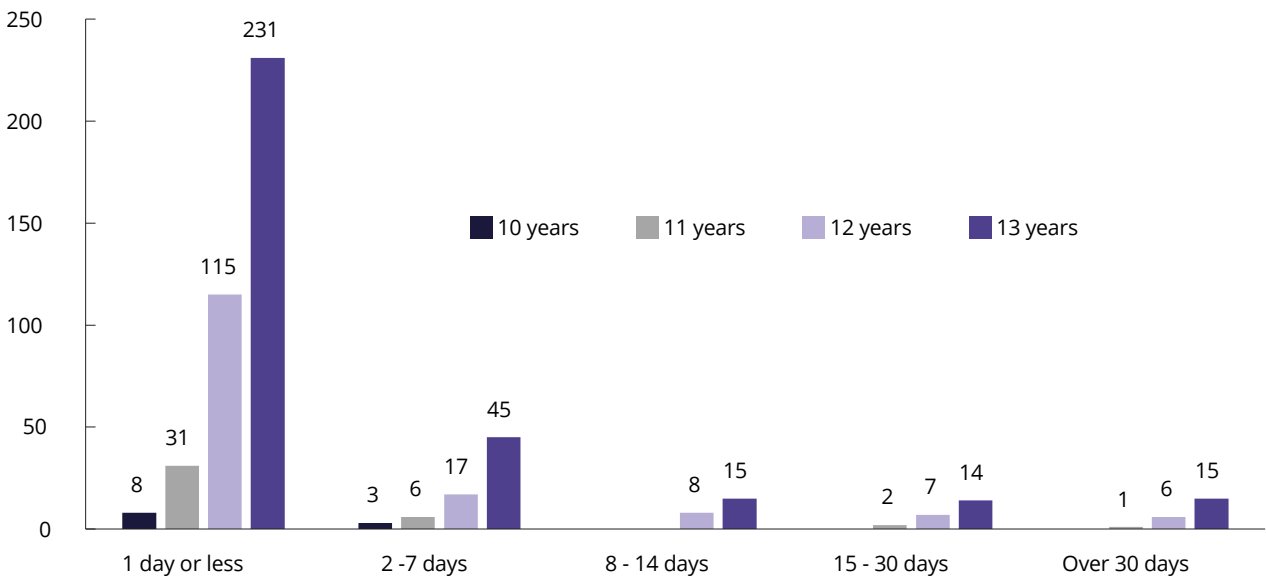


Figure 12 shows the length of stay in custody for young people aged 10 to 13 years. There were 526 custodial episodes for young people aged 10 to 13 years at the time of reception in 2023, and all but two young people had been discharged by 31 December 2023. As seen here, most young people aged 10 to 13 years who are received into custody stay for less than 24 hours before being released back into the community. In 2023, there were 385 young people aged under 14 who were received into youth detention and released within 24 hours (73.5 per cent of custodial episodes). Very few custodial episodes for this age group were longer than 30 days (22 episodes or 4.2%).

Figure 12. Length of stay in custody for young people aged 10 to 13 years old received into custody and discharged, by age, 2023 (n=524 receptions)



Note: Excludes 2 records with no exit date.

These short stays in youth detention predominantly arise from police decisions to refuse bail to the young person. Young people refused bail by police are remanded in custody until their first court appearance, which must take place as soon as practicable. The young person can then make an application for bail to the court. Table 4 shows the outcome of bail decisions made by the NSWPF and by the court at the first court appearance, for young people aged 10 to 13 years. In 2023, there were 1,136 first court appearances for young people aged 10 to 13 years at the time of the offence. Of these, 458 (40.3%) followed bail being refused by police. We can see in Table 4 that a much smaller proportion of young people were bail refused at their first court appearance (11.4% or 130 young people). As such, the vast majority of young people initially bail refused by police were subsequently granted bail or dispensed with at their first court appearance.

Table 4. Bail decisions by the NSW Police Force and the court at the first appearance, for young people aged 10 to 13 years, 2023

		Age of defendant				
		10 years	11 years	12 years	13 years	10- 13 years
Police bail refused	N	17	41	110	290	458
	%	85.0%	40.2%	38.9%	39.7%	40.3%
Court bail refused	N	6	11	29	84	130
	%	30.0%	10.8%	10.2%	11.5%	11.4%
Total first court appearances	N	20	102	283	731	1,136

What do we know about the complex needs of young people aged 10 to 13 years who appear in court?

We can draw upon a range of other data sources to obtain a more detailed understanding of some of the complexities of the lives of young people who have contact with the justice system. Using the NSW Department of Community and Justice’s Linked Data Asset (LinDA) and victimisation data recorded by the NSWPF, we can examine client interactions with the justice and human services systems. Focusing on a cohort of 255 distinct young people who had a finalised court appearance in 2022 and who were aged 10 to 13 years at the time of their offence, we see a high rate of prior contact with the criminal justice system. Almost half (44.7%) the cohort had had contact with police in the 12 months prior to the index court appearance for an earlier matter and received either a caution, YJC or court attendance notice. Furthermore, 59 young people (23.1%) had previously spent time in youth detention.

A large proportion of the cohort had also had contact with the human services system. The vast majority of the cohort (81.6%; 208 young people) had been identified in a child protection report as at risk of significant harm (ROSH); 154 of the young people (60.4%) had received 10 or more ROSH reports. Almost one in four (23.9% or 61 young people) had been in out-of-home care. An even greater proportion (37.3% or 95 young people) had accessed a specialist homelessness service.

The cohort was also characterised by significant levels of known criminal victimisation. The majority of the cohort (163 young people or 63.9%) had been recorded by police as a victim in a prior criminal incident, with the median age at first victimisation being 11 years old. More than half the cohort had been a victim of violence (143 young people or 56.1%), and 58 young people were recorded as a victim of a family violence (22.7%). While most of the prior victimisation was in relation to violence, 6.7 percent had a prior record as a victim of property crime.

Inter-generational contact with the criminal justice system was also high among this cohort of young people. Of the 255 young people in the cohort, 169 young people (66.3%) had a parent who had ever appeared in court and 103 young people (40.4%) had a parent who had ever been in custody.

DISCUSSION

The aim of this paper was to help inform the ongoing debate about the justice system's response to crime committed by very young people by providing information on the level and nature of the contact that young people aged 10 to 13 years have with the NSW criminal justice system. The data presented here indicates that the NSWPF initiated over 4,500 legal proceedings against young people under 14 years in 2023, which equates to a rate of 1,126.8 per 100,000 young people. Despite a recent increase in the rate of legal proceedings for this age group, it remains below the 2010 peak of 1,303.2 per 100,000. Young people aged 10 to 13 years account for only a small proportion (19.6%) of all police proceedings against young people aged under 18 years. An examination of the nature of the offences found that over two thirds of legal proceedings were for non-violent offences.

The study identified 2,144 distinct young people aged 10 to 13 years who were legally proceeded against by the NSWPF in 2023. When we consider the sociodemographic characteristics of these young people, we see an over-representation of Aboriginal young people. While approximately eight percent of the NSW population aged 10 to 13 years identifies as Aboriginal (Australian Bureau of Statistics, 2021), 41.3 percent of the 10- to 13-year-olds proceeded against by police in 2023 were Aboriginal. Similarly, while only 25.3 percent of young people aged 10 to 13 years in NSW live outside a major city, 47.2 percent of 10- to 13-year-olds proceeded against by police live in regional or remote areas of NSW. The rate of young people proceeded against by police in outer regional/remote/very remote regions of NSW was 2.2 times the NSW average (1,171.6 compared with 524.8 per 100,000 population of young people 10 to 13 years).

Young people aged 10 to 13 years who appear in the criminal courts overwhelmingly come from disadvantaged backgrounds and have a range of complex needs. Most have been recorded as a victim of a violent offence (56.1% in 2022) by the NSWPF, been the subject of 10 or more ROSH reports (60.4% in 2022) and have parents who have been involved in the criminal justice system (66.3% in 2022). About a third had accessed a specialist homelessness service (37.3% in 2022).

The NSWPF use diversion under the YOA as the most common way of proceeding against young people aged 10 to 13 years (63.4% of legal proceedings in 2023). While the majority of young people aged 10 to 13 years were diverted from court, there were 719 finalised appearances in the Children's Court in 2023 involving defendants who were under 14 years of age at the time of the offence. At over half of these court appearances, all charges were withdrawn by the prosecution (52.5%). Of the 200 matters that proceeded to a defended hearing, only 23 (11.5% of defended hearings) resulted in a proven court outcome. In total, 141 of the 718 (19.6%) court finalisations involving defendants aged under 14 years at the time of the offence resulted in a charge being proven. The vast majority (80.9%) of all proven court appearances involving 10- to 13-year-olds, involved a young person aged 13 years at the time of the offence. While we are not able to determine how often the *doli incapax* rebuttal is successfully argued in the NSW Children's Court, the high proportion of matters being withdrawn by the prosecution and the low rate of conviction suggests the presumption of *doli incapax* plays a key role in determining the outcome for young people aged under 14 at the time of the offence who are proceeded against to court.

The current analysis also showed that court penalties for proven offences committed when under the age of 14 years, seldom include custody or supervision. In half of the NSW Children's Court finalisations examined in this study, where there was at least one proven offence, the charge was dismissed by the court (potentially with a caution or referral to a YJC), with no conviction. An additional 7.8 percent were released without conviction but with some conditions. Approximately one third (34.8%) received a community-based order and 7.1 percent (10) received a custodial penalty.

Despite only ten custodial sentences being handed down by the NSW Children's Court in 2023 for a person aged under 14 years at the time of the offence, 171 (distinct) young people under the age of 14 years experienced at least one custodial episode in 2023. All of these young people entered custody on remand; 10 of these young people were under the age of 12. These 171 young people accumulated a total of 526 custodial episodes in 2023. The length of time spent in custody for this age group is short;

with 73.5 percent of 10- to 13-year-olds released from youth detention within 24 hours. These very short episodes on remand result from individuals being granted bail by the court at their first court appearance after initially being refused bail by the police.

The findings of this study closely mirror those of those by Baidawi et al, 2024. Both studies highlight systems where young people under 14 years of age who have contact with police for alleged offences are diverted from the court process. Of the young people who do have their offending dealt with at court, the charge is often withdrawn or not proven. Similarly, the cohorts examined in both studies identified an over-representation of Aboriginal young people and substantial levels of victimisation.

Currently in NSW there are several mechanisms under the YOA which are successfully diverting young people from the formal criminal justice system. However there remains a substantial number of young people under 14 years of age who enter custody after being refused bail by police. Many of these young people are subsequently released to bail (or have bail dispensed with) once they appear before a magistrate. Raising the age of criminal responsibility to 14 would keep these young people out of custody and out of the court system. However, not all offences committed by these young people are trivial. In 2023, there were 983 legal proceedings commenced against young people aged 10 to 13 years for assault, 98 for robbery and 376 for break and enter offences. The challenge is to identify an appropriate response to these offending behaviours that can keep both the child and the community safe, while attempting to address the longer-term complex needs of these young people and prevent future offending.

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APPENDIX

Table A1. Legal proceedings by the NSW Police Force against young people aged 10 to 13 years by the NSW Police Force by method of proceeding and age, 2023

Age	Court	Diversion			Total
		Youth Justice Conference	Caution YOA	Warning YOA	
10 years	28	3	42	38	111
11 years	160	28	124	115	427
12 years	446	65	466	304	1281
13 years	1071	195	1,058	519	2,843
14 years	2347	246	1,595	642	4,830
15 years	2688	218	1,558	601	5,065
16 years	2901	144	1215	459	4719
17 years	3065	96	986	345	4492
10-17 years	12,706	995	7,044	3,023	23,768

Table A2. Legal proceedings by the NSW Police Force against young people aged 10 to 13 years at the time offence, by method of proceeding, most serious offence category and age, 2023 (n=4,662)

Offence type	10 years			11 years			12 years			13 years		
	Court	Diversion	Total	Court	Diversion	Total	Court	Diversion	Total	Court	Diversion	Total
Property offences	16	42	58	68	122	190	129	293	422	368	655	1,023
<i>Malicious damage</i>	3	15	18	16	40	56	18	92	110	54	186	240
<i>Steal from retail store</i>	0	7	7	4	28	32	17	88	105	57	188	245
<i>Break & enter non-dwelling</i>	2	9	11	10	15	25	17	34	51	37	78	115
<i>Other stealing/theft</i>	1	4	5	9	17	26	22	33	55	47	63	110
<i>Motor vehicle theft</i>	5	2	7	9	10	19	14	14	28	74	55	129
<i>Break & enter dwelling</i>	2	5	7	11	6	17	27	16	43	68	39	107
<i>Receiving stolen goods</i>	1	0	1	3	3	6	9	10	19	17	29	46
<i>Fraud</i>	2	0	2	6	3	9	5	6	11	14	17	31
Against the person offence	5	12	17	35	79	114	127	298	425	314	522	836
<i>Non-domestic assault</i>	1	9	10	10	55	65	39	218	257	101	356	457
<i>Intimidation/ stalking/ harassment</i>	2	1	3	15	11	26	30	27	57	109	78	187
<i>Domestic assault</i>	2	2	4	2	10	12	14	42	56	36	67	103
<i>Robbery</i>	0	0	0	7	0	7	28	5	33	50	8	58
<i>Sexual offences</i>	0	0	0	1	0	1	10	2	12	10	9	19
<i>Assault police</i>	0	0	0	0	3	3	6	1	7	7	2	9
<i>Other offences against the person</i>	0	0	0	0	0	0	0	3	3	1	2	3
Justice procedure offences	7	0	7	42	1	43	143	4	147	264	12	276
<i>Breach bail conditions</i>	6	0	6	40	0	40	126	1	127	218	2	220
<i>Breach Apprehended Violence Order</i>	0	0	0	2	0	2	16	0	16	43	0	43
<i>Resist or hinder officer</i>	0	0	0	0	1	1	1	3	4	3	10	13
<i>Escape custody</i>	1	0	1	0	0	0	0	0	0	0	0	0
Disorderly conduct offences	0	15	15	10	29	39	28	129	157	73	275	348
<i>Trespass</i>	0	12	12	6	23	29	17	101	118	37	220	257
<i>Offensive conduct</i>	0	2	2	0	5	5	2	23	25	4	35	39
<i>Criminal intent</i>	0	1	1	4	0	4	9	3	12	31	14	45
<i>Offensive language</i>	0	0	0	0	1	1	0	2	2	1	6	7
Driving offences	0	3	3	1	6	7	5	17	22	24	67	91
Weapons offences	0	4	4	3	10	13	2	20	22	13	67	80
Drug offences	0	1	1	0	0	0	5	17	22	4	40	44
Other offences*	0	6	6	1	20	21	7	57	64	11	134	145
Total	28	83	111	160	267	427	446	835	1,281	1,071	1,772	2,843

^ Where there was more than once offence type in an event, the most serious offence type is shown.

* other offences include arson, liquor, pornography, transport regulatory and other unspecified offences

Table A3. Young people aged 10 to 13 at time of offence who were legally proceeded against by the NSW Police Force by gender, Aboriginality, remoteness and age, 2023 (n=2,144)

Variable		10 years		11 years		12 years		13 years	
		N	%	N	%	N	%	N	%
Gender	Female	6	9.4%	54	31.2%	221	37.0%	470	35.9%
	Male	55	85.9%	117	67.6%	373	62.5%	831	63.4%
	Unknown	3	4.7%	2	1.2%	3	0.5%	9	0.7%
	Total	64	100.0%	173	100.0%	597	100.0%	1,310	100.0%
Aboriginality	Aboriginal	35	54.7%	88	50.9%	242	40.5%	498	38.0%
	Non-Aboriginal	29	45.3%	82	47.4%	334	55.9%	777	59.3%
	Unknown	0	0.0%	3	1.7%	21	3.5%	35	2.7%
	Total	64	100.0%	173	100.0%	597	100.0%	1,310	100.0%
Remoteness	Major cities	17	26.6%	65	37.6%	283	47.4%	748	57.1%
	Inner regional	32	50.0%	73	42.2%	227	38.0%	413	31.5%
	Outer regional	6	9.4%	19	11.0%	61	10.2%	104	7.9%
	Remote areas & very remote	7	10.9%	13	7.5%	19	3.2%	22	1.7%
	Unknown	2	3.1%	3	1.7%	7	1.2%	23	1.8%
	Total	64	100.0%	173	100.0%	597	100.0%	1,310	100.0%