

# Restoring youth justice

## VCOSS submission to the inquiry into youth justice centres

March 2017



## About VCOSS

The Victorian Council of Social Service (VCOSS) is the peak body of the social and community sector in Victoria. VCOSS members reflect the diversity of the sector and include large charities, peak organisations, small community services, advocacy groups, and individuals interested in social policy. In addition to supporting the sector, VCOSS represents the interests of vulnerable and disadvantaged Victorians in policy debates and advocates for the development of a sustainable, fair and equitable society.

This submission was prepared for VCOSS by VCOSS Policy Advisor Carly Nowell with input from VCOSS members.

**Authorised by:**

Emma King, Chief Executive Officer

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Victorian Council of Social Service

Level 8, 128 Exhibition Street

Melbourne, Victoria, 3000

+61 3 9235 1000

**For enquiries:**

Llewellyn Reynders, Policy and Programs Manager

[llewellyn.reynders@vcoss.org.au](mailto:llewellyn.reynders@vcoss.org.au)

VCOSS acknowledges the traditional owners of country and pays its respects to Elders past and present.

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# Introduction

VCOSS welcomes this opportunity to make a submission to the Legislative Council Legal and Social Issues Committee inquiry into youth justice centres in Victoria. Too many vulnerable children and young people become entrenched in the youth justice system, rather than receiving tailored assistance to help address the underlying causes of their offending and get their lives back on track.

VCOSS members have numerous concerns about Victoria's youth justice centres, including staff shortages, limited support and training for staff in trauma informed practice, noncompliance with the rules governing use of isolation and seclusion, and inadequate assessment and responses to young people's complex needs.

While the inquiry is largely focused on the functioning of youth justice centers, VCOSS believe it is important to understand their role within the broader youth justice system. This inquiry provide an opportunity to identify and fix the parts of the youth justice system that are not working effectively and make smart investments which genuinely improve community safety, prevent reoffending and improve the lives of vulnerable children and young people. It is crucial to preserve and strengthen elements of the system that are working well, including retaining a separate youth justice system for children and young people focused on diversion, rehabilitation and age appropriate responses.

Victoria was once considered a leader in youth justice initiatives. There is a risk the recent punitive and regressive youth justice system initiatives will undermine our success and chances of treating offenders humanely and with the best chance of rehabilitation.

## Youth offending is low and declining

Historically, Victoria has had a strong youth justice system, with policies and interventions focused on preventing crime and diverting children and young people away from the youth justice system. As a result, Victorian has one of the lowest rates of youth offending in Australia,<sup>1</sup> and was the only state or territory which experienced a decrease in the number of offenders between 2014–15 and 2015–16.<sup>2</sup>

Despite recent media coverage, Victoria is not experiencing a youth crime wave. Overall, the number of children and young people committing crimes is low and declining. Less than one

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<sup>1</sup> Australian Institute of Health and Welfare, Victoria: youth justice supervision in 2014–15, Youth justice fact sheet no. 62, AIHW, April 2016.

<sup>2</sup> ABS, Recorded Crime - Offenders, 2015-16, cat. No. 4519.0, 2 February 2017

percent of 10 to 17 year olds in Victoria are sentenced for criminal offences.<sup>3</sup> Over the last 10 years the number of young people aged 10 to 19 committing offences has steadily decreased.<sup>4</sup> There has been a 43 per cent reduction in the number of children sentenced in the Children's Court of Victoria over the last five years.<sup>5</sup>

However, there are a small number of young people committing repeat and violent offences for whom the system is not working. We recognise there is legitimate community concern about these crimes, and believe more intensive, tailored interventions are required to prevent reoffending and rehabilitate these young people.

This cohort are responsible for a high proportion of crimes committed by young people,<sup>6</sup> with just 1.6 per cent of young offenders accounting for almost one quarter of all recorded offences committed by young people.<sup>7</sup> The vast majority (89%) of young offenders commit very few offences.<sup>8</sup> Despite some recent high profile cases of more serious offences, such as car theft and home entry, overall young people are much less likely than adults to commit serious crimes.<sup>9</sup>

## **Punitive measures are not effective**

In response to recent media coverage of these high-profile cases and incidents at the Malmsbury and Parkville youth justice centers, the Victorian government has become increasingly punitive, including transferring some young people to the Grevillea unit in Barwon's adult prison.

While this approach may be politically popular, evidence demonstrates sanctions focusing on detention and overly strict bail limitations, are ineffective at reducing offending and recidivism among young people.<sup>10,11</sup> Detention and punitive measures are likely to cause further harm and place young people at risk of becoming chronic, long-term offenders.

The most effective youth justice systems invest in a suite of comprehensive and complementary interventions from prevention through to early intervention to divert young people away from detention, provide intensive interventions to rehabilitate children and young people who have offended, and post-release support to help prevent future offending.<sup>12</sup>

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<sup>3</sup> Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria*, Sentencing Advisory Council, Melbourne, December 2016.

<sup>4</sup> P Sutherland and M Millsteed, *In fact No. 1: Downward trend in the number of young offenders, 2006 to 2015*, Crime Statistics Agency, March 2016.

<sup>5</sup> Sentencing Advisory Council, *Sentencing Children in Victoria: Data Update Report*, Sentencing Advisory Council, Melbourne, July 2016.

<sup>6</sup> K Richards, *What makes juvenile offenders different from adult offenders?*, Trends & Issues in Crime and Criminal Justice no. 409, Australian Institute of Criminology, February 2011.

<sup>7</sup> P Sutherland and M Millsteed, *In brief: Patterns of recorded offending behaviour amongst young Victorian offenders*, Number 6, Crime Statistics Agency, September 2016.

<sup>8</sup> P Sutherland and M Millsteed, *In brief: Patterns of recorded offending behaviour amongst young Victorian offenders*, Number 6, Crime Statistics Agency, September 2016.

<sup>9</sup> K Richards, *What makes juvenile offenders different from adult offenders?*, Trends & Issues in Crime and Criminal Justice no. 409, Australian Institute of Criminology, February 2011.

<sup>10</sup> Noetic Solutions Pty Limited, *Review of Effective Practice in Juvenile Justice*, Report for the Minister for Juvenile Justice, January 2010.

<sup>11</sup> I Lambie and I Randell, 'The impact of incarceration on juvenile offenders', *Clinical Psychology Review*, 33(3), 2013, pp. 448-59.

<sup>12</sup> Noetic Solutions Pty Limited, *Review of Effective Practice in Juvenile Justice*, Report for the Minister for Juvenile Justice, January 2010.

Alternatives to detention in youth justice facilities, such as diversion, cautioning and intensive community support programs can be more effective and less expensive than detention. VCOSS believes youth justice centers should remain a last resort, but when required, can be a place to help young people who have offended to rehabilitate and reintegrate back into the community, with appropriate therapeutic response and programs aimed at reducing their disadvantage.

We acknowledge and welcome some positive recent investment such as the state-wide Youth Justice Bail Supervision scheme, expansion of the Central after Hours Assessment and Bail Placement Service and the reversal of certain bail laws for children and young people.

## **Young offenders are highly disadvantaged**

Children and young people's offending is related to their circumstances. Their brains are still developing, making them more susceptible to peer influence and risk taking behavior. Most young people grow out of offending as they mature, if given the right assistance.

Overwhelmingly, young people who have offended, or are on remand facing sentencing, have faced significant disadvantage and adversity in their lives. Many have already been involved in the child protection system and experienced trauma or neglect, have mental health or drug and alcohol problems, have low levels of education and experienced poverty. Aboriginal children and children with intellectual disability are also over-represented in youth justice.

A Department of Health and Human Services (DHHS) snapshot survey of 176 young people on sentence on and remand on October 2015 shows:

- 63 per cent were victims of abuse, trauma or neglect.
  - 45 per cent had been subject to a previous child protection order
  - 19 per cent were subject to a current child protection order
- 62 per cent had previously been suspended or expelled from school
- 30 per cent presented with mental health issues and 18 per cent had a history of self-harm or suicidal ideation
- 24 per cent presented with issues concerning their intellectual functioning and 11 per cent were registered with Disability Services
- 66 per cent had a history of both alcohol and drug misuse and 90 per cent were under the influence of alcohol, drugs or both alcohol and drugs when they offended.
- 12 per cent were young parents
- 38 per cent had a family history of parental or sibling imprisonment
- 12 per cent spoke English as a second language
- 10 per cent were homeless with no fixed address or residing in insecure housing prior to custody.<sup>13</sup>

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<sup>13</sup> Department of Health and Human Services, *Youth Parole Board Annual Report 2015–16*, Victorian Government, Melbourne, August, 2016.

## Take a long-term, evidence-based approach

We urge the Victorian government to avoid making hasty, regressive changes and to consider the findings and recommendations of this inquiry along with the review of youth support, youth diversion and youth justice being undertaken by Penny Armytage and Professor James Ogloff, the Commission for Children and Young People's inquiry into the use of isolation, separation and lockdowns in youth justice centres, and the Ombudsman's report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville.

VCOSS along with Youth Affairs Council of Victoria (YACVic), Smart Justice for Young People (SJ4YP) and the Federation of Community Legal Centres held a joint consultation with over 65 community members and youth justice experts. Our submission draws on their frontline experience working with vulnerable children and young people and their direct involvement with the youth justice system and youth justice facilities.

Our submission calls on the government to take a long-term approach to youth justice, based on the evidence of best practice about what works to prevent offending and reoffending. By investing more in prevention and intervention initiatives which tackle the causes of crime and rehabilitate children and young people who have come in contact with the system, we can create safer communities, and help place these young people on more positive life trajectories.

# Recommendations

## Better care in youth justice centres

- Immediately transfer children out of adult Barwon Prison
- Use detention as a last resort because it harms the chances of rehabilitation
- Develop and implement a therapeutic model of care across all youth justice settings
- Undertake comprehensive assessments of all young people entering youth justice facilities and implement tailored, multidisciplinary rehabilitative intervention and support
- Keep Parkville College
- Provide all young people in justice facilities with access to meaningful education
- Maintain low ratios of staff to young people
- Ensure staff are suitably qualified and trained in trauma-informed therapeutic practice
- Prohibit the use of solitary confinement of any duration for children
- Introduce clear maximum time limits on the use of other forms of isolation against a young person under the age of 18
- Design youth justice facilities to support a therapeutic approach which is age appropriate and able to cater for diverse needs
- Provide adequate transitional planning and post-care support for all young people leaving youth justice centres

## Children and young people need a specialised youth justice system

- Manage Victoria's youth justice system separately to the adult prison system, with a focus on rehabilitation and development
- Retain administrative responsibility for youth justice in the Department of Health and Human Services
- Retain the dual track system, allowing young offenders aged 18-20 to serve custodial sentences in a youth justice facility where appropriate
- Raise the minimum age a child can be charged with a criminal offence to 12 and identify age-appropriate justice system responses for children aged 10–12 years
- Ensure there are appropriate mechanisms in place for children and young people involved in youth justice to be heard
- Meaningful consult with children and young people with experience of the youth justice system to better inform systems design

## Provide comprehensive prevention, early intervention and diversion programs

- Invest in expanding crime prevention, early intervention and diversion programs for an integrated support continuum that addresses the causes and risk factors underlying youth offending
- Invest in children's early years to prevent harm and reduce the chance of later offending



- Invest in education initiatives to help vulnerable young people maintain or reengage with education and training
- Work in partnership to develop a strategy to divert Aboriginal children in out-of-home care from entering or progressing in the youth justice system
- Develop an inter-agency protocol to reduce the contact of youth people in residential care with police and the criminal justice system
- Extend support for young people in out-of-home care to at least age 21
- Develop justice reinvestment strategies to tackle the causes of crime and address entrenched disadvantage
- Invest in culturally appropriate interventions developed and delivered in partnership with local communities
- Address systemic inadequacies which contribute to the overrepresentation of young people from particular cultural groups in the youth justice system
- Expand access to youth mental health and alcohol and other drug rehabilitation services, including residential services
- Invest in a flexible range of diversion options along the justice continuum, available equitably across the state
- Legislate to help make pre-plea youth diversion accessible to all young offenders.
- Establish an Aboriginal youth cautioning program
- Fund intensive case-management and family support for the small number of young people committing a large numbers of offences

### **Improve remand responses**

- Provide bail support and services which enable young people to remain within their community, where appropriate
- Speed up the Court's ability to process remand cases
- Provide comprehensive services and support to young people on remand

# Better care in youth justice centres

## Transfer young people out of Barwon's adult prison immediately

### Recommendation

- Immediately transfer children out of adult Barwon Prison

Recent incidents at the Parkville and Malmsbury Youth Justice Centres have led to the government transferring some young people to the Grevillea Unit at Barwon's adult prison. The Ombudsman's report into the Victoria's youth justice centres, identifies a number of issues with the conditions and management of the Grevillea Unit, including "appropriate staffing, the amount of time young people were spending in lockdowns, the provision of food, information given to youth people about why they have been transferred, access to bedding, clothing and education services."<sup>14</sup> There are also alleged reports of mistreatment, including use of capsicum spray, and threats of tear gas.<sup>15</sup>

VCOSS supports SJ4YP's call to immediately transfer of young people out of Barwon. The Victorian Ombudsman's 2013 investigation into children transferred to the adult prison system found "there are no circumstances that justify the placement of a child in the adult prison system".<sup>16</sup> The Convention of the Rights of the Child Committee's advice on Children's rights in juvenile justice also states governments "should establish separate facilities for children deprived of their liberty, which include distinct, child-centred staff, personnel, policies and practices".<sup>17</sup>

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<sup>14</sup> Victorian Ombudsman, *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville*, February 2017, p. 2.

<sup>15</sup> Human Rights Law Centre, *Serious assault on 16 year old boy further evidence that no child belongs in an adult prison*, 1 February 2017, <https://www.hrlc.org.au/news/2017/2/1/serious-assault-on-16-year-old-boy-further-evidence-that-no-child-belongs-in-an-adult-prison>

<sup>16</sup> Victorian Ombudsman, *Investigation into children transferred from the youth justice system to the adult prison system*, December 2013.

<sup>17</sup> Committee on the rights of the child, *General comment no. 10 (2007), Children's rights in juvenile justice*, paragraph 85, p.23.

## Use detention as a last resort

### Recommendation

- Use detention as a last resort because it harms the changes of rehabilitation

Detention as a last resort, for the shortest possible time, is a key principle of Australia's youth justice system and is consistent with *United Nations Convention on the Rights of the Child* and the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* ('The Beijing Rules').

Detention does not deter reoffending. An Australian study comparing young people after detention with those given a non-custodial sentence, found no difference in reoffending rates, after controlling for prior criminal records.<sup>18</sup> Other evidence suggests detention increases the risk of reoffending.<sup>19,20</sup>

Like remand, detention separates children and young people from their family and support networks, disrupts their schooling, and can erode their mental health.<sup>21</sup> They mix with other young offenders, which can encourage reoffending. Detention entrenches disadvantage, and can reduce a young person's future employment prospects, which may also increase their risks of reoffending.

## Provide a therapeutic model of care

### Recommendation

- Develop and implement a therapeutic model of care across all youth justice settings

Detention, used as a last resort, is a rehabilitation and development opportunity. A therapeutic, trauma informed approach to care can help young people tackle the causes of their offending and build pro-social skills to prepare for a successful reintegration. Healthy, well-adjusted children and young people are less likely to reoffend.

Almost two-thirds of young people in Victorian youth justice centres have experienced abuse, trauma or neglect.<sup>22</sup> Early experiences of adversity and trauma, such as child abuse and neglect, can disrupt behavioral, social, and emotional development and functioning,<sup>23</sup> and mental and

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<sup>18</sup> D Weatherburn, S Vignaendra and A McGrath, *The specific deterrent effect of custodial penalties on juvenile reoffending*, AIC Reports Technical and Background Paper, Australian Institute of Criminology, 2009.

<sup>19</sup> D Weatherburn, S Vignaendra and A McGrath, *The specific deterrent effect of custodial penalties on juvenile reoffending*, AIC Reports Technical and Background Paper, Australian Institute of Criminology, 2009.

<sup>20</sup> Australian Institute of Health and Welfare, *Young people aged 10–14 in the youth justice system 2011–12*, AIHW, 2013.

<sup>21</sup> Australian Institute of Health and Welfare, *Young people aged 10–14 in the youth justice system 2011–12*, AIHW, 2013.

<sup>22</sup> Department of Health and Human Services, *Youth Parole Board Annual Report 2015–16*, Victorian Government, Melbourne, August, 2016.

<sup>23</sup> Child Welfare Information Gateway, [Understanding the Effects of Maltreatment on Brain Development: Issue brief](#), Children's Bureau, U.S. Department of Health and Human Services, April 2015

physical health.<sup>24</sup> Providing trauma informed care recognises and understands trauma's impact, and helps support recovery and resilience.<sup>25</sup>

VCOSS members report therapeutic approaches are not widely used in Victoria's youth justice centres. They have multiple concerns about youth justice operations, including staff shortages, limited support and training for staff in trauma informed practice, a lack of daily structure and routine, inconsistent practices meaning young people do not know the rules, noncompliance with rules governing isolation and seclusion, and inadequate assessment and responses to complex needs.

A clearly articulated therapeutic care model in all youth justice facilities helps foster a common understanding among staff and influence culture, practices and policies. Victorian can learn from successful overseas models, including Spain's re-education centres.<sup>26</sup>

### **Wellbeing of young people in youth justice facilities**

An Australian Human Rights Commission Survey of young people in justice facilities identified conditions that improved their wellbeing:

- contact with family members and friends;
- access to education and purposeful activities;
- contact with professional services;
- access to health services;
- being treated respectfully by staff;
- access to religious and spiritual life;
- access to fresh and to healthy food;
- well-maintained facilities;
- access to basic toiletries, clothing and shoes.<sup>27</sup>

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<sup>24</sup> Australian Child and Adolescent Trauma, Loss and Grief Network, *Trauma, young people and Juvenile Justice*, Australian Government, Department of Health and Ageing.

<sup>25</sup> Australian Child and Adolescent Trauma, Loss and Grief Network, *Trauma, young people and Juvenile Justice*, Australian Government, Department of Health and Ageing.

<sup>28</sup>E Allison and S Hattenstone, *Tough love: is this a model prison for children?*, The Guardian, 8 November 2014.

<sup>27</sup> Australian Human Rights Commission, *Children's rights report 2016*, National Children's Commissioner, Australian Human Rights Commission 2016P.81

## Undertake comprehensive assessment and provide personalised support

### Recommendation

- Undertake comprehensive assessments of every young person entering youth justice facilities and provide tailored, multidisciplinary rehabilitative interventions and support

Young people entering youth justice facilities often face multiple disadvantage and have complex needs. Undertaking a comprehensive assessment upon entry can identify these needs and for the basis of an individualised intervention plan.<sup>28</sup> VCOSS members report young people have inconsistent and limited assessments.

Multi-disciplinary, individually tailored interventions can place young people on a positive pathway for future success. This may include educational programs, health and mental health services, alcohol and drug services, disability support, and family based interventions, delivered by appropriately skilled workers and professionals.

## Maintain education access

### Recommendation

- Keep Parkville College
- Provide young people in justice facilities with meaningful education

Maintaining Parkville College to offer education programs 7 days per week, 52 weeks per year, to every young people in custody, can help their rehabilitation and improve their life chances.

All children and young people have a right to access high quality education.<sup>29</sup> Parkville College provides a therapeutic environment of learning and delivers the Victorian Certificate of Applied Learning and the Victorian Certificate of Education.<sup>30</sup> Now available in all youth justice facilities, Parkville College was established in 2012, in response to recommendations from the 2010

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<sup>28</sup> Youthlaw and Smart Justice for Young People, *Submission to the inquiry by the Legal and Social Issues Committee into Youth Justice Centres*, March 2017.

<sup>29</sup> United Nations, *Convention on the Rights of the Child*, Article 28.

<sup>30</sup> Parkville College, [http://parkvillecollege.vic.edu.au/?page\\_id=14](http://parkvillecollege.vic.edu.au/?page_id=14), accessed 27 February 2017.



Ombudsman's report. More recently it began offering a Koori Cultural Program,<sup>31</sup> and operates a Flexible Learning Centre for students to continue studying after leaving custody.<sup>32</sup>

VCOSS members report Parkville College is working effectively to support the education and of wellbeing young people, and praise the trauma informed approach taken.<sup>33</sup>

## Improve staff capacity and capabilities

### Recommendations

- Maintain low ratios of staff to young people
- Ensure staff are suitably qualified and trained in trauma-informed therapeutic practice

Both the Parkville and Malmsbury facilities experience chronic staff shortages. The Victorian Ombudsman found the creation of the Grevillea unit at Barwon's maximum security adult prison has exacerbated the problem.<sup>34</sup> For instance, VCOSS members report examples of only two staff members present in units where eight staff are required.

Inadequate staff and overcrowding have precipitated overuse of lockdowns in Parkville, Malmsbury and Grevillea.<sup>35</sup> In some cases, young people have been kept in their cells for up to 22 or 23 hours each day.<sup>36</sup> This is detrimental to young people's rehabilitation and mental health, particularly given the high rates of young people who have experienced trauma and have existing mental health conditions. Lockdowns create further unrest and exacerbate tensions between young people and staff. VCOSS members report excessive lockdowns are a major contributor to recent incidents at youth justice facilities.

Lower ratios of staff to young people, stronger staff retention, improved management support to staff and more regular staff rosters can all help reduce unnecessary lockdowns. They also foster positive relationships between staff and young people and allow staff to pay closer attention to their individual needs. VCOSS members report constant staff changes make it difficult to form positive relationships and exacerbate inconsistent practices.

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<sup>31</sup> M McNerty, *Putting culture and community at the heart of Just Justice for Aboriginal and Torres Strait Islander youth*, Croakey, March 2016.

<sup>32</sup> Parkville College, [http://parkvillecollege.vic.edu.au/?page\\_id=14](http://parkvillecollege.vic.edu.au/?page_id=14), accessed 27 February 2017.

<sup>33</sup> M McNerty, *Putting culture and community at the heart of Just Justice for Aboriginal and Torres Strait Islander youth*, Croakey, March 2016.

<sup>34</sup> Victorian Ombudsman, *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville*, February 2017, p. 3.

<sup>35</sup> Victorian Ombudsman, *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville*, February 2017, p. 2.

<sup>36</sup> Victorian Ombudsman, *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville*, February 2017, p. 2.

VCOSS members also report staff require a better skills in de-escalation, especially in an environment where young people have experienced trauma, exhibit challenging behaviours and have mental health conditions. Potential models include therapeutic crisis intervention, currently used in the residential care setting to help prevent and de-escalate crises.<sup>37,38</sup> Providing comprehensive training in trauma informed practice and a clearly articulated model of care helps improve practice consistency and embed routine.

## Use isolation as a last resort only

### Recommendations

- Prohibit solitary confinement of any duration for children
- Introduce clear maximum time limits on the use of other forms of isolation

VCOSS members are concerned isolation, separation and lockdowns are inappropriately used in youth justice centres. For instance, they are frequently used as behaviour management tools due to staff shortages. There are also reports young people in Barwon's grevillea unit are experiencing solitary confinement.<sup>39</sup> The *Children, Youth and Families Act 2005* currently permits the use of isolation in youth justice facilities, but is intended to be a last resort when all other reasonable steps have been taken, and where there is an immediate threat to the safety of any young person, staff or property.<sup>40</sup>

Isolation negatively affects young people's mental health, particularly those with a history of trauma and mental health conditions. The Australian Children's Commissioners and Guardians warn against the use of isolation for children with developmental disabilities or psychosocial problems<sup>41</sup> and states "it is impossible to reconcile seclusion with the "best interests" of the child as it serves no integrative or rehabilitative objective. Children in detention are particularly susceptible to medical, social and psychological problems which can be seriously exacerbated by the use of seclusion cells or being left alone in their own cells for extended periods of time."<sup>42</sup>

The Secretary must approve placing a young person in isolation, and they must be closely supervised and observed at intervals of no longer than 15 minutes.<sup>43</sup> No maximum time period is

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<sup>37</sup> College of Human Ecology, *TCI System Overview*, [http://rccp.cornell.edu/tci/tci-1\\_system.html](http://rccp.cornell.edu/tci/tci-1_system.html), accessed 21 February 2017.

<sup>38</sup> Centre for Excellence in Child and Family Welfare, *Therapeutic Crisis Intervention*, <http://www.cfecfw.asn.au/learning-and-development/residential-care-learning-and-development-strategy/rclds-events-and-forum-0>, accessed 21 February 2017.

<sup>39</sup> Human Rights Law Centres, *Moving youth justice to adult corrections the wrong approach*, February 2017.

<sup>40</sup> Children, Youth And Families Act 2005 - Sect 488

<sup>41</sup> Australian Human Rights Commission, *Children's rights report 2016*, National Children's Commissioner, Australian Human Rights Commission 2016, p.62

<sup>42</sup> Australian Human Rights Commission, *Children's rights report 2016*, National Children's Commissioner, Australian Human Rights Commission 2016, p.61

<sup>43</sup> Children, Youth And Families Act 2005 - Sect 488

prescribed.<sup>44</sup> VCOSS supports YACVic's and Smart Justice for Young People's call to amend the *Children, Youth and Families Act 2005* to prohibit the use of solitary confinement of any duration for children and to introduce clear maximum time limits on the use of other forms of isolation against a young person under the age of 18.<sup>45,46</sup> VCOSS also recommends acting on the findings and recommendations of the Commission for Children and Young People's inquiry into the use of isolation, separation and lockdowns in youth justice centres, due to be released in March.

## Provide a suitable physical environment

### Recommendation

- Design youth justice facilities to support a therapeutic approach which is age appropriate and able to cater for diverse needs.

In 2010, the Ombudsman raised serious concerns about the design of Parkville, stating it is “*inappropriate for a custodial facilitate which houses vulnerable children*” and noting several design features, such as a low roof-line, exposed piping and ill-placed staircases, which pose safety risks to young people and staff.<sup>47</sup> While some improvements were made, the 2017 Ombudsman's report notes “*successive governments have failed to make the significant investment needed to address the long-term issues*”<sup>48</sup>

VCOSS members expressed concern the design of the new 224 bed youth detention centre, expected to open in Werribee South in 2020 may not meet best practice.<sup>49</sup> Designing youth justice fit for purpose facilities support young people's and staff safety, and promotes rehabilitation. Ideally, facilities should be relatively small in size, with small units, so children and young people are given individual, therapeutic care.<sup>50</sup> Members also report facilities should provide different kinds of accommodation units for children with diverse needs.<sup>51</sup>

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<sup>44</sup> Australian Human Rights Commission, *Children's rights report 2016*, National Children's Commissioner, Australian Human Rights Commission 2016P.81

<sup>45</sup> Youthlaw and Smart Justice for Young People, *Submission to the inquiry by the Legal and Social Issues Committee into Youth Justice Centres*, March 2017.

<sup>46</sup> Youth Affairs Council of Victoria, *Inquiry into Youth Justice Centres in Victoria, A submission to the inquiry by the Standing Committee on Legal and Social Issues, Parliament of Victoria*, March 2017.

<sup>47</sup> Ombudsman Victoria, *Whistleblowers Protection Act 2001 Investigation into conditions at the Melbourne Youth Justice Precinct*, October 2010.

<sup>48</sup> Victorian Ombudsman, *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville*, February 2017, p. 2.

<sup>49</sup> Jesuit Social Services, *Transfer of youth justice to Department of Justice counter-productive to community safety*, 6 February 2017.

<sup>50</sup> Youthlaw and Smart Justice for Young People, *Submission to the inquiry by the Legal and Social Issues Committee into Youth Justice Centres*, March 2017.

<sup>51</sup> Youthlaw and Smart Justice for Young People, *Submission to the inquiry by the Legal and Social Issues Committee into Youth Justice Centres*, March 2017.

## Provide adequate post-care support to all young people

### Recommendation

- Provide adequate transitional planning and post-care support for all young people leaving youth justice centres.

VCOSS members report too often young people are released from detention, without adequate support or links to education or employment. This can add to their social and community disconnectedness and isolation, and increase their chance of reoffending.

Ideally post-care support should include a flexible range of services including mentoring, support to engage with education and employment, access stable accommodation, mental health and drug and alcohol services and family support. VCOSS members highlight the for post release support to commence while in detention to help prepare them to successfully reintegrate into the community.

Supporting young people to successfully transition from custody to community can help prevent reoffending and set them lives on a positive trajectory.

# Children and young people need a specialised youth justice system

## Retain a separate justice system for children and young people

### Recommendations

- Manage Victoria's youth justice system separately to the adult prison system, with a focused on rehabilitation and development
- Retain administrative responsibility for youth justice in the Department of Health and Human Services.
- Retain the dual track system, allowing young offenders aged 18-20 to serve custodial sentences in a youth justice facility where appropriate

VCOSS believes Victoria should retain a separate justice system for children and young people focused on diversion, rehabilitation and age appropriate responses. Retaining a separate system, recognises children and young people have a unique capacity to be rehabilitated, are developmental immature and the vast majority of have experienced substantial disadvantage. It is widely acknowledged children and young people should be treated differently to adults, requiring a higher duty of care more intensive interventions to meet their complex needs.<sup>52</sup>

During adolescence, young people's brains undergo substantial change and development, affecting their decision-making ability, judgement and self-control.<sup>53,54,55</sup> Their brains continue developing until at least their early- to mid-twenties.<sup>56,57</sup> During this developmental stage, young people are also more susceptible to peer influences<sup>58</sup> and are more likely to engage in risky or

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<sup>52</sup> Australian Institute of Criminology, What makes juvenile offenders different from adult offenders?, Trends & issues in crime and criminal justice, No. 409 February 2011.

<sup>53</sup> K Richards, *What makes juvenile offenders different from adult offenders?: Trends & Issues in Crime and Criminal Justice no. 409*, Australian Institute of Criminology, February 2011.

<sup>54</sup> The Royal Society, *Brain Waves Module 4: Neuroscience and the law*, The Royal Society, December 2011.

<sup>55</sup> J Edersheim, G Beresin and S Schlozman, *Are teenagers responsible?*, The Massachusetts General Hospital Center for Law, Brain, and Behavior, September 2013.

<sup>56</sup> The Royal Society, *Brain Waves Module 4: Neuroscience and the law*, The Royal Society, December 2011.

<sup>57</sup> J Edersheim, G Beresin and S Schlozman, *Are teenagers responsible?*, The Massachusetts General Hospital Center for Law, Brain, and Behavior, September 2013.

<sup>58</sup> K Richards, *What makes juvenile offenders different from adult offenders?*, Trends & Issues in Crime and Criminal Justice no. 409, Australian Institute of Criminology, February 2011.



reckless behaviours.<sup>59</sup> Together, these factors increase the probability young people can engage in offending.

Most youth offending is episodic and transitory, and most young people ‘grow out’ of offending behaviour as they mature.<sup>60,61</sup> Rates of offending generally peak in late adolescence and decline in early adulthood.<sup>62</sup>

The Victorian Government’s recent decision to change responsibility for youth justice from DHHS to the Department of Justice and Regulation, which manages adult prisons, is a retrograde step that will not improve community safety, and risks causing harm to young people. DHHS is better equipped to meet the developmental and welfare needs of young people involved in youth justice, and prevent them from becoming entrenched in the criminal justice system. The Victorian Ombudsman’s report into rehabilitation identified the corrections system as “ill-equipped to deal with young adult prisoners”.<sup>63</sup>

Victoria’s ‘dual track’ system provides adult courts with the discretion to sentence young people aged 18–20 years to serve their custodial sentence in a youth justice facility instead of an adult prison where courts believe the young person has reasonable prospects for rehabilitation, is particularly impressionable, immature or likely to be subjected to negative influences in an adult prison<sup>64</sup>. Retaining Victoria’s ‘dual track’ system can help prevent vulnerable young people from being exposed to the negative effects of the adult prison system at an early age, and allows them to benefit from rehabilitative programs and services available in the youth justice system. The Victorian Ombudsman confirmed support to retain Victoria’s dual track system stating “*Victoria’s dual track system must go on recognising that children – even dangerous children – are different from adults.*”<sup>65</sup>

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<sup>59</sup> L Steinberg, ‘A Social Neuroscience Perspective on Adolescent Risk-Taking’, *Developmental Review*, 28(1), March 2008, pp. 78–106.

<sup>60</sup> L Jordan and James Farrell, *Juvenile Justice Diversion in Victoria: A Blank Canvas?*, Current Issues in Criminal Justice, Volume 24 Number 3, March 2013.

<sup>61</sup> K Richards, *What makes juvenile offenders different from adult offenders?*, Trends & Issues in Crime and Criminal Justice no. 409, Australian Institute of Criminology, February 2011.

<sup>62</sup> K Richards, *What makes juvenile offenders different from adult offenders?*, Trends & Issues in Crime and Criminal Justice no. 409, Australian Institute of Criminology, February 2011.

<sup>63</sup> Victorian Ombudsman, *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville*, February 2017, p. 3.

<sup>64</sup> Sentencing Act 1991, Section 32

<sup>65</sup> Victorian Ombudsman, *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville*, February 2017, p. 3.

## Raise the age of criminal responsibility

### Recommendation

- Raise the minimum age a child can be charged with a criminal offence to 12 and identify age-appropriate justice system responses for children aged 10–12 years

In Victoria, the minimum age of criminal responsibility is 10 years of age. This is out of step with international law, and evidence about children’s brain development which demonstrates that children under 12 years lack the necessary mental capacity for full criminal responsibility.

*“At the age of ten the brain is developmentally immature, and continues to undergo important changes linked to regulating one’s own behaviour”<sup>66</sup>*

The United Nations Committee on the Rights of the Child states that a minimum age of criminal responsibility below the age of 12 years is unacceptable.<sup>67</sup> The Committee encourages countries to increase their minimum age of criminal responsibility to age 12 as an absolute minimum and encourages countries to increase it to 14 or 16 years of age.<sup>68</sup> An international study of 90 countries identifies that 68 per cent had a minimum criminal age of 12 or higher, with the most common age being 14 years.<sup>69</sup>

Involvement in the criminal justice system at a young age places young people at risk of becoming chronic, long-term offenders.<sup>70</sup> The younger a person is on first encountering the justice system, the more likely they are to reoffend. For instance, longitudinal data from the Sentencing Advisory Council indicates the re-offending rate of children first sentenced between the ages of 10-12 is 85 per cent, compared with 51 per cent for 17 year olds and 33 per cent for 19 – 20 year olds.<sup>71</sup> Similarly, the earlier children are first sentenced the more likely they are to be sentenced in an adult court before the age of 22.<sup>72</sup>

The state government can better support these children by raising the minimum age a child can be charged with a criminal offence from 10 to 12 years of age, and identifying more age-appropriate interventions that prevent harm and foster behavioural development.

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<sup>66</sup> The Royal Society, [Brain Waves Module 4: Neuroscience and the law](#), The Royal Society, December 2011.

<sup>67</sup> UN Committee on the Rights of the Child (CRC), *General comment No. 10 (2007): Children’s Rights in Juvenile Justice*, 25 April 2007, CRC/C/GC/10.

<sup>68</sup> UN Committee on the Rights of the Child (CRC), *General comment No. 10 (2007): Children’s Rights in Juvenile Justice*, 25 April 2007, CRC/C/GC/10.

<sup>69</sup> N Hazel, *Cross-national comparison of youth justice*, Youth Justice Board for England and Wales, United Kingdom, 2008.

<sup>70</sup> Australian Institute of Health and Welfare 2013, *Young people aged 10 – 14 in the youth justice system 2011 – 2012*, AIHW, Canberra, p. vi.

<sup>71</sup> Sentencing Advisory Council, [Reoffending by Children and Young People in Victoria](#), December 2016, p. 26

<sup>72</sup> Sentencing Advisory Council, [Reoffending by Children and Young People in Victoria](#), December 2016, p. 20.

## Given children and young people a voice

### Recommendations

- Ensure appropriate mechanisms are in place for children and young people involved in youth justice to be heard
- Meaningfully consult with children and young people with experience of the youth justice system to better inform system design

Children and young people have the right to be heard in decisions about their lives. The UN Committee on the Rights of the Child advise this right “should be fully respected and implemented throughout every stage of the process of juvenile justice” and that “every child (deprived of their liberty) should have the right to make requests or complaints... and need to know about and have easy access to these mechanisms.”<sup>73</sup> This view is echoed by the Australian Human Rights Commissioner, stating that providing children and young people voice their opinions on how their needs can be met “is especially important for children in vulnerable situations, like those involved in the youth justice system”.<sup>74</sup>

Adequately resourcing the independent visitors program will enable the Commission for Children and Young People to continue to provide an independent mechanism through which young people can express any concerns affecting their day-to-day lives in youth justice centres.<sup>75</sup> Having mechanisms in place to enable young people to raise concerns directly with youth justice facilitate staff can also help to better meet their needs and provide a safer environment.<sup>76</sup>

VCOSS members report the voice and experience of young people is missing from the debate around youth justice. Actively gaining the views of young people who have experienced the youth justice system could better help inform the system’s design, including of early intervention and diversion initiatives, the operation of youth justice centres, and post care support. YACVic’s submission to this inquiry explores this in more detail.<sup>77</sup>

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<sup>73</sup> UN Committee on the Rights of the Child (CRC), *General comment No. 10 (2007): Children's Rights in Juvenile Justice*, 25 April 2007, CRC/C/GC/10.

<sup>74</sup> Australian Human Rights Commission, *Children's rights report 2016*, National Children's Commissioner, Australian Human Rights Commission 2016, p.81

<sup>75</sup> B Geary, 'Hearing the voices of young people', *Insight 8: Crime and Justice*, VCOSS, 2013.

<sup>76</sup> Jesuit Social Services, Submission to the Commission for Children and Young People's Inquiry into the use of isolation, separation and lockdowns in youth justice centres, November 2016.

<sup>77</sup> Youth Affairs Council of Victoria, *Inquiry into Youth Justice Centres in Victoria, A submission to the inquiry by the Standing Committee on Legal and Social Issues, Parliament of Victoria*, March 2017.

# Provide comprehensive prevention, early intervention and diversion programs

## Invest in an integrated support continuum

### Recommendation

- Invest in expanding crime prevention, early intervention and diversion programs for a integrated support continuum addressing the causes and risk factors underlying youth offending

The government can improve community safety and support the young people's wellbeing by providing an integrated support continuum. This can provide comprehensive prevention and early intervention programs to divert young people away from the justice system, through to tertiary interventions that rehabilitate children and young people who have offended, with strong post-care support reintegrating young people back into community and preventing future offenses. VCOSS members advise there are services gaps along the entire continuum and investment is required at every stage.

This can include a mix of preventions, strategies and initiatives aimed at reducing known risk factors, such as poverty, family dysfunction, early school leaving, unemployment, and drug and alcohol abuse, while also strengthening protective factors, such as building effective parenting skills and helping young people remain engaged in education.<sup>78, 79</sup>

Prevention strategies, which improve children and young people's wellbeing, learning and development and tackle socioeconomic disadvantage, can be complemented by early intervention programs which target children and young people at greater risk of offending, to help them address the particular issues they are facing.<sup>80</sup> This can include interventions such as mentoring, education

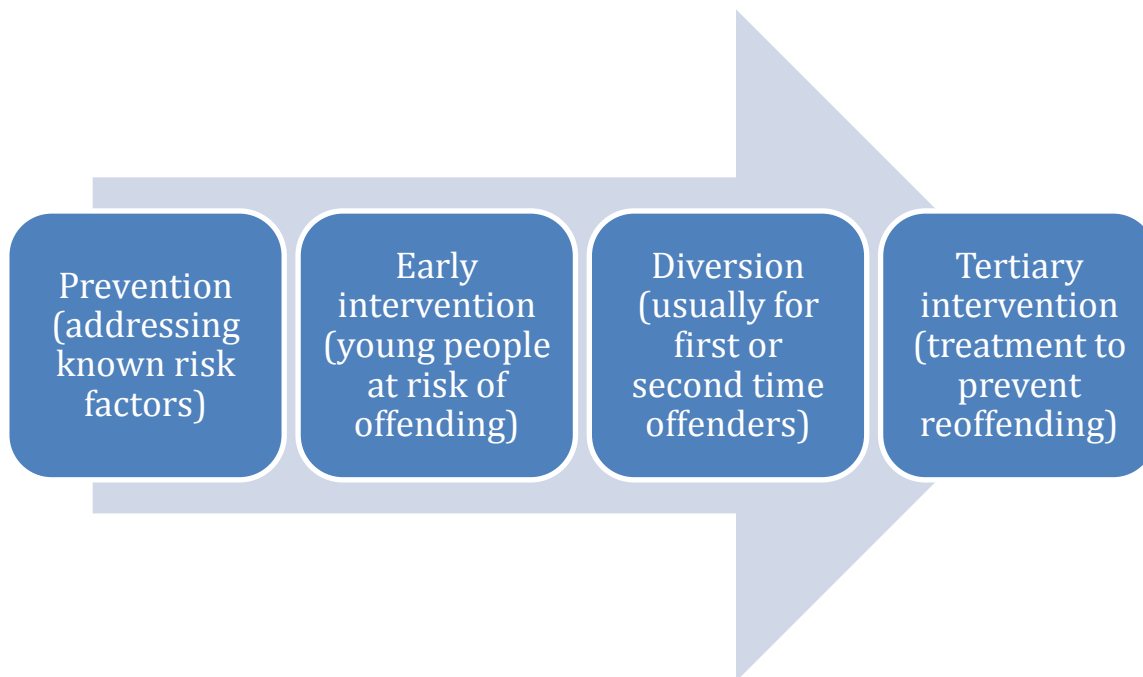
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<sup>78</sup> Noetic Solutions Pty Limited, *Review of Effective Practice in Juvenile Justice*, Report for the Minister for Juvenile Justice, January 2010.

<sup>79</sup> K Richards, L Rosevear and R Gilbert, *Promising interventions for reducing indigenous juvenile offending: Brief 1*, Australian Institute of Criminology, March 2011.

<sup>80</sup> K Richards, L Rosevear and R Gilbert, *Promising interventions for reducing indigenous juvenile offending: Brief 1*, Australian Institute of Criminology, March 2011.

reengagement initiatives and diversion programs. Interventions are also most effective when they target multiple risk and protective factors.<sup>81</sup>



Adapted from: J Stewart, B Hedwards, K Richards, M Willis and D Higgins [Indigenous Youth Justice Programs Evaluation](#), Australian Institute of Criminology, 2014.

*“The best way to protect the community is to invest in measures that prevent or interrupt the criminal pathways of children who would otherwise go on to commit a disproportionately high volume of youth crime. Measures such as enhanced early intervention and resources to rehabilitate young offenders are the best way to steer at-risk children away from a life of crime and protect the community in the long term.”*

**Sentencing Advisory Council, 2016<sup>82</sup>**

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<sup>81</sup> K Richards, L Rosevear and R Gilbert, *Promising interventions for reducing indigenous juvenile offending: Brief 1*, Australian Institute of Criminology, March 2011.

<sup>82</sup> Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria*, Sentencing Advisory Council, Melbourne, December 2016.



Prevention and early intervention strategies deliver substantial long-term benefits, including savings to government by reducing the demand on the youth justice system,<sup>83</sup> improving community safety, and improving the lives of vulnerable children and young people.

Taking a whole-of-government approach helps tackle systemic causes of young peoples' involvement in the justice system. This integrates policies and practices across child and family welfare, education, disability, health, police, legal and youth justice systems. Community involvement in the design and implementation of prevention and intervention initiatives, including Aboriginal and culturally diverse communities, increases their effectiveness by addressing community-identified problems, drawing on existing community strengths and resources, and being culturally responsive.<sup>84</sup>

## Prevent crime by tackling its underlying causes

### Invest in children's early years

#### Recommendation

- Invest in children's early years to prevent harm and reduce the probability of later offending

Investing in children's early years can help prevent harm and reduce the probability of later offending. The early years of life are a critical period for children's healthy development, and are among the most formative in shaping the way children learn, develop and form relationships.<sup>85</sup> Experiences during this time have long lasting effects into adulthood, influencing an individual's mental and physical health, social adjustment, educational achievement and life expectancy.<sup>86</sup>

A combination of risk and protective factors at the individual, family, community and society level affect children's health, wellbeing and education.<sup>87</sup> Risk factors such as poverty, abuse or neglect, limited cognitive stimulation, witnessing family violence, parental mental illness or substance abuse, an absence of positive caregiver attachments or toxic stress can contribute to developmental vulnerability.<sup>88</sup> Improvements in children's developmental trajectories can be achieved by targeted interventions that reduce these risk factors and enhance protective factors,

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<sup>83</sup> Noetic Solutions Pty Limited, *Review of Effective Practice in Juvenile Justice*, Report for the Minister for Juvenile Justice, January 2010.

<sup>84</sup> K Richards, L Rosevear and R Gilbert, *Promising interventions for reducing indigenous juvenile offending: Brief 1*, Australian Institute of Criminology, March 2011.

<sup>85</sup> C Gong, J McNamara and R Cassells, *AMP.NATSEM Income and Wealth Report: Issue 28 - Little Australians: Differences in early childhood development*, Sydney, AMP.NATSEM, April 2011

<sup>86</sup> M McDonald, T Moore and R Robinson, *Policy Brief No. 26: The future of early childhood education and care services in Australia*, Murdoch Childrens Research Institute, Centre for Community Child Health, 2014.

<sup>87</sup> S Fox, A Southwell, N Stafford, R Goodhue, D Jackson and C Smith, *Better Systems, Better Chances: A Review of Research and Practice for Prevention and Early Intervention*, Canberra, Australian Research Alliance for Children and Youth (ARACY), 2015, p.3.

<sup>88</sup> Goodstart early learning, 'Why access to early learning is important for vulnerable children', *Vulnerability*, June 2014.

such as access to health and social care services, secure caregiver-child attachments, attendance at high quality early learning services and strong school engagement.<sup>89</sup>

Positive actions include increasing funding for supported playgroups, providing high quality affordable early learning, and using integrated service models that provide children and their families with better access to prevention and early intervention services in education, health and community services.

## Promote educational engagement

### Recommendation

- Invest in helping vulnerable young people stay engaged or re-engage in education and training

Early school leavers are more vulnerable to becoming involved in the justice system,<sup>90</sup> and many young people involved in youth justice have experienced disrupted education or disengagement.

A recent study documented the educational engagement of 103 young people, aged 12 to 19 involved in the Victoria's Education Justice Initiative.<sup>91</sup> Thirty-nine per cent of young people of compulsory school age were not enrolled in education when commencing the program. Almost half of all young people who were enrolled in education, had not attended a single day of school in the previous month. Further, 70 per cent of young people had been enrolled in at least four Victorian schools, showing pattern of disrupted education.<sup>92</sup>

Initiatives that help vulnerable young people to maintain or reengage with education and training, can help steer them away from anti-social behaviour and set them up for a more positive future. VCOSS welcomes the Victorian Government's recent investments including school equity funding, the Navigator pilots, LOOKOUT Education Support Centres and Reconnect programs. However, more can be done to promote school engagement and help prevent early school leaving for young people facing disadvantage.

The report, *Creating engaging schools for all children and young people: What works*<sup>93</sup>, identifies 10 strategies to help support engage all children and young people and prevent early school leaving. Some key initiatives include giving vulnerable children and young people extra assistance at school, promoting student's health and wellbeing, collaborating with families and communities

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<sup>89</sup> S Fox, A Southwell, N Stafford, R Goodhue, D Jackson and C Smith, *Better systems, better chances: A review of research and practice for prevention and early intervention*, Australian Research Alliance for Children and Youth, 2015, p.78.

<sup>90</sup> Deloitte Access Economics, *The socio-economic benefits of investing in the prevention of early school leaving*, prepared for Hands On Learning Australia, 2012.

<sup>91</sup> Kitty te Riele and Karen Rosauer, *Education at the Heart of the Children's Court; Evaluation of the Education Justice Initiative Final Report*, The Victorian Institute for Education, Diversity and Lifelong Learning, 2015.

<sup>92</sup> Kitty te Riele and Karen Rosauer, *Education at the Heart of the Children's Court; Evaluation of the Education Justice Initiative Final Report*, The Victorian Institute for Education, Diversity and Lifelong Learning, 2015.

<sup>93</sup> VCOSS, YACVic, the Centre for Excellence in Child and Family Welfare, Hume Whittlesea LLEN and Early Learning Association Australia, *Creating engaging schools for all children and young people: What works*, December 2016.

and providing flexible learning options. The government can also continue to fund education initiatives which support young people involved in youth justice to maintain or reengage with education, such as the Education Justice Initiative.

### **Victoria's Education Justice Initiative<sup>94</sup>**

The Education Justice Initiative (EJI) pilot works with young people appearing before the Melbourne Children's Court (Criminal Division) or Children's Koori Court to help reengage them in education. It is a partnership between Parkville College and the Children's Court, with funding from the Department of Education and Training.

Staff members act as a link between the young person and their families, schools and other education providers, courts and welfare services. Staff have specialist knowledge enabling them to effectively navigate the justice and education systems, advocate on behalf of young people, and offer them practical assistance and information to help reengage.<sup>95</sup>

Since launching in September 2014, EJI has had contact with around 450 young people, and worked closely with 103 young people. Most of the young people experienced substantial personal, social and educational disadvantage, and seventy percent of these young people were aged 12-16 and of compulsory school age.. A 2015 evaluation of the program found:

- 75 per cent of the 68 full clients were successfully re-connected with education
- educational enrolment increased from 51 per cent to 75 per cent
- attendance in education increased from 9 per cent to 54 per cent.<sup>96</sup>

The report also states there is some anecdotal evidence EJI can help divert young people from being remanded or sentence in detention, and improve rehabilitation and reduce reoffending among young people.<sup>97</sup>

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<sup>94</sup> K te Riele and K Rosauer, The Victoria Institute for Education, *Diversity and Lifelong Learning*, Melbourne, December 2015.

<sup>95</sup> K te Riele and K Rosauer, Education at the Heart of the Children's Court Evaluation of the Education Justice Initiative Final Report, The Victoria Institute for Education, *Diversity and Lifelong Learning*, Melbourne, December 2015.

<sup>96</sup> K te Riele and K Rosauer, *Education at the Heart of the Children's Court Evaluation of the Education Justice Initiative Final Report*, The Victoria Institute for Education, Diversity and Lifelong Learning, Melbourne, December 2015, p.55.

<sup>97</sup> K te Riele and K Rosauer, *Education at the Heart of the Children's Court Evaluation of the Education Justice Initiative Final Report*, The Victoria Institute for Education, Diversity and Lifelong Learning, Melbourne, December 2015, p.55.

## Break the link between child protection and youth justice

### Recommendations

- Work in partnership to develop a strategy to divert Aboriginal children in out-of-home care from entering or progressing in the youth justice system
- Develop an inter-agency protocol to reduce the contact of young people in residential care with police and the criminal justice system
- Extend support for young people in out of home care to at least age 21.

There is consistent evidence of a link between children and young people experiencing child abuse and neglect, and later offending.<sup>98</sup> Sixty percent of children aged 10 at the time of their first youth justice supervision, were also in child protection.<sup>99</sup> Young people involved in the child protection system are 14 times more likely than other children to be under youth justice supervision,<sup>100</sup> with even higher rates for Aboriginal young people. Aboriginal young people in the child protection system were twice as likely to be under youth justice supervision as non-Aboriginal children.<sup>101</sup>

VCOSS supports the Commission for Aboriginal Children and Young People's recommendation for DHHS to work in partnership with the Aboriginal Children's Forum to developing a strategy to divert Aboriginal children in out-of-home care from entering or progressing in the youth justice system.<sup>102</sup> Some residential care facilities rely too heavily on police intervention for minor behavioural incidents, such as 'smashing a cup, throwing a sink plug or spreading food around a unit's kitchen'.<sup>103</sup> If these behaviours occurred in a traditional family home they would be unlikely to attract police attention.<sup>104</sup> Similarly, VCOSS members report police are called for minor incidents involving young people with disability living in supported accommodation.

Developing strategies to reduce the criminalisation of young people in out of home care and supported accommodation could help break the link between child protection and youth justice. VCOSS supports the recommendation by Victoria Legal Aid to develop and implement an inter-agency protocol to reduce the contact of young people in residential care with police and the criminal justice system.<sup>105</sup>

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<sup>98</sup> J Cashmore, *The link between child maltreatment and adolescent offending*, Family Matters No. 89, Australian Institute of Family Studies, December 2011

<sup>99</sup> Australian Institute of Health and Welfare, *Young people in child protection and under youth justice supervision 2014–15*, data linkage series No. 22, Cat. no. CSI 24, Canberra, AIHW, 2016

<sup>100</sup> Australian Institute of Health and Welfare, *Young people in child protection and under youth justice supervision 2014–15*, data linkage series No. 22, Cat. no. CSI 24, Canberra, AIHW, 2016

<sup>101</sup> Australian Institute of Health and Welfare, *Young people in child protection and under youth justice supervision 2014–15*, data linkage series No. 22, Cat. no. CSI 24, Canberra, AIHW, 2016

<sup>102</sup> J Cashmore, *The link between child maltreatment and adolescent offending*, Family Matters No. 89, Australian Institute of Family Studies, December 2011

<sup>103</sup> Victorian Legal Aid, *Care not custody: A new approach to keep kids in residential care out of the criminal justice system*, Corporate Affairs, Victoria Legal Aid, 2016.

<sup>104</sup> Victorian Legal Aid, *Care not custody: A new approach to keep kids in residential care out of the criminal justice system*, Corporate Affairs, Victoria Legal Aid, 2016.

<sup>105</sup> Victorian Legal Aid, *Care not custody: A new approach to keep kids in residential care out of the criminal justice system*, Corporate Affairs, Victoria Legal Aid, 2016.

Young care leavers are also at greater risk of involvement with the justice system and experiencing housing instability or homelessness, unemployment and low incomes, poorer educational achievement, poor physical and mental health, substance abuse, social isolation, and early parenthood.<sup>106,107</sup> Limited support in the post-care period is associated with increased risk of offending behaviour.<sup>108</sup>

The Victorian government can reduce the chance of involvement in youth justice and help young care leavers achieve better health, employment and quality of life by providing holistic support and care until at least age 21. VCOSS, along with many other organisations, are part of the Home Stretch campaign,<sup>109</sup> calling on the Victorian government to extend support provided from young people leaving out of home care from age from 18 to 21.

## Invest in place-based interventions and justice reinvestment strategies

### Recommendation

- Develop justice reinvestment strategies to tackle the causes of crime and address entrenched disadvantage

Children and young people involved in the youth justice system often come from communities experiencing entrenched intergenerational disadvantage. Young people from the lowest socioeconomic areas are six times more likely to be under supervision than those from the highest socioeconomic areas.<sup>110</sup> One quarter of children and young people on remand come from Victoria's 16 poorest suburbs (2.6 per cent).<sup>111</sup>

VCOSS welcomes the Victorian government's investment in the place based Youth Crime Prevention Grants program. The government can build on this approach and address the underlying reasons young people commit crime by adopting a whole-of-government justice reinvestment strategy.

Justice reinvestment empowers communities experiencing disadvantage to find local solutions to economic and social risk factors behind offending. It focuses on the wellbeing of children and

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<sup>106</sup> UnitingCare, *Young people transitioning from out-of-home care to adulthood: Review of policy and program approaches in Australia and overseas*, July 2014, p. 2.

<sup>107,107</sup> P Mendes, G Johnson and B Moslehuddin, 'Effectively preparing young people to transition from out-of-home care: An examination of three recent Australian studies', *Family Matters*, No. 89, Australian Institute of Family Studies, 2011.

<sup>108</sup> P Mendes, S Baidawi, and P.C Snow, *Good Practice in Reducing the Over-Representation of Care Leavers in the Youth Justice System. Leaving Care and Youth Justice – Phase Three Report*, Melbourne, Monash University, 2014.

<sup>109</sup> Anglicare Victoria, *The Home Stretch Campaign*, <http://thehomestretch.org.au/about/>, accessed 21 February 2017.

<sup>110</sup> Australian Institute of Health and Welfare, *Youth justice in Australia 2014–15, Bulletin 133*, AIHW, April 2016.

<sup>111</sup> M Ericson and T Vinson, *Young people on remand in Victoria: Balancing individual and community interests*, Jesuit Social Services, Richmond, 2010.

young people and intervenes early in their lives to help prevent crime from happening, and to help avoid children and young people getting caught in a pattern of offending behaviour.<sup>112</sup>

Justice reinvestment means reallocating funds from the criminal justice system to evidence based early intervention, crime prevention and diversionary programs. The approach taken in each location is adapted to meet the local circumstances, but can include programs that help young people remain in education or work, provide safe and accessible housing, address drug and alcohol use, and prevent abuse, trauma and neglect.<sup>113,114</sup>

By tackling disadvantage and the causes of crime, justice reinvestment helps build stronger and safer communities.<sup>115</sup> It saves money over time by reducing expenditure on youth justice services. For example, an analysis of a justice reinvestment approach in QLD estimates an upfront investment of \$10 million over four years, could save up to \$263 million by 2030.<sup>116</sup>

The Victorian government could work with local communities to identify opportunities for piloting justice reinvestment approaches to reduce offending behaviour and promote community safety. A project in Bourke, NSW, can be used as a starting point for similar trials in Victoria.

### **Bourke Justice Reinvestment Project**

The Justice Reinvestment Project in Bourke, NSW is an innovative example of communities taking control for positive change. In 2012, the Bourke Aboriginal Community Working Party partnered with Just Reinvest NSW to develop a justice reinvestment framework to address the challenges facing young people in the community, particularly their involvement in the criminal justice system.<sup>117</sup>

Bourke is a small remote town in north-west New South Wales with a population of almost 3,000 people. Thirty per cent of the population are Aboriginal.<sup>118</sup> It is highly disadvantaged, with high levels of juvenile convictions and adult prison rates, domestic violence, long term unemployment, early school leaving, and young people not fully engaged in education or employment.<sup>119</sup>

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<sup>112</sup> Smart Justice for Young People, *Intro to Justice Reinvestment*, <http://youthlaw.asn.au/campaigns-advocacy/justice-reinvestment-home/intro-to-justice-reinvestment/>, accessed 16 December 2016.

<sup>113</sup> Smart Justice for Young People, *Intro to Justice Reinvestment*, <http://youthlaw.asn.au/campaigns-advocacy/justice-reinvestment-home/intro-to-justice-reinvestment/>, accessed 16 December 2016.

<sup>114</sup> D Brown, 'Justice reinvestment: the circuit breaker?', *Insight 8: Crime and Justice*, VCOSS, 2013.

<sup>115</sup> Smart Justice for Young People, *Intro to Justice Reinvestment*, <http://youthlaw.asn.au/campaigns-advocacy/justice-reinvestment-home/intro-to-justice-reinvestment/>, accessed 16 December 2016.

<sup>116</sup> A Bratanova and J Robinson, *Cost effectiveness analysis of a 'justice reinvestment' approach to Queensland's youth justice services*, November 2014.

<sup>117</sup> Just Reinvest NSW, *Justice Reinvestment in Bourke*, <http://www.justreinvest.org.au/justice-reinvestment-in-bourke/>, accessed 5 January 2017.

<sup>118</sup> Office of Communities, *Community Portrait, Bourke: A portrait of the Aboriginal community of Bourke, compared with NSW, from the 2011 and earlier Censuses*, Aboriginal Affairs NSW Government, August 2013.

<sup>119</sup> Jesuit Social Services, *Dropping off the Edge 2015, 'Bourke'*, <https://dote.org.au/map/>, accessed 11 January 2017,



A series of community consultations were held, with assistance from the Australian Human Rights Commission, to identify community priorities to reduce offending and make the community safer. Obtaining and analysing holistic data sets on community outcomes in Bourke (e.g. housing, education, health, child safety) has also helped inform the goals, measures and strategies for the project. From June 2016 a number of cross-sector initiatives or 'circuit breakers' are being implemented, including addressing breaches of bail, outstanding warrants and the need for a learner driver program in Bourke.<sup>120</sup> Detailed economic modelling will be undertaken to demonstrate the savings from the initiatives.

## Reduce the overrepresentation of Aboriginal and culturally and linguistically diverse young people in the youth justice system

### Recommendations

- Invest in culturally appropriate interventions developed and delivered in partnership with local communities.
- Address systemic inadequacies which contribute to the overrepresentation of young people from particular cultural groups in the youth justice system.

Aboriginal children and young people continue to be overrepresented in the youth justice system. In 2014-15, Aboriginal young people in Victoria were 11 times more likely to be on youth justice supervision orders and 12 times more likely to be on detention than non-Aboriginal young people.<sup>121</sup> Maori and Pacific Islander young people and young people from culturally and linguistically diverse communities, particularly from Sudan, are also disproportionately likely to come in contact with the youth justice system.<sup>122</sup>

The overrepresentation of specific groups is not caused by their ethnicity but by the social and economic disadvantage their communities experience.<sup>123</sup> For instance, they often face cultural, structural and service-related barriers making it more difficult to access services. These communities commonly experience racism and discrimination, economic and social exclusion, disrupted education, lack of awareness of the law,<sup>124</sup> and experience intergenerational trauma. Young people from culturally and linguistically diverse backgrounds report feeling hopeless, disconnected and 'locked out' from the wider community.<sup>125</sup> Focus groups with Sudanese and

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<sup>120</sup> Just Reinvest NSW, *Justice Reinvestment in Bourke*, <http://www.justreinvest.org.au/justice-reinvestment-in-bourke/>, accessed 5 January 2017.

<sup>121</sup> Australian Institute of Health and Welfare, *Youth justice in Australia 2014–15, Bulletin 133*, AIHW, April 2016.

<sup>122</sup> The Age, *Victoria youth crime: Statistics raise questions about calls to deport youth offenders*, <http://www.abc.net.au/news/2016-12-04/statistics-raise-questions-about-calls-to-deport-youth-offenders/8087410>

<sup>123</sup> L Bartels, *Crime prevention programs for culturally and linguistically diverse communities in Australia*, Australian Institute of Criminology, Research in practice no.18, 2011.

<sup>124</sup> L Bartels, *Crime prevention programs for culturally and linguistically diverse communities in Australia*, Australian Institute of Criminology, Research in practice no.18, 2011.

<sup>125</sup> Helen Fatouros, *Is our youth justice system really broken?* Castan Centre for Human Rights Law Conference, Vic Legal Aid, 22 July 2016.



Pacific Islander young people identify they experience negative impacts from racism.<sup>126</sup> Addressing systemic barriers and discrimination faced by young people from particular cultural groups can help reduce their overrepresentation in the youth justice system.

To reduce involvement in the youth justice system, Aboriginal and culturally diverse groups require tailored strategies to address their distinct risk-factors and build on their unique strengths.<sup>127</sup> These are most effective when they involve genuine community involvement in the design and implementation of programs, and encompass family and cultural support.<sup>128</sup>

For instance, a joined up strategy to reduce Aboriginal children and young people's involvement in the youth justice system could comprise:

- developing cultural programs for Aboriginal children and young people
- building the capacity of Aboriginal Community Control Organisations to develop and implement intensive diversionary strategies<sup>129</sup>
- employing Koorie youth workers and youth workers from culturally diverse communities to provide positive role-modelling and mentoring, assertive outreach, and recreational programs<sup>130</sup>
- providing targeted support for problems such as homelessness, mental health and alcohol and other drugs
- ensuring generalist interventions are culturally relevant and safe.

### **Barreng Moorop<sup>131</sup>**

Barreng Moorop is a small outreach based intensive case management program for that works with Aboriginal children aged 10-14 years old who have had involvement with the youth justice system.

The program aims to divert young people away from the justice system by addressing the underlying issues contributing to their offending behaviour. It works with the children, their siblings, families, including extended family and community (where appropriate), to provide a wraparound, trauma informed response.

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<sup>126</sup> M Grossman and J Sharples, *Don't go there: young people's perspectives on community safety and policing: a collaborative research project with Victoria police, region 2 (Westgate)*, Victorian University, 2010.

<sup>127</sup> Noetic Solutions Pty Limited, *Review of Effective Practice in Juvenile Justice*, Report for the Minister for Juvenile Justice, January 2010.

<sup>128</sup> J Stewart, B Hedwards, K Richards, M Willis and D Higgins, *Indigenous Youth Justice Programs Evaluation*, Australian Institute of Criminology, 2014.

<sup>129</sup> Commission for Children and Young People, *Always was always will be Koori children: Systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria*, 2016, p.18.

<sup>130</sup> Youth Affairs Council of Victoria, *Inquiry into Youth Justice Centres in Victoria, A submission to the inquiry by the Standing Committee on Legal and Social Issues, Parliament of Victoria*, March 2017.

<sup>131</sup> Liz Poole, *Helping Aboriginal children stay out of the justice system*, Jesuit Social Services, June 2016, <https://jss.org.au/helping-aboriginal-children-stay-out-of-the-justice-system/>, accessed 3 February 2017.

It focuses on creating meaningful engagement, building trust and connecting children to community and culture to strengthen their Aboriginal identity, using the family, community and culture as a protective factor. Each child is assessed individually and personalised case and cultural care plans are developed in collaboration with them and their family.

Jesuit Social Services delivers the Barrang Moorop program in partnership with the Victorian Aboriginal Legal Service (VALS) and the Victorian Aboriginal Child Care Agency (VACCA), in North and West metropolitan regions of Melbourne.

Since commencing in 2014, the program has assisted 35 Aboriginal children and their families, with feedback from staff and key stakeholders indicating positive outcomes.<sup>132</sup>

## Invest in youth mental health and drug and alcohol rehabilitation services

### Recommendation

- Expand access to youth mental health and alcohol and other drug rehabilitation services, including residential services

Young people entering youth justice facilities often face multiple disadvantage and have complex issues, including mental illness, homelessness, family violence, intellectual disability and drug and alcohol issues. For instance a 2016 report by the ACT Children and Young People commissioner estimates that between 40 and 70 per cent of young people in youth justice across Australia have a mental health condition and between 11 and 17 per cent have an intellectual disability.<sup>133</sup>

Research also indicates that up to two thirds of young people seeking alcohol and other drug services are involved with the youth justice system.<sup>134</sup>

VCOSS members report inadequate services to meet the needs of young people, particularly for alcohol and other drug and mental health services.<sup>135,136</sup> Young people's involvement in the youth justice system could be reduced by adequately investing in specialised services to help young people access timely support. In particular, VCOSS members suggest creating a secure facility for residential treatment of alcohol and other drug issues for children and young people.

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<sup>132</sup> Jesuit Social Services, *Submission to the Commission for Children and Young People's Inquiry into the use of isolation, separation and lockdowns in youth justice centres*, November 2016.

<sup>133</sup> A Roy, B McGill and L Fenn, *Children & young people with complex needs in the ACT youth justice system: Criminal justice responses to mental health conditions, cognitive disability, drug & alcohol disorders, and childhood trauma*, Office of the ACT Children & Young People Commissioner, March 2010, Page 33.

<sup>134</sup> Youth Support and Advocacy Service (YSAS) and Youth Drug and Alcohol Advice service (YoDAA), *The Victorian Youth Alcohol and Other Drug Service System: A vision realised*, October 2013.

<sup>135</sup> Victoria Legal Aid, *Is our youth justice system really broken?*, Castan Centre for Human Rights Law Conference, 22 July 2016.

<sup>136</sup> J Hancock 'Nowhere near enough' youth workers to address issues behind Victoria's teen crime problem, ABC News, 2 February 2017, <http://www.abc.net.au/news/2017-02-03/more-youth-workers-urged-to-tackle-victorias-teen-crime/8236908>

## Divert young people from the youth justice system

### Invest in flexible diversion options along the justice continuum

#### Recommendation

- Invest in a flexible diversion options along the justice continuum, available equitably across the state

Diversion programs help young people avoid anti-social conduct by tackling the causes of their offending, including substance use, mental ill-health, and educational disengagement.<sup>137</sup> Diversion programs hold young people accountable for their behavior, but allow them to avoid the stigma of a criminal record, which can entrench offending behaviour patterns.

Youth diversion programs offer an effective alternative to detention, and reduce reoffending. For instance, almost 90 per cent of young people who completed the ROPES diversionary course for first offenders, and 61 per cent who completed the Right Step eight-week program, did not reoffend within two years, compared to 43 per cent of young people detained in a youth justice facility.<sup>138</sup> Youth diversion programs are also cost-effective. Community-based diversion, such as Youth Justice Conferencing, costs around 10 per cent of the amount required to detain someone in a youth justice facility.<sup>139</sup>

#### Youth justice group conferencing<sup>140,141</sup>

The Youth Justice Group Conferencing Program is for young people aged 10-17, who have pleaded or been found guilty of an offence serious enough for a custodial sentence or a supervision order. It aims to divert the young person from more intensive supervisory court decisions, while also holding them accountable for their offending, and helping repair the harm done to the victim and the community.

Youth Justice Group Conferencing uses a problem-solving approach to offending based on restorative justice principles. It brings together people directly involved or affected by an offence, including the young person and their family, the victims and their support people, legal representatives and the police.

With a qualified convenor, the group conference aims for the young person to understand the impact of their offending, and identify actions to repair the harm caused. An outcome plan is prepared setting out the agreements made, which is presented to the Magistrate for consideration during sentencing.

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<sup>137</sup> Smart Justice for Young People, [Youth diversion factsheet](#), July 2014.

<sup>138</sup> Smart Justice for Young People, [Youth diversion factsheet](#), July 2014.

<sup>139</sup> Smart Justice for Young People, [Youth diversion factsheet](#), July 2014.

<sup>140</sup> Smart Justice for Young People, [Youth Diversion makes sense factsheet](#), November 2014.

<sup>141</sup> Jesuit Social Services, *What is Youth Justice Group Conferencing?*, <https://jss.org.au/what-we-do/justice-and-crime-prevention/youth-justice-group-conferencing/>, accessed 21 February 2017.

An independent evaluation of the program in 2010 found the young people involved were much less likely to have reoffended within 12 to 24 months than people who received a probation order or a youth supervision order.<sup>142</sup> All victims and family members surveyed indicated they were satisfied with the process, and the program is estimated to save at least \$1.21 for every dollar invested.

Victoria has a number of effective and promising pre-court, pre- and post-plea diversion programs, but these have limited availability, are not offered consistently and experience funding insecurity.<sup>143,144,145</sup> The government can improve outcomes for young people and make the community safer by investing in the flexible range of diversion options along the justice continuum, which are available long-term and can be accessed equitably across the state.

## Legislate to enshrine diversion

### Recommendation

- Legislate to help make pre-plea youth diversion accessible to all young offenders

Establishing a statutory pre-plea youth diversion scheme in the children's court provides long-term certainty and help make diversion accessible to all young people. The Royal Commission into Family Violence recommended establishing a statutory youth diversion scheme, subject to a successful evaluation of the Youth Diversion Program pilot.<sup>146</sup>

VCOSS understands the Victorian government intends to legislate the court-based pre-plea youth diversion scheme. The diversion program builds on the Jesuit Social Services' Youth Diversion Pilot Program which has assisted more than 270 young people since June 2015. The pilot program, operating in seven Victorian courts, has received consistently positive feedback from Victoria Legal Aid, police prosecutors and the broader court network, with 94 per cent of participants successfully completing the program.<sup>147</sup> Early findings indicate many positive effects for young people, including improved engagement in education, improved mental health, and better employment prospects.<sup>148</sup>

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<sup>142</sup> KPMG, *Review of the Youth Justice Group Conferencing Program – Final report*, Department of Human Services, September 2010, Melbourne, Victoria.

<sup>143</sup> Smart Justice for Young People, [Youth Diversion makes sense factsheet](#), November 2014.

<sup>144</sup> Sentencing Advisory Council, *Sentencing Children in Victoria: Data Update Report*, Sentencing Advisory Council, Melbourne, July 2016.

<sup>145</sup> L Jordan and James Farrell, *Juvenile Justice Diversion in Victoria: A Blank Canvas?*, *Current Issues in Criminal Justice*, Volume 24 Number 3, March 2013, p.437-8.

<sup>146</sup> State of Victoria, *Royal Commission into Family Violence: Summary and recommendations*, Parl Paper No 132 2015-16, March 2016, p. 79.

<sup>147</sup> Jesuit Social Services, [To address youth offending, we must look to the evidence of what works](#), 25th July, 2016.

<sup>148</sup> Jesuit Social Services, [To address youth offending, we must look to the evidence of what works](#), 25th July, 2016.

## Establish an Aboriginal youth cautioning program

### Recommendation

- Establish an Aboriginal youth cautioning program

Police officers can caution Aboriginal young people for first time and less serious offences. This reduces further offending, especially when young people are also referred to diversionary programs.<sup>149</sup> Aboriginal young people are less likely to receive a caution or warning for committing an offence, compared with non-Aboriginal young people.<sup>150</sup> The Government can help change this disparity, and divert young Aboriginal people from crime by establishing a Koori youth cautioning program.

A Koori youth cautioning pilot commenced in Morwell and Mildura in 2007. It worked to increase police cautioning rates for Aboriginal young people, and decrease future police contact rates using diversion strategies. The Victorian Aboriginal Legal Service reached out to Aboriginal young people coming into police contact, helping divert them from the criminal justice system and linking them with support.

The pilot concluded in 2008, resulting in a 45 per cent increase in cautioning in Mildura and a 32 per cent increase in Morwell.<sup>151</sup> Despite being a part of the Aboriginal Justice Agreement Phase 3,<sup>152</sup> the program has not secured ongoing funding or been expanded to other regions.

## Provide intensive support for young people committing a high volume of offences

### Recommendation

- Fund intensive case-management and family support for the small number of young people committing large numbers of offences

The Crime Statistics Agency identifies 182 young people in the 'high offender' category. This small group commit almost one quarter of all offences by young people in Victoria.<sup>153</sup>

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<sup>149</sup> Jesuit Social Services, *Thinking Outside; Alternatives to remand for children*, 2013.

<sup>150</sup> State Government, *Victorian Government Aboriginal Affairs Report 2016*, Department of Premier and Cabinet, November 2016

<sup>151</sup> Victorian Aboriginal Legal Service, *Practical Recommendations for Diversion*, March 2016.

<sup>152</sup> *Victorian Aboriginal Justice Agreement Phase 3 (AJA3) A partnership between the Victorian Government and Koori Community*, Koori Justice Unit, Victorian Government Department of Justice, Melbourne, March 2013, p.12.

<sup>153</sup> P Sutherland and M Millsted, *In brief: Patterns of recorded offending behaviour amongst young Victorian offenders*, Number 6, Crime Statistics Agency, September 2016.

These young people could be assisted to reform their behaviour by providing intensive case management in the community, from highly skilled staff.<sup>154,155</sup> This may require after hours and weekend support, and two case workers for a period of time. Assertive outreach can help identify these young people and deliver support in their community.<sup>156</sup>

VCOSS members report there are between 180 and 500 young people who are involved in repeat serious offending. This group is small enough to provide targeted, intensive interventions to each individual young person and their family. VCOSS members report police and services providers often know these young people, but do not have the resources or flexibility to provide the intensive support required. Some good programs exist, but they do not have the resources to cater for this group.

Providing comprehensive, multidisciplinary interventions can help address the complex issues they may face, including mental health difficulties, experience of trauma, problem drug and alcohol use, housing instability and disengagement from education or employment.<sup>157</sup> Engaging with the young person's family and community can also strengthen family support and build their social and cultural connections, along with tailored programs that build their skills and promote pro-social behavior.

Taking the time to understand the young person's passions and interests, as well the issues they face, can help foster respect and build trust and better tailor interventions.<sup>158</sup> Case managers can then work alongside these young people to build the scaffolding needed to address their issues, develop their skills and help set them on a positive pathway.

Further research may be required on the risk and preventative factors and the best response for the young people committing a high volume of offences.<sup>159</sup> However, lessons about effective practice, can be learnt from existing models of intensive case management support, such as the Youth Justice Community Support Services. The below case study highlights what can be achieved when a worker forms an influential relationship with a young person and their family involved in high-volume offending and offers practical assistance to get on a positive pathway.

### Case study – Okoth's Story

In 2006, Okoth\* moved to Australia from a refugee camp in South Sudan. He was 6 years old and had experienced substantial trauma, experiencing war and violence in Sudan and

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<sup>154</sup> J Edwards, *Dealing with young offenders is difficult, but not impossible*, the Age, November 2016, <http://www.theage.com.au/comment/dealing-with-young-offenders-is-difficult-but-not-impossible-20161128-gszb9r.html>, accessed 21 February 2017.

<sup>155</sup> L Jordan and James Farrell, *Juvenile Justice Diversion in Victoria: A Blank Canvas?*, Current Issues in Criminal Justice, Volume 24 Number 3, March 2013, p.431.

<sup>156</sup> YSAS, *YSAS Snapshot: Findings from the assertive outreach initiative with African-born young people*, October 2013.

<sup>157</sup> J Edwards, *Dealing with young offenders is difficult, but not impossible*, the Age, November 2016, <http://www.theage.com.au/comment/dealing-with-young-offenders-is-difficult-but-not-impossible-20161128-gszb9r.html>, accessed 21 February 2017.

<sup>158</sup> YSAS, *YSAS Snapshot: Findings from the assertive outreach initiative with African-born young people*, October 2013.

<sup>159</sup> P Sutherland and M Millsteed, *In brief: Patterns of recorded offending behaviour amongst young Victorian offenders*, Number 6, Crime Statistics Agency, September 2016.



the subsequent refugee journey through Egypt (where they spent two years in an urban refugee enclave) before arriving in Melbourne on Humanitarian Visas.

As a teenager Okoth began engaging in anti-social type offending and was on bail for a series of offences relating to violent offending, including aggravated burglary and assault. Okoth's older brother, Kato, was incarcerated in a youth detention facility for similar violent offending.

At age 16, Okoth came in contact with Youth Support and Advocacy Services (YSAS), initially through attending the YSAS after-hours drop-in program and then through a chance meeting at the Dandenong Magistrate's Court. The worker discovered Okoth had several court matters coming up but that he had 'no idea' when or what he had to do to prepare and had not been attending his youth justice workers appointments, required as part of his bail conditions. The worker offered to assist Okoth with his court appearance and his regular youth justice appointments. The worker provided Okoth with intensive support, including collecting him from his family home and driving him to these appointments.

During this time, the worker got to know Okoth and his mother, Aba\* and assisted them with other issues. Aba reported heated conflicts with Okoth and was experiencing difficulties raising teenage boys when dealing with a new culture, especially with English as a second language. The worker formed a deep connection and Aba and helped her recognise the impact of trauma and the effect it has had on the entire family. The worker suggested some parenting strategies to help to relieve conflict and reduce the instances of Okoth staying away from home with his friends and engaging in anti-social type offending. The worker also connected Aba with a range of supports, including low-cost legal support.

Over time, Aba reported these parenting strategies were effective. While initially dismissive of the effects of trauma, Aba saw the value in this and asked the YSAS worker to meet with a group of other mothers from the local African-Australian community and discuss similar issues they experienced with their children.

Okoth had been expelled from a local secondary college earlier in the year, but expressed interest in returning to school. The worker helped enrol Okoth in another school, however, shortly after Okoth was arrested for motor vehicle theft and remanded for two weeks. While the school accepted him back, Okoth was struggling to stay interested and engaged. Through their trusting relationship, the worker discovered Okoth wanted to become a builder so he could one day return to Sudan and rebuild his family village, destroyed in the civil war. The case worker helped Okoth enrol in a building course at a local TAFE and with the teacher developed strategies to engage and keep Okoth in the course. Okoth soon formed a genuine bond with the teacher, who stuck by him during this period. Okoth successfully completed the course and recently gained regular work with local builders, who are hoping to take him on as an apprentice.

\*names changed to protect identify



# Improve remand responses

## Reduce the number of young people on remand

### Recommendations

- Provide bail support and services allowing young people to remain in their community, whenever appropriate
- Speed up the Court's ability to process remand cases

When a young person is arrested for a suspected criminal offence, they can be held in custody on remand before entering a plea, while awaiting trial, during trial or awaiting sentence.<sup>160</sup> The number of young people on remand has more than doubled in the last 5 years. The average number of young people on remand on any given night in Victoria rose from 35 in 2012, to 62 in 2015, and to 71 in 2016.<sup>161</sup> Completed periods of remand are more likely to be followed by a community-based sentence in Victoria,<sup>162</sup> indicating any threat to community safety is not driving the increase.

Rather, VCOSS members report it largely results from 2013 Bail Act changes making bail condition breaches an offence.<sup>163,164</sup> These changes mean children are remanded for minor or 'technical' bail breaches such as a curfew breach. These minor breaches do not involve new charges, and do not cause harm or affect community safety.<sup>165</sup> VCOSS members also report people with cognitive impairment may not understand their bail conditions and are more likely to breach them.

Bail amendments in 2016 reversed some of the changes, meaning children are no longer charged with breaching bail conditions, however remand figures have remained high. As of January 2017 nearly half of all young people in youth justice centres were on remand.<sup>166</sup>

Some young people are held on remand, rather than granted bail, because of an inability to meet strict bail conditions or inadequate support in particular, a lack of appropriate accommodation or no

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<sup>160</sup> K Richards and L Renshaw, *Bail and remand for young people in Australia: A national research project*, AIC Reports, Research and Public Policy Series 125, Australian Institute of Criminology, Canberra, 2013.

<sup>161</sup> Australian Institute of Health and Welfare, *Youth detention population in Australia 2016: Supplementary Tables*, December 2016, p. 14.

<sup>162</sup> AIHW, *Young people in unsentenced detention: 2014–15*, Youth justice fact sheet no. 67, AIHW August 2016.

<sup>163</sup> Jesuit Social Services, *An escalating problem: Responding to the increased remand of children in Victoria*, JSS, October 2015.

<sup>164</sup> Sentencing Advisory Council, *Sentencing Children in Victoria: Data Update Report*, Sentencing Advisory Council, Melbourne, July 2016

<sup>165</sup> Smart Justice for Young People, *Less young people being sentenced to youth detention, but an unacceptable number of young people are in detention on remand*, August 2014.

<sup>166</sup> Victorian Ombudsman, *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville*, February 2017, p. 3.

family support or other adult supervision available.<sup>167</sup> Members also report there is inadequate afterhours bail services, and limited bail services in rural areas, which can contribute to high numbers of children and young people being remanded in custody.<sup>168</sup> VCOSS members report some young people are remanded in custody by accumulating multiple minor offences, when no diversion or support was provided.

Well-resourced bail support which help young people obtain bail and meet bail conditions can help young people remain within their community, reducing the numbers held on remand. Making bail services available afterhours and on weekends and available equitably throughout Victoria, will help young people arrested out-of-hours or in rural areas to access bail supports. Providing well-resourced holistic bail support can help young people meet their bail conditions, and help address the underlying issues of their offending, case management, assistance with accommodation, reengagement in education and employment, mental health and AOD support, and family support. VCOSS welcomes the Victorian government's commitment to expand the Youth Justice Bail Supervision scheme state-wide and expand the Central After Hours Assessment and Bail Placement Service, helping reduce support gaps.

VCOSS members report lengthy delays in court processes, increasing the time young people spend on remand.<sup>169</sup> Faster court decisions reduce the time spent on remand, meaning fewer custodial places are required in youth justice facilities.

## Provide holistic support to young people on remand

### Recommendation

- Provide comprehensive services and support to young people on remand.

Being remanded in custody significantly affects young people's lives, separating them from family, friends and community and disrupting education or employment.<sup>170</sup> While on remand, young people cannot access some services and support available to sentenced young people, limiting their rehabilitation opportunities.

Being held in custody can negatively impact young people's mental and physical well-being.<sup>171</sup> In particular, the uncertainty young people experience on remand can have negative psychological

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<sup>167</sup> Sentencing Advisory Council, *Sentencing Children and Young People in Victoria*, April 2012.

<sup>168</sup> Jesuit Social Services, *An escalating problem: Responding to the increased remand of children in Victoria*, JSS, October 2015.

<sup>169</sup> K Richards and L Renshaw, *Bail and remand for young people in Australia: A national research project*, AIC Reports, Research and Public Policy Series 125, Australian Institute of Criminology, Canberra, 2013.

<sup>170</sup> K Richards and L Renshaw, *Bail and remand for young people in Australia: A national research project*, AIC Reports, Research and Public Policy Series 125, Australian Institute of Criminology, Canberra, 2013.

<sup>171</sup> B Holman and J Ziedenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, Juvenile policy institute, 2013.

and social effects, including feelings of anxiety and hopelessness, and withdrawing from social contact both inside and outside the youth justice centre.<sup>172</sup> The youth parole board notes young people displaying patterns of “*unsettled behaviour on remand*.”<sup>173</sup>

Being remanded in custody can increase young people’s reoffending, from the influence of living with more serious offenders, and by demystifying youth detention, reducing deterrent effects.<sup>174,175</sup>

Remand costs are higher than community based supervision.<sup>176</sup> The increase in remand numbers places pressure on youth justice facilities. As identified by the Ombudsman’s investigation, overcrowding in Victoria’s youth justice facilities results in “undesirable mixing of young people of varying ages”, as well as mixing remandees with sentenced offenders.<sup>177</sup>

Increasing the availability of interventions and support to young people on remand can improve their health and wellbeing and help address issues they face.

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<sup>172</sup> K Richards and L Renshaw, *Bail and remand for young people in Australia: A national research project*, AIC Reports, Research and Public Policy Series 125, Australian Institute of Criminology, Canberra, 2013.

<sup>173</sup> Department of Health and Human Services, *Youth Parole Board Annual Report 2015–16*, Victorian Government, Melbourne, August, 2016.

<sup>174</sup> Jesuit Social Services, *An escalating problem: Responding to the increased remand of children in Victoria*, JSS, October 2015.

<sup>175</sup> A Roy, B McGill and L Fenn, *Children & young people with complex needs in the ACT youth justice system: Criminal justice responses to mental health conditions, cognitive disability, drug & alcohol disorders, and childhood trauma*, Office of the ACT Children & Young People Commissioner, March 2010

<sup>176</sup> Jesuit Social Services, *An escalating problem: Responding to the increased remand of children in Victoria*, JSS, October 2015.

<sup>177</sup> Ombudsman Victoria, *Whistleblowers Protection Act 2001 Investigation into conditions at the Melbourne Youth Justice Precinct*, October 2010.

**Victorian Council of Social Service**

Level 8, 128 Exhibition Street,  
Melbourne, Victoria, 3000

e [vcoss@vcoss.org.au](mailto:vcoss@vcoss.org.au)

t 03 9235 1000

[www.vcoss.org.au](http://www.vcoss.org.au)

