



**“Entrenching diversion in the youth justice system”**

**SMART JUSTICE FOR YOUNG PEOPLE’S**

**RESPONSE TO DIVERSION DISCUSSION PAPER**

**“Practical Lessons, Fair Consequences: Improving Diversion for  
Young People in Victoria”**

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## About Smart Justice for Young People

Smart Justice for Young People is a broad coalition made up of youth advocates from community legal centres, youth services, peak bodies, and other community organisations interested in the legal and justice issues of young people. Launched in November 2011, the work of Smart Justice for Young People is informed by an evidence-based human rights approach to youth justice and policing issues.

Smart Justice for Young People seeks to engage with Government about a range of youth justice issues including the need for a coordinated and comprehensive approach to diversion for young people under 18 years.

Early in 2012 a Diversion Working Group was formed. Members include:

- Youthlaw
- Youth Affairs Council of Victoria (YACVic)
- Victorian Council of Social Services (VCOSS)
- Jesuit Social Services
- Whitelion and Open Family
- YMCA Victoria – Youth Services
- Barwon Youth
- Youth Support and Advocacy Service (YSAS)
- Youth Connect
- Federation of Community Legal Centres
- Centre for Multicultural Youth
- Victorian Aboriginal Legal Service
- Centre for Excellence in Child and Family Welfare
- Law Institute of Victoria
- headspace

Members of the Working Group have developed a joint response to the Government's Diversion Discussion paper by outlining:

- A. Key principles that we believe should underpin a diversion framework; and**
- B. Recommendations to improve the diversion system for young people**

Individual member organisations will either endorse the response by letter or in their more detailed submissions responding to the various discussion paper questions.

## PART A - Principles

In response to Questions 19 and 20 of the Discussion Paper, Smart Justice for Young People has identified the following principles that must underpin any diversion framework for young people:

### Principle 1

Community safety requires long-term solutions to both prevent children & young people from offending and to stop them progressing through the criminal justice system.

### Principle 2

Children and young people will be diverted from the justice system before court proceedings are initiated 'whenever *appropriate and desirable*<sup>1</sup>, and after court proceedings have been initiated (i.e. post-summons or charge). A child should not be arrested and criminal proceedings are not to be instituted against a child if there is an alternative and appropriate means of dealing with the matter. Where criminal proceedings are appropriate, the diversionary principles in the *Children Youth & Families Act 2005* (Vic) apply, including custody being a measure of last resort.

### Principle 3

A primary focus of diversion is supporting and rehabilitating children and young people who are vulnerable or at risk of coming into contact with the youth justice system, by managing and reducing their identified risk factors and strengthening and sustaining protective factors.

### Principle 4

Consistent & equitable access for children & young people to diversion options requires a legislated diversion framework covering both pre-court options (i.e. police cautioning) and court options.

### Principle 5

The rights, needs and best interests of the child or young person will be taken into account in all decisions involving a young person. Diversion measures are available to all children and young people regardless of race, sex, gender, ethnic origin, status, religion, ability and place of residence.

### Principle 6

Diversion programs are flexible, culturally safe and relevant and tailored to individual needs, gender, and circumstances of the child or young person within the context of their culture, family, community and peers. Culturally specific diversion programs are offered for particular cultural groups who are overrepresented in the youth justice system. Koori specific diversion initiatives and programs with Koori staff members are made available as an option for young Koori offenders.

### Principle 7

Diversion options for a child or young person who has offended should be focused on supporting and encouraging them to accept responsibility & be accountable for their actions.

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<sup>1</sup> "Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected" (From CRC Art 40).

### **Principle 8**

Children and young people should be supported to engage meaningfully with and have their voices heard in any decisions made during the referral and the diversion process. Children who are alleged to have committed an offence are entitled to be informed about their right to obtain legal advice and to have an opportunity to obtain that advice. Young people should be supported to understand and make informed choices about whether to participate in any diversionary programs.

### **Principle 9**

Police must responsibly exercise their discretionary power to divert a child or young person from formal proceedings, on the basis of established criteria and practice guidelines, taking into account their specific circumstances and needs.

### **Principle 10**

An integrated whole-of-government and whole-of-community services system approach to diversion requires innovative approaches to funding that recognise the interface between legal and welfare interventions and the savings that will be made from long-term and appropriate levels of resourcing in this area.

### **Principle 11**

Diversion programs, initiatives and services are grounded in evidence and are regularly evaluated to ensure effectiveness and efficiency. All evaluations and any program design must be informed by the perspectives and voice of young people involved in or affected by diversionary schemes.

## **PART B: Recommendations to improve diversion for young people in Victoria**

In response to Questions 2, 3, 4 and 11 of the Discussion Paper, Smart Justice for Young People maps out the programs and supports currently in the system and makes recommendations that strengthens programs and strategies that have been proven to work or address limitations and gaps in the system.

In this response Smart Justice For Young People maps the youth justice system as a continuum encompassing five stages, with options at each stage along the continuum for diversion to occur. An important point of diversion is early intervention with the best outcomes associated with preventing individuals from coming in contact with the justice system. However the majority of young offenders will be diverted from the justice system by police.

The five stages of the continuum we examine are:

**Stage 1 At risk young person comes to the attention of community organisations, schools or police (early intervention)**

Practitioner, community or police have identified at risk behaviour and linked young person and/or their family into community support services to address issues underlying the behaviour.

**Stage 2 Young person has contact with police in relation to alleged offending (pre-charge/ pre court diversion)**

Where matters do not proceed to Court as an unofficial caution or warning or formal police caution has been issued, and/or the young person may have been referred to support services and successfully completed an activity/ program.

**Stage 3 Young person is charged with offence and required to appear at Court (pre-plea diversion)**

Offences that have proceeded to Court, however before entering a formal plea of guilty the young person is assessed as suitable for diversion. Upon successful completion of the diversion program the matters are dismissed. This leads to no disclosable criminal record as there is no formal finding of guilt.

**Stage 4 Young person is charged with offence and required to appear at Court (post-plea / pre-sentence diversion)**

Offences for which a plea of guilty has been entered but the magistrate is yet to finally determine which sentence to give. Sentencing is deferred for the young person to participate in diversion. The outcome may lead to a reduction in the sentence, such as avoiding a supervisory order or detention in appropriate circumstances. An example is Group Conferencing program.

**Stage 5 Young person is at risk of remand /custody (bail support diversion)**

Offences that have lead to a young person being at risk of remand.

### **Key priorities for change**

We stress that the most critical overall improvement is the introduction of a state-wide legislated diversion framework for the diversion of children and young people from court proceedings wherever possible.

The proposed legislation would provide a graduated hierarchy of diversion for young offenders starting with police warnings, formal cautions, to direct referral to an appropriate diversion support program. Diversion may be given by Victoria Police or the Children's Court.

The legislative framework would be funded and coordinated by Department of Human Services, to ensure consistent and equitable access to diversion for all eligible children and young people across the state.

The scheme would have a rehabilitative focus, referring children and young people to appropriate support services. This would require dedicated funding of a graduated range of diversion programs run by non-government organisations ranging from low level consequential activities to more intensive individualised case-managed interventions that may be provided for a period of 6 months or longer.

## Summary of recommendations

**Recommendation 1-** Implement recommendations from *Protecting Victoria's Vulnerable Children Inquiry* via the whole-of-government strategy for vulnerable children and families, *Victoria's Vulnerable Children – Our Shared Responsibility*, which the Government is currently developing.

**Recommendation 2** - Explore SupportLink being more effectively promoted, local support services being resourced to be part of the referral base, and Victoria Police Officers trained in making referrals .

**Recommendation 3** - Expand the Youth Support Service program to ensure these are available to young people on child protection orders.

**Recommendation 4** - Introduce a state-wide, legislated diversion framework for the diversion of children and young people from court proceedings wherever possible and linkage of children and young people to appropriate rehabilitative and support services.

The proposed legislation would provide a graduated hierarchy of interventions for young offenders starting with warning, then formal cautions, or direct referral to an appropriate diversion program. Under the proposed legislation where police elect not to issue a warning, caution or referral, but rather proceed with charges, a Magistrate may also caution or refer a young person to an appropriate diversion program. If the diversion program is successfully completed by the young person, proceedings are dismissed and no criminal record results.

**Recommendation 5** – Refund and expand the Victorian Aboriginal Legal Service's Police Cautioning and Youth Diversion Program state-wide.

**Recommendation 6** - Expand Youth Support Service to allow youth workers to support children and young people who are in contact with the criminal justice system.

**Recommendation 7** - Implement recommendations of the *Supporting young people in police interviews*, Final Report<sup>2</sup>, including changes to legislation to clarify the role of the 'independent person' / 'support person', and improving the administration of the state-wide YRIPP scheme of trained volunteers.

**Recommendation 8** - Make resources available for coordination, assessment of young offender's circumstances and risks, and dedicated funding of a range of diversion programs including intensive individualised case-managed programs and support services run by non-government organisations.

**Recommendation 9** - Maintain the Youth Group Conferencing Program and explore the applicability of the group conferencing model at the earlier pre-court and pre-plea stage (Stage 2 & 3).

**Recommendation 10** - Expand Children's Koori Courts to regions where there are adult Koori Court.

**Recommendation 11** - Remove exceptions for young people on child protection orders to access intensive bail support programs

**Recommendation 12** - Fund state-wide Intensive Bail Supervision Program

**Recommendation 13** - Increased availability of safe alternate accommodation for young people to avoid unnecessary remand.

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<sup>2</sup> Victorian Law Reform Commission, 2011. Accessible here: <http://www.lawreform.vic.gov.au/projects/supporting-young-people/supporting-young-people-final-report>

**Stage 1**     **At risk young person comes to the attention of community organisations, schools or police (early intervention)**

**Early intervention services currently available**

- ✓ **Early intervention and child protection system identify concerns for vulnerable children and make referrals**  
Children and families practitioners may identify concerns within a family regarding parenting, child development or other issues for which another agency or professionals can provide a specific service. Effective and timely referrals can be instrumental in connecting a family or individual members to a relevant service and successful referrals.
- ✓ **SupportLink – referral management framework for Victoria Police**  
Police identify young person or family who present with support issues and refer them to appropriate local support services via a single referral gateway.<sup>3</sup>

*Limits:* Lack of awareness of some local support services about the database, and the process for being included on it. Others services such as the Victorian Aboriginal Legal Service who are on database report not receiving referrals from Victoria Police.

- ✓ **Early intervention - Youth Support Service (YSS)**  
DHS funded early intervention program aimed at addressing the underlying causes of youth crime and preventing low risk young people from entering the youth justice system. Police directly refer young people aged between 10 and 17 years, at risk of becoming involved in or in the early stages of involvement with youth justice, to a youth worker for general casework support and links to relevant services and programs.

*Limits:* excludes young people on youth justice or child protection orders, or young people already in contact with the criminal justice system.

**Recommendations to improve early intervention**

**Recommendation 1-** Implement recommendations from *Protecting Victoria’s Vulnerable Children Inquiry* via the whole-of-government strategy for vulnerable children and families, *Victoria’s Vulnerable Children – Our Shared Responsibility*, which the Government is currently developing.

These recommendations include:

- Area-based planning and coordination of family services,
- Prioritising support programs to be delivered in communities where there is a high concentration of vulnerable children and families, and
- ‘Expand[ing] upon the existing local Alliances of family services and statutory child protection services to develop broader Vulnerable Child and Family Service Networks’ (Rec. 17).

We also note the importance of the Government developing the five year plan for children in out of home care, as discussed in *Victoria’s Vulnerable Children – Our Shared Responsibility Directions Paper*.

**Recommendation 2** - Explore SupportLink being more effectively promoted, local support services being resourced to be part of the referral base, and Victoria Police Officers trained in making referrals .

**Recommendation 3** - Expand the Youth Support Service program to ensure these are available to young people on child protection orders.

<sup>3</sup> For more information, see <http://www.supportlink.com.au/>

**Stage 2**      **Young person has contact with police in relation to alleged offending (pre-charge/ Pre Court Diversion)**

**Diversion options currently available**

✓ **Police warnings, informal and formal cautions**

**Police Cautioning program**

Informal cautions and warning (not recorded)

Official warnings at police station - discretion and process guided by Victoria Police Manual.

*Limits* – Police decisions in relation to the cautioning of young offenders are at times have been uneven and inconsistent between individual officers, between stations and regions, raising questions about whether police discretion has been properly exercised.

**Victorian Aboriginal Legal Service - Police Cautioning and Youth Diversion Program**

This program commenced as a pilot in 2007 acknowledges the need for Indigenous Australian inclusion in the development and delivery of programs to ensure they are culturally sensitive and involve family and support people. It also contains a referral/follow up component 2-6 weeks after the caution to 'check-in' on the progress of the offender since receiving the caution.

If police do not give a caution they must complete a 'Failure to Caution Form' which provides a reason why no caution was given.

*Limits:* Currently unfunded and stagnant

✓ **Drug Diversion**

When the police apprehend people with small (non-trafficable) quantity illicit substances, they can offer these offenders access to drug education, assessment and treatment through the Drug Diversion, CREDIT Bail Support and RODDW programs.

**Drug Diversion Program** Offenders are offered a caution on condition that they undertake a clinical assessment and commence drug treatment. If the offender complies with the conditions of the caution, no conviction will be recorded. Victoria Police will keep a record that the offender has received a drug caution but this information will not be released in criminal record checks.

**Rural Outreach Drug Diversion Youth Worker (RODDW)** An outreach drug and alcohol service for young people, which provides drug assessment and treatment to young people who are apprehended for a non-drug related offence and are not eligible to receive a caution and participate in the Drug Diversion program, but whose drug use is a clear factor in their offending behaviour.

✓ **Police referrals to other programs**

**Youth Referral and Independent Person Program (YRIPP)**

Police are provided with a trained, Independent Person to attend the police station and sit in on an interview with a young person under 18 years. YRIPP links young people in with local health and welfare support services, aiming to reduce the risk factors and increase the protective factors associated with youth offending.



## Recommendations to improve Pre-Court / Pre-Charge Diversion

**Recommendation 4** - Introduce a state-wide, legislated diversion framework for the diversion of young offenders from court proceedings wherever possible and linkage of children and young people to appropriate rehabilitative and support services.

- Legislation would provide a graduated hierarchy of interventions for young offenders starting with warning, then formal cautions, or direct referral to other diversion program.
- Police use of warnings (informal cautions) and cautions would be guided by the legislation and largely mirror the policy guidelines in the Victoria Police Manual. The legislation should:
  - guide but not overly restrict or complicate police discretionary decision-making, and
  - require recording of warnings, cautions and refusals to grant this entitlement.The legislation must be supported by training for police to develop their practice in diverting young people and state wide monitoring.
- Magistrates may also give a caution or refer a young person to one of a pre-court diversion option if police proceed with charges .

**Recommendation 5** – Refund and expand the Victorian Aboriginal Legal Service’s Police Cautioning and Youth Diversion Program state-wide.

**Recommendation 6** - Expand Youth Support Service to allow youth workers to support young people in contact with the criminal justice system.

**Recommendation 7**- Implement recommendations of the *Supporting young people in police interviews, Final Report*<sup>4</sup>, including changes to legislation to clarify the role of the ‘independent person’/ ‘support person’, and improving the administration of the state-wide YRIPP scheme of trained volunteers.

## Stage 3 – Young person is charged with offence and required to appear at Court (Pre-plea Diversion)

### Diversion options currently available

- **Police informant refers young person to a diversion option where available e.g. ROPES or locally-based diversion programs such as Right Step in Moorabbin.**  
Court adjourns the matter to allow young person to undertake the diversion program. If successfully completed the charges are struck out, avoiding a finding of guilt against the young person.

**ROPES** is a court diversion program which is a joint venture between Victoria Police, the Children’s Court of Victoria and municipal youth workers. Police officers are teamed up with youth offenders in the one day activity of climbing ropes. This is followed by education about the impact of a police record. If the course is successfully completed the young person is not required to appear at court and the charge is struck out.

#### *Limits:*

Police discretion to refer - Anecdotal evidence has shown refusal by police informants to refer a young person to diversion even when young person appears eligible.

Restricted to young people who have no prior criminal history and if the offence is considered relatively minor with young people who have participated in the ROPES program already being precluded from participation in the future.

Not all young people can access the Program due to geography – ROPES does not have state-wide coverage.

<sup>4</sup> Victorian Law Reform Commission, 2011. Accessible here: <http://www.lawreform.vic.gov.au/projects/supporting-young-people/supporting-young-people-final-report>

**Right Step** is a more intensive diversion program than ROPES, that is directed at the causes of offending. Once successfully referred to the program by an informant and endorsed by the Magistrate, the young person is required to engage in an intensive eight week program of case managed support. On completion of the eight weeks of the program, the Case Manager prepares a report for the Magistrate, reporting on the progress made and indicating whether or not it has been completed successfully. If the Magistrate is satisfied with the report, the young person is discharged. Right Step is a pilot and only operates out of one court in Moorabbin. Funding ends in October 2012.

*Limits:*

Only operating in Moorabbin Court  
Short-term philanthropic funding

### Recommendations to improve Pre-plea Diversion at Court

**Recommendation 4** (as applies at Court) Introduce a state-wide legislated diversion framework for the diversion of young offenders from court proceedings wherever possible and linkage of children and young people to appropriate rehabilitative and support services.

- Where police decide to proceed with charge & summons then a Magistrate may caution or refer a young person to one of the diversion options if on assessment a diversion from court would have been more appropriate.
- Where matters do proceed to court, the Children's Court will consider the prospects of diversion for all eligible young offenders based on the circumstances of their offending, the vulnerabilities of the young person and the order being contemplated. A diversion or outcome plan would be developed, the Court would consider and approve the plan and adjourn the proceedings so the young person can undertake appropriate diversion activities. If the defendant successfully completes a Court approved plan, the charges against the defendant are struck out without any disclosable finding of guilt.

**Recommendation 8** - Make resources are made available for coordination, assessment of young offender's circumstances and risks, and dedicated funding of a range of diversion programs including individualised case-managed programs and support services run by non-government organisations.

- Based on the assessment diversion or outcome plans would be developed that match and refer the young person to appropriate and available diversion options, support programs or interventions ranging from low level consequential activities (e.g. make an apology to the victim, a donation, ROPES) to higher level more intensive case-managed interventions that may be provided for a period of 6 months or longer.

*\* Coordination may replicate elements of the Magistrates Court's Criminal Justice Diversion Program.  
\* Assessment, referral and individualised case-management could replicate elements of NSW's youth justice conference system, or the Magistrate Court's Court Integrated Services Program (CISP), or involve an expansion of the DHS Youth Support Service program, incorporating successful elements of localised case-managed models such as the Right Step program or an extension of the pre-sentence case-management and reporting function of Youth Justice Officers (i.e. at the deferral of sentence stage).*

### Stage 4 Young person is charged with offence and required to appear at Court (Post-plea / Pre-sentence Diversion)

✓ **Deferral of Sentence (Youth Justice)**

Sentencing of a young person can be deferred until a later date (not more than four months away), usually to allow for the defendant's rehabilitation and participation in certain programs. This participation is monitored and reported on by a Youth Justice worker.

✓ **Youth Justice Group Conferencing**

Youth Justice Group Conferencing is a state-wide, legislated diversionary program providing a community rehabilitation intervention in the Children's Court at the pre-sentence stage. The primary aim of a group conference is to help the young person avoid further or more serious offending. It brings together those involved in an offence including the young person, their family and the victims of the crime. At the conference the young person and the other participants discuss the circumstances surrounding the offending behaviour and will agree on what needs to be done to make amends for the harm caused by the offence and prevent re-offending. An outcome plan will be prepared at the end of the conference setting out the agreements that were made. The convenor then writes a report explaining what happened in the conference and this is presented to the Magistrate to consider when sentencing.

*Limits:* Resource and time intensive  
Only available at the pre-sentence stage.

✓ **Children's Koori Court**

The Children's Koori Court is designed to reduce the number of young Koori people returning to Court. Aboriginal and/or Torres Strait Island young offenders may elect to go to the Koori Court rather than the mainstream Criminal Division of the Children's Court. Offenders must be either pleading guilty or found guilty of the offence and live in areas covered by the Children's Koori Courts. A young offender comes before a judge, a Koori Elder and family. The Court investigates what is going on in the young person's life and what help and support they need to help them stay away from Court.

*Limits:* covers areas of Heidelberg, Broadmeadows, Sunshine, Werribee, Mildura, Robinvale, Ouyen and the Sunraysia area.

**Recommendations to improve Pre-sentence Diversion**

**Recommendation 9-** Maintain the Youth Group Conferencing Program and explore the applicability of the group conference model at an earlier pre-court and pre-plea stage (Stage 2 & 3).

**Recommendation 10-** Expand Children's Koori Courts to regions where there are adult Koori Court.

**Stage 5 – Young person is at risk of remand /custody (Bail Support diversion)**

✓ **Referral to bail placement and supervision programs**

**Victorian Central After Hours Assessment and Bail Placement Service (CAHABPS).** Provides a single point of contact when police are considering refusing bail to a young person outside of business hours. During business hours, existing arrangements would continue to apply and police could contact the Youth Justice Court Officer or Community Youth Justice as required. Under police standing orders in Victoria, police must notify CAHABPS when they are considering remand of a young person and allow the young person to be in contact with a CAHABPS worker.

**Intensive Bail Supervision Program.** This program provided by Youth Justice and is currently operating in the North West and Southern Metropolitan regions of Melbourne. It is available to young people

between the ages of 10 and 18 who are at high risk of remand and require a high level of support to stay in the community prior to sentencing.

***Koori Intensive Bail Support Program*** is provided by Youth Justice and is available to young Aboriginal people aged between 10 and 18 coming before the Criminal Division of the Children’s Court in most regions.

***Court Referral Education, Drug Intervention and Treatment (CREDIT)*** is offered to offenders with substance issues as part of bail proceedings after initial arrest. Persons charged with any offence who have an immediately presenting drug problem are referred by police for assessment by a drug clinician based at the court and, where appropriate, the alleged offender is diverted into a recommended treatment regime by the magistrate as a condition of bail.

### **Recommendations to improve Bail Support Diversion**

**Recommendation 11-** Remove exceptions for young people on child protection orders to access intensive bail support programs

**Recommendation 12-** Fund state-wide Intensive Bail Supervision Program

**Recommendation 13-** Increased availability of safe alternate accommodation for young people to avoid unnecessary remand.