



**Youthlaw Submission**

to the Department of Justice in response to

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

**Discussion Paper**

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**Youthlaw gratefully acknowledges the contributions of**

**Peninsula Community Legal Centre**

**North Melbourne Legal Service**

**Victorian Aboriginal Legal Service**



**NORTH MELBOURNE LEGAL SERVICE**



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## Part A – About this submission

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### 1. About Youthlaw and collaborating Community Legal Centres

- 1.1 Youthlaw is Victoria's state-wide community legal centre for young people under 25 years. Youthlaw works to achieve systemic responses to the legal issues facing young people, through casework, policy development, advocacy and preventative education programs, within a human rights and social justice framework.

Youthlaw provides legal support, advice and representation to a significant number of children and young people having contact with police and/or dealing with criminal charges proceeding before the Children's Court.

Youthlaw developed the submission with the support of the Federation of Community Legal Centres of Victoria member centres, Victorian Aboriginal Legal Service, North Melbourne Legal Service and Peninsula Community Legal Service.

### 1.2 Victorian Aboriginal Legal Service (VALS)

VALS was established in 1973 and plays an important role in providing referrals, advice/information, duty work or case work assistance to Aboriginal and Torres Strait Islander peoples in the State of Victoria, including Aboriginal and Torres Strait Islander youth involved in the criminal justice system across the state.

### 1.3 North Melbourne Legal Service (NMLS)

NMLS has been assisting disadvantaged and marginalised young people in Melbourne's inner northern suburbs for thirty years. They work with partner organisations in their local community to provide legal assistance, community legal education and policy advocacy to promote access to justice and health and wellbeing.

### 1.4 Peninsula Community Legal Centre (PCLC)

PCLC is an independent, not for profit organisation that has been providing free legal services to Melbourne's south-eastern communities for 35 years.

The Centre has a long history of involvement with youth justice issues, beginning with its origins in disadvantaged Frankston North where many young people were caught up in the criminal justice system resulting in suspicion and distrust between police and the community. The 1990's 'Crosswire Program' was a telephone service targeting people aged 15 to 25 who found themselves at designated police stations between Friday afternoon and Monday morning. More recently the Centre has run a 'Young Renters' program to assist young people to secure and maintain private tenancies.

## 2. Scope of the submission

### 2.1 This submission:

- endorses the Smart Justice for Young People response “*Entrenching diversion in the youth justice system*” (**attached**) and,
  - focuses on building the case for improving diversion for young people in Victoria by:
    - i) **introducing a state-wide legislative framework** (in part addressing Discussion Paper questions 1,4,5,10,11, 16,19 and 20), and
    - ii) **resourcing and strengthening the range and reach of diversion support programs** (in part addressing Discussion Paper questions 2,3,6,11,12,13 and 17).
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### 2.2 Smart Justice for Young People response

Smart Justice for Young People (SJFYP) has developed this joint response to the Government’s Diversion Discussion paper by which outlines:

**PART A - Key principles** that the group believes should underpin a diversion framework (addressing questions **19 and 20** of the Discussion Paper), and

**PART B - Recommendations** to improve the diversion for young people in Victoria (in part addressing questions **2, 3, 4** and **11** of the Discussion Paper).

#### **PART A – SJFYP Principles underpinning a diversion framework**

**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.

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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 4** Consistent and equitable access for 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 children and young people 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, ethnic origin, gender, status, religion, ability and place of residence.

**Principle 6** Diversion programs are flexible, culturally safe and relevant and tailored to individual needs, 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.

**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 and in the best interests of the child. Police must be accountable for their decisions.

**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: Summary of SJFYP's recommendations to improve diversion for young people in Victoria**

### **Key priorities for change**

The most critical overall improvement is the introduction of a state-wide legislated diversion framework for the diversion of young offenders 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 SJFYP 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 children and young people on child protection orders.

**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.

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 child or 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 stages.

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

**Recommendation 11-** Remove exceptions for children and 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 children 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>

### **3. Summary of Youthlaw’s position**

#### **3.1 Definition of diversion**

Youthlaw adopts the definition of diversion as the “removal from criminal justice processing and, frequently, redirection to community support services”, as found in the commentary of the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (‘the Beijing Rules’). The Beijing Rules require that consideration is given to dealing with young people without resorting to trial, wherever appropriate, and that police, prosecutors and other agencies have authority to dispose of juvenile cases at their discretion in accordance with established criteria and principles contained in the Beijing Rules.

The Rules recognise the particular vulnerabilities of young people with most juvenile offending being episodic and transitory, with the majority of young people maturing out of criminal behaviour and not having additional contact with the youth justice system.

Australian and international research highlights the need to intervene early with vulnerable, high risk young people, with the majority of adult offenders beginning offending as juveniles, with the most serious and persistent adult offenders having been detained as juveniles. In order to facilitate the diversion of vulnerable young people, the Beijing Rules require that efforts are made to provide for community programs, such as temporary supervision and guidance, restitution and compensation of victims.<sup>3</sup>

#### **3.2 Benefits of diversion**

In essence diversion should allow a young person to get on with their lives and not be shadowed by their past criminal behaviour and criminal record. It is a whole community approach that ensures good outcomes for our vulnerable young people who know that they can blend back into the community, with supports and services in place to maintain positive pro-social behaviours and longer term life outcomes.

The commentary from the Beijing Rules emphasises that diversionary practices aim to prevent the negative effects of subsequent criminal proceedings for a young person, including the negative labelling and stigmatisation of the justice system, especially of having a criminal record.

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<sup>3</sup> Article 11 of the Beijing Rules

### **3.3 Issue's with Victoria's current diversion options for children and young people**

While there has long been a commitment to diverting young people from the justice system in Victoria, the current diversionary options available to children and young people in Victoria are inadequate and limited in range and scope.

We know from a recent Sentencing Advisory Council report that over 70% of young offenders currently found guilty in the Children's Court have received accountable undertakings, good behaviour bonds or fines.<sup>4</sup> This means they are likely to experience the harmful effects of stigmatisation that accompany formal court, in particular acquiring a criminal record (see Question 5). Many of these young people are entitled to and would benefit from diversion.

In Youthlaw's assessment, use of or referral to existing diversion programs (i.e. police warnings and cautions, ROPES, Right Step etc.) can be effective ways of avoiding or reducing the harmful effects of stigmatisation that may accompany the formal court processes and having a criminal record.

However the current system often operates in an ad hoc, inequitable, and discriminatory manner and must be improved as a matter of priority. Youthlaw and other community legal centre lawyers commonly assist children and young people being denied the opportunity to access diversion. Mostly this is a result of police informants not exercising their discretion to issue a caution or refusing to give their consent for a referral to a diversion program (i.e. ROPES). Sometimes it is because the young person is not be eligible for ROPES, however at other times we would argue this amounts to an improper use of their discretion by the informant.

We have also encountered cases where a young person has been denied diversion simply because no appropriate diversion program exists in the region they live.

Victoria needs individualised case managed diversion options for young offenders, especially those at risk of reoffending if they do not receive intensive support.

The unfortunate irony is that if these young people were 18 or older and going through the adult system, where diversion is legislated and statewide, the likelihood is that they would be offered diversion and their offending trajectory may be very different.

### 3.4 Recommendations

It is therefore timely to implement a stronger, whole-of-government approach to embed diversion principles and practices in agencies' actions and decisions impacting on children and young people who are involved in the justice system.

This submission will argue the case that this will be achieved via:

- the introduction of a state wide legislative framework ; and
- resourcing and strengthening a range of diversion support programs.

### 3.5 State-wide legislated framework

Current diversion programs for children and young people are ad hoc, often inaccessible, and operate in a patch work fashion without any legislative basis.

Youthlaw supports the call by SJFYP and a host of other stakeholders for the introduction of a state-wide legislated diversion framework for young offenders to ensure consistent and equitable access to diversion options (pre-court and at court).

#### **Recommendation 1**

Introduce legislation that:

- has as its objects: i) the diversion of young offenders from court proceedings wherever possible and ii) linking of children and young people to appropriate rehabilitative and support services.
- enacts the principles (in the SJFYP response)
- provides a graduated hierarchy of diversion options for young offenders starting with warning (unofficial cautions), then formal cautions, or direct referral to an appropriate diversion program.
- provides for access to diversion options when a young person has initial contact with police, and when matters proceed to the Children's Court.
- allows a Magistrate to also caution or refer a young person to an appropriate diversion program, where police elect not to issue a warning, caution or referral, but rather proceed with charges.
- provides guidelines for use of cautions consistent with VPM and does not overly restrict discretionary police decision making.
- sets out eligibility for diversion based on the circumstances of the offence, the vulnerabilities of the young offender, and whether diversion would benefit the

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<sup>4</sup> Sentencing Advisory Council, Sentencing Children and Young People in Victoria Report 2012, pg 28

offender, rather than considering their criminal history.

- sets out that all offences that fall within the Children's Court jurisdiction should be considered for diversion so that the only exceptions are those contained under section 356 of the *Children, Youth and Families Act 2005 (the Act)*<sup>5</sup>.
- only allows for commencement of criminal proceedings if a young person is not entitled or eligible to be dealt with by diversionary options.
- makes it clear that a successful completion of diversion program will result in the dismissal of matter/s and hence no criminal record.

### 3.6 Resourcing and strengthening diversion programs

Youthlaw recommends that a legislated youth diversionary framework be funded and coordinated by the Department of Human Services. Centralising the coordination of diversion services with Department of Human Services will help promote a more cohesive and comprehensive system in terms of service delivery, identification of service delivery gaps, improved coverage of rural and regional areas and stable and transparent funding arrangements across the continuum of the youth justice system.

Dedicated funding is required for graduated diversion options ranging from low level consequential activities to more intensive case managed interventions. While Victoria has a range of diversion programs provided by government and non-government agencies, at different stages of the continuum, some of these programs are only operating in limited regions or localities, or have unnecessarily strict eligibility guidelines or have no ongoing funding.

The Government needs to commit ongoing, dedicated funding for programs like Youth Support Service, and Victorian Aboriginal Legal Service's Police Cautioning and Youth Diversion Program.

Another focus of Government should be resourcing individually tailored, evidence based programs that provide case-managed support to address complex needs of young people who are at risk of entering the criminal justice system, or progressing in the criminal justice system. Apart from some locally based programs such as Youth

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<sup>5</sup> These offences included murder, attempted murder, manslaughter, arson causing death and culpable driving causing death

Connect's Right Step program, there is a dearth of intensive and targeted diversion programs.

Intensive Bail supervision provides essential case managed support for children and young people at risk of remand and needs to be offered across the state.

**Recommendation 2:**

The legislated youth diversion framework be funded and coordinated by the Department of Human Services

**Recommendation 3:**

Commit ongoing funding and expand Youth Support Service to allow youth workers to support young people who have made contact with the criminal justice system, and young people on child protection orders.

**Recommendation 4:**

Re-fund and expand the Victorian Aboriginal Legal Service's Police Cautioning and Youth Diversion Program state-wide.

**Recommendation 5:**

Increase Government resourcing of intensive case-managed diversion programs run by non-government organisations that police or courts can refer to at pre-court or pre-plea stages .

**Recommendation 6:**

To continue a state wide expansion of the bail supervision program for young people and remove the exclusion of young people who are on child protection orders.

**Recommendation 7:**

The Victoria Government to research and pilot programs to determine the viability and impact of justice reinvestment in the youth justice space in Victoria.

## Part B – A state-wide legislative framework

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### 4. Lack of accessibility of current diversion options (relates to question 10)

#### 4.1 Access limited by police informants refusing diversion

Young people's entry to diversion is subject to police discretion. Police decide who will be diverted through informal and formal cautions, and they act as a primary gatekeeper to diversion programs such as Youth Support Service, the ROPES program and Right Step programs.

#### Cautions

##### ***Current practice in Victoria***

Victoria is now the only state in Australia which does not provide for police cautioning within its youth justice legislation.

Under the Victoria Police Cautioning Program, Victoria has two levels of cautions that are used by the police, informal and formal cautions. Informal cautions are not formally recorded and can be given by any police member.

The current procedure for a formal caution is outlined in the *Victoria Police Operating Procedures Manual (the VPM)*. The Guidelines refer to evidence that suggests that the later a young person enters the criminal justice system, the less likely they are to have continued involvement. Therefore, prosecution of a child should always be regarded as a severe step, and a much stronger case can be made for taking action which falls short of prosecution (unless the seriousness of the offence or the circumstances of the child concerned dictate otherwise). In deciding whether or not to prosecute a child, regard should be had to a number of specific considerations including:

- seriousness of the offence,
- age and apparent maturity (including cognitive, social or emotional development)
- available alternatives to prosecution, such as a caution or diversion
- drivers to the offending behaviour (what caused or led to the offending taking into account family, peers, school or community factors)
- whether prosecution would be likely to be harmful to the child or be inappropriate, having regard to drivers to offending behaviour and family/environmental factors
- any previous enforcement action taken and result, particularly to ascertain if it addresses the causal factors contributing to the offending behaviour.

### ***Problems with current practice***

Despite in general terms the Victorian Police Cautioning program being reasonably accessible to young people there is significant evidence relating to the uneven and inconsistent use of cautions with young offenders that raise questions about whether some police discretion has been properly exercised.

Victoria Police currently has the lowest rate of diversion among all Australian states and Territories (Richards 2009), particularly in relation to the issuing of cautions, which the Organisation has acknowledged to be a result of 'a general lack of knowledge within the Operational environment regarding the long-term benefits of effective diversion processes' (Victoria Police 2009:10).

Analysis of Victoria Police cautioning data in an unpublished research study by Dr Lucinda Jordan and James Farrell from Deakin University's Centre for Rural Regional Law and Justice, reveals an ad hoc approach to cautioning across the state. Overall formal cautioning rates for 2010-11 range from as little as 14 per cent in the Metropolitan Division ND1 (Melbourne and Yarra), to 31 per cent in the Metropolitan Divisions of ND2 (Hobsons Bay, Maribyrnong and Wyndham) and SD4 (Frankston and Mornington Peninsula). Variances are even greater where data was analysed by offence type, with the proportion cautioned for crimes against the person ranging from 22 per cent in Horsham to 1per cent in Melbourne/Yarra.

Another issue of particular concern has been the apparent differential treatment of Aboriginal and Torres Strait Islander young people, who have been found to be less likely than non-indigenous young people to be cautioned or referred to diversionary processes.

Through the legal casework practice, Youthlaw is aware of numerous cases where young people under 18 have not been afforded a caution, even though under their circumstances appear to fall within the VPM guidelines. Here is one such case-study.

#### **Case study 1**

##### **17 year old with intellectual disability refused warning & fined for spitting**

Ben (not his real name) a 17 year old with an intellectual disability, who had dropped out of school, and was living on a disability support pension, was approached by two transport police officers at Flinders Street Station. The officers tried to talk to Ben but he did not wish to talk.

Then officers asked his name & address – which Ben provided. No reason was given for the questioning.

When his train arrived Ben looked between the train & the platform to see if he had dropped anything, at which time officers believed he had spat. The police followed Ben on to the train and made Ben get off the train at Southern Cross where they fined him for spitting.

The fine was not withdrawn on internal review by Victoria Police and the matter was referred to the Children’s Court. In the interim, Youthlaw submitted a complaint regarding the police’s failure to withdraw the fine and issue a warning. Ben’s file was reviewed and the fine withdrawn and a warning issued.

A broader concern is that many young people are being issued fines for public order offences without being afforded the benefit of either an unofficial warning or a caution. Youthlaw submits that where a young person is apprehended for infringement offences and qualifies for a caution under the VPM, an infringement notice should not be issued.

We are concerned that the relative ease of issuing infringement notices for minor matters may result in net-widening, with the police more likely to issue infringement notices instead of warnings or cautions.

### **Referral to diversion programs**

A young offender’s access to pre-plea diversion programs such as ROPES and Right Step is subject to a police informant’s discretion and on them forming the view that the young offender would benefit from a diversionary program. Both programs require the informant agreeing to a referral. There is currently no formal appeal or review process of a police informant’s refusal to refer to diversion.

Below are a couple of case-studies that highlight instances of police informants denying a young person access to diversion via the ROPES program, despite meeting the eligibility criteria.

### **Case Study 2**

#### **16 year old refused referral to ROPES**

16 year old Max (not his real name) was drunk with friends in city and kicked in door of

car. The car happened to belong to a police officer. Max was charged with criminal damage. Max had no prior criminal history, was experiencing family conflict resulting in homelessness, had dropped out of school, and was working casually full time.

Youthlaw made submissions requesting Max be referred to ROPES as he was an appropriate candidate. The police informant refused.

At court, the Youthlaw lawyer again canvassed referral with the prosecutor's support. On a return date to court, the informant still refused and was adamant Max should not be referred.

The presiding Magistrate made strong comments about how Max should have been referred to ROPES. They found the matter proved and dismissed, however this meant Max still had a disclosable finding of guilt on the record.

### **Case Study 3**

#### **15 year old refused diversion for first time minor offences**

In 2011, 15 year old Samir (not their real name) was referred to the North Melbourne Legal Service (NMLS) for legal assistance. Samir and his family came to Australia from Africa. Samir would often help his parents to take care of his younger brothers and sisters, because the family has very little money.

Samir was caught leaving a store with jeans that he had not paid for. Samir had not planned to take the jeans, and later regretted his moment of thoughtless impulsiveness. When the police arrived, Samir changed some of the details of his name and address because he was scared and didn't want his parents to find out what he had done. Samir told the police his real name and address when he got to the police station.

Samir was charged with theft, providing a false name to police and providing a false address to police.

Samir expressed remorse for his behaviour and understood that what he did was dishonest and wrong. Samir apologised to the shop assistant and store owners for trying to take the jeans without paying and apologised to the police informant for his wrongful conduct in not giving his real name and address at the store.

NMLS believed Samir would be a very suitable candidate for the ROPES program. Unfortunately, the police informant refused to refer Samir for the ROPES program. NMLS asked the police informant to reconsider, but the police informant would not refer

Samir for the ROPES program.

At court, Samir and his NMLS lawyer watched as a number of Caucasian young people were diverted to the ROPES program for more serious offences than Samir had committed. Samir was the only African young person in the court room at the time. The Magistrate found all charges proven and dismissed without conviction, a disclosable finding of guilt that will stay on Samir's criminal record.

#### **4.2 Access limited by geography**

Young people residing in rural, regional and remote areas are less likely to have access to the current diversionary programs. The very real concern is that young offenders living in certain remote rural and regional areas are not offered the same opportunities to offenders with identical circumstances because of the difference in available diversion opportunities throughout the state. This access issue is compounded by the paucity of appropriate support services in some regional, rural and remote areas.

As previously mentioned, the Youth Support Service is not state-wide and the Intensive Bail Support program is available in limited areas as well. Right Step only operates in Moorabbin, and the ROPES program currently operates throughout metropolitan Melbourne and in several, but not all, rural regions.<sup>6</sup>

#### **4.3 Restrictive eligibility criteria for diversion programs**

Another barrier to accessing the only court based diversionary program in Victoria is its restrictive eligibility criteria. If a young person is charged with an intermediate offence, already has a record or receives more than two cautions, they are deemed ineligible to participate in ROPES.

Despite a significant nexus between young people in the child protection system and the youth justice system, children on child protection orders are not eligible for support from the Youth Support Service or the Intensive Bail Support programs.

The assumption underpinning this policy we imagine is that these children are already linked to case management support. But the well documented reality is that many of

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<sup>6</sup> ROPES is not available in Seymour, Ballarat or Warrnambool for example.

these children are not having their complex issues effectively addressed by their case managers, and require additional attention and support and should also be able to benefit from diversionary programs.

Reforms are needed to address the exclusion of child protection clients from Youth Support Service and the Intensive Bail Supervision programs, given the strong links between Youth Justice and Child Protection clients.

**Recommendation 3:**

Commit ongoing funding and expand Youth Support Service to allow youth workers to support young people who have made contact with the criminal justice system, and young people on child protection orders.

**Recommendation 6:**

To continue a state wide expansion of the bail supervision program for young people and remove the exclusion of young people who are on child protection orders.

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**5. The proposed legislation regarding the diversion of young people**

(Questions 1, 4 & 16)

Since 2009, the adult system has benefited from a Criminal Justice Diversion Program in the Magistrates' Court of Victoria, which provides mainly first time offenders with the opportunity to avoid a criminal record by undertaking conditions that will benefit the offender, victim and the community as a whole.

It is counterintuitive, if not discriminatory, that children and young people cannot access a legislated and state-wide diversion program in the Children's Court jurisdiction.

Youthlaw supports the call by SJFYP and a host of other stakeholders for the introduction of a state-wide legislated diversion framework for young offenders to ensure equity of access by children and young people across the state.

### Recommendation 1

Introduce legislation that:

- has as its objects i) the diversion of young offenders from court proceedings wherever possible and ii) link children and young people to appropriate rehabilitative and support services.
- enacts the principles (in the SJFYP response)
- provides a graduated hierarchy of diversion options for young offenders starting with warning (unofficial cautions), then formal cautions, or direct referral to an appropriate diversion program.
- provides for access to diversionary options when a young person has initial contact with police, and when the matters proceed to the Children's Court.
- allows a Magistrate to also caution or refer a young person to an appropriate diversion program, where police elect not to issue a warning, caution or referral, but rather proceed with charges.
- provides guidelines for use of cautions consistent with VPM and not overly restrict or complicate discretionary police decision making.
- sets out eligibility for diversion based on the circumstances of the offence, the vulnerabilities of the young offender, and whether diversion would benefit the offender, rather than considering their criminal history
- sets out that all offences that fall within the Children's Court jurisdiction should be considered for diversion so that the only exceptions are those contained under section 356 of the *Children, Youth and Families Act 2005 (the Act)*<sup>7</sup>.
- only allows for commencement of criminal proceedings should only occur if a young person is not entitled or eligible to be dealt with by diversionary options.
- makes it clear that a successful completion of diversion program will result in the dismissal of matters and hence no criminal record.

Access to diversionary options should be available throughout each stage of the continuum, from when a young person has initial contact with police, to when the matters proceed to the Children's Court. Principles of international human rights law remind us that "*Whenever appropriate and desirable, [there should be] measures for dealing with children without resorting to judicial proceedings*", measures that "*take into account the child's age and the desirability of promoting the child's reintegration*"

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<sup>7</sup> These offences included murder, attempted murder, manslaughter, arson causing death and culpable driving causing death

*and the child's assuming a constructive role in society.*<sup>8</sup>

The proposed legislation would provide for specific guidelines and considerations in referring a young person to diversionary options, based on the circumstances of the offence and the vulnerabilities of the young person, rather than their criminal history.

Diversion is not only appropriate for first time offenders or for minor offending. A young person who has previously participated in a pre-court diversionary program or has been charged with intermediate offences, should not be precluded by the legislation from future diversion options. Progression through each stage of the continuum results in an increased risk of offending and reoffending.<sup>9</sup> Therefore eligibility for diversion should be based on whether diversion would benefit the offender rather than just considering their criminal history.

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## **5.1 Legislating police warnings and cautions**

Legislation in the majority of Australian jurisdictions includes detailed provisions on cautioning, which cover three main areas: the disposition options available to police, the factors to be taken into account in deciding how to deal with a young person, and how the caution is to be administered.

Youthlaw submits that the issuing of cautions should be legislated in Victoria. Any legislative amendment should be consistent with the VPM and should be overly restrictive or complicate discretionary police decision making.

Legislation will help institutionalise a youth policing approach where diversion is always considered an appropriate option for dealing with the majority of offenders, before summons or arrest; encourage principled and consistent decision-making; and provide a standard for police decision-making, which assists transparency and accountability.

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<sup>8</sup> CRC Art. 40

<sup>9</sup> Day, A., Howells, K. and Rickwood, D. (2004) Current Trends in the Rehabilitation of Juvenile Offenders. Australian Institute of Criminology, Trends and Issues in Crime and Criminal Justice, Number 284, p20.

Legislation and policy must be supported by training and state-wide monitoring in order to be effective.

## 5.2 Legislating checks and balances

Any legislation should contain checks and balances concerning all decisions made under the legislation.

i) Ensuring diversion is considered as a first option

Police should be required to complete a 'Reasons for charge not diversion' form based on the 'Failure to Caution form', similar to that used in the VALS Police Cautioning and Youth Diversion Program.

ii) Allowing diversionary options at court

Decisions by police may be challenged in the first instance by the court. Where a matter gets to court and the court considers that a less intrusive intervention should have occurred, the magistrate should have the ability to dismiss a charge<sup>10</sup> and/ or administer a caution<sup>11</sup> or refer the matter back to other diversion options such as ROPES. This ensures that diversionary options are not lost if police refuse to deal with the matter by way of a caution or by referrals to diversionary programs.

## 5.3 How legislated diversion works in other jurisdictions (relates to Question 16)

We have referred in our submission to elements of the NSW diversionary scheme legislated in the *Young Offenders Act 1997* (the YOA) in NSW. We are of the view the scheme addresses many of the barriers to diversion faced in Victoria by:

- having the explicit objective of diverting young people from the youth court system,
- formalising diversionary options in legislation,
- reducing the procedures associated with diversionary options (especially those that are court based),
- keeping police informant's discretion to determine the appropriateness of warnings, cautions, and referrals to other diversion options, but introducing accountability for their decision, with levels of review of determinations, and
- centralising diversion services, thereby promoting a more cohesive and comprehensive system in terms of service delivery, improved coverage of rural

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<sup>10</sup> See section 21, *Juvenile Justice Act Qld (1992)* which empowers the Children's Court to dismiss a charge made against the child by a police officer the court is satisfied that the child should have been cautioned instead of being charged. [http://www.austlii.edu.au/au/legis/qld/consol\\_act/jja1992191/s21.html](http://www.austlii.edu.au/au/legis/qld/consol_act/jja1992191/s21.html)

<sup>11</sup> Section YOA

and regional areas and stable and transparent funding arrangements across the continuum of the youth justice system.<sup>12</sup>

By way of background in NSW, the YOA provides a legislative framework for the use of cautions and warnings. Police discretion in the use of warnings, and cautions and youth justice conferences is guided to an extent not usually seen in legislation. The YOA sets out the criteria that distinguish between matters that should be dealt with by way of a warning<sup>13</sup> or a caution<sup>14</sup>, and those that should be dealt with by way of conference.

Under the YOA a child has an “*entitlement to be dealt with by warning*” for summary offences that do not involve violence and an admission of guilt is not required. Recipients of warnings (the equivalent of Victoria’s informal cautions) will be spoken to by police, and may have their name recorded in a police notebook, but in most cases, no further action will be taken. Further, no admission to the alleged offence is required. A child is not precluded from being given a warning merely because the child has previously committed offences or been dealt with under the YOA.

Under the YOA a child has an “*entitlement to a caution*” for summary offences and indictable offences, which can be dealt with summarily, if the investigating officer is satisfied that the young person meets the criteria of the YOA, and where the young person admits the offence and consents to the caution. Family members may be present at a caution, and, while victims are not present, they should be notified that the offender has been cautioned. The offender may be required to provide a written apology to the victim, but no other undertakings can be required. Police can use the caution as an opportunity to advise the young person or their parents of services that are available that may be able to assist them preventing further offending.

If an investigating officer is not satisfied that the young person is eligible for a warning or caution, the matter is then referred to a Specialist Youth Officer (SYO) who then decides to refer the matter to a youth justice conference or commence criminal proceedings

A comprehensive analysis<sup>15</sup> of the impact of legislative regulation of cautioning in NSW found that the first three years of the implementation of the YOA resulted in ‘a substantial

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<sup>12</sup> For more information, go to <http://www.djj.nsw.gov.au/>

<sup>13</sup> See sections 13 - 17 of the *Youth Offenders Act 1997* (NSW)

<sup>14</sup> See sections 18-33 of the *Youth Offenders Act 1997* (NSW)

<sup>15</sup> Regulating Police Discretion: An Assessment of the Impact of the New South Wales Young Offenders Act 1997, Jenny Bargaen, Director, Youth Justice Conferencing, New South Wales, Department of Juvenile Justice, Australia, cited 27/09/2012 at [http://www.iirp.edu/article\\_detail.php?article\\_id=Mzg1](http://www.iirp.edu/article_detail.php?article_id=Mzg1)

increase in the use of cautions and warnings, and a corresponding decline in the use of court proceedings'. It also found that the introduction of the YOA resulted in an almost 50 per cent drop in the odds of an Aboriginal first offender being taken to court

We also note that the NSW Department of Attorney General and Justice has been coordinating a Review of the NSW *Young Offenders Act 1997*. Additionally an evaluation of NSW's youth justice conferencing, being carried out by the Bureau of Crime Statistics and Research.<sup>16</sup>

## **6. Avoiding a criminal record** (relates to Question 5)

Criminal records present a significant barrier to employment and participation in society, and reintegration back into the community.

One of the aims of diversion is ensure a young person avoids the harmful effects and stigmatisation attached to having a criminal record, and assist offenders to rehabilitate, and move on with their lives. Where a young person is eligible for, and successfully completes, a pre-court or pre-plea diversion the charge should be dismissed with no finding of guilt and no criminal item recorded.

A legislative framework would make clear that a successful completion of diversion program will result in the dismissal of matters and hence no criminal record. This is an important tangible incentive for some young people to take responsibility for their actions and to reveal their issues and commit to engaging in dealing with them at an early stage.

This discussion puts into the spotlight a major flaw of the current system/ practice around criminal records. As things stand it does not matter whether a sentence is made with or without conviction, as any finding of guilt in Children's Court leads to a disclosable criminal record. This is particularly concerning in the context of Victoria not having a spent convictions legislation.

Under the Victoria Police Information Release Policy (2005), criminal history information will be released on the basis of findings of guilt rather than convictions, including findings of guilt without conviction.

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<sup>16</sup> [http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll\\_bocsar.nsf/vwFiles/cjb164.pdf/\\$file/cjb164.pdf](http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/cjb164.pdf/$file/cjb164.pdf)

The resultant release of information and confusion about the meaning of criminal records has had a dramatic impact on young people's lives and their livelihoods. People have lost their jobs, refused employment and discriminated against on the basis of trivial matters. Below is a case-study of a young man who lost his job due to his criminal record from charges processed in the Children's Court.

#### **Case-study 4**

##### **Criminal record stops Hendrick getting on with life**

Hendrick", 19 years old, grew up in DHS care and then became homeless. He had a number of shop-theft offences on his criminal record from when he was under 18 dealt with in the Children's Court.

Hendrick gave instructions to a Youthlaw lawyer that the thefts were related to "*trying to survive*" i.e. he stole clothes, food, and sometimes items to sell.

When he turned 18, he finally got a job in sales and started supporting himself to get out of the cycle of stealing. He was well regarded by his employer.

After 3 months of the job his boss required a criminal record check as part of his employment condition. Hendrick's Children's Court offences were revealed and he was fired from his job.

Hendrick is now homeless again and has no income because he has been cut off from Centrelink due to missing appointments.

Youthlaw strongly advocates that the establishment of a spent convictions scheme be introduced to address this issue, in addition to the interim measure of legislation relating to criminal records and diversion.

## Part C – Resourcing and strengthening diversion programs

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### 7. Diversionary Programs and their effectiveness (Question 2, 3, 7 and 17)

There are a number of diversionary programs, some not mentioned in the Discussion Paper, with features worth considering and modelling.

By way of general comment, it is important when looking at good diversionary practice to focus on the outcomes of the interventions i.e whether this is reducing the number of young people appearing before the court on criminal charges, and providing more young people with therapeutic programs that address risk factors associated with their offending.

There seems to be an increased focus on recidivism rates of young offenders as a key indicator of how effective youth justice intervention programs are in “reforming” young offenders. This is one indicator of good diversionary practice, however others are equally, if not more, important.

7.1 We refer to the Smart Justice for Young People response (**attached**) and make the following additional comments in relation to various diversion programs.

#### 7.2 Contact with police

##### **Support Link, Victoria Police’s referral management system**

Where Police identify a young person or family who present with support issues they may refer them to appropriate local support services via a single referral data base gateway, SupportLink.<sup>17</sup>

We understand Youth Support Service and Salvation Army is on the database and receives a substantial number of police referrals. However we also understand the Victorian Aboriginal Legal Service is also on SupportLink database, but receives few, if any, referrals.

It has been reported to us that other essential community services are not aware of the existence or operation of Support link.

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<sup>17</sup> See <http://www.supportlink.com.au/> for more information.

Youthlaw submits Victoria Police be resourced and supported to promote the database internally and externally, provide officer with critical information about the services on the database and expand the utilisation of SupportLink.

### **Youth Support Service (YSS)**

YSS is being formally evaluated through this financial year and next, but anecdotal evidence suggests that YSS is quite successful, receiving most referrals from police at the early stages of a young person's involvement with the youth justice system. Anecdotally however, Youthlaw has received feedback from workers that police in some rural regions are not referring to YSS.

Where referrals are being made YSS providers are reporting many successes with re-engaging young people back to school and improving their relationships with family, amongst other positive outcomes.

### **The Police and Community Youth Assist Program (YAP) – Frankston and Mornington Peninsula** *(not mentioned)*

YAP was a diversion program in which youth support agencies worked with police in an intervention project targeting at risk youth. The program involved youth support agencies working collaboratively in identifying and supporting young people at risk. This included young people who had committed criminal offences, were at risk of doing so, displayed anti-social behavior, were in situations of economic or social disadvantage or were victims of family violence, physical or sexual abuse. It involved individually tailoring action plans based on a case management framework.

The program was based on principles of mutual responsibility, respect and the belief that positive leaders build strong and resilient communities. A holistic approach to youth issues was adopted, recognising the intersection of family, school, employment and other issues in creating 'risk' situations. The importance of multi agency involvement was recognized and the program had the support of around 20 community agencies including Peninsula Community Legal Centre. Services included accommodation services, drug and alcohol services, legal advice, counselling, parenting advice, vocational training and mental health specialists.

The program was viewed as extremely successful within the local community, engaging significant numbers of young people with impressive results. Anecdotally, it is estimated that approximately 100 clients per annum were assisted with extremely low recidivism rates (under 5%, although longer term figures are not available).

In October 2009 YAP was a national winner of the Australian Crime and Violence Prevention Award – Police Project. Judge Paul Grant, President of the Children’s Court indicated his support for the program. Interest was expressed by various other Victorian Police Stations and by South Australia Police, although we do not believe that it progressed beyond the trial stage in any other location.

The program was evaluated by the University of Melbourne’s Youth Research Centre in 2009. Recommendations included the promotion of the model throughout the State, reinforcement of the partnership through continued funding, and funding for further follow up of participants. Despite this, in 2010 Mission Australia were required to withdraw from the program due to funding issues. It appears that without the involvement of this key agency, the program eventually disintegrated.

### **Victoria Police Cautioning program**

According to Victoria Police statistics, after one year of being cautioned most young people (80 per cent) have not reoffended and after three years 65 per cent have not reoffended (Victoria Police 2009). Victoria Police issued formal cautions to approximately one quarter of juvenile offenders processed in 2010-11.<sup>18</sup>

### **Victorian Aboriginal Legal Service (VALS) Police Cautioning & Youth Diversion Program** *(not mentioned)*

This program commenced as a pilot in 2007 in two sites, Mildura and the LaTrobe Valley, in response to the over representation of young Koori people in the youth justice system, and the need for procedures that overcome police bias in the use of diversion options for young Indigenous Victorians. It is well documented that Indigenous young people are less likely than non-Indigenous young people to be cautioned.

The program acknowledges the need to be culturally sensitive and involve family and support people to a greater extent than mainstream cautioning. The issuing of a caution may be postponed to allow a parent or guardian to be available or to choose another family member or respected Aboriginal community member to stand in for the parent or guardian.

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<sup>18</sup> Victoria Police, *Crime Statistics*, 2010-11, p. 38.

A follow up meeting occurs two to six weeks after the caution is issued. The meeting is held with the offender, police representative, family or community member, Koori Educator and any other individual who has since been involved with the offender. The purpose of this meeting is to 'check-in' on the progress of the offender since receiving the caution. The follow up process can continue for up to 3 months.

If Police do not give a caution they must complete a 'Failure to Caution Form' which provides a reason why no caution was given and this reason is reviewed to determine if it is appropriate. Under this system, Magistrates have the power to make their own determination about access to diversion which enables review of alleged discriminatory practices by police.

The program has been positively evaluated in June 2008 (**attached**) and VALS expanded the program to six other locations. The quantitative value of the Program is that was a significant increase of cautioning rates for both first time offenders and those with prior contact with the police and 94% of individuals did not re-offend. The qualitative value of the Program is apparent in case studies, such as young people re-engaging in school as a result of follow up.<sup>19</sup>

It is our understanding the program is currently stagnant.

**Recommendation 4:**

Re-fund and expand the Victorian Aboriginal Legal Service's Police Cautioning and Youth Diversion Program state-wide.

**The Rural Outreach Diversion Youth Worker (RODW)**

The Rural Outreach Drug Diversion Youth Worker is an outreach drug and alcohol service for young people. The program is designed to be an alternative to criminal justice sanctions and to address individual drug related behaviour through assessment, education and treatment. The program also provides drug assessment and treatment to young people who are apprehended for a non-drug related offence

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<sup>19</sup> Victorian Aboriginal Legal Service, Police Cautioning and Youth Diversion Project, Final Evaluation Report, (June 2008), p 22

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.

There was an evaluation of Rural Outreach Diversion Worker Program in February 2005<sup>20</sup>.

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

YRIPP is a unique partnership between community agencies and the Victoria Police. It is funded by the State Government and is a partnership of the Centre for Multicultural Youth, the Youth Affairs Council of Victoria, UnitingCare and other agencies.

YRIPP trains and supports people working as Independent Persons across Victoria. YRIPP provides a free 24-hour service for young people who are interviewed by police when a parent or guardian was unavailable to attend the police station. More than 350 trained volunteers are available to attend over 100 police stations across Victoria to offer support to young people under the age of 18 who are being questioned by police. On average they attend just over 3000 interviews per year.

This is an invaluable service that supports young people at a time when they are most vulnerable. About 30% of the young people who accessed YRIPP were from culturally and linguistically diverse backgrounds and about 30% of the young people had some level of DHS involvement.<sup>21</sup>

The YRIPP trained Independent Person 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.

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<sup>20</sup> See [http://docs.health.vic.gov.au/docs/doc/E475873CD0445E11CA25789600134738/\\$FILE/rodw-evaluation.pdf](http://docs.health.vic.gov.au/docs/doc/E475873CD0445E11CA25789600134738/$FILE/rodw-evaluation.pdf)

<sup>21</sup> For more information go to <http://www.cmy.net.au/YRIPP/YRIPPhome>

### 7.3 Court pre-plea / pre-sentence

#### ROPES

The ROPES program is an effective entry-level program for young people with no criminal history who are effectively given a second chance, taught consequential thinking and avoid any criminal record. ROPES 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 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 dismissed.

#### **Case Study 5**

##### **ROPES program helps Jessa to get her life back on track**

In 2011, 17 year old Jessa (not her real name) approached the North Melbourne Legal Service for legal assistance. Jessa lives with her father and younger brother in Melbourne's inner north, and the family's only income is her father's Centrelink payments. Jessa's mother was separated from the family when Jessa was young.

Jessa and a group of her friends decided to knock on the door of a property and check the backyard to see if anyone was home. They saw a large dog inside the house and left. This was witnessed by a neighbour. The police arrested them shortly after. Jessa's friends had been in trouble with the police before, but this was Jessa's first encounter with the police and the court system.

Jessa and her friends were charged with trespass and loitering with intent to commit an indictable offence (burglary). Jessa took full responsibility for her actions, complied with her bail conditions and cooperated with the police.

Jessa was recommended by the police informant to participate in the ROPES program, to allow Jessa to build greater trust and respect with the police.

In early 2012, Jessa successfully completed the ROPES program and has put the incident behind her. She is doing well at school and hopes to go to university when she finishes year 12.

The program has been independently evaluated and found to be effective in reducing youth re-offending. Rates of re-offending of young people participating in ROPES are around 10 to 12 per cent.<sup>22</sup>

However, ROPES is a limited intervention and does not target or address the multiple needs and social concerns that have led to a young person's offending. This is a limited intervention restricted to young people who have no prior criminal history, not been issued with more than two cautions, where the offence is considered relatively minor or where the young person is unlikely to come in contact with the justice system again.

As the Sentencing Advisory Council (SAC) cites in its 2012 report on sentencing young people in Victoria '*while the program is certainly of value to young people in terms of offering a second chance, for those young people most likely to reoffend (an estimated 25 per cent of participants) the program is less likely to be contributing to sustained change*'.<sup>23</sup> This is primarily due to the limited nature of this intervention as young people are only engaged in the program for one day, and receive minimal, if any, follow-up subsequent to the program and the restrictive eligibility requirements.

### **Youth Connect's Right Step Program**

Right Step is an innovative intensive case management diversion model, elements of which Youthlaw submits should be adopted throughout the state. It is an excellent example of a program which, under proposed legislation, either the police or the Court could refer a young person to. In addressing the specific needs and issues of the young offenders, the intensive case management model, aims to ensure that both the criminal behaviour and the reasons that led to the behaviour are supported and addressed. For this reason we describe the operations of the program in some detail below and we also refer you to Youth Connect's submission.

After a young person has been charged, and the police informant forms the view that the young offender would benefit from a diversionary program, and the victim gives the informant permission to refer the young offender to the program, the Case Manager meets with the young person at court and assesses the likelihood that they will benefit from the program.

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<sup>22</sup> See KPMG Evaluation Report on Victoria Police ROPES program.

<sup>23</sup> KPMG 2010, cited in Little and Karp 2012: 34.

Before any plea, the Magistrate is advised that the Informant wishes the charge to be held over while the young person is referred to Right Step, and the Magistrate then endorses the recommendation that the young person is suitable for intervention through participation in Right Step and postpones the hearing for eight weeks.

Although the young offender's participation is voluntary, the Magistrate explains that the case manager instructions should be considered as if they were being issued by the Magistrate.

The case manager assists the young person throughout the entire diversionary period, and works with the young person to ensure they are accessing appropriate locally based support services. Over the eight week period the case manager meets regularly at Youth Connect with the young person, providing counselling and working with them to understand and engage with the issues that led to their criminal behaviour and the possible causes of those issues such as drugs, alcohol, home environment, and provides support which is tailored to the young person's specific needs. Where appropriate, the young person is referred onto other community-based services that can assist with alcohol and other drugs issues and housing; or where engagement or reengagement with education, training or employment is appropriate, referral might be to other staff and programs offered by Youth Connect. The program also has the flexibility to cater for a young person who needs additional help through having the program extended beyond 8 weeks.

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's matters are dismissed.

The program had an interim evaluation in May 2012 and a final evaluation is being prepared for November of this year.

The Right Step is a pilot and only operates out of one court in Moorabbin. Philanthropic funding ends in October 2012.

## **Case Study 6**

### **Right Step helps 17 year old cope better with life**

A 17-year-old male was charged with robbery, theft, assault and graffiti related offences. Prior to court, he met with a Right Step case manager and indicated he was keen to get his life back on track.

He and his case manager worked on a number of issues affecting him, including anger management, a breakdown in his family relationships and a lack of engagement in education. The young person attended counselling for his anger and relationship issues, was given help to link in with community education, and started volunteering at the local op-shop as part of his community service hours.

After eight weeks in the Right Step program, this young man had significantly improved his interpersonal communication, created links with the local community through his work at the op-shop and felt that he could cope much better with life's challenges. The court dismissed his charges based on the positive progress he had made.

One month later, he had not re-offended and was doing well in terms of his relationships with others and keeping his anger under control. He felt well-supported knowing he could link in with other services via Right Step if he needed to in the future.

### **Recommendation 5:**

Increase Government resourcing of intensive case-managed diversion programs run by non-government organisations that police or courts can refer to at pre-court or pre-plea stages.

## **7.4 Pre-sentence**

### **Youth Justice Group Conferencing Program**

Victim-offender or family conferences are used increasingly either to divert young offenders prior to trial or as a sentencing option. Group conferencing aims to repair the harm resulting from offending and may occur at earlier points of the justice process (for example, referral by police) or as individual's progress further into the system (for example, referral by courts or corrections agencies).

While there are different legislative and policy frameworks in jurisdictions, conferencing generally involves the young offender, supporters of the offender, the victim and their supporters and a conference convenor coming together to discuss the offence and its impact on the victim, the supporters involved and the wider community.

In Victoria the Youth Justice Group Conferencing is a legislated diversionary program providing a community rehabilitation intervention in the Children's Court at the pre-sentence stage. An evaluation by KPMG in late 2010 found that the Youth Justice Group Conferencing (YJGC) program was effective and efficient in diverting young people from the youth justice system and in significantly reducing re-offending. This is often put down to the experience of a young person having to face a victim and the consequences of their actions. KPMG found that within 24 months, only 19% of conference participants re-offended compared to 43% of young people placed on Probation or a Youth Supervision Order.

However in most other Australian jurisdictions, including New South Wales (NSW) and Queensland, police are able to directly refer young people to conferencing processes, in addition to their discretion to issue informal warnings or cautions. Studies of NSW youth justice conferences have also found that young people who had a police referred conference for their first contact had lower levels of recontact with the juvenile justice system than young people who had a finalised court appearance.<sup>24</sup>

Youthlaw submits it would be worth considering making group conferencing a pre-court diversion option.

**Recommendation 5:**

Increase Government resourcing of intensive case-managed diversion programs run by non-government organisations that police or courts can refer to at pre-court or pre-plea stages .

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<sup>24</sup> Luke G & Lind B 2002. *Reducing juvenile crime: conferencing versus court*. Crime and Justice bulletin No. 69.

[http://www.agd.nsw.gov.au/lawlink/bocsar/ll\\_bocsar.nsf/vwFiles/CJB69.pdf/\\$file/CJB69.pdf](http://www.agd.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/CJB69.pdf/$file/CJB69.pdf)

## 7.5 Pre-trial - at risk of remand/ custody

### Intensive Bail Support

From the limited evaluation data available bail support programs generally appear to seek to divert young people from inappropriate pre-trial detention and assist offenders with underlying factors contributing to offending behaviour and thus to provide an opportunity for rehabilitation during the bail period.

Youthlaw clients with criminal matters before the adult court on summons or bail have achieved good results via the Court Integrated Services Program (CISP) established by Department of Justice and the Magistrates Court of Victoria. CISP targets offenders with multiple and complex needs, such as homelessness, substance abuse, and mental disability, by linking them with support services such as drug and alcohol treatment, crisis accommodation, disability services and mental health services, and providing case management and stability – often for the first time. The key to the success of the program is appropriate and thorough assessment. An independent evaluation found that CISP clients are 20% less likely to re-offend than non-participants; while they also had a 30% drop in re-offending frequency.<sup>25</sup>

The Intensive Bail Supervision Program in the Children's Court, which commenced as a pilot, has also shown to be effective. However the program is not yet state-wide so its effectiveness is limited to regions where it is located.

The Koori Intensive Bail Support Program is for Koori young people from the adult justice system and Children's Court (on deferral of sentence status) who are at high risk of breaching bail and/or reoffending and are deemed likely to be remanded in custody. The program provides intensive outreach services to support young people's compliance with bail conditions and facilitates referrals and access to accommodation, community-based and culturally specific support. This program operates all eight regions across Victoria.

We call for intensive bail support programs to be made state-wide to provide children and young people with comparable support to that provided in the adult system.

#### **Recommendation 6:**

To continue a state wide expansion of the bail supervision program for young people and remove the exclusion of young people who are on child protection orders.

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<sup>25</sup> <http://www.justice.vic.gov.au/resources/5fa85c11-aff8-49fa-9ef9->

## 8. Tailored and targeted interventions and support programs

(relates to questions 12 & 13)

As mentioned above Victoria only has limited, localised intensive case managed programs, such as Right Step and intensive bail supervision. A focus of funding should be given to supporting targeted and evidence based diversion programs that address the complex needs of young people who are at risk of entering the criminal justice system, progressing in the criminal justice system or entering custody.

An effective diversion scheme should direct each young offender to the most appropriate support service/s that will address their specific issues and needs and the nature of their offending behaviour. The scheme should be flexible and responsive enough to benefit the most vulnerable and disadvantaged groups of young people listed below.

Young people's contact with the justice system is influenced by their background and social context. There are many risk factors associated with young people offending at the individual, family, community, school and peer-group levels. In order to develop effective diversionary strategies and tailor responsive programs, it is necessary to understand the reasons behind offending behaviour for different cohorts of young people including: young people who misuse drugs and alcohol; young people disengaging with education; young people who are homeless; young people who are from culturally and linguistically diverse backgrounds; Aboriginal and Torres Strait Islander young people; young people experiencing abuse and neglect; and young people experiencing mental health issues<sup>26</sup>.

In Youthlaw's experience many of these young people are often fast-tracked into the youth justice system rather than being linked to more intensive, therapeutic interventions because they are judged as not having the potential to be rehabilitated or benefit from diversion. In other cases an appropriate diversion program does not exist.

To correct the imbalance, emphasis should be given to providing diversion options at the earliest opportunity to young people over-represented in the youth justice system.

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[3c8447e9172f/cisp\\_tackling\\_the\\_causes\\_of\\_crime.pdf](#)

<sup>26</sup> See *Guidelines for Best Practice for Diversion and Support of Offenders with a Mental Illness*

**Recommendation 5:**

Increase Government resourcing of intensive case-managed diversion programs run by non-government organisations that police or courts can refer to at pre-court or pre-plea stages .

As previously mentioned there are a few Koori specific diversionary options, being the Victorian Aboriginal Legal Service's Police Cautioning and Youth Diversion Program, the Children's Koori Court and, in the adult system, the Koori Court Integrated Services Program. Each of these programs have elements from which we can learn and strengthen the supports offered to Koori young people.

Some critical elements of these programs include:

- Being based on community cultural input into the development, implementation and monitoring of programs.
- Acknowledgment of the need to be culturally sensitive and involve family and community support people to a greater extent than mainstream options
- A choice is offered between mainstream programs and Koori specific services.
- Being provided by both Indigenous Australian agencies and non-Indigenous Australian agencies.<sup>27</sup>

Youthlaw urges the Government to consider:

- Re-funding and expanding the Victorian Aboriginal Legal Service's Police Cautioning and Youth Diversion Program statewide,
- Expanding Children's Koori Courts to all regions with adult Koori Courts,
- Introducing in the Children's Court jurisdiction a Koori specific diversion program like the Koori Court Integrated Services Program.

We also note a report on the Queensland system *Diverting Young Indigenous People from the Queensland Youth Justice System: The Use and Impact of Police Diversionary Practices and Alternatives for Reducing Indigenous Over-representation* (2011).<sup>28</sup>

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<sup>27</sup> VALS Summary of submission to the Drugs and Crime Prevention Committee in response to the 'Inquiry into Strategies to prevent high volume offending by young people' Discussion Paper for Public Hearing on 22nd October 2008

<sup>28</sup> Little, Allard, Chrzanowski & Stewart, Griffith University, February 2011. Available at: <http://www.premiers.qld.gov.au/publications/categories/reports/assets/diverting-young-people-from-the-justice-system.pdf>

**9. Coordination of diversion programs** (relates to question 6)

We recommend that a legislated youth diversionary framework be funded and coordinated by the Department of Human Services. Centralising the coordination of diversion services with Youth Justice, Department of Human Services will help promote a more cohesive and comprehensive system in terms of service delivery, identification of service delivery gaps, improved coverage of rural and regional areas and stable and transparent funding arrangements across the continuum of the youth justice system. Many of the relevant programs such as Youth Support Service and Group Conferencing, already fall under the responsibility of Department of Human Services.

**Recommendation 2:**

The legislated youth diversion framework be funded and coordinated by the Department of Human Services

NSW provides an example of a diversion framework coordinated by the Department of Juvenile Justice, which includes a Youth Justice Conferencing Directorate.

The current Magistrates' Court Criminal Justice Diversion Program provides an example of how a court based diversion program could be set up and managed.

## **Part D – Smart investment in youth diversion**

(relates to question 11)

- 10** In general terms we know diversion provides low-cost and effective mechanisms for addressing youth offending behaviour, especially when compared to the cost of further matters coming before the court or detention. Community based diversion and support programs cost about one tenth of what detention of a young offender in a youth justice facility costs Government. The Victorian Government estimates that it currently costs approximately \$528 a day to keep a young person in a youth justice facility, compared to approximately \$52-54 a day for either community based supervision<sup>29</sup>, or case managed support for a young person through the Youth Connect Right Step program.

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<sup>29</sup> Source: Minister For Community Services, *Strengthening Youth Justice And Helping Young People*

When considering cost effective diversion measures there is a strong argument for maximising the use of those early pre-court approaches that amount to some combination of warning, caution and referral to existing support services. In Northern Ireland over three-quarters of the cases referred to the police juvenile processing unit in the areas studied were dealt with either by no further action or by 'advice and warning', while only 3 to 4 per cent were disposed of through either a restorative conference or restorative caution, contrasted with between 10 and 17 per cent dealt with through prosecution.<sup>30</sup> The more resource-intensive strategies are most appropriately targeted at repeat offenders rather than those with little or no prior records of offending. Restorative procedures are considered by some as a costly and resource-intensive option that needs to be very carefully targeted at those cases which merit this level of intervention.

There is considerable research showing diversion programs have the capacity to reduce recidivism and reduce costs for taxpayers.

For example the NSW Bureau of Crime Statistics and Research (BOSCAR) has conducted a recent study into the cost effectiveness of youth justice conferences (YJC), compared with Children's Court proceedings. YJCs are alternative ways to deal with certain cases that would have been dealt with by the Children's Court prior to the enactment of the *Young Offenders Act 1997*. BOSCAR found the average cost of a YJC was estimated to be about 18 per cent less than the average cost of a comparable matter dealt with in the Children's Court<sup>31</sup>.

An independent evaluation found that the Victorian Courts Integrated Services Program (bail support program in the adult system, referred to at page 33) for every dollar invested in the program, the reduction in crime saved the public nearly twice that<sup>32</sup>.

A creative and pragmatic way to fund a state-wide legislated diversion program for young people is via "Justice Re-investment". This involves a portion of funds allocated to prisons being redirected to programs that tackle the underlying causes of crime in

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*Avoid A Life Of Crime*, Media Release, 03/05/2011.

<sup>30</sup> O'Mahony, Chapman and Doak 2002, p 28.

<sup>31</sup> [http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll\\_bocsar.nsf/vwFiles/cjb164.pdf/\\$file/cjb164.pdf](http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/cjb164.pdf/$file/cjb164.pdf)

<sup>32</sup> [http://www.justice.vic.gov.au/resources/5fa85c11-aff8-49fa-9ef9-3c8447e9172f/cisp\\_tackling\\_the\\_causes\\_of\\_crime.pdf](http://www.justice.vic.gov.au/resources/5fa85c11-aff8-49fa-9ef9-3c8447e9172f/cisp_tackling_the_causes_of_crime.pdf)

the targeted communities. Organisations like the Australian Human Rights Commission have recognised the potential of justice reinvestment to reduce over-representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system given it can target high recidivism rates and patterns of intergenerational offending through its community based approach.

While Justice Reinvestment has been adopted in a number of states in the United States and in the UK, two recent Australian parliamentary committee reports<sup>33</sup> have recommended state governments consider or trial justice reinvestment programs.

Youthlaw supports the recommendation of Smart Justice<sup>34</sup> for:

**Recommendation 7:**

The Victoria Government to research and pilot programs to determine the viability and impact of justice reinvestment in Victoria (especially in the youth justice space).

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<sup>33</sup> See The Senate and Constitutional Affairs Committee References Committee, *Access to Justice Report* (2009) 110. The Standing Committee on Environment and Public Affairs, *Legislative Council of Western Australia, Inquiry into the transportation of detained persons: the implementation of the Coroner's recommendations in relation to the death of Mr Ward and related matters* (2011) 85.

<sup>34</sup> See Smart Justice fact sheet at

[http://www.smartjustice.org.au/cb\\_pages/files/SMART\\_Reinvestment.pdf](http://www.smartjustice.org.au/cb_pages/files/SMART_Reinvestment.pdf)