

## **Is our youth justice system really broken?**

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## Introductory comments

According to the headlines, Victoria is in the grip of a ‘youth crime wave.’ If all we relied upon to found our reality was tabloid media, this statement would be accepted as fact. Triggered by the Moomba riots earlier this year, there is now an almost daily focus on youth crime in our popular media. The ‘Apex gang’ has become a regular conversation point at barbecues even if Victoria Police and other experts have disavowed the use of the word ‘gang’.

The imagery of anti-social teenagers engaging in dangerous behaviour is never far away from a newspaper headline. This is not a new social problem. However, there are some unique and corrosive aspects to the current media coverage that warrant increased scrutiny and challenge both in and out of the court room.

The predominant narrative shaping community perceptions is of rioting gangs, mostly of migrant ‘thugs’ brazenly committing terrifying home invasions and carjackings. The link to ethnicity is particularly divisive and taps into broader fears and anxieties around uncontrolled immigration, terrorism and an increasingly unstable international landscape.

One of the main vices of sensationalised media narratives on complex social issues, such as youth offending, is that they invariably lead to short-term problem solving. They create pressured environments that militate against the making of good policy. In recent years, this kind of media has proven potently successful in influencing politicians of all persuasions – resulting in reactionary justice policies that add unnecessary complexity to judicial and administrative decision making processes.

In some instances, punitive changes to the law appear to be contributing to increased recidivism, disproportionate rates of imprisonment when one considers population and crime rates, and perverse outcomes that erode rights and entrench disadvantage and inequality.

Too often the focus is on more prisons, harsher sentencing laws, more offences and more police being the solution – at significant cost to the taxpayer and in the face of growing evidence that such law and order approaches do not work. We have, with some notable and recent policy exceptions, lost sight of the bigger picture, namely, how we might prevent offending and reduce re-offending by young people over the long-term.

In order to protect against short-term law and order solutions that will have alarming longer term consequences for young offenders and the broader community, we need to shift our attention away from an oversimplified suggestion that, in response to incidents of serious youth crime, more punishment for all young people is required.

In challenging the sensationalised and unbalanced narrative, we should of course not fail to genuinely acknowledge that there are pockets of increasingly serious offending being committed by a very small number of young offenders. The significant harm to victims and the community should not be overlooked. Although a last resort, strict supervision or detention orders will likely be the most appropriate sentencing option for some of these more serious young offenders. How we work with young people that commit serious crimes in supervisory and custodial settings, and how we support them when released, should receive far more of our attention, remembering always that a teenager – even one on the cusp of young adulthood – is rarely if ever beyond saving.

However, this small number of offenders should not overshadow how we view or reform the whole system. The empirical data shows an overall decline in youth offending over a number of years, where most children are diverted from the criminal justice system.

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Taking an evidence driven approach to solutions and reform requires us to move beyond the individual high profile case. Whilst each case must be determined fairly and in accordance with the law, we need to look at the system and at society as a whole to understand youth crime in a way that lends itself to long-term strategies which enable early intervention to prevent offending and reduce the rate of re-offending.

We should also look beyond our shores to find creative solutions that have worked in other communities. There are many examples of justice re-investment approaches that seek to re-direct money spent on prisons to community based initiatives that address the causes of crime. Such initiatives have transformed communities and policing strategies, particularly within ethnically diverse communities previously locked in a cycle of distrust.

Current Government policy settings in youth justice are on the whole moving in the right direction, and they should not be disrupted. Recent announcements around a State-wide youth diversion scheme and the reversal of certain bail laws, will strengthen the system and hopefully reduce the high number of un-sentenced children on remand.

There is much common sense in many of the current sentencing laws applicable to children and young people, and the research and evidence supports the law's focus on rehabilitation. The system is not broken but it can be improved.

Intuitively and from our shared human experience – irrespective of culture or ethnicity – we know that adolescence is marked by the complexity of negotiating identity and belonging, independence, impulsivity, susceptibility to peer influence, empathy, judgment, consequences and responsibility. For the vast majority of young offenders, the role models, familial supports and other safety nets many of us take for granted are simply not present as they negotiate the turbulence of adolescence. Correspondingly, interventions addressing adolescent offending must be designed with these complexities in mind and the age-related risks that mean troubled young people may not fully engage the first time we try to intervene.

More broadly, the Victorian Government's *Roadmap for Reform: strong families, safe children*<sup>1</sup>, which arose out of recommendations from the Royal Commission into Family Violence, sets out a broad agenda for early intervention and prevention, and community-focused service integration. There have been many announcements in recent months around community initiatives and pilots designed to start delivering on the promise of this overarching framework. A missing link seems to be a focused justice strategy or plan that connects education, children, youth and family systems to the police and court responses to youth crime.

At the Victoria Police Youth Summit, we heard directly from a diverse group of young people. For those working at the coal face with young people, the stories were not surprising. Consistent themes emerged of hopelessness and disconnection. Many young people felt they had no employment prospects. Some spoke of racism that not only blocked their path to finding work, but also had a dehumanising effect that 'broke them down'.

Young people at the Summit also commented on the negative impact of being bombarded by 24/7 media which labelled them and their families. Much of what the community currently experiences about the extent and nature of offending by young people 'remains predominantly based on

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<sup>1</sup> Department of Health and Human Services, April 2016. Available at: <http://www.dhs.vic.gov.au>

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anecdote and popular mass media imagery'.<sup>2</sup> The primary stories and images currently being sold are unbalanced, inaccurate and as one of the young people at the Summit indicated, hurtful.

Inequality at all levels was described by these young people and by those working directly with them. For many young people, particularly ethnically diverse young people, this led to feeling 'locked out'. VLA's young clients have similar stories of exclusion. Many of our clients have experienced trauma and victimisation, they are disconnected from school, are struggling with drug and alcohol addiction and they have much higher rates of mental health problems. Family supports are often absent, and there is overlap with children being in residential care and the child protection system.

Listening to young people, it becomes clear that alongside the policing and court response, we have to work more on understanding the 'why' examining the individual and societal factors that are operating to drive certain offending. What happens in the home, classroom and on the street is often far more instructive than what happens in court. We need to create real opportunities and a sense of hope, so we can crowd out seductive criminal pathways which make false promises of status and belonging. That requires close work in the community with young people.

Characterisations of young offenders as 'thugs' who are inherently 'bad' can lead to life-long stigmatisation, increased re-offending and the further risk of minority suburban youth becoming entrenched in crime well into adulthood. It is an irrefutable fact that children who come from circumstances of disadvantage are heavily over-represented in the youth justice system. There is a role for governments and other agencies to dispel fear and distrust through leadership, research, education and community campaigns that engage young people directly, particularly disadvantaged young people. As such, part of any strategy to address youth crime must tackle the causes of disadvantage.<sup>3</sup>

Policy makers should not be tempted to depart from a well-established welfare and rights based youth justice framework, supported by decades of accepted research and evidence, in favour of a quick-fix punitive approach.<sup>4</sup> Smart community policing approaches in early development should not be disrupted in favour of tougher arrest, bail or sentencing regimes.

Once we get to the courtroom we should be focusing on more integrated or multi-disciplinary approaches that link legal and non-legal services alongside a greater and more intensive use of therapeutic and restorative justice approaches. For example, group and victim focused conferencing and more broadly available therapeutic orders that can be tailored to suit the rehabilitative needs of the young offender.

Our ability to make a real and lasting difference exists in large part because the offender is young. We cannot squander the best time we have to help each young offender when they need it most and when it can make the greatest difference.

Finally, Victoria's *Legal Aid Act 1978* requires that the community be provided with improved access to justice and legal remedies. The Act also requires that we look at ways to innovatively reduce the need for legal services in a way that dispels fear and distrust. With the conferral of such great statutory purpose comes great responsibility but also opportunity. In working to dispel that fear and

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<sup>2</sup> Papalia, N et al 2015, 'Changes in the prevalence and nature of violent crime by youth in Victoria, Australia', *Psychiatry, Psychology and Law*, 22:2, pp. 213-223, p. 214

<sup>3</sup> Grant, P 2013, 'Youth justice: getting the early years right', *Crime and Justice*, Insight 8, 15-17, p. 17. Available from: <http://vcoss.org.au/documents/2013/06/Insight.PaulGrant.pdf> [7 July 2016]

<sup>4</sup> Sellers, B G 2015, 'Community-based Recovery and Youth Justice', *Criminal Justice and Behaviour*, Vol. 42, No. 1, 58-69, p. 59

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distrust, VLA is committed to working with everyone in the system to execute that duty diligently on behalf of the community, particularly for its youngest and most vulnerable members.

## Why treat children differently?

It is well established – internationally and within the Australian sentencing context – that children should be dealt with differently than adult offenders, and that as far as possible, sentencing should promote a child’s rehabilitation. There are a number of reasons for this.

## Characteristics of young offenders

Adolescence is a formative period of development. Research suggests that adolescent brains do not fully mature until well into the early twenties.<sup>5</sup> This immaturity may undermine an adolescents ability to self-regulate and refrain from criminal behaviour.<sup>6</sup> Affiliation with offending peers is also a particularly important risk factor for criminal behaviour in young people.<sup>7</sup> Substantial evidence shows that ‘teens are more oriented toward peers and responsive to peer influence than adults’,<sup>8</sup> and a desire for peer approval and fear of rejection means that young people are ‘far more likely than adults to commit crimes in groups’.<sup>9</sup>

Compared with adults, young people are more likely to come into contact with the criminal justice system due to their inexperience as offenders, their propensity to offend in groups,<sup>10</sup> opportunistic and unplanned offending, offending in visible public spaces closer to home<sup>11</sup> and racial profiling.<sup>12</sup> Despite this, the number of young offenders in Victoria aged 10 to 19 years has been declining.<sup>13</sup>

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<sup>5</sup> Sentencing Advisory Council, *Sentencing Children and Young People in Victoria*, April 2012, p. 25. Available from: <http://www.sentencingcouncil.vic.gov.au/publications/> [30 June 2016] referring to Sowell, E et al 2001, ‘Mapping Continued Brain Growth and Gray Matter Density Reduction in Dorsal Frontal Cortex: Inverse Relationships during Postadolescent Brain Maturation’, 21 *Journal of Neuroscience* 8697, p. 8819; Goldberg, E 2001, *The Executive Brain: Frontal Lobes and the Civilized Mind*; Blakemore, S & Choudhury, S 2006, ‘Development of the Adolescent Brain: Implications for Executive Function and Social Cognition’, 47(3) *Journal of Child Psychology and Psychiatry* 296

<sup>6</sup> Scott, E & Steinberg, L 2008, *Rethinking Juvenile Justice* in Sentencing Advisory Council, April 2012, p. 26

<sup>7</sup> Petitclerc, A et al 2013, ‘Effects of juvenile court exposure on crime in young adulthood’, *Journal of Child Psychology and Psychiatry*, 54, pp. 291–297

<sup>8</sup> Cauffman, E & Steinberg, L 2012, ‘Emerging findings from research on adolescent development and juvenile justice’, *Victims & Offenders: An International Journal of Evidence-based Research, Policy, and Practice*, 7, 428-449, p. 434

<sup>9</sup> *Ibid.*, p. 435

<sup>10</sup> Sentencing Advisory Council, April 2012, *op. cit.*, p. 7

<sup>11</sup> *Ibid.*, pp. 21-22; Richards, K 2014, ‘Blurred Lines: Reconsidering the Concept of ‘Diversion’ in Youth Justice Systems in Australia’, *Youth Justice* Vol. 14(2), 122-139, p. 128

<sup>12</sup> Flemington & Kensington Community Legal Centre 2016, *Racial Profiling*. Available from: [http://www.communitylaw.org.au/flemingtonkensington/cb\\_pages/racialprofiling.php](http://www.communitylaw.org.au/flemingtonkensington/cb_pages/racialprofiling.php) [19 July 2016]

<sup>13</sup> The number of unique offenders decreased from 73,443 in 2006-10 to 62,437 in 2011-15: Millstead, M & Sutherland, P 2016, ‘Downward trend in the number of young offenders, 2006 to 2015’, *In Fact*, Crime Statistics Agency, Number 1, March 2016. Available from: <http://www.crimestatistics.vic.gov.au/research-and-evaluation/publications/downward-trend-in-the-number-of-young-offenders-2006-to-2015> [19 July 2016]. Victoria experienced the largest decrease in youth offenders in Australia between 2013-14 and 2014-15, with a decrease of 11%, which accounted for 83% of the overall decline in the Victoria offender population: Australian Bureau of Statistics (ABS), *Recorded Crime – Offenders, 2014-15 – Victoria*, 4519.0. Available from: <http://www.abs.gov.au/ausstats> [7 July 2016]

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It has also been shown that the vast majority of young people who commit anti-social acts desist from those activities as they mature, and that only a small percentage become 'life course persistent offenders'.<sup>14</sup> This is borne out by the 'age-crime curve', which has been used by researchers to demonstrate that criminal activity increases after pre-adolescence, peaks around age 17, and then declines, with disengagement in the early twenties.<sup>15</sup>

Research has identified eight major, well-validated risk factors for re-offending amongst both adults and adolescents. These include a history of anti-social behaviour, association with anti-social peers, anti-social cognition and anti-social personality pattern, level of education or engagement with other learning opportunities, unemployment, substance abuse, and relationship problems.<sup>16</sup> Young offenders have also been found to have a higher prevalence of mental illness and intellectual disability than young people in the general population.<sup>17</sup>

Other commonly recognised social risk factors include Indigenous status, ethnicity, low socioeconomic status, homelessness or inadequate housing, and/or a history of involvement in the child protection system.<sup>18</sup> Young people aged between 10 and 17 years from areas of the lowest socioeconomic status are around seven times more likely to be under supervision as those from areas of highest socioeconomic status.<sup>19</sup>

These risk factors are also borne out in recent research conducted by VLA. High contact users (the top one per cent of users) of legal aid services in Victoria have been found to have had early contact with legal aid services prior to 18 years and had criminally offended between 10 and 17 years. Frequent users were also identified as having a psychiatric issue, acquired brain injury or a cognitive disability, and/or identified as an Aboriginal or Torres Strait Islander. They were also more likely to have received legal aid services for a child protection or family violence issue before the age of 18.<sup>20</sup>

Designing community, rehabilitative and restorative programs with these risks in mind is critically important to reducing the risk of re-offending. We should also work closely within and across communities, including with young people, to examine how those factors interact, and develop evidence-based strategies to prevent offending and engage the more serious young offenders seduced by the dynamics of negative peers and impulsivity powered by social media.<sup>21</sup>

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<sup>14</sup> Chu, C M & Ogloff, J R P 2012, 'Sentencing of Adolescent Offenders in Victoria: A Review of Empirical Evidence and Practice', 19(3) *Psychiatry, Psychology and Law*, 325, p. 331 referring to Farrington, D P 2003, 'Developmental and life-course criminology: Key theoretical and empirical Issues', 41 *Criminology* 221; Moffitt, T E 1993, 'Life-course-persistent' and 'adolescence-limited' antisocial behaviour: A developmental taxonomy', 100 *Psychological Review* 674

<sup>15</sup> Cauffman, E & Steinberg, L 2012, op. cit., pp. 325, 331

<sup>16</sup> Fougere, A et al 2013, 'A study of the multiple and complex needs of Australian young adult offenders', *Australian Psychologist*, 48, 188-195, p. 188

<sup>17</sup> Ibid., p. 188-9

<sup>18</sup> Sentencing Advisory Council, April 2012, op.cit., pp. 27-28

<sup>19</sup> AIHW 2015, *Youth justice in Australia 2013–14*, Bulletin 127, p. 10. Available from: <http://www.aihw.gov.au> [19 July 2016]

<sup>20</sup> Victoria Legal Aid 2014, *Victoria Legal Aid client profiles - High contact users of legal aid services*, Research Brief. Available from: <http://www.legalaid.vic.gov.au/about-us/what-we-do/research-and-analysis/client-profiles> [20 July 2016]

<sup>21</sup> 'Children and Youth Area Partnerships' (Area Partnerships) were established in Victoria 2013 to create formal links between local community sector organisations and broader State-wide social services. Area Partnerships are an existing collaborative framework, which could be utilised for examining these risk factors and developing effective strategies to prevent offending at the local level.

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## A 'human rights' context

... a rights based and inclusive approach can help to enable the self-confidence, resilience and capacities of marginal youth in efforts to counter social exclusion.<sup>22</sup>

The importance of taking a different approach to youth crime than to offending committed by adults is well recognised in international human rights jurisprudence.

The enunciation of children's rights, like all human rights, 'emerged as a tool to regulate the relationship between the powerful and the powerless, between the governed and the governing – to respond to the perceived failings and excesses of particular approaches to governance and power distribution within society'.<sup>23</sup>

Children's rights are specifically and comprehensively dealt with by the *United Nations Convention on the Rights of the Child* (the Convention).<sup>24</sup> Drawing from the principles in 'The Beijing Rules',<sup>25</sup> the Convention sets out a number of civil, cultural, economic, political and social rights relating to people under 18 years of age and the manner in which those rights are to be protected.<sup>26</sup>

The Preamble to the Convention acknowledges that children, by reason of their physical and mental immaturity, and their 'special vulnerability', need special safeguards and care, including appropriate legal protection.<sup>27</sup> Several principles that are relevant to sentencing young offenders including:

- the best interests of the child as a primary consideration in decision-making;<sup>28</sup>
- where appropriate, diversion from judicial proceedings;<sup>29</sup>
- proportionate sentencing;<sup>30</sup>
- an emphasis on rehabilitation;<sup>31</sup> and
- the use of detention as a last resort and for minimal time.<sup>32</sup>

Under the Convention, children accused of offending behaviour are also entitled to various guarantees,<sup>33</sup> including the opportunity to be heard and involved in proceedings.<sup>34</sup>

Article 37(b) of the Convention stipulates that:

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<sup>22</sup> Wearing, M 2011, 'Strengthening youth citizenship and social inclusion practice – The Australian case: Towards rights based and inclusive practice in services for marginalized young people', *Children and Youth Services Review*, 33, 534-540, p. 534

<sup>23</sup> Tobin, J 2013, 'Justifying Children's Rights', *International Journal of Children's Rights* 21, 395-441, p. 410

<sup>24</sup> The *Convention on the Rights of the Child*, UN Doc A/RES/44/25 (20 November 1989) was ratified in Australia in December 1990 and became binding in 1991.

<sup>25</sup> *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*, UN Doc A/RES/40/33 (29 November 1985)

<sup>26</sup> Sentencing Advisory Council, April 2012, op. cit., pp. 120-1

<sup>27</sup> Tobin, J 2013, op. cit., p. 410

<sup>28</sup> Art 3.1. See also 'The Beijing Rules', r 17.1(d)

<sup>29</sup> Art 40.3(b)

<sup>30</sup> Art 40.4

<sup>31</sup> Art 40.1

<sup>32</sup> Art 37(b)

<sup>33</sup> Art 40

<sup>34</sup> Art 12. See also 'The Beijing Rules', Article 14.2 (proceedings to be conducted in an atmosphere conducive to participation)

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No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child ... shall be used only as a measure of last resort and for the shortest appropriate period of time.

The Convention also supports the establishment of youth diversion programs. According to Article 40.3(b), parties to the Convention should, whenever appropriate and desirable, promote the establishment of laws and measures for dealing with children who have been accused of committing a crime without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

Many of the principles enunciated in the Convention are also reflected in other international instruments, including the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*<sup>35</sup> and the 'The Beijing Rules'.<sup>36</sup>

Although these instruments are not directly incorporated into Australian law, many of the principles espoused in the *Children, Youth and Families Act 2005* (Vic) (CYFA) are 'consistent with the human rights covenants'.<sup>37</sup> For example, under the CYFA, detention may not be imposed if another sanction is appropriate.<sup>38</sup> International children's rights are also reflected in the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (the Charter). For example, under the Charter a child has a right to be tried without unreasonable delay<sup>39</sup> and the right to a procedure that takes into account the age of a child and the desirability of promoting the child's rehabilitation.<sup>40</sup>

Victorian courts have been prepared to take rights enunciated in international instruments into account in considering principles applicable to child offenders. In *Director of Public Prosecutions v TY (No 3)*,<sup>41</sup> Bell J held that the Convention was significant in that it supplied a further basis for, and reinforced 'the existing principle of giving primary emphasis to youth and rehabilitation as a mitigating factor when sentencing children'.<sup>42</sup> However, Bell J was careful to point out that other considerations should be taken into account where the crime is very serious, and the Convention can 'cut both ways' where the victim is a child.<sup>43</sup>

A number of other international frameworks relating to youth justice stress the importance of diversion for young offenders. For example, the *United Nations Guidelines for the Prevention of Juvenile Delinquency* ('*The Riyadh Guidelines*') recommend that law enforcement and other relevant personnel should be familiar with and use, to the maximum extent possible, programs and referral possibilities for the diversion of young people from the justice system.<sup>44</sup>

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<sup>35</sup> UN Doc A/RES/45/113 (14 December 1990)

<sup>36</sup> Hutchinson, T 2014, 'Making the Fun Stop: Youth Justice Reform in Queensland', *Deakin Law Review*, Vol. 19, No. 2, 243-274, p. 260

<sup>37</sup> *Herald and Weekly Times Pty Ltd v AB* [2008] VChC 3 (20 May 2008) [20] (Judge Grant)

<sup>38</sup> CYFA s 361

<sup>39</sup> Charter s 25(2)(c)

<sup>40</sup> Charter s 25(3)

<sup>41</sup> *Director of Public Prosecutions v TY (No 3)* [2007] VSC 489 (28 November 2007)

<sup>42</sup> *Ibid.*, [51]. Refer also Sentencing Advisory Council 2012, op. cit., p. 126

<sup>43</sup> *Ibid.*, [48]. Refer also Sentencing Advisory Council 2012, op. cit., p. 126

<sup>44</sup> Art 58, UN Doc A/RES/45/112 (14 December 1990) in Richards, K 2014, op. cit., p. 124.

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Human rights and social inclusion agendas are an important way to ‘underpin the urgency for services to develop explicit frameworks on inclusive practice for marginal and excluded young people’,<sup>45</sup> including Indigenous youth.

## Protecting the Children’s Court jurisdiction in Victoria

One of the risks that may arise from a continued focus on the punishment of young offenders is the erosion of the ‘distinctive’<sup>46</sup> criminal jurisdiction of the Children’s Court. For example, changes that result in fewer young offenders being dealt with in the Children’s Court, or punitive principles of sentencing only appropriate in the adult jurisdiction, being allowed to creep into the Court’s jurisdiction.

As former President of the Children’s Court Judge Grant has stated:

*We have a Children’s Court because we accept, as a community, that young offenders should be dealt with differently to adults.*<sup>47</sup>

The Children’s Court of Victoria was established as an independent court in 1906. This followed an increasing recognition in the second half of the nineteenth century of the need for specialised responses for dealing with children, and the establishment in 1880 of the first Australian Children’s Court in South Australia. Victoria’s Children’s Court is governed by the CYFA.

The Victorian Children’s Court is granted jurisdiction to hear and determine most matters relating to children. The Children’s Court has jurisdiction over all summary matters and most indictable matters. Seven death-related offences are explicitly excluded from the Children’s Court jurisdiction.<sup>48</sup> ‘Child’ is defined in the CYFA (in the context of criminal offending) as a person who at the time of the alleged commission of the offence was under the age of 18 years but of or above the age of 10 years. It does not include any person who is of or above the age of 19 years when a proceeding for the offence is commenced in the Court.<sup>49</sup>

It is conclusively presumed that children under the statutory threshold of 10 years of age are unable to commit a criminal law offence<sup>50</sup> as they are unable to form the requisite criminal intent. While children above the age of 10 are capable of being charged, there is a rebuttable presumption at common law in Victoria that a child aged under 14 is ‘incapable of crime’ (*doli incapax*).

It has long been recognised that prescribing a biological age as the threshold for criminal responsibility is arbitrary in light of the significant differences in capacity among children and the fact that children mature at inconsistent rates.<sup>51</sup>

Sentencing in the Children’s Court is different from sentencing in courts of adult jurisdiction. The *Sentencing Act 1991* (Vic) instructs courts of adult jurisdiction that the purposes for which a sentence may be imposed are punishment, deterrence, rehabilitation, denunciation and protection of

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<sup>45</sup> Wearing, M 2011, op. cit., p. 540

<sup>46</sup> *Webster (A Pseudonym) v The Queen* [2016] VSCA 66 [7] (Maxwell P and Redlich JA)

<sup>47</sup> *R v P and ors* [2007] VChC 3 (5 November 2007) [20] (Judge Grant)

<sup>48</sup> CYFA s 516(1)(b): Offences the court considers unsuitable to be determined summarily given ‘exceptional circumstances’ are also excluded. Refer also s 356(3)(b).

<sup>49</sup> CYFA s 3(1)

<sup>50</sup> CYFA s 344

<sup>51</sup> Sentencing Advisory Council, April 2012, op. cit., pp. 74-75

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the community. In contrast, the principles set out in the CYFA are largely focused on the needs of the offender.

For example, in determining which sentence to impose on a child, section 362 of the CYFA requires the court to consider factors, including the need to strengthen and preserve the relationship between the child and the child's family, the desirability of allowing the child to live at home and continue with education, training or employment, the need to minimise stigma to the child and the suitability of the sentence to the child.

It is consistent with well-established legal principle that rehabilitation is the overarching or core principle in the Children's Court. According to former President of the Children's Court, Judge Grant, in *Herald and Weekly Times Pty Ltd v AB*:<sup>52</sup>

*It has been said often enough that one of the great aims of the criminal law is the rehabilitation of the young offender. That is generally the focus of orders in the Children's Court.*<sup>53</sup>

Writing separately on youth justice in 2013, Judge Grant referred to a 2007 Victoria Supreme Court case in which the Court gave two reasons for describing youth as a mitigating consideration of the first importance – acknowledgement that young people lack the degree of insight, judgment and self-control possessed by an adult, and recognition that the community has a very strong interest in the rehabilitation of young offenders.<sup>54</sup>

The Victorian Court of Appeal most recently considered the jurisdiction of the Children's Court in *Webster (A Pseudonym) v The Queen*.<sup>55</sup> Maxwell P and Redlich JA stated as follows:

*First, the statutory framework for juvenile justice compels the court sentencing a young offender (almost always the Children's Court) to adopt the offender-centred (or 'welfare') approach, rather than the 'justice' or 'punishment' approach. Secondly, and just as importantly, this strong legislative policy is well supported by the extensive research into adolescent development conducted over the past 30 years.*<sup>56</sup>

Rehabilitation of the youth offender under the welfare approach recognises the community's long-term interests in the possibility for positive behavioural change.<sup>57</sup>

In *Webster*, the Victorian Court of Appeal drew attention to research in relation to the process of development and maturity of young people, which it saw as providing a unique opportunity for rehabilitation and therefore for minimising the risk of re-offending.<sup>58</sup> The Court cited the earlier case of *CNK v The Queen*<sup>59</sup> for drawing attention to research, which had 'highlighted the potential for the

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<sup>52</sup> [2008] VChC 3 (20 May 2008)

<sup>53</sup> *Ibid.*, [24] (Judge Grant). Refer also Sentencing Advisory Council, April 2012, *op. cit.*, pp. 99-100

<sup>54</sup> Grant, P 2013, *op. cit.*, p. 17

<sup>55</sup> *Webster (A Pseudonym) v The Queen* [2016] VSCA 66 (11 April 2016)

<sup>56</sup> *Ibid.*, [28] (Maxwell P and Redlich JA). Reference was made to Richards, K 2011, 'What makes juvenile offenders different from adult offenders?', *Trends and Issues in Crime and Criminal Justice*, Australian Institute of Criminology, No. 409, p. 6 and C M Chu, C M & Ogloff, J R P 2012, *op. cit.*

<sup>57</sup> Sentencing Advisory Council, *Changes to Sentencing Practice: Young Adult Offenders – Report*, April 2015 [1.10]. Available from: <http://www.sentencingcouncil.vic.gov.au/publications/> [30 June 2016]

<sup>58</sup> *Webster*, *op. cit.*, [8] (Maxwell P and Redlich JA)

<sup>59</sup> [2011] VSCA 228; (2011) 32 VR 641

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immature brain to respond to punitive punishments in such a way as to make recidivism more rather than less likely'.<sup>60</sup>

In *CNK* the Victorian Court of Appeal determined that, on a proper construction of section 362(1) of the CYFA, general deterrence was excluded from consideration in the sentencing of children.<sup>61</sup> Although this was cited with approval by the Court in *Webster*, it was recognised that there would still be offenders and offending for which the emphasis on rehabilitating the offender is qualified, in appropriate cases, by the need to protect the community and ensure accountability and specific deterrence of the offender.<sup>62</sup>

This reflects sub-sections 362(1)(f) and (g) of the CYFA, which recognise the need to ensure that children are required to take responsibility for their actions, where this is appropriate, and the need to protect the community or any person from the violent or other wrongful behaviour of the child.

Often, the need to increase 'public confidence' is used as a justification for pursuing more punitive sentencing approaches. However, a perceived lack of confidence cannot be sufficient; there must be actual and informed lack of confidence. The evidence to date suggests that, when properly informed, public views of appropriate sentencing outcomes are roughly consistent with the outcomes imposed.<sup>63</sup>

In the very recent case of *HWT v DM & Ors*,<sup>64</sup> a media application was made to the President of the Children's Court for permission to publish pictures and video recordings of children who were involved in proceedings in the Criminal Division of the Court. One of the children was yet to be sentenced. The President examined section 534 of the CYFA, which restricts the publication of a report of proceedings, or a picture of a child, where it contains any particulars likely to lead to the identification of a child in that proceeding, where permission from the President has not first been obtained.

Judge Chambers considered this application 'in the context of the harm sought to be ameliorated by s534(1) of the Act', and found that the public interest in the publication of details and images relating to the offending did not override the competing interest in avoiding stigma to the child, protecting their privacy, and facilitating the child's rehabilitation to reduce the risk of further offending and promote community safety.<sup>65</sup>

In so doing, her Honour reinforced the purpose of this provision, being to protect against stigmatisation of the child, promote rehabilitation, and enforce the fundamental rights of the child (as expressed in the Convention) to privacy at all stages of proceedings, which were held to have outweighed the public interest in publication.

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<sup>60</sup> *Webster*, op. cit., [28] (Maxwell P and Redlich JA) quoting *CNK v The Queen* [2011] VSCA 228; (2011) 32 VR 641, 662 [77]. In *CNK*, Maxwell P, Harper JA and Lasry AJA cited Steinberg, L 2009, 'Adolescent Development and Juvenile Justice', *Annual Review of Clinical Psychology* 47, pp. 65-8

<sup>61</sup> *CNK*, op. cit., [4]-[16] referred to in *Webster*, op. cit., [67]

<sup>62</sup> In *Webster*, Maxwell P and Redlich JA (at [78]) recognised that there would still be offenders and offending which justified a sentence of detention.

<sup>63</sup> Sentencing Advisory Council, *Sentencing Guidance in Victoria Report*, June 2016, p. 64. Available from: <http://www.sentencingcouncil.vic.gov.au/publications/> [20 July 2016]

<sup>64</sup> *Herald and Weekly Times Pty Ltd v DM (a child), RS (a child) and RJ (a child)* [2016] VChC (19 July 2016)

<sup>65</sup> *Ibid.*, [21], [23]-[24]

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## Is the system broken?

By and large, the court and sentencing processes, as they apply to young people, operate effectively in Victoria. The laws supporting sentencing are drawn from considered policy and human rights discourses, backed by research and evidence.

The courts have appropriate sentencing powers to deal with more serious offending by young people. Judicial officials sentence young people to a variety of dispositions on a daily basis, often with agreement between police and the defendant's lawyer that the young offender's rehabilitation is a primary objective of the sentencing process for most offences. Appeals are not being brought by police or prosecutors in any great numbers.

Despite the headlines, the number of young offenders in Victoria aged between 10 and 19 years has declined over a 10-year period.<sup>66</sup> Similar trends have been observed in New South Wales, and internationally in the United States and the United Kingdom.<sup>67</sup> Serious criminal offending is relatively infrequent across the general youth population, with most offending of a relatively minor nature.<sup>68</sup>

This is not to ignore the small proportion of youth who are responsible for a disproportionate number of crimes, with 3.8 per cent of high-frequency offenders aged 10–24 years, who were recorded for 11 or more incidents, responsible for 28.9 per cent of all reported incidents for that cohort in 2015–16.<sup>69</sup> The average number of charges per case sentenced in the Children's Court has also increased between 2013–14 and 2014–15, indicating 'that a smaller number of offenders are being sentenced for more offences in the Children's Court'.<sup>70</sup>

So, in answer to the question is our youth justice system broken – the response is a resounding no. However, whilst the system is not broken it is far from perfect. It requires continuous improvement to meet the challenges of changing and dynamic community settings, and service needs.<sup>71</sup>

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<sup>66</sup> There were 73,443 unique offenders aged 10 to 19 years between the years 2006-10, compared with 62,437 between the years 2011-15. The decline was largely in the 10 to 14 age group: Millstead, M & Sutherland, P 2016 (March), op. cit. Between 2013-14 and 2014-15, youth offenders decreased by 1,801 persons or 11% to 15,222 youth offenders in Victoria. According to the ABS, this was the largest decrease in youth offenders across the states and territories and accounted for 83% of the overall decline in the Victorian offender population: ABS, 4519.0, op. cit.

<sup>67</sup> Ibid., Millstead, M & Sutherland, P 2016 (March)

<sup>68</sup> Boni, N 1999, 'Youth and Serious Crime: Directions for Australasian researchers into the new millennium', *Paper presented at the Children and Crime: Victims and Offenders Conference convened by the Australian Institute of Criminology*, Australasian Centre for Policing Research, Brisbane, p. 4

<sup>69</sup> 1,685 of 44,735 unique offenders aged 10 to 24 accounted for 32,592 of 112,770 recorded incidents in 2015-16: Millstead, M & Sutherland P 2016, 'How has youth crime in Victoria changed over the past 10 years?', *In Fact*, Crime Statistics Agency, Number 3, July 2016

<sup>70</sup> This is even after accounting for the new bail-related offences. According to the Sentencing Advisory Council, the average number of cases "has increased from a consistent average of around 4.5 charges per case for the years 2010 to 2013, to an average of 5.2 charges per case in 2014 and then 6.4 charges per case in 2015": Sentencing Advisory Council, *Sentencing Children in Victoria: Data update report*, July 2016, pp. VI, 13-14. Available from: <http://www.sentencingcouncil.vic.gov.au/publications/> [22 July 2016]

<sup>71</sup> Refer also to Grant, P 2013, op. cit., p. 17

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## Some key areas for improvement

### Current court and service settings

Firstly, we must shift our criminal justice system away from one that is reactive toward one that proactively facilitates more effective and early intervention in tandem with legal and non-legal services.

We can do more to maximise the court event in a way that further incorporates targeted therapeutic, restorative and multi-disciplinary approaches. Victorian Children's Court Magistrates who were interviewed in a 2010 study supported the notion of the Court 'as a therapeutic jurisprudence-informed problem-solving court.'<sup>72</sup> However, more can be accomplished with the expansion and greater resourcing of multi-disciplinary and restorative approaches consistently across the State. For example, the Melbourne based Education Justice Initiative has demonstrated positive results and could be resourced far more intensively.<sup>73</sup>

Another enduring challenge is the patchwork of youth bail, training, alcohol, drug and mental health support services and programs. Significant 'postcode injustices' are currently experienced by many young people, particularly in regional Victoria. Often beneficial outcomes for young people are reliant on the relationships fostered by hard working professionals in specific areas. The recent announcements around targeted funding of intensive bail and other support programs may address this issue to an extent, but there remain significant gaps, and State-wide access to quality services has yet to be achieved.

Other areas that may benefit from reform include an examination around whether the age of responsibility should be lifted and spent convictions. Importantly, vulnerable children in residential care often find themselves subject to criminal charges for behaviour that would ordinarily not attract the attention of police outside of the residential setting. 'Over-policing' children in state-care creates a vicious and unfair cycle.

Greater focus also needs to be placed on more effectively facilitating critical transition points, for example when a child leaves state care or when a child is released from custody. Ensuring a young person is given every opportunity at success often requires links to many supports. Post-sentence, such efforts will fail if the young person is not supported intensively through the availability of real opportunities to participate as a valued member of society through education, employment and inclusion in community life, not as an outsider unable to ever move beyond their conviction.<sup>74</sup>

Our reform and investment focus in youth justice should therefore be more heavily weighted in favour of supporting family, health, education, community development and ultimately greater socioeconomic equality – for it is primarily in the interplay between these contexts that most youth crime has its origins.

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<sup>72</sup> Borowski, B and Sheehan, R 2013, 'Magistrates' Perspectives on the Criminal Division of the Children's Court of Victoria', *Australian Social Work* Vol. 66, No. 3, 375-390, pp. 387-8

<sup>73</sup> According to the Youth Affairs Council of Victoria (YACVic), an initial evaluation of the Initiative found that "school enrolments rose from 51% to 75% and school attendance rose from 9% to 54%": 2016, 'Out of sight, out of mind? The exclusion of students from Victorian schools', *A preliminary discussion paper by the Youth Affairs Council of Victoria*, p. 9. Available from: <http://yacvic.org.au> [27 July 2016]. YACVic referred to Victoria University, 'Education offers hope to young offenders', 14 December 2015. Available at: <https://www.vu.edu.au/news-events/news/education-offers-hope-to-young-offenders>

<sup>74</sup> According to YACVic, "young people who do not obtain a Year 12 qualification (or a Year 10 qualification) may find themselves more marginalized than ever": 2016, op. cit., p. 5

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## The importance of early intervention

International research shows that early intervention is critical to preventing youth offending.<sup>75</sup> Escalating a matter through the court system may place young people on a more criminal path than the one they might follow if released, cautioned or diverted.<sup>76</sup>

Young people who are developing their identities are particularly affected by stigmatisation that can result from others knowing about their offending. This can subsequently cause problems obtaining employment and exclusion from conventional social networks, and place the young person at risk of further re-offending.<sup>77</sup>

Retaining or re-constructing connections with home, family, education and employment at an early stage assists a young person to develop socially, educationally and productively without the label of 'criminal' flowing from conviction for a criminal offence. As youth unemployment rates in Victoria are approximately twice that of the general population, it is important that attempts by young people to obtain employment are not thwarted by the stigma attached to a criminal conviction.<sup>78</sup>

It is important to help people as soon as they need it, rather than when their lives have reached a crisis point. The Royal Commission into Family Violence stated that the 'existing focus on crisis response and justice system mechanisms must be matched by a similar focus on, and investment in, prevention, early intervention and recovery'.<sup>79</sup>

One of VLA's strategic directions for the next two years is the investment in timely intervention, especially for children and young people. Providing timely intervention works for all clients and particularly benefits vulnerable groups, such as those experiencing homelessness or family violence, young people living in out of home care, people with a disability or mental illness and people from Indigenous or culturally and linguistically diverse communities.

However, it is especially beneficial for children. We want to see fewer children in the justice system because we know that in the long term that will lead to fewer adult offenders and ultimately a safer community.

Children who are born into disadvantage or who experience neglect have fewer opportunities and greater life challenges. Many frequent users of legal aid services first come to us between the ages of 10 and 17 years. By investing in legal services for vulnerable children and young people we aim to help them achieve safety and stability, so they can lead productive lives and minimise their risk of becoming future legal aid clients.

The Legal Australia Wide Survey confirmed the close and mutually reinforcing relationship between legal problems and social exclusion and other life problems. It also confirmed that non-legal professionals like doctors and social workers are routinely advised at an earlier stage than lawyers of people's legal problems.

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<sup>75</sup> Boni, N 1999, *op. cit.*, p. 8

<sup>76</sup> Petitclerc, A et al 2013, *op. cit.*, pp. 291–297

<sup>77</sup> Ascani, N 2012, 'Labeling Theory and the Effects of Sanctioning on Delinquent Peer Association: A New Approach to Sentencing Juveniles', *Perspectives* (University of New Hampshire), Spring 2012, p. 80

<sup>78</sup> YACVic 2016, *op. cit.*, p. 5 referring to ABS 2015, *Labour Force*, 6202.0, pp. 5, 13, 25

<sup>79</sup> Royal Commission into Family Violence, *Summary and Recommendations*, Victorian Government Printer, March 2016, No. 132, Session 2014-16, p. 11

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VLA considers that better integration of legal services with the broader non-legal service sector, and with organisations that routinely come into contact with disadvantaged individuals, would:

- encourage and make it easier for disadvantaged individuals to obtain the help they need to resolve their problems at an early stage;
- increase the likelihood of an individualised response to their circumstances and the likelihood of meaningful and enduring positive results; and
- promote broad dissemination of legal information to a diverse range of communities, thereby expanding the reach of legal assistance.

Examples of recent positive announcements include the ‘Navigator’ pilot, which will support students with low attendance at school to re-engage,<sup>80</sup> and further funding for the School Focused Youth Service to support 10 to 18 year olds who are showing signs of disengagement.<sup>81</sup> However, a whole of sector approach would see a clear link between these initiatives and the justice system’s response to youth offending.

The integration of legal assistance with social and community services requires establishing and maintaining strong links with the target communities and their support organisations, the location of services in places frequented by the target group, effective marketing of services, appropriate staffing and resources, effective referral systems with support organisations, and appropriate quality, monitoring and evaluation.

## **The absence of a legislated state-wide diversion scheme**

Intervening early to divert young people away from the criminal justice system should continue to be a key policy direction. The evidence suggests that steps need to be taken at an earlier stage to avoid intensive engagement at a later stage in the criminal justice system when efforts at rehabilitation become more complex and less likely to succeed.

Victoria is often acknowledged as a leader in its approach to youth justice due to significantly lower rates of young people on remand or serving custodial sentences.<sup>82</sup> Despite this, we lack a diversion scheme, which is flexible, appropriately funded and consistently accessible to all young people across the State. Paradoxically, an adult diversion scheme has been in place for many years.

Along with others in the sector, VLA has long advocated for a legislated State-wide youth diversion scheme where diversion as an outcome is court determined. The State Government’s recent announcement of \$5.6m in funding for a State-wide diversion scheme will be a vital addition long overdue in Victoria. However, legal services, which play an essential role in supporting and implementing existing ad-hoc and pilot diversionary outcomes for young people, were omitted from this recent funding announcement. The expertise of specialist legal practitioners is critical to any scheme’s successful implementation and VLA’s in-house youth crime lawyers work alongside private practitioners on a daily basis in the Children’s Court. The overwhelming majority of young offenders are legally aided. Youth lawyers play a vital role in early intervention and the brokering of outcomes that maximise the effectiveness of court therapeutic and restorative processes.

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<sup>80</sup> Department of Education and Training 2016, ‘Navigator: program overview and specifications’, *The Education State*. Available from: <http://www.education.vic.gov.au/Documents/about/educationstate/navigator-program-overview-and-specifications.pdf> [27 July 2016]

<sup>81</sup> YACVic 2016, op. cit., p. 8

<sup>82</sup> Jordan, L & Farrell J 2013, ‘Juvenile Justice Diversion in Victoria: A Blank Canvas?’, *Current Issues in Criminal Justice* Vol. 24, No. 3, 419-437, p. 424

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Over the last 12 months a successful pilot diversion program has been running across regional and metropolitan locations in Victoria. More than 90 per cent of over 270 participants have successfully completed the program, with positive impacts demonstrated in engagement with education and specialist services.<sup>83</sup>

## More effectively dealing with the over-representation of Indigenous youth in our criminal justice system

The Royal Commission into Aboriginal Deaths in Custody ‘found that Indigenous people, particularly Indigenous youth, were significantly over-represented at all stages of the criminal justice process, largely because of the social, economic and cultural disadvantages faced by Indigenous people in Australian society’.<sup>84</sup> However, criminal justice processes, including court, sentencing and policing procedures, were also influential.<sup>85</sup>

Some 25 years after these recommendations were handed down, Indigenous children and youth remain grossly overrepresented in the criminal justice and child protection system. They are around 15 times as likely as non-Indigenous youth to be under supervision on an average day.<sup>86</sup> This should be one of the most urgent justice priorities across the country. We are failing indigenous children so profoundly that we must recommit to understanding the challenges they face in accessing justice at all points across the system so we can come up with culturally appropriate solutions in true partnership with Indigenous leaders and service providers.<sup>87</sup>

The new State-wide diversion scheme should be designed to include additional safeguards and pathways through which Indigenous children and young people can be linked in with the right services and supports as early as possible. Integrating youth justice responses to the *Roadmap for Reform: strong families, safe children*<sup>88</sup> and the *Youth Policy: Building Stronger Youth Engagement in Victoria*<sup>89</sup> holds great long term promise for a holistic approach.

## Policing, restorative justice and justice reinvestment

Youth crime must be viewed within the context of the wider community. The process of development toward maturity ‘is one of reciprocal interaction’ between the individual and his or her social context.<sup>90</sup> Community collaboration, the modification of local environments and the creation of opportunities for social inclusion can assist to prevent crime.<sup>91</sup>

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<sup>83</sup> Jesuit Social Services, 26 April 2016, *Youth diversion helps young people avoid lifetime involvement with the justice system*. Available from: <http://jss.org.au/youth-diversion-helps-young-people-avoid-lifetime-involvement-with-the-justice-system/> [20 July 2016]

<sup>84</sup> Sentencing Advisory Council, April 2012, op. cit., pp. 85-6

<sup>85</sup> Ibid., p. 86

<sup>86</sup> AIHW 2015, op. cit., p. 8

<sup>87</sup> Victoria’s *Roadmap for Reform* commits the State Government to working with the Aboriginal community to develop an Aboriginal children and families strategy, and Aboriginal children’s panels. Consistent with the cross-sector approach expounded in this paper, access to justice for Indigenous youth should be examined alongside the development of this strategy.

<sup>88</sup> Department of Health and Human Services, April 2016. Available from: <http://www.dhs.vic.gov.au> [27 July 2016]

<sup>89</sup> Department of Health and Human Services, June 2016. Available from: <http://www.youthcentral.vic.gov.au> [27 July 2016]

<sup>90</sup> Cauffman, E & Steinberg, L 2012, op. cit., pp. 428-449

<sup>91</sup> White, R 2004, ‘Police and Community Responses to Youth Gangs, Australian Institute of Criminology’, *Trends & Issues in crime and criminal justice*, No. 274. Available from: <http://aic.gov.au/publications/> [14 June 2016]

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A justice reinvestment approach would see less money spent on detention and prisons, and increased investment in specialist and problem-solving courts, and community-based initiatives that address the causes of offending to interrupt offending cycles and build safer communities.<sup>92</sup> This approach would also create additional opportunities to divert young offenders away from future contact with the criminal justice system by requiring them to think about what caused their behaviour, its impact on the victim, and how to change their lives to prevent future or more serious re-offending. This is the direction in which the justice system needs to evolve if we want to see real change.<sup>93</sup>

Although Victoria still has a long way to go in terms of adopting formal, system-wide, justice reinvestment policies, our therapeutic courts and some of our existing restorative justice approaches form a good basis upon which to build and intensify further reform.

The Children's Koori Court, which was established in Victoria in 2005, is an example of a justice reinvestment and problem-solving approach, with its provision during the court process for Elders or Respected Persons from the Aboriginal community to engage directly with young offenders to require them to think about the offending behaviour, understand what caused it and consider what supports may be needed to address the young person's behaviour.<sup>94</sup> In 2009 the Australian Human Rights Commission released its Social Justice Report, in which it recommended justice reinvestment as the method through which to address the disproportionately high Indigenous incarceration rate.<sup>95</sup>

Youth Justice Group Conferencing is an effective way of responding to the criminal behavior of young people. This program takes a problem-solving approach based on restorative justice principles with the aim of diverting young people from further or more serious offending. It encourages the offender to take responsibility for the harm done to the victim and to make reparation to the victim and the community.<sup>96</sup> Group conferencing allows for recognition of victims and gives them a voice in the criminal justice process.<sup>97</sup> It is a key way of developing empathy in immature young offenders and encourages families to play an active role in the young person's rehabilitation.<sup>98</sup>

Following recent changes, group conferencing is now available for a wider range of cases across different types of offending behaviour, but greater take up needs to be encouraged. Given the benefits of this program for the offender and the victim, further consideration should also be given to enhancing this model further, with appropriate professionals working alongside lawyers and the Court even in the more serious and complex cases.

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<sup>92</sup> Smart Justice, 2 July 2015, *Justice reinvestment: investing in communities not prisons* (Factsheet). Available from: [http://www.smartjustice.org.au/resources/SJ\\_JusticeReinvest.pdf](http://www.smartjustice.org.au/resources/SJ_JusticeReinvest.pdf) [20 July 2016]

<sup>93</sup> Victoria Legal Aid 2016, *Submission to the Access to Justice Review*, p. 5. Available from: <http://www.legalaid.vic.gov.au/about-us/strategic-advocacy-and-law-reform/access-to-justice-review> [30 June 2016]

<sup>94</sup> Refer to Grant, P 2008, 'Conference Paper: Interventions that work: dealing with young people in conflict with the law', *Young People, Crime and Community Safety: engagement and early intervention*, Australian Institute of Criminology International Conference, Melbourne, p. 11

<sup>95</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner 2009, *Social Justice Report*, Australian Human Rights Commission, Report No. 1/2010. Available from: <https://www.humanrights.gov.au> [20 July 2016]

<sup>96</sup> Sentencing Advisory Council, April 2012, *op. cit.*, pp. 46-7

<sup>97</sup> Grant, P 2008, *op. cit.*, p. 10

<sup>98</sup> KPMG 2010, *Review of the Youth Justice Group Conferencing Program Final Report*, Department of Human Services, p. 64. Available from: <http://www.dhs.vic.gov.au> [19 July 2016]

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The role of the police is obviously critical, with the first interaction with police often being a defining point for young people. The support from Victoria Police for the recent diversion pilot and the current review into police cautioning are important steps in the right direction. The Flemington and Kensington Community Legal Centre's Police Accountability Project aims to drive the political, cultural and systemic change required for police accountability, in particular in the context of racial profiling.<sup>99</sup>

In addition to more reinvestment and therapeutic approaches to offending, there is need for a greater use of formal and informal police cautioning to divert young people away from the justice system at the earliest point, whilst at the same time linking young people to appropriate community supports to prevent future re-offending. How police interact with legal and other social services in terms of referrals in the cautioning context is another opportunity for early intervention and prevention.

## A missing link?

Even though there is much that could be improved and the concern around youth crime is currently acute, in Victoria, we do find ourselves at an encouraging juncture. An ambitious and integrated family, youth and education vision has been articulated through the recently announced *Roadmap for Reform*.

Unfortunately, the policy and funding links which connect education, children, youth and families on the one hand, and police and justice bureaucracies on the other, were not made clear at the Youth Summit.

More importantly, these links are not clearly discernible operationally given the complex network of new policies, reforms and pilots, overlaid on existing services not always well designed, funded, monitored or evaluated. It is of course early days and the promise of these reforms will be seen in the long term. They will however, require sustained effort and investment to embed them structurally.

The risk remains that police and justice responses will be piecemeal and more about 'boots' on the ground, rather than being linked in with the longer term vision for communities, health and education systems. In many ways there needs to be a gap analysis to balance short and longer term justice solutions, given the pressure for immediate 'action.' The different activities must work together, not against each other. A high degree of government, sector and police collaboration is required for this to occur successfully.

A specific justice strategy addressing young offenders would enable deliberate design of interventions and services guided by clear outcomes around rehabilitation, re-integration and the reduction of re-offending. This kind of plan is critical to how we identify and prioritise immediate and longer term police and justice solutions. We can then connect these solutions more readily to the whole-of-system agendas, or to existing pilots and programs which are working and can perhaps be scaled up or modified quickly and responsively. A deliberate and carefully planned approach will be essential to the success of crime prevention strategies and other legal interventions.

Commissioning resources to capture complete and accurate data sets will ensure that we get our service settings and early intervention points right not to mention connected. Data and case

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<sup>99</sup> Flemington & Kensington Community Legal Centre 2016, *Police Accountability Project*. Available from: <http://www.policeaccountability.org.au/about/> [20 July 2016]

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information is currently fragmented across multiple systems. Mapping the pathways which lead children into crime, and the points in the systems where failure and disengagement from services is common, will inform the design and quality of interventions based on risk and need. The transitions between childhood, adolescence and young adulthood are where the most marginalised and disadvantaged young offenders often get lost or disconnected from siloed services and systems that do not interface well. To achieve recovery and re-integration, young offenders need holistic case management and supports.

Police and legal services are uniquely placed to work together in a more connected and purposeful way in the community, before a young person is charged or even gets to court. The current policy and operational settings are 'light on' in terms of how these sorts of improvements link in with the overarching child, youth and family framework.

An integrated youth justice strategy would also ensure government and sector accountability and no doubt avoid some of the frustration and cynicism expressed by parts of the sector at the Youth Summit about the 'same old issues.' A more focused youth justice strategy could enable a State-wide review of services, with attention to quality and evaluation. A systemic approach to funding existing programs that work would deliver planning and service certainty, and ultimately help make the *Roadmap for Reform* vision a reality.

Given the small number of young offenders in Victoria, a less complex whole of system approach that links family, education, health, child-protection, police and justice responses at all levels should not be so elusive or radical.<sup>100</sup> Depending on how the state-wide youth diversion scheme is designed and implemented, it could act as the central bridge between the broader family, education and youth systems and the police and justice systems.

The Youth Summit remains a heartening start to an important conversation. Approached correctly, a continuing conversation could lead to long called for improvements. However, as the Chief Commissioner indicated, the police alone cannot provide the total solution. In the absence of a focused youth justice plan that supports truly integrated responses on the ground, we risk continuing to view the challenges and known areas of improvement in a siloed way, with bursts of disjointed activity that are superficially or loosely connected without clarity of purpose or outcome. This just leaves us more vulnerable to law and order options and we will not get far if our approach is to address youth crime concerns through the narrow policy lens of public order, divorced from their broader social context.

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<sup>100</sup> Literature on youth offending suggests that the most successful policy frameworks are those that seek to engage in a 'multi-systemic' or 'whole-of-community' approach: Wells, D 2014, *What Works for Juvenile Offenders?*, Research Summary; Australian Institute of Criminology 2002, 'What works in reducing young people's involvement in crime? Review of current literature on youth crime prevention', *Australian Institute of Criminology Report and Literature Review*, 7

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