



Inquiry into Youth Justice Centres in Victoria

Submission to Standing Committee on Legal and Social Issues (Legislation and References)

March 2017

Criminal Law Services - Victoria Legal Aid

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About Victoria Legal Aid

VLA is an independent statutory authority set up to provide legal aid in the most effective, economic and efficient manner. We provide legal information, education and advice for all Victorians.

We fund legal representation for people who meet eligibility criteria based on their financial situation, the nature and seriousness of their problem and their individual circumstances. We provide lawyers on duty in most courts and tribunals in Victoria.

Our clients are often people who are socially and economically isolated from society; people living with a disability or mental illness, children, the elderly, people from culturally and linguistically diverse backgrounds and those who live in remote areas. We assist people with legal problems about criminal matters, family breakdown, child protection and family violence, immigration, social security, mental health, discrimination, guardianship and administration, tenancy and debt.

We provide:

- free legal information through our website, our Legal Help telephone service, community legal education, publications and other resources
- legal advice and minor assistance through our Legal Help telephone service, Duty Lawyer Service and free clinics on specific legal issues
- support to people in the mental health system through non-legal advocates in the Independent Mental Health Advocacy service
- family dispute resolution services to help families make decisions about family law disputes away from court
- grants of legal aid to pay for legal representation by a lawyer in private or community law practice or a VLA staff lawyer.

VLA is a major provider of legal services to young people. Through our youth crime sub-program, we provide assistance to young people who face criminal charges before the Children's Court. In 2015/16, we provided almost 4,000 grants of legal assistance in the youth crime sub-program.

A number of our clients are detained in youth justice centres, including at the Malmsbury Youth Justice Centre (**Malmsbury**) and the Parkville Youth Justice Precinct (**Parkville**). More recently, a number of our clients have also been detained at the Grevillea unit at Barwon Prison (**Barwon**).

We provide outreach services to all young people in youth detention centres, whether or not they have been clients of VLA in the past. In the 2015/2016 financial year, our solicitors saw 334 young people in custody as part of this service.

Our outreach services are primarily targeted towards young people who have been recently remanded or sentenced, to ensure that they are legally represented and to provide a general 'welfare check'. We also ensure that they are aware of any upcoming court dates or any relevant timeframes in relation to their rights of appeal. In some instances, we also provide advice on new charges they may be facing since being detained.

In addition to helping individuals resolve their legal problems, VLA works to address the barriers that prevent people from accessing the justice system. By participating in law reform, we influence the efficient running of the justice system and ensure that the actions of government agencies are held to account. We take on important cases and campaigns that aim to improve the law and make it fairer for all Victorians.

VLA is committed to encouraging a fair and transparent justice system and to using evidence and our experience to improve legal service delivery.¹ Our Strategy 2015-2018 also prioritises timely intervention for children and young people as a key strategic direction.

¹ Victoria Legal Aid, *Strategy 2015-2018*.

Executive Summary

Victoria Legal Aid (VLA) welcomes the opportunity to contribute to the Committee's inquiry.

Our submission is largely drawn from our lawyers' first-hand experience working with young people in the criminal justice system. We believe that we are uniquely placed to contribute to these terms of reference based on our experience in delivering services to young people in Victoria's youth justice centres. Our submission addresses terms of reference 2, 3, 4, 5, 7 and 8. We have not addressed terms of reference 1 or 6 as we do not have particular knowledge of the matters raised in these terms of reference.

As a society, we have a choice as to how we treat children and young people in the criminal justice system. One approach is to focus on young people's offending behaviour and to respond punitively, without seeking to understand or address the reasons why a young person might be offending. Such an approach can exacerbate the profound disadvantage experienced by young people who come into contact with the criminal justice system, and does little to reduce their offending or reoffending.

The alternative approach involves a recognition that young people are different from adults and require specialist, therapeutic, welfare-based responses which focus on their rehabilitation. This approach depends on the provision of early supports to prevent young people from offending, and opportunities for diversion in order to minimise their involvement with the criminal justice system. Where the offending is more serious and complex, the youth justice system must prioritise the welfare and rehabilitation of young people in ways that seek to address the seriousness and complexity of their offending and prevent them from entering the adult system. VLA strongly advocates for this approach to youth justice as the most effective way to protect the community.

Most offending by young people is episodic, transitory and unlikely to constitute a risk to the safety and welfare of the community.² Research on adolescent brain development demonstrates that the second decade of life is a period of rapid change, particularly in areas of the brain associated with response inhibition, the calibration of risks and rewards, and the regulation of emotions.³

In recognition of this and of the vulnerabilities of children, most modern justice systems aim to divert children away from the criminal justice system. This approach is also informed by evidence that diversion, and the use of welfare-based and restorative justice approaches, are more effective in reducing reoffending among children than the use of custody. This promotes crime prevention and community safety.

Victoria's separate specialist framework under the *Children, Youth and Families Act 2005* (the CYFA) recognises that children and young people are different from adults and require responses which focus primarily on rehabilitation, such as having access to educational and other therapeutic programs while in youth justice centres. Staff within the youth justice system require specialist training and support which is designed to address the therapeutic needs of children and young people. We believe that it is critical that Victoria preserve and strengthen this specialist youth justice framework. This is the most effective way to minimise reoffending and ultimately to protect the community.

² C.Cunneen & R. White, *Juvenile Justice: Youth and Crime in Australia*, 3rd ed. South Melbourne: Oxford University Press, 2007.

³ L.Steinberg, Cognitive and affective development in adolescence, *Trends in Cognitive Sciences* 9(2), 2005, 69-74.

We are concerned about the safety and well-being of young people in Victoria's youth justice centres, and of staff who work in this system. Youth justice centres should be both safe and secure. It is also vital that young people in youth justice centres, whether on remand or serving a sentence, continue to have access to specialist rehabilitation programs which are tailored to address the causes of their offending and to prevent reoffending. Education programs are central to this, and must be available at youth justice centres.

As a society, we accept that children need guidance, good role-modelling, education and safe and stable accommodation if they are to grow into responsible and well-balanced members of society. Without these supports in place there is a real risk that a child will be damaged and harmful to both themselves and others.

The background of children in our youth justice centres confirms this. We know that most young people in youth detention centres, either on remand or sentenced, have experienced some kind of trauma. Their stories are often tragic. Many have had chaotic lives without safe and stable accommodation. Many require drug and alcohol treatment, mental health services and intellectual disability services.

In recent years, there has been a significant increase in the number of children and young people on remand. VLA believes that any strategy to address youth crime and to keep young people out of detention should engage young people before offending has started, identifying those who are most vulnerable. This involves careful application of targeted prevention initiatives in schools, residential care facilities, and through other services that are already working with children and their parents.

We welcome the Government's commitment to an expanded state-wide youth diversion program, supported by legislation. Ensuring young offenders think about the impact of their behaviour and about how to change their lives is key to keeping our community safe.

Custody should always be an option of last resort. In cases where there is no alternative, VLA believes that more can be done to work intensively with young people in youth justice centres and following release to ensure that the causes of their offending are addressed and that they are accountable for their actions, and to prevent them from becoming serious adult offenders.

Finally, VLA welcomes the Government's review of youth justice by former Corrections Commissioner and Secretary of the Department of Justice and Regulation, Penny Armytage, and forensic psychiatrist Professor James Ogloff, with its focus on the adequacy of current operating models and existing youth justice programs. This review should assist in guiding the future policy and direction for youth justice in Victoria.

We hope the information we provide is of assistance to the Committee and would be pleased to elaborate on, or provide any further information to the Committee if required.

Summary of recommendations

VLA makes a number of recommendations aimed at reducing the number of young people on remand. We also make a number of recommendations aimed at improving Victoria's youth justice centres, so that, in cases where there is no option available other than detention, these centres operate to facilitate rehabilitation and improve community safety and protection.

Reducing the number of young people on remand

We recommend that:

- consideration be given to whether there is scope to enhance bail decision-maker training with a focus on the particular vulnerabilities of young people
- supports for young people on bail be increased to reduce the risk of reoffending
- the Victorian Government work with relevant stakeholders to develop and implement an inter-agency protocol to reduce the contact of young people in residential care with police and the criminal justice system
- there be further investment in evidence-based treatment services for young people on ice
- the Children's Court and those who support the work of the Court be properly funded and resourced to ensure that remand cases can be dealt with as expeditiously as possible
- when matters are listed for a court hearing, appropriate arrangements be put in place to ensure that young people in detention are brought before the court for their hearing at the appointed time, to avoid unnecessary adjournments and delay
- there be increased resourcing for culturally appropriate services for Koori young people and young people from culturally and linguistically diverse communities that aim to improve social outcomes and reduce engagement with the criminal justice system
- the Koori Children's Court be expanded throughout Victoria
- there be increased investment in, and focus on, early intervention
- state-wide diversion be legislated and properly funded
- restorative models of justice, such as group conferencing, be strengthened
- justice reinvestment strategies be developed.

Improving Victoria's youth detention centres

We recommend that youth detention centres:

- be safe and secure with the flexibility to provide both low and high security options
- be designed to accommodate the specific needs of children and young people
- focus on rehabilitation
- provide strong education programs for children and young people
- provide evidence-based treatment and supports for children and young people to address the range of factors that contribute to offending, such as mental illness and drug and alcohol abuse
- be adequately staffed by officers who have been given specialist training and support in working with children and young people.

Reasons for, and effects of, the increase in the numbers of young people on remand in the last 10 years (term of reference 3)

In addressing this term of reference, our submission firstly considers the reasons for the increase in the numbers of young people on remand in the last 10 years. The effects of the increase in the numbers of young people on remand are considered separately below.

Reasons for the increase in the number of young people on remand

VLA believes that a combination of factors has contributed to the increase in the numbers of young people on remand. These factors include:

- legislative changes
- responses to children in residential care
- lack of suitable accommodation and other supports
- lack of treatment and support for ice addiction
- inconsistent access to diversion and bail supports.

Given the complexity of factors that have led to an increase in the number of young people on remand, we believe that there is no one single solution to reduce remand numbers. Rather, what is required is a suite of changes across all parts of the system, as well as early interventions and support.

Legislative changes

Amendments to the *Bail Act 1977* made in late 2013, which included the new offence of breaking a condition of bail, contributed to an increase in young people on remand. These amendments were repealed in February 2016. At that time, changes were also introduced to encourage police to issue a summons for a child to attend court, rather than remanding them in custody.

Notwithstanding the 2016 bail amendments, we are still seeing significant numbers of young people on remand. It is VLA's experience that many young people on remand are released back into the community after their cases are heard. The time spent on remand is therefore inconsistent with efforts to divert young people away from the criminal justice system.

Although the 2016 bail amendments introduced changes to encourage police to issue a summons for a child to attend court rather than remanding them in custody, our lawyers report that they are still regularly seeing young people being charged and placed on bail by police rather than being proceeded against by way of summons.

Section 345 of the CYFA requires young people to be proceeded against by summons unless 'exceptional circumstances' exist. Where previously a young person would only be arrested and placed on bail when 'exceptional circumstances' existed in their particular case, the current approach appears to be more punitive, with a significant number of young people arrested and placed on bail without justification as to why 'exceptional circumstances' apply to their case. This approach is contrary to the legislative presumption in section 345.

More generally, VLA recommends that consideration be given to whether there is scope to enhance bail decision-maker training with a focus on the particular vulnerabilities of young people.

Responses to young people in residential care

Children in out-of-home care are highly vulnerable to being placed on remand. VLA has a longstanding concern about the number of young people in youth detention centres (both on remand and sentenced) who have lived in out-of-home care. In a recent report, VLA highlighted that many children living in out-of-home care end up involved in the criminal justice system.⁴

A Victorian study by Jesuit Social Services published in 2015 found that vulnerable and disadvantaged children and young people were highly over-represented among those who were on remand. The study found that all 27 children who were first remanded at age 10 to 12 years were known to child protection, with 14 of the 27 children known to children protection before their third birthday.⁵

Children living in out-of-home care are among the most vulnerable and disadvantaged in our community. Many have been exposed to multiple traumas from a young age resulting from family violence, substance abuse, neglect or abandonment, and/or sexual or physical abuse.

Unfortunately, as numerous studies have demonstrated, too many of these children are still ending up involved from a young age, often unnecessarily, in the criminal justice system.

VLA has represented children from residential care who have received criminal charges for actions like smashing a cup, throwing a sink plug or spreading food around a unit's kitchen. This behaviour would have been unlikely to come to police attention had it occurred in a family home. Frequently children who may never have had a criminal charge prior to entering care, quickly accrue a lengthy criminal history due to a cycle of 'acting out' followed by police responses, which develops in a residential unit.

A recent review of VLA's child protection client data found that:

- Almost one in three young people we assist with child protection matters who are placed in out-of-home care later returns to us for assistance with criminal charges
- The young people we assist who are placed in out-of-home care are almost twice as likely to face criminal charges as those who remain with their families
- Young people placed in out-of-home care whom we assist are more likely than other children to be charged with criminal damage for property-related offences.

Our *Care Not Custody* report recommends that the Government adopt a new approach, similar to one recently introduced in New South Wales, which explicitly aims to reduce children's contact with police.⁶ The New South Wales approach, which was developed in partnership with residential care providers and police, involves the development and implementation of an interagency Protocol which provides a clear and consistent framework and better training and support for staff in residential care units to help them manage low-level incidents within the unit, without needing to involve police.

⁴ Victoria Legal Aid, *Care Not Custody. A new approach to keep kids in residential care out of the criminal justice system*, 2016.

⁵ Jesuit Social Services, *Thinking Outside: Alternatives to Remand for Children, Summary Report*, 2015, p.20.

⁶< <http://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-care-not-custody-report.pdf>>

Lack of suitable accommodation and other supports

Lack of appropriate accommodation can influence bail and remand decisions. Our lawyers report that on occasions they see the routine use of custody as a first, rather than last, resort. The difficulties involved in securing adequate accommodation often lead to a tension between current practice and section 346(9) of the CYFA, which provides that bail must not be refused to a child on the sole ground that the child does not have any, or any adequate, accommodation.⁷

The Victorian Sentencing Advisory Council's 2012 report into the sentencing of children and young people⁸ describes how practical difficulties such as lack of appropriate accommodation can influence bail and remand decisions. The report highlights how factors such as mental health issues, intellectual disability, family violence, substance abuse issues, and limited family support contribute to young people being placed on remand rather than granted bail.

Ice addiction

In 2015 VLA made a submission to the National Ice Taskforce.⁹ Our submission highlighted that we are increasingly seeing young people who are addicted to ice. There are no beds, and limited rehabilitation services, for ice addiction. This can influence whether or not a young person is granted bail or placed on remand. There need to be more research and resources directed to early intervention for young people on ice.

“At least one third of our clients in both the Children’s Court Family Division and the Children’s Court Criminal Division would be presenting with a problem somehow relating to ice.”

Lawyer, Melbourne

“There are not enough detox options for young people with criminal matters. The result is that youth justice centres becomes the detox facility in that there are no other options to address the causes of offending.”

Lawyer, Melbourne

Our experience tells us that there are not enough treatment services available, particularly in rural and remote areas where ice problems are reported to be the greatest. In many cases, we have nowhere to refer our clients, which places them at far greater risk of further legal problems.

In addition, our experience is that where there is treatment available, it is often generic for drug and alcohol treatment, rather than specifically targeted to ice. There is a particular need for youth-specific rehabilitation services, given that many clients affected by ice are young.

⁷ By virtue of section 346(9) of the CYFA, section 3B(3) of the *Bail Act 1977* applies to provide that bail must not be refused to a child on the sole ground that the child does not have any, or any adequate accommodation.

⁸< <https://www.sentencingcouncil.vic.gov.au/sites/default/files/publication-documents/Sentencing%20Children%20and%20Young%20People%20in%20Victoria.pdf>>

⁹< <http://www.vla.vic.gov.au/about-us/news/victoria-legal-aid-taskforce-submission-reveals-community-impacts-of-ice-use>>

We endorse key recommendations of the National Ice Taskforce, 2015.¹⁰ In particular, we support the National Ice Taskforce's recommendations that:

- under the National Drug Strategy framework, Commonwealth, state and territory Governments should further invest in alcohol and other drug treatment services (recommendation 18)
- state and territory Governments should increase the focus on evidence-based approaches to treatment in correctional facilities and youth justice centres (recommendation 23).

Inconsistent access to diversion, bail assessment and support

Access to bail assessment, bail support, and diversionary programs plays an important role in reducing rates of remand, however such services are not available at all times or in all locations. Currently there is significant variation in the availability of bail support and diversion options across Victoria, and many children, particularly in rural areas, miss out.¹¹

In December 2016, the Government announced that it would:

- set up an Intensive Monitoring and Control Bail Supervisions Scheme
- extend the existing Youth Justice Bail Supervision scheme across the entire state
- expand the Central After Hours Assessment and Bail Placement Service to ensure staff are on hand around the clock to assist Victoria Police and Bail Justices make the best decisions about how to deal with an offender who has been arrested out of hours.

VLA welcomes these measures and stresses the need to ensure that these measures are properly resourced. VLA also welcomes the Government's commitment to an expanded state-wide youth diversion program.

Effects of the increase in the number of young people on remand

Increases in the number of young people on remand impact upon the entire youth justice system, leading to overcrowding and an inability for the system to function effectively. They place pressure on youth justice centres, the courts, court cells and transport services to and from court. These pressures result in adjournment and delays, which in turn further contribute to the number of young people on remand.

Capacity of courts

We note that it is vital that all parts of the youth justice system are properly resourced. The ability of courts to be able to deal with cases without undue delay is critical to reducing the number of young people on remand. The courts need to be properly funded and resourced to ensure that there is not a backlog of cases.

Proper resourcing requires adequate funding and adequate training. The Children's Court jurisdiction is a specialist jurisdiction. Police prosecutors, magistrates and lawyers who work in this jurisdiction require specialist training and support to ensure that the particular needs of young people in the criminal justice system are recognised. This will help ensure that young people are

¹⁰ <https://www.dpmc.gov.au/sites/default/files/publications/national_ice_taskforce_final_report.pdf>

¹¹ Jesuit Social Services. *An escalating problem: Responding to the increased remand of children in Victoria*, October 2015, p.5.

only placed on remand in cases where they present an unacceptable risk to community safety, and that where a young person is placed on bail, the conditions of bail are appropriate.

Facilitating the appearance of young people at court

Our lawyers report that young people are routinely not transported to court for plea or bail hearings. This may be due to the capacity of the cells at court or the capacity to transport the young people to court. If a young person on remand is not present for their court appearance, this results in further delay in the finalisation of their hearing and more time on remand.

The security and safety of staff, employees and young offenders at both facilities (term of reference 2)

VLA believes that poor infrastructure, overcrowding, staff shortages and inadequate staff training/inappropriate recruitment in Victoria's youth justice centres have exacerbated tensions and compromised the security and safety of staff and young people in detention. These pressures have undermined Victoria's strong approach to youth justice. Our lawyers are concerned that recent riots at Parkville, Malmsbury and Barwon are in large part explicable by the culmination of these pressures.

The increasing use of lockdown in Victoria's youth justice centres has also contributed to unrest and tensions between staff and young people at these centres.

VLA lawyers regularly visit Victoria's youth justice centres and are aware that the use of separation, isolation and lockdown have, at times, been used as a result of staff shortages. Between July and August 2016, prior to the riots at Parkville, our lawyers noted that a number of young people had reported being on lockdown for several days due to staff shortages on the units. During this period, young people were held in their rooms. They did not have access to programs or ordinary schooling and were unable to come out at meal times. The use of lockdowns is continuing across Victoria's youth justice centres.

Lockdowns, isolation and separation can take a significant toll on the mental and physical health of young people.

"It is not uncommon for young people to be kept in isolation, not because of any behavioral concerns, but because there's a lack of space."

Lawyer, Melbourne

"The kids have been spending long periods of time in lockdown. They become anxious and stressed."

Lawyer, Melbourne

VLA notes that the Commission for Children and Young People is currently completing an inquiry into the use of isolation, separation and lockdown in Victoria's youth justice centres.¹² The inquiry is examining events during the 18 month period between 1 February 2015 and 31 July 2016. VLA has contributed to this inquiry and understands that the Commission intends to table its report in both Houses of Parliament.

¹²For the terms of reference see <<http://www.cyp.vic.gov.au/systemic-inquiries/isolation/index.htm>>

We believe that any improvements to security at Victoria's youth justice centres should be developed and implemented in accordance with the therapeutic framework of the CYFA. Consistent with this framework, rehabilitation should be prioritised, family relationships preserved and access provided to education and training and to drug, mental health and other supports. Noting the Government's recent announcement of the construction of a new youth justice facility, VLA further recommends that any new facility be designed consistently with these principles.

It is vital that young people and staff in youth detention centres feel safe and secure. The level of security required will vary depending on the security risks that different young people present. Youth justice centres should not simply replicate adult prisons. Any new youth justice facility should be fitted out in such a way as to flexibly accommodate the different needs and risks presented by the young people housed there.

Implications of incarcerating young people (term of reference 4)

For many young people, incarceration has lasting detrimental effects. It disconnects them from their family and their community, including any educational activities they are engaged in. It also places them in an environment where they are mixing with a cohort of young people who are experiencing a range of social issues, leading to peer connections that can lead to further offending.

Remand in particular can have a profound impact on a young person. Time spent on remand severs a child's connection to schooling, thus impacting upon their education and subsequent employment prospects. Children on remand also miss the opportunity to demonstrate to the sentencing court that they have taken steps to address their offending behaviour.

Remand also contributes to the stigmatization of young people as criminals. The stigmatization engendered by the criminal justice system can produce a self-fulfilling prophecy in that young people labelled criminals assume the identity of a criminal. Labelling and stigmatisation are widely considered to play a role in the formation of young people's offending trajectories, influencing whether young people persist with, or desist from crime.¹³

Many young people on remand have a history of trauma, experience of child protection, alcohol and substance abuse and mental health issues. VLA's clients are often socially disadvantaged and present to us with complex and interconnected issues. Such young people are highly over-represented in the youth justice system.

In its 2015-16 Annual Report, the Victorian Youth Parole Board referred to a Department of Health and Human Services 'snapshot survey' of 167 males and nine females detained on sentence and remand on 7 October 2015. The survey showed, among other things, that:

- 63% were victims of abuse, trauma, or neglect
- 45% were the subject of a previous child protection order
- 19% were subject to a current child protection order
- 33% presented with mental health issues
- 18% had a history of self-harm or suicidal ideation
- 24% presented with issues concerning their intellectual functioning

¹³ K.Richards, What makes juvenile offenders different from adult offenders? *Trends and issues in crime and criminal justice* No.409, February 2011, p.2.

- 11% were registered with Disability Services
- 10% had a history of alcohol misuse
- 16% had a history of drug misuse
- 66% had a history of both alcohol and drug misuse
- 10% were homeless with no fixed address or residing in insecure housing prior to custody.¹⁴

The experience of detention exacerbates the disadvantage and vulnerability of these young people. Significantly it also increases their likelihood of reoffending.¹⁵ Incarcerating young people is clearly not the best way to manage and address the often complex and interconnected issues that they face.

Koori and culturally and linguistically diverse young people

Young people of Aboriginal and Torres Strait Islander and some culturally and linguistically diverse backgrounds are over-represented in the youth justice system. A reduction in contact with the criminal justice system for young people from these communities can best be achieved through culturally informed, tailored strategies which address the relevant risk factors. Family and support structures should also be engaged and supported as much as possible and where appropriate.

VLA recommends that there be increased resourcing for culturally appropriate services for Koori young people which aim to improve social outcomes and reduce engagement with the youth justice system. VLA also supports the expansion of the Koori Children's Court throughout Victoria.

More generally, supports for young people from culturally and linguistically diverse communities should be tailored so that they are culturally appropriate. To achieve this, supports should be specifically designed with input and assistance from those agencies and organisations that have specialised knowledge and expertise, as well as from the communities themselves.

Additional options for keeping young people out of youth justice centres (term of reference 5)

We know that detention is the least effective way of achieving rehabilitation.¹⁶ First and foremost, VLA believes that we need to have a greater focus on investment that supports family, health, education, community development and socioeconomic equality.

Providing early intervention and support for young people is critical to keeping young people out of youth detention centres. The Sentencing Advisory Council's 2016 report, *Reoffending by Children and Young People in Victoria*, found that the likelihood of a child or young person progressing from the Children's Court to the adult criminal jurisdiction was found to be associated with age at 'entry' into the criminal courts.

The younger children were at their first sentence, the more likely they were to reoffend generally, reoffend violently, continue offending into the adult criminal jurisdiction, and be sentenced to an

¹⁴ Youth Parole Board, *Annual Report 2015-16* (2016) p.14.

¹⁵ K. Richards and L. Renshaw, *Bail and Remand for Young People in Australia: A National Research Project*, AIC Reports: Research and Public Policy Series 125, Australian Institute of Criminology, Canberra, 2013.

¹⁶ Sentencing Advisory Council, *Sentencing Children and Young People in Victoria*, 2012, pp.322-333.

adult sentence of imprisonment before their 22nd birthday. The Sentencing Advisory Council found that after accounting for the effect of other factors, each additional year in age at entry into the criminal courts was associated with an 18% decline in the likelihood of reoffending.¹⁷

Many frequent users of legal aid services first come to VLA between the ages of 10 and 17 years, and many have experienced trauma.¹⁸ Family supports are often absent, and there is overlap with children being in residential care and the child protection system.¹⁹ VLA considers that any strategy to keep young people out of youth justice centres should engage young people early, before offending has started, identifying from the data those who are most vulnerable.

In addition to measures announced by the Government in December 2016 to increase and expand bail supervision and supports (see page 9), we also note the importance of diversion, post-release support, restorative models of justice and justice reinvestment as crucial means of keeping young offenders out of detention.

Diversion

Diversion is a key strategy for keeping young people out of detention. VLA supports the introduction of a legislated youth diversion scheme that is properly funded and resourced. Our experience with young people is that, in many cases, appropriately tailored diversion can significantly reduce the likelihood of reoffending, as illustrated in the following case studies.

Josh

Josh (not his real name) was 17 when he committed a number of offences. The offending was primarily burglaries in the presence of other young people. He had no other prior criminal history and was referred to VLA when he was an inpatient at a youth health facility. He had a new diagnosis of schizophrenia, an ice problem and no family support. The prosecution ultimately agreed to diversion in relation to the charges. The diversion plan was one which was extensive and structured and allowed for extra supports around the mental health treatment which was at the heart of the issues Josh was experiencing. Josh successfully completed the diversion, which went for approximately 6 months – a lengthy period of time. It meant that Josh was able to get the support that he needed to address the underlying contributors to his offending and put this offending behind him, without the stigma that attaches to a criminal history.

Dylan

Dylan (not his real name), was 13 when he was charged with the theft of a push bike. He had DHHS involvement, his mum was very unwell and he had just enrolled in school. His one day diversion was to write a letter of apology. This meant that he could learn from the experience and move on.

¹⁷ https://www.sentencingcouncil.vic.gov.au/sites/default/files/publicationdocuments/Reoffending_by_Children_and_Young_People_in_Victoria.pdf, p.xiii.

¹⁸ Victoria Legal Aid, *Research brief: Victoria Legal Aid client profiles – high contact users of legal aid services*, 2014.

¹⁹ Victoria Legal Aid, *Care Not Custody. A new approach to keep kids in residential care out of the criminal justice system*, 2016.

Kayla

When Kayla (not her real name) was 17, she was charged with two counts of recklessly causing injury. Kayla's dad is an alcoholic and her mum died when Kayla was in primary school. At the time of the offending, Kayla was homeless and had been using ice. Kayla wanted to undertake early childhood studies and work in childcare. She was worried that a finding of guilt would make it difficult to get a Working with Children Check. Kayla was referred to drug and alcohol counselling, and then to a homelessness service, where she was supported to find accommodation. This service also organised a computer for Kayla so that she could complete her studies. The Children's Court was satisfied that Kayla had successfully completed her diversion plan, and did not record a finding of guilt.

Cheyenne

Cheyenne (not her real name) had three lots of offending including a robbery. She had a young child. She was linked to a mentor provided through a community based youth justice mentoring program. This mentor assisted her to get housing and other support. After three months, the Children's Court dismissed Cheyenne's charges.

VLA has also seen positive outcomes as a result of resource-targeted, strategic support for young people who have come into contact with the criminal justice system, including the involvement of proactive outreach youth workers. For example, our lawyers have reported that programs such as the GRIPP program²⁰ have been very successful in addressing anger management issues for young people in and around the Dandenong area, extending to Frankston. GRIPP is a voluntary program for young males aged 13-17 years, who have come to the attention of police or the court for offences involving violence. The success of such programs depends on them being well-staffed, with qualified clinicians who are able to conduct proactive outreach and provide targeted support for young people.

Post-release support

In cases where a youth detention order is the most appropriate sentencing option for a young person, VLA considers that more can be done to work intensively with these young people following release to prevent them from returning to youth detention and becoming adult offenders.

Upon release from a youth detention centre, a young person is likely to require a range of supports, such as housing, drug and alcohol treatment and mental health treatment. To release a young person without these supports in place greatly increases their likelihood of reoffending. Our focus needs to be not only on the criminal justice system but on the need for interventions and support both before and after young people have contact with the criminal justice system.

Restorative justice models

Restorative justice models, such as youth conferencing, can offer a meaningful way for young people to take responsibility for their behaviour in a way that diverts them from the criminal justice system.

²⁰ Gain Respect and Increase Personal Power (GRIPP), City of Greater Dandenong Youth Services.

Restorative justice will not be an appropriate intervention for all young people or in all circumstances. However, in appropriate cases it can be a successful means of reducing reoffending.

VLA has seen in our practice the value of restorative justice models in making offenders confront their offending behaviour, take responsibility for their actions and make amends.

Group conferencing provides the Children's Court with an alternative pre-sentencing option that aims to divert young people from further or more serious offending. Ultimately, the Court makes the final decision about the fate of the young person it deals with.

Group conferencing requires an offender to talk about what they have done, listen to what harm has been caused to the victim and apologise.

Importantly, group conferencing also gives victims the opportunity to explain to the offender the impact that their behaviour has had on them, and to hear words of contrition directly from the young person. The process can facilitate understanding among all of the participants.

Justice reinvestment

VLA also considers that there is enormous potential to focus on justice reinvestment in Victoria. Children who come from circumstances of disadvantage are heavily over-represented in the youth justice system. Any strategy to keep young people out of youth justice centres must address the causes of disadvantage.

Justice reinvestment strategies were developed in the United States in response to the social and economic costs associated with mass incarceration. States across the US have used justice reinvestment strategies to better manage correctional spending, increase public safety and redirect some of the savings to improve conditions in the neighbourhoods to which most people who are released from prison return.²¹

Justice reinvestment is a data-driven approach to improve public safety, reduce corrections and criminal justice spending, and reinvest savings in strategies that reduce crime and strengthen communities. Money that would otherwise be spent on custodial services is diverted into early intervention, crime prevention and diversionary programs that address the causes of crime.

The role of the Department of Health and Human Services in overseeing practices at the centres (term of reference 7)

We note that the responsibility for overseeing practices at Victoria's youth justice centres is moving from the Department of Health and Human Services to the Department of Justice and Regulation, effective from 23 April 2017.²²

VLA considers that independent oversight of youth detention centres is critical in promoting transparency and accountability. In this regard, VLA acknowledges the important role of Independent Visitors, the Commission for Children and Young People, the Victorian Ombudsman and the Victorian Equal Opportunity and Human Rights Commission.

²¹ Justice Centre, The Council of State Governments, *Justice Reinvestment State Brief: Texas*, 2007, p.1

[<www.pewtrusts.org>](http://www.pewtrusts.org)

²² <http://www.premier.vic.gov.au/building-a-stronger-and-more-secure-youth-justice-system/>

VLA also notes that on 9 February 2017 the Australian Government announced its intention to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) by December 2017. Under OPCAT, facilities like Australian prisons and youth detention centres will be independently monitored by a network of Australian inspectorates. Following ratification, the Australian Government will fund the Office of the Commonwealth Ombudsman to coordinate the network of Australian inspectorates.²³

VLA welcomes measures that are aimed at improving independent oversight and accountability at youth justice centres in Victoria.

Any other issues the Committee consider relevant (term of reference 8)

Victoria's youth detention centres should operate in such a way as to reduce the likelihood of further offending. Victoria's separate specialist framework under the CYFA recognises that children and young people are different from adults and require responses which focus primarily on rehabilitation, such as having access to education and therapeutic programs while in youth justice centres.

VLA considers that there are a number of measures that should be implemented to mitigate the harmful effect of detention on young people. These include:

- strong education programs
- programs that focus on treating and addressing the causes of offending
- specialised training for staff within the youth justice system designed to address the therapeutic needs of children and young people.

Strong education programs

On 31 July 2012, the Minister for Education formally established Parkville College, to commence operation as a Victorian Government School on 30 January 2013 at the Parkville Campus and the Malmsbury Campus, for 365 days per year.

Parkville College was formed to improve the quality of education in the youth justice system for students who are, or have been, detained in custody. Its role is also to ensure that legislative requirements for children and young people in the care of the state are met.

Many of VLA's clients have attended school sporadically. Parkville College offers a real opportunity for young people to receive education that is tailored to their level of education and their complex needs.

Programs run by the Parkville College, such as the Education Justice Initiative (EJI), based at the Melbourne Children's Court, also provide an effective means of engaging young people in education. The aim of EJI is to connect young people appearing before the courts to an appropriate, supported education pathway through liaison and advocacy with schools, alternative settings and training providers. The Parkville College EJI staff focus on engaging with young people and their families, providing relevant support services.²⁴

²³ See <<https://www.attorneygeneral.gov.au/Mediareleases/Pages/2017/FirstQuarter/Improving-oversight-and-conditions-in-detention.aspx>>

²⁴< http://parkvillecollege.vic.edu.au/?page_id=44>

VLA's experience is that Parkville College and programs run by Parkville College have had a hugely positive impact on many young people.

"A lot of the kids thrived at Parkville College. They developed good relationships with the teachers and really looked forward to going to school."

Lawyer, Melbourne

"The Parkville school has been a great asset for my clients who have been in custody and who have been on periods of remand and then released. I have had a number of clients who are in the community but continuing to engage with Parkville and this has provided them with stability and continuity and overall been a really positive thing."

Lawyer, Western suburbs

"Parkville College was amazing because it gave the kids so much confidence. These are kids who have only ever had experiences of failure. One kid who got 100 per cent in a maths test told me 'I didn't realise I was good at this'. It made a huge difference to his confidence."

Lawyer, Melbourne

"The Education Justice Initiative often forms part of a successful diversion plan. They are able to provide a link between the young person and their school and advocate on behalf of the young person."

Lawyer, Melbourne

Programs that focus on treating and addressing the causes of offending

As the figures provided by the Victorian Youth Parole Board, and indeed VLA's own experience, indicate, the reality is that many young people in detention have experienced past neglect and trauma. As a result, youth detention centres need to focus on recovery from this past neglect and trauma.

In addition, an effective youth justice system cannot ignore the prevalence of mental health issues and issues concerning intellectual functioning among young people in detention. Many of the young people in youth justice centres are simply ill-equipped to make the right choices. They require treatment to address the causes of their offending. Where there is no alternative to incarceration, time spent in a youth detention centre should be used as critical opportunity to provide young people with tailored, evidence-based programs that focus on treating the causes of their offending.

Specialised training for staff within the youth justice system designed to address the therapeutic needs of children and young people

Children differ from adults in their physical and psychological development, and their emotional needs. In the general community, those who work with children and young people in the education system receive specialist training in recognition of the fact that children and young people's needs are distinct from those of adults. It should be no different in the youth justice system. Those who

work with young people in youth detention centres require specialist training. This is vital if our youth justice system is to operate effectively to reduce reoffending and promote community safety.

Conclusion

VLA appreciates the opportunity to contribute to the Committee's inquiry. Our recommendations for reducing the number of young people on remand and improving youth justice centres in Victoria are based on the view that:

- the way the criminal justice system treats children and young people can have a positive or profoundly negative effect on their rehabilitation
- the experience of detention can exacerbate the disadvantage experienced by young people
- providing early supports and diversion from the criminal justice system are the keys to reducing offending and reoffending among young people
- specialist therapeutic responses must be available to children and young people in youth justice centres and in the criminal justice system more broadly.

We trust that our contribution will assist the Committee in its task and would be pleased to elaborate on any aspect of the submission, or to provide any further information to the Committee if required.