



VCOSS submission to SARC on the Youth Justice Reform Bill and the Protective Service Officers Bill

June 2017

Overview

VCOSS welcomes the opportunity to provide feedback on the *Children and Justice Legislation Amendment (Youth Justice Reform) Bill 2017* and the *Justice Legislation Amendment (Protective Services Officers and Other Matters) Bill 2017*. We request this submission be made public on the SARC website.

Many of the measures proposed in the *Youth Justice Reform Bill* and the *Protective Service Officers Bill* are dangerously regressive and disregard a growing body of evidence regarding 'what works' in youth justice.

Despite some positive measures, these Bills threaten the effectiveness of Victoria's existing youth justice system.

This submission details how the proposed legislative changes will:

- **INFRINGE** on the human rights of young Victorians
- **UNDERMINE** Victoria's successful 'dual track system'
- **BLUR** the lines between the youth and adult justice systems
- **EXACERBATE** the preconditions for violence in Victoria's youth prisons
- **OBSTRUCT** young people who are trying to rehabilitate, and
- **GIVE** Protective Services Officers too much power.

VCOSS notes these changes are being proposed amid a broader shift towards measures perceived as 'tough on crime', including the construction of an outdated 'supermax' youth jail and attempts to unlawfully house young offenders in an adult prison.

Victoria's justice system was once the envy of Australia. Other states looked to us for leadership and innovation. But Victoria is slowly surrendering its leadership position on these matters. Increasingly, Victoria is adopting policies that deliberately hurt young offenders for no meaningful gain and stymie their rehabilitation. We are doing things that *look tough*, but will not make the Victorian community any safer.

These Bills are merely the latest expression of that sad decline.

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Feedback on specific elements of the Youth Justice Reform Bill and the Protective Service Officers Bill

Infringement of human rights

VCOSS believes elements of the *Children and Justice Legislation Amendment (Youth Justice Reform) Bill 2017* and *Justice Legislative Amendment (Protective Services Officers and other Matters) Bill 2017* are inconsistent with the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*¹.

In particular:

- the right for children and young people convicted of an offence to be treated in a way that is appropriate for his or her age (section 23),
- the right for a child or young person charged with a criminal offence to a procedure that takes account of his or her age and the desirability of promoting their rehabilitation (section 25)
- the right of every child, without discrimination, to protection in his or her best interests (section 17).

Undermining Victoria's dual-track system

The *Youth Justice Reform Bill* will place restrictions on the use of Victoria's 'dual track' system. The system currently provides adult courts with the discretion to sentence young people aged 18–20 years to serve their custodial sentence in a youth justice facility instead of an adult prison where courts believe the young person has reasonable prospects for rehabilitation, is particularly impressionable, immature or likely to be subjected to negative influences in an adult prison.²

Under the proposed amendments, if a young person is convicted of a 'serious youth offence' (a Category A offence, or a Category B offence, if they have previously been convicted of a Category A or B offence) the court is unable to make a youth justice centre order or a youth residential centre order in respect of the young offender unless the court is satisfied exceptional circumstances exist.³ This amendment risks undermining the effectiveness of the existing system, and is likely to result in more young people (aged 18-20 years) serving sentences in adult prisons. The Victorian Ombudsman's report into rehabilitation identified the corrections system is currently "ill-equipped to deal with young adult prisoners".⁴

Retaining the court's discretion to make a youth justice centre order or a youth residential centre order, where deemed appropriate, can help prevent vulnerable young people from being exposed to the negative effects of the adult prison system at an early age, and allows them to benefit from rehabilitative programs and services available in the youth justice system.

¹ Charter of Human Rights and Responsibilities Act 2006,

² *Sentencing Act 1991*, Section 32

³ *Children and Justice Legislation Amendment (Youth Justice Reform) Bill 2017*, Section 20 and 21.

⁴ Victorian Ombudsman, *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville*, February 2017, p. 3.

The Victorian Ombudsman has also supported retaining Victoria's dual track system in its current form stating "*Victoria's dual track system must go on recognising that children – even dangerous children – are different from adults.*"⁵

More young people being tried in adult courts

The *Youth Justice Reform Bill* includes a presumption favouring the transfer of serious youth offences from the Children's Court to adult courts for children aged 16 years or older.⁶ This risks undermining the Children's Court and eroding the separation of Victoria's youth justice with the adult justice systems. VCOSS cannot support this amendment as it currently stands.

Failing to address why young people in detention are rioting

The *Youth Justice Reform Bill* introduces tougher penalties for young people who commit an offence involving property damage to a remand centre, a youth justice centre or a youth residential centre; an offence involving an assault on a youth justice custodial worker; or who escape from a youth justice facility.

Young people will now serve 'any period of detention' related to the offence on top of their original period of detention, unless the Court states the sentences are concurrent and gives reasons for its decision.⁷

This Bill fails to recognise the factors causing or contributing to the recent riots and property damage occurring in youth justice facilities. VCOSS members report excessive lockdowns are a major contributor to recent incidents at youth justice facilities. The number of lockdowns across all youth justice centres doubled in December 2016.⁸ In some cases, young people have been kept in their cells for up to 22 or 23 hours each day.⁹

The Commission for Children and Young People's recent report found "Young people were denied access to fresh air, exercise, meaningful activities, education, support programs and visits, sometimes for extended periods."¹⁰ Lockdowns are detrimental to young people's rehabilitation and mental health, and can exacerbate harm particularly given the high rates of young people who have experienced trauma and have existing mental health conditions.¹¹ Lockdowns create further unrest and exacerbate tensions between young people and staff.¹²

The Ombudsman's report identified chronic staff shortage and overcrowding precipitated overuse of lockdowns in Parkville, Malmsbury and Grevillea.¹³ Lower ratios of staff to young people, stronger staff retention, improved management support to staff and more regular staff rosters can all help reduce unnecessary lockdowns.

⁵ Victorian Ombudsman, *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville*, February 2017, p. 3.

⁶ *Children and Justice Legislation Amendment (Youth Justice Reform) Bill 2017*, Section 22 and 23.

⁷ *Children and Justice Legislation Amendment (Youth Justice Reform) Bill 2017*, Section 43,

⁸ Commission for Children and Young People, *The same four walls, Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, 2017.

⁹ Victorian Ombudsman, *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville*, February 2017, p. 2.

¹⁰ Commission for Children and Young People, *The same four walls, Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, 2017.

¹¹ Commission for Children and Young People, *The same four walls, Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, 2017.

¹² Victorian Ombudsman, *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville*, February 2017, p. 2.

¹³ Victorian Ombudsman, *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville*, February 2017, p. 2.

VCOSS members also report staff require more training in effective de-escalation, especially in an environment where young people have experienced trauma, exhibit challenging behaviours and have mental health conditions. Potential models include therapeutic crisis intervention, currently used in the residential care setting to help prevent and de-escalate crises.^{14,15}

Undermining young people's chance for rehabilitation

The second reading of *Youth Justice Reform Bill* appears to indicate only some children and young people deserve the opportunity to rehabilitate. "This Government understands that *suitable* young people should be given the opportunity to rehabilitate, which will protect the community from further offending."¹⁶ VCOSS strongly believes all children and young people should be given the chance to rehabilitate and does not believe this proposed amendment aligns with the Victorian Charter of Human Rights.

Protective Services Officers with too much power

The *Protective Services Officers Bill* will amend the functions and expand the powers of protective services officers (PSOs) when on duty at designated places, including railway stations. For example, PSOs will have the ability to search a member of the public without a warrant, for drugs of dependence or psychoactive substances, on reasonable suspicion.¹⁷ They will also be able to stop and search member of the public, including children, for weapons, if police officers are also conducting searches in the designated area.¹⁸ They can detain a person for so long as is reasonably necessary to conduct such a search.¹⁹ PSOs will be able to exercise these powers in relation to a person at, or 'in the vicinity of', a designated place.

The statement of compatibility identifies this Bill as being incompatible with the charter but "believes that this legislation is important for preventative and deterrent reasons, including the protection of children."²⁰ VCOSS is concerned about the anxiety and negative affect this will have on children and young people subjected to these searches, as well as the potential risk of racial profiling. For example, a study by the Flemington and Kensington Community Legal Centre identified "significant issues of racial profiling, over-policing and under policing persist for young people of colour in Melbourne".²¹

Aboriginal children and young people continue to be overrepresented in the youth justice system. For example, in 2014-15, Aboriginal young people in Victoria were 11 times more likely to be on youth justice supervision orders and 12 times more likely to be on detention than non-aboriginal young people.²² Maori and Pacific Islander young people and young

¹⁴ College of Human Ecology, *TCI System Overview*, http://rccp.cornell.edu/tci/tci-1_system.html, accessed 21 February 2017.

¹⁵ Centre for Excellence in Child and Family Welfare, *Therapeutic Crisis Intervention*, <http://www.cfecfw.asn.au/learning-and-development/residential-care-learning-and-development-strategy/rclds-events-and-forum-0>, accessed 21 February 2017.

¹⁶ Statement of Compatibility, Parliamentary debates (Hansard), Legislative assembly fifty-eighth parliament first session, Thursday, 25 May 2017 (Extract from book 6), p. 1502.

¹⁷ Justice Legislation Amendment (Protective Services Officers and Other Matters) Bill 2017, Section 18.

¹⁸ Justice Legislation Amendment (Protective Services Officers and Other Matters) Bill 2017, Section 7.

¹⁹ Justice Legislation Amendment (Protective Services Officers and Other Matters) Bill 2017, Section 7.

²⁰ Statement of Compatibility, Parliamentary debates (Hansard) legislative assembly fifty-eighth parliament first session, Thursday, 25 May 2017 (Extract from book 6), p.1473.

²¹ Flemington and Kensington Community Legal Centre, *The more things change, the more they stay the same*, Report of the FKCLC Peer Advocacy Outreach Project on racial profiling across Melbourne, p. 21.

²² Australian Institute of Health and Welfare, *Youth justice in Australia 2014–15*, *Bulletin 133*, AIHW, April 2016.

people from culturally and linguistically diverse communities, particularly from Sudan, are also disproportionately likely to come in contact with the youth justice system.²³

We recommend the powers of PSOs are not expanded, particularly without comprehensive training in working respectfully and appropriately with children and young people, including those with complex needs.

Welcome support for statutory diversion

VCOSS warmly welcomes the introduction of a statutory youth diversion scheme in the Children's Court which will help make diversion accessible to more young people. This builds on \$5.6m in funding over two years to expand the effective pre-plea youth diversion scheme pilot program state-wide. The pilot diversion program received consistent positive feedback from key stakeholders including Victoria Legal Aid, police prosecutors and the broader court network, and 94 per cent of participants successfully completed the program.²⁴

The Government can further improve community safety and support the young people's wellbeing by investing in an integrated support continuum. This can provide comprehensive prevention and early intervention programs to divert young people away from the justice system, through to tertiary interventions that rehabilitate children and young people who have offended, with strong post-care support reintegrating young people back into community and preventing future offenses.

Conclusion

Build on the evidence to effect real change

VCOSS acknowledges community concern about crimes committed by young people and agrees a response is required. However, any changes should be based on the evidence of what works to prevent both offending and reoffending.

Any proposed amendments should, therefore, be informed by the findings and recommendations of recent reviews and inquiries in this area, including the:

- [Review of youth support, youth diversion and youth justice services](#) by Penny Armytage and Professor James Ogloff;
- Commission for Children and Young People's [Report into the use of isolation, separation and lockdowns in youth justice centres](#);
- Ombudsman's [Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville](#); and
- forthcoming Parliamentary [Report into youth justice centres in Victoria](#).

²³ The Age, *Victoria youth crime: Statistics raise questions about calls to deport youth offenders*, <http://www.abc.net.au/news/2016-12-04/statistics-raise-questions-about-calls-to-deport-youth-offenders/8087410>

²⁴ Jesuit Social Services, [To address youth offending, we must look to the evidence of what works](#), 25th July, 2016.

While the Victorian Government's 'tough on crime' reform agenda may be politically popular, there is clear evidence punitive measures such as longer-term detention and overtly strict bail limitations do little to reduce offending and recidivism among young people.^{25,26}

Such punitive measures have been widely demonstrated to cause further harm and place young people at risk of becoming chronic, long-term offenders.²⁷

“Traditional penal or ‘get tough’ approaches are ineffective due to the stigmatising effect of labelling young offenders, reinforcement of offenders’ criminal behaviour resulting from the collective detention, lack of pro-social influences and failure to address the underlying behaviour behind the offending behaviour.

Not only do these methods tend to be ineffective in reducing recidivism among young people, but they are also amongst the most costly means of dealing with juvenile crime due to high immediate costs and ongoing long-term costs to the juvenile justice system due to continued contact with the criminal justice system.”²⁸

There is clear evidence suggesting the best way to improve community safety is by investing in prevention and earlier intervention initiatives, which tackle the causes of crime. This approach supports the effective rehabilitation of children and young people who have come in contact with the youth justice system.²⁹

A systemic response is now required, which include providing targeted, intensive case-management and family support for the small number of young people committing a high volume of offences (including carjacking and home invasions) to help reform their behaviour and address community concerns.

VCOSS's recent submission to the *Inquiry into youth justice centres* outlines our recommendations for strengthening the youth justice system in greater detail.³⁰

Recognising that young people are not yet adults

It is widely acknowledged children and young people should be treated differently to adults. They require a higher duty of care and more intensive interventions to meet their complex needs.³¹ Young people's brains are still developing, making them more susceptible to peer

²⁵ Noetic Solutions Pty Limited, *Review of Effective Practice in Juvenile Justice*, Report for the Minister for Juvenile Justice, January 2010.

²⁶ I Lambie and I Randell, 'The impact of incarceration on juvenile offenders', *Clinical Psychology Review*, 33(3), 2013, pp. 448-59.

²⁷ Australian Institute of Health and Welfare, *Young people aged 10–14 in the youth justice system 2011–12*, AIHW, 2013, p.21.

²⁸ Noetic Solutions Pty Limited, *Review of Effective Practice in Juvenile Justice*, Report for the Minister for Juvenile Justice, January 2010, p. iv.

²⁹ Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria*, Sentencing Advisory Council, Melbourne, December 2016.

³⁰ VCOSS, [Restoring Youth Justice: VCOSS submission to the inquiry into youth justice centres](#), March 2017.

³¹ Australian Institute of Criminology, *What makes juvenile offenders different from adult offenders?*, Trends & issues in crime and criminal justice, No. 409 February 2011.

influence and risk taking behaviour.^{32,33} Further, their offending is often related to their circumstances.

Overwhelmingly, young people who have offended, or are on remand facing sentencing, have faced significant disadvantage and adversity in their lives. Many have already been involved in the child protection system and experienced trauma or neglect, have mental health or drug and alcohol problems, and have low levels of education and experienced poverty.³⁴ Aboriginal children and children with intellectual disability are also over-represented in youth justice in Victoria.

The principle of detention as a last resort and for the shortest possible time, is a key principle of Australia's youth justice system and is consistent with *United Nations Convention on the Rights of the Child* and the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* ('The Beijing Rules'). However, many of the proposed amendments will erode these principles, and prioritise detention and punishment over rehabilitation.

Highlighted above are some of VCOSS's specific concerns about the proposed amendments to the two Bills. This is by no means an exhaustive list, due to the tight timeframe in which to provide a response.

VCOSS would welcome broader consultation on these proposed legislative amendments and the opportunity to provide a more comprehensive submission.

³² K Richards, *What makes juvenile offenders different from adult offenders?*, Trends & Issues in Crime and Criminal Justice no. 409, Australian Institute of Criminology, February 2011.

³³ L Steinberg, 'A Social Neuroscience Perspective on Adolescent Risk-Taking', *Developmental Review*, 28(1), March 2008, pp. 78–106.

³⁴ Department of Health and Human Services, *Youth Parole Board Annual Report 2015–16*, Victorian Government, Melbourne, August, 2016.