

Youth Justice Strengthening our approach

October 2014

Victoria's next government must take action to build on the state's strong track record in youth justice.

Our youth justice system is highly regarded throughout Australia and globally. At Jesuit Social Services' most recent National Justice Symposium, youth justice expert Professor Chris Cunneen lauded Victoria's approach of diverting children and young people from the criminal justice system. Our rate of youth incarceration has declined by 75 per cent since 1981 and we outperform nearly all Australian states and territories in key indicators including recidivism and crime rates (Cunneen, 2013).

This is not an historic accident. Instead, it is the result of policies and practices grounded in evidence that have focused on preventing crime, diverting children and young people from the justice system, and restoring the broken relationships between people who offend, their victims, and the wider community. It has been the result of work and partnerships between successive state governments, the courts, public sector agencies, and the community sector.

Despite the strengths of our approach, there are still significant issues in the Victorian youth justice system which must be addressed. Through our experience and research, particularly ***Thinking Outside: Alternatives to Remand for Children***, we have identified a range of missed opportunities to intervene and divert vulnerable children and young people from the criminal justice system. This includes:

- The failure to effectively respond to the small cohort of extremely vulnerable children who come into contact with the justice system at a very young age. Children who were 14 years or under at their first youth justice order were more likely to come from areas with higher rates of developmental vulnerability and missed maternal and child health consultations. Aboriginal children are overrepresented in this group. The ultimate costs of our failure to respond to these children are immense, with 85 per cent of young people who were supervised at age 10–14 years returning to (or continuing under) youth justice supervision by age 15–17 (AIHW, 2013).
- Inconsistencies in the availability of diversion, especially in rural and regional areas, with diversion options not available and limited program coverage. Police practice around diversion also varies, with the use of arrest to

process children having increased by 5 per cent and the use of caution and summons decreased by 10 per cent and 13 per cent respectively in the decade to 2010-11 (Jesuit Social Services, 2013).

- Opportunities are being missed to intervene early with young people. In 2012, 38 per cent of young people in custody had a previous child protection order (Youth Parole Board and Youth Residential Board Victoria, 2013) with placement instability in child protection linked to offending (Cashmore, 2011). More generally, responses are not available at the right time with 80 per cent of arrests taking place outside of the hours 9-5pm Monday to Friday when most services operate.

Further investment will strengthen our capacity to divert children and young people from the justice system. The outcome will be better pathways for vulnerable children and young people, less burden on Victoria's police, courts and custodial services, and ultimately a safer community.

Initiative 1

Raise the age of criminal responsibility from 10 years old to 12 years old and put in place approaches to support at-risk and vulnerable children below this age.

A small number of vulnerable children enter the criminal justice system at a very young age. In 2010-11, 406 children aged 10 or 11 were processed by Victoria Police for criminal offences; 41 of these children were Aboriginal or Torres Strait Islander. We know that among this group are some of the most vulnerable children in our community. *Thinking Outside* identified strong correlations between areas with high rates of younger children involved in the criminal justice system and lower SEIFA scores/higher levels of vulnerability on the Australian Early Development Index (AEDI). These vulnerable children risk becoming entrenched in the criminal justice system, with research showing that 85 per cent of young people who were under youth justice supervision aged 10–14 had returned to (or continued under) supervision when they were aged 15–17. This rate is even higher (91 per cent) for Aboriginal children.

The most effective approach to prevent these children's trajectory into the justice system is to address the issues driving their vulnerability, including family dysfunction, trauma, abuse and neglect. Evidence demonstrates that youth justice programs with a therapeutic and supportive approach to young people are far more effective than programs characterised by discipline, fear of consequences, and surveillance (Lipsey, Howell, Kelly, Chapman and Carver, 2010). A therapeutic approach is also more appropriate given the reduced culpability and competency of younger children (Cauffman & Steinberg, 2012), factors that have been recognised in international conventions regarding the rights of children (Committee on the Rights of the Child, 2007).

In line with international standards, we recommend raising the age of criminal responsibility to the age of 12 and putting in place approaches to supporting vulnerable children who are below this age. This could include less formal methods of holding them to account, such as the restorative justice and family centred approaches that are used in New Zealand. Similar family centred approaches for younger children are being trialled in the Aboriginal Children and Family Justice project, a diversion program which is being piloted in North-West Melbourne. There must also be a capacity for individualised responses focused on meeting the welfare and educational needs of these children, similar to those used in Scotland and the Nordic countries.

study of Australia's Children's Courts identified that Australia's youth justice and children protection systems are significantly under resourced (Borowski, 2013). Consequently, children experience delayed assessments of their issues; lack of availability of support with mental health, disability or drug and alcohol issues; a fragmentation inside, outside and between custodial environments and the community; and a lack of safe and secure housing options for young people in the justice system that are gender and culturally appropriate.

Support for vulnerable children and young people who are involved in the criminal justice system needs to be expanded. This should be grounded in evidence of what works, most notably a therapeutic approach focused on personal development through means such as restoration, personal and vocational skill building, counseling and multiple coordinated services (Vinson, 2012). Promising initiatives should be strengthened including:

- **Youth Justice Community Support Services (YJCSS)** which provides a coordinated response for highly vulnerable children and young people in the youth justice system. Support includes the provision of stable housing, access to mental health and drug and alcohol services, and access to education and training opportunities. A recently completed evaluation of YJCSS recommended that additional resources should be provided to support brokerage, a professional development strategy for the program, and increasing the availability and range of alternative housing.
- **Next Steps** is a supported residential program run by Jesuit Social Services for young people with complex needs who are involved in the criminal justice system and at risk of homelessness. The program includes long-term intensive case management support, a strong therapeutic focus, and the provision of stable and appropriate housing with 24 hour supported accommodation provided for three participants. The model is demonstrating success in stabilising housing of a highly vulnerable group of young people, however at present the availability of supported housing for this group remains a major issue.

Initiative 2

Expand intensive support to stop the most vulnerable young people cycling in and out of the justice system.

Many children and young people have repeated and extensive contact with the justice system. Jesuit Social Services' *Thinking Outside* report confirmed evidence of this pattern with 35 per cent of the 444 children or young people who were remanded in 2010 having more than one episode of remand in the same year. Too often the responses of our justice system, as well as wider social services and community fail to provide opportunities for these young people to get their lives on track. The 2013

Initiative 3

Expand restorative justice programs to address minor offending in out-of-home care.

In Victoria in 2012, 38 per cent of young people in custody had a previous child protection order (Youth Parole Board and Youth Residential Board Victoria, 2013). One issue contributing to this ‘cross-over’ of children from child protection to the justice system is the lack of appropriate formal mechanisms to address behavioural problems and conflict in residential care units. It has become common practice for residential care unit staff to call the police in to assist in responding to conflict and behaviour management issues among young people in residential care. This often results in young people being arrested and remanded over the weekend only to be released straight back to community and the same residential care unit at a court sitting on Monday.

A restorative justice approach, such as Group Conferencing, offers a more appropriate way to respond to these issues. Jesuit Social Services has explored the potential of this approach with some young people who have come into contact with the justice system as a consequence of issues in out-of-home-care. More generally, the effectiveness of Group Conferencing has been already demonstrated within the youth justice system. A 2010 evaluation of Victoria’s Youth Justice Group Conferencing program conducted by KPMG showed that it was effective in diverting young people from more intrusive interventions and in reducing reoffending (19.2 per cent of program participants reoffended within 24 months compared with 42.9 per cent of a comparison group).

Initiative 4

Implement a legislative framework for diversion for young people.

Despite a strong culture of support for diversion across much of the youth justice system, Victoria has very few legislative protections to ensure that children are diverted away from the criminal justice system. Major issues with the legislative framework include the lack of a presumption for Police to informally divert children from the justice system by using a caution, no protections for children who are at risk of remand

in the Bail Act, and the absence of a legislative framework for diversion in the Children’s Court. This limits the options available to decision makers across the youth justice system and contributes to inconsistent practice. *Thinking Outside* revealed some inconsistent patterns in use of arrest, summons and caution by Police across regions and time.

Other jurisdictions throughout Australia and internationally have more comprehensive legislative frameworks for diversion including protections for children at risk of remand and presumptions that police and courts will divert children away from the criminal justice system. The Victorian Law Reform Commission’s report into Bail (2007) recommended many similar reforms. These reforms should be implemented, including a presumption in favour of diversion, child specific criteria in the Bail Act 1977, and a statutory diversion scheme in the Children’s Court. Legislative reform is important, but on its own is not enough. It must be completed by continuing efforts to strengthen the culture in favour of diversion across frontline justice services in Victoria and also through funding of diversion programs across the state.

Initiative 5

Resource diversion programs for children and young people who appear in court across Victoria.

Diversion programs are not consistently available for children and young people appearing in the Victorian Children’s Court. This is most notable at the pre-plea stage of criminal proceedings where Magistrates have few options available to them that hold children and young people to account whilst also diverting them from more serious involvement in the justice system. Currently, the most widespread diversion option is the ROPES program, which involves one day of activity involving young people and members of Victoria Police. However, ROPES is no longer available in many locations across Victoria.

Some local organisations and courts have initiated local diversion programs, such as Right Step in Moorabbin and the GRIPP program in the city of Dandenong. While these initiatives are promising, there is no consistent statewide approach to diverting children and young people from the Children’s Court. As a result, Victoria is missing crucial opportunities to divert young people at this early stage of the criminal justice system and set them on a path to a better future.

There is a strong body of evidence supporting the effectiveness of diversion programs in reducing reoffending in a cost efficient manner. Given this, resources should be allocated to Youth Justice (DHS) to develop comprehensive diversion plans for children and young people appearing in Victoria's Children's Court. Workers should have the option of recommending Magistrates refer young people to diversion options that respond to their needs and the circumstances of their offending. It is important that this approach to diversion is available not just in metropolitan but also in regional areas.

Diversion programs must also focus on developing pathways to education and training for children and young people as well as positive links to the wider community. Activities that form part of the community service obligations in the adult corrections systems provide some guidance as to what could be achieved. Here, locally-based programs such as Jesuit Community College's *Fix the Garden* combines preparing and planting a community garden with pathways to pre-accredited qualifications. Activity based rehabilitation camps can also play a role as they have significant positive impacts on children and young people who have been involved in the criminal justice system (Wilson & Lipsey, 2000). "The Outdoor Experience" (TOE) is a wilderness therapy and outdoor adventure program for young people run by Jesuit Social Services. The program assists participants with the promotion of health and healthy lifestyles, social skills and connections, and life skills. TOE uses extended remote journeying (involving bushwalking, ski-touring and rafting, amongst other modalities) as a powerful catalyst for change.

Initiative 6

Expand the Central After Hours Assessment and Bail Placement Service (CAHABPS).

Although 80 per cent of arrests of children and young people in Victoria take place outside of business hours almost all services for young people are only open between 9am and 5pm on weekdays. At the same time, 40 per cent of remand admissions to custody that begin on the weekend last for only one to three days because children are remanded on a Friday night, Saturday or Sunday and then released when they are brought to the Children's Court early in the following week. A key component of after-hours support is the Central After Hours Assessment and Bail Placement Service which assesses children, puts in place necessary supports, and advocates where suitable, in favour of bail to police and bail

justices. The capacity of CAHABPS to assist children is constrained by the lack of resources available to the service, including being closed from 3am through to 9.30am. While CAHABPS workers undertake a valuable role, placement options are limited and they do not have resources to purchase accommodation for children. Furthermore, CAHABPS can only provide an outreach service and in metropolitan areas.

A modest investment would make it possible to extend the opening hours of the service between 3am and 9:30am. Additional funding could also be used to provide an in person assessment service in regional areas during peak periods where there are high levels of arrests of young people out of hours. Support for children at risk of remand could also be provided through utilising existing street outreach, drug and alcohol, and accommodation services. A model of using brokerage funds to purchase accommodation and support services for children on bail has already been successfully implemented in Queensland through the Youth Bail Accommodation Support Service (YBASS). A similar approach should be adopted in Victoria to provide access to after-hours support for children who at the point of arrest are at risk of remand due to lack of suitable accommodation or other support services.

Initiative 7

Expand intensive bail support to regional areas.

Remand places a significant burden on the youth justice system. *Thinking Outside* calculated that the cost of remand admissions that ended in bail in 2010 was over \$3.5 million. In the same year, one quarter of young people released from remand onto bail, had been on remand for over 21 days. Immediate and comprehensive support to avoid unnecessary use of remand and keep children and young people in the community on bail is needed. While bail support has been introduced in metropolitan Melbourne, support for young people on bail in regional areas is not sufficient. A result of this is that young people from regional areas are at risk of being remanded in custody in Melbourne, away from their family and community supports.

Community-based bail support services provide an alternative option to remand for children who might otherwise be remanded due to the risk they present. The pilot program of intensive bail support in metropolitan Melbourne was evaluated and children participating in the program were found to have successfully made it to court without being rearrested

or breaching their bail (DHS, 2011). Funding for the Intensive Bail Support program should be increased so that it can be expanded to regional areas. This could be achieved through additional resourcing of youth justice units and community sector youth justice services, including YJCSS consortia, in rural and regional areas.

Initiative 8

Strengthen the dual track system for 18-20 year olds.

Under Victoria's dual track system, young adults aged 18 to 20 years who are convicted of a crime can be sentenced to a youth justice custodial centre for up to three years instead of an adult prison where a court believes they are vulnerable or have reasonable prospects for rehabilitation. While young adults are able to access dual track once sentenced to custody, this often occurs after significant contact with the adult justice system through adult courts, remand in adult prisons, and sentences in the adult community corrections system. Furthermore, sentencing reform including baseline sentences and minimum mandatory sentences are eroding the availability of dual track for many young people as these sentence lengths mean they are ineligible to be sentenced through dual track. As a result opportunities to utilise the dual track approach for many young people are being missed.

Around half of young people in custody aged 18-20 are in the youth justice centres. Dual track adopts a more therapeutic approach and reflects an understanding of the 'extended transition to adulthood' (Ericson and Vinson, 2011). This approach is supported by increased knowledge of the brain architecture and function among young people. Other jurisdictions including Western Australia and the United Kingdom have adopted similar approaches to young adult offenders.

In all but exceptional circumstances, the component institutions of the Victorian criminal justice system, including courts and custodial facilities should adopt the principles of therapeutic jurisprudence when dealing with young people up to 21 years of age. This should include expanding the operation of the dual track system beyond prisons, to courts, remand facilities and community corrections. Sentencing law and policy should also maximise the opportunity for young people to serve their sentences in the dual track system.

Jesuit Social Services: who we are and what we do

Jesuit Social Services works to build a just society by advocating for social change and promoting the health and wellbeing of disadvantaged people, families, and communities.

For over 37 years we have accompanied people involved in Victoria's criminal justice system. Today our programs working with people in the criminal justice system are grouped together and form Brosnan Services. This work includes a range of programs funded by local, state and national governments, donors and philanthropic bodies. Our approach values every person. We seek to engage with people in a respectful way, that acknowledges their experiences and skills and gives them the opportunity to harness their full potential.

Our vision, values and way of working are underpinned by principles of Catholic Social Teaching, the tradition of Ignatius of Loyola founder of the Jesuits, and human rights principles. This includes a belief in the inherent dignity of all people, a desire to seek the common good, and a commitment to stand in solidarity with those in need.

These values, combined with our experience and research inform our direct work and our efforts to influence hearts and minds for social change.