



Submission to the Bail Review

February 2017



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Who we are

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. We value all persons and seek to engage with them in a respectful way that acknowledges their experiences and skills and gives them the opportunity to harness their full potential.

We strengthen and build respectful, constructive relationships with a focus on:

- **Effective services** – by partnering with people most in need and those who support them to address disadvantage
- **Education** – by providing access to life-long learning and development
- **Capacity building** – by refining and evaluating our practice and sharing and partnering for greater impact
- **Advocacy** – by building awareness of injustice and advocating for social change based on grounded experience and research
- **Leadership development** – by partnering across sectors to build expertise and commitment for justice.

Our service delivery and advocacy focuses on the following areas:

- **Justice and crime prevention** – people involved with the justice system
- **Mental health and wellbeing** – people with multiple and complex needs and those affected by suicide, trauma and complex bereavement
- **Settlement and community building** – recently arrived immigrants and refugees and disadvantaged communities
- **Education, training and employment** – people with barriers to sustainable employment.

For nearly 40 years, we have accompanied people involved, or at risk of becoming involved, in the criminal justice system. In Victoria we work with people to prevent and divert involvement in the justice system and support people exiting prison and youth justice facilities. This includes the Corrections Victoria Reintegration Program in North and West Metropolitan Melbourne (Reconnect), the African Visitation and Mentoring Program (AVAMP), Next Steps and Perry House residential programs, the Youth Justice Community Support Service, Youth Diversion Pilot Program, Group Conferencing and Barreng Moorop (delivered in partnership with the Victorian Aboriginal Childcare Agency and the Victorian Aboriginal Legal Service).

Research, advocacy and policy are coordinated across all program and major interest areas of Jesuit Social Services. Our advocacy is grounded in the knowledge, expertise and experiences of program staff and participants, as well as academic research and evidence. We seek to influence policies, practices, legislation and budget investment to positively influence participants' lives and improve approaches to address long term social challenges. We do this by working collaboratively with the community sector to build coalitions and alliances around key issues, and building strong relationships with key decision-makers and the community.

Our Learning and Practice Development Unit builds the capacity of our services through staff development, training and evaluation, as well as articulating and disseminating information on best practice approaches to intervening with participants across our programs.

Our recommendations

We call on the Victorian Government to:

- act immediately to put in place appropriate structures, plans and resources targeted to the state's most vulnerable communities to effectively break the web of disadvantage
- fully resource the provision of legal assistance at all stages of the bail and remand process, especially at the earliest stages.
- introduce a central database for the recording of all bail outcomes, conditions and reasoning for the purpose of: flagging an accused person's individual needs; identifying likely risks should they be released; and facilitating referrals to support services where appropriate
- insert a Bail Act "purposes" provision to ensure the bail system does not perpetuate the disadvantage faced by marginal and disadvantaged accused, including those:
 - with cognitive impairments and mental health problems
 - who, for geographical or other reasons, are unable to access specialist courts and services
 - who, as a result of complex disadvantage, are not proactive in accessing legal aid.
 - who are Indigenous.
- not add further categories of offences to the show cause or exceptional circumstances lists
- continue to apply the unacceptable risk' test in s 4(2)(d) of the Bail Act 1977 to allow the judiciary to continue to use their discretion in striking the right balance between community safety and the presumption of innocence
- retain provisions in the Bail Act so that children will not be charged with the offence of breaching bail conditions
- expand integrated models of court programs to address unacceptable risk issues and prevent the significant number of people with multiple and complex needs from cycling in and out of the justice system
- expand the Central After-Hours Assessment and Bail Placement Service to include vulnerable groups over the age of 18
- expand bail support programs across the state, with a focus on after-hours support, and particularly for the adult cohort
- expand proven restorative justice programs across the state.

Introduction

Jesuit Social Services welcomes the opportunity to respond to the review into Victoria's bail system.

We believe every Victorian should have the opportunity to access the support they need so that they can appropriately exercise their rights in the face of a court or tribunal, and so they have the opportunity to address the underlying drivers of their offending.

Our submission focuses on the difficulties some groups face in accessing support, and the consequences of this exclusion both for the individuals involved and the community as a whole. Our submission draws on our experience with vulnerable people and communities in Victoria and our '*Dropping of the Edge*' research series¹, which provides extensive information about the extent and geographical spread of disadvantage across Australia, and its entrenched nature.

Our submission is also informed by our involvement in the Enabling Justice project, a collaboration with the Centre for Innovative Justice at RMIT that seeks to understand why people with an acquired brain injury (ABI) are so overrepresented in the criminal justice system, to identify opportunities for providing greater support to this group, and enable better access to justice.

As shown in our *States of Justice: Criminal justice trends across Australia* report¹, It is clear that vulnerable Australians – in particular people with cognitive impairment, indigenous people, those who are unemployed, those who have not completed secondary school, and those experiencing poverty – are over-represented in our prisons. This disadvantage becomes more deeply embedded as people progress from early contact with the criminal justice system through to, in the most severe cases, imprisonment, with many vulnerable young people becoming caught in a lifelong pattern of cycling in and out of the justice system. It is essential that vulnerable people are able to access support services and legal aid both to protect their immediate interests and to help stem a potential slide into criminal behaviour.

Bail restrictions introduced in recent years have led to a growing number of people in our prisons and youth detention centres who have not been sentenced. People experiencing disadvantage are at heightened risk of falling into this situation as their ability to argue for and access bail is diminished by their vulnerable circumstances. We are concerned about the unprecedented growth in the use of remand and the extent to which this falls disproportionately on the vulnerable.

Our recommendations provide a range of practical solutions to help make sure that people engaging with the criminal justice system receive the support they need, with the ultimate aim of reducing their contact with the justice system and creating a safer community for all.

Cornerstones of our judicial system

Jesuit Social Services values and respects the long standing principles of our judicial system, including:

- The presumption of innocence
- The protection of the public, including victims of crime
- The speedy resolution of issues regarding a person's detention

¹ Vinson, T & Rawsthorne, M (2015) *Dropping off the Edge 2015*, Jesuit Social Services and Catholic Social Services Australia, <http://www.dote.org.au/findings/full-report/>; Vinson, T (2007) *Dropping Off the Edge*, Jesuit Social Services, Richmond; Vinson, T (2004) *Community Adversity and Resilience - The distribution of social disadvantage in Victoria and New South Wales and the mediating role of social cohesion*, Jesuit Social Services, Richmond; Vinson, T (1999) *Unequal in Life*, Jesuit Social Services, Richmond.

- The presumption in section 4 of the Bail Act that a person should normally be granted bail except in specified circumstances.

Whilst the presumption of innocence and the related principle that guilt must be proved beyond reasonable doubt are cornerstones of our judicial system, there has been a recent shift in Victoria to increase the use of ‘reverse onus’ provisions which reverse the presumption in favour of granting bail for certain offences (e.g. for people charged with serious offences if they have convictions for failing to appear on bail in the past five years, terrorism offences, or Commonwealth offences of drug importation), as well as the consequences for breaching bail (e.g. in 2013 the Victorian Government introduced separate offences in relation to offences committed while on bail or on parole, as well as offences in relation to the breach of certain conduct conditions while on bail)².

An equitable and just society needs a bail system that will comprehensively allow for the presentation of all facts relevant to an individual accused, with it then becoming a matter for the court to strike an appropriate balance between the freedom of an individual (addressing their individual needs) and the protection of the community.

The proposed review in Victoria provides a valuable opportunity to look at not only those instances when the community needs to be protected from accused persons waiting for trial, but also the ways in which those awaiting trial could receive the necessary support to address the underlying drivers of their offending.

Remand pressures

The prison population in Victoria has increased 33 per cent over the last five years from 4,882 in 2012 to 6,522 in 2016. One of the largest contributing factors to rising imprisonment numbers is the increase in the number of prisoners being placed on remand. As illustrated in *States of Justice*³, between 2012 and 2016 the number of Victorians on remand almost doubled, with the proportion of unsentenced people in prison rising from 20 per cent to 29 per cent (a similar trend can be seen across Australia). The state’s highest ever prison population of 6,937 persons was recorded on 11 February 2017; one third (2,320) of these prisoners were unsentenced.

Number and percentage of prison population on remand, state and territories, 2012-16

Year	VIC	NSW	QLD	SA	WA	TAS	NT	ACT	Australia
2012	996 (20%)	2,476 (26%)	1,250 (22%)	650 (31%)	971 (20%)	86 (17%)	349 (25%)	91 (29%)	6,869 (23%)
2013	954 (18%)	2,765 (28%)	1,346 (22%)	767 (34%)	972 (20%)	114 (24%)	364 (25%)	90 (26%)	7,372 (24%)
2014	1,139 (19%)	2,745 (26%)	1,676 (24%)	868 (35%)	1,179 (23%)	98 (22%)	417 (28%)	88 (22%)	8,209 (24%)
2015	1,434 (23%)	3,651 (31%)	1,796 (25%)	981 (36%)	1,312 (24%)	143 (28%)	482 (30%)	107 (27%)	9,898 (27%)
2016	1,880 (29%)	4,149 (33%)	2,266 (29%)	1,196 (41%)	1,863 (29%)	155 (27%)	463 (28%)	139 (32%)	12,111 (31%)

Sources: Australian Bureau of Statistics (2012) 4517.0 – Prisoners in Australia, 2012, Table 13 PRISONERS, selected characteristics by state/territory, ABS, Canberra.

Australian Bureau of Statistics (2013) 4517.0 – Prisoners in Australia, 2013.

Australian Bureau of Statistics (2014) 4517.0 – Prisoners in Australia, 2014.

Australian Bureau of Statistics (2015) 4517.0 – Prisoners in Australia, 2015.

Australian Bureau of Statistics (2016) 4517.0 – Prisoners in Australia, 2016.



This trend is partly attributable to a more risk-averse attitude to bail applications, as well as a number of legislative changes (such as the introduction of ‘reverse onus’ provisions which reverse the presumption in favour of granting bail for certain offences). In some cases remand is justified, however we must remember that it involves the imprisoning of people who have not been convicted of a crime. It should therefore be the option of last resort. While some people present a real risk to the community and a period of incarceration (including remand) is an appropriate response to the crimes they have committed, we believe the pendulum has swung too far.

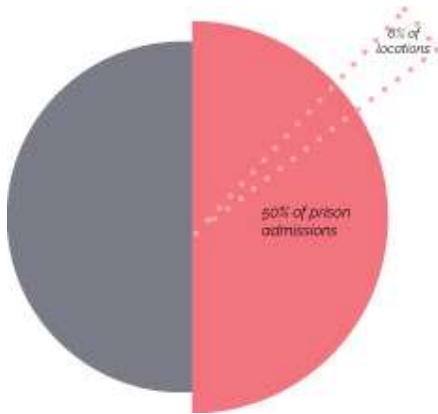
This pattern has been associated with a significant increase in government spending on prison infrastructure, with prison expenditure alone rising by 53 per cent in Victoria between 2011 and 2015. According to Victorian state budget papers, the cost of ‘providing constructive containment of prisoners’ increased from \$316.5 million in 2004–05 to \$901.1 million in 2014–15, with \$1.1 billion budgeted for 2016–17⁴.

The costs of prisons and the current straining of prison resources in Victoria suggests that tightening the bail system is an inefficient use of funds that could be better spent on prevention. As outlined below, prevention of crime by addressing entrenched disadvantage is the best way to avoid having people entering the criminal justice system in the first place.

Addressing disadvantage

Jesuit Social Services’ experience working with young people and adults involved in the criminal justice, education and training, and mental health systems, as well as a robust evidence base, has focused our efforts on supporting people to build pathways to productive lives. We believe this works to reduce crime, strengthen our communities and enhance community safety.

From our *Dropping off the Edge 2015*⁵ research we know that people entering the criminal justice system come from areas of localised and entrenched disadvantage. In fact, just six per cent (42) of postcodes in Victoria accounted for half of all prison admissions. This highlights the often localised nature of crime, as well as the role of disadvantage as an underlying driver of offending.



It is in the justice system at the intersection of disadvantage – including often co-occurring mental problems, disability, homelessness, disengagement from education and employment, drug and alcohol use, and family violence – that we see a need for greater availability of support and legal assistance.

Dropping Off The Edge

In 2015, Jesuit Social Services along with Catholic Social Services Australia released the findings of its *Dropping off the Edge 2015* report (DOTE), which found that complex and entrenched disadvantage continues to be experienced in a small number of locations in each state and territory across Australia, including in Victoria.

Our research confirms that disadvantage is heavily concentrated within relatively few locations. DOTE looked at a range of indicators, including evidence of interaction with the criminal justice system. Our research found that those living in the most disadvantaged 3 per cent of postcodes in Victoria were:

- twice as likely to have criminal convictions
- 3 times more likely to be experiencing long term unemployment
- 2.6 times more likely to have experienced domestic violence
- 2.4 times more likely to be on disability support.

There was a correlation across the various indicators of disadvantage that suggested many people are caught in a “web” of disadvantage, resulting in multiple barriers to productive community engagement. The research supports the notion that it is ineffective to consider any one element of disadvantage in isolation, as various challenges interact with one another to produce a more complex picture.

Acknowledging the above evidence in the context of how the bail system operates is important for two reasons.

First, entrenched disadvantage can be seen as a root cause of bail applications having to be heard. Addressing disadvantage will reduce the scale of the problem confronted in this review, particularly in view of the resource constraints currently impacting on the system.

Second, disadvantage faced by individual bail applicants means they are less able to defend their presumed entitlement to bail than others who can afford private services and legal help. This disadvantage is heightened in situations of out-of-hours bail applications, as the support services necessary to bolster the cases of bail applicants tend to operate during ordinary business hours. Due to the link between incarceration and recidivism, it is in the interests of the community – in the name of avoiding the financial and social costs of remand – that all bail applicants enjoy equal access to those services that could help them avoid being held on remand.

As noted by the Victorian Law Reform Commission's 1997 report:

People from marginalised groups are overrepresented in the criminal justice system and tend to be disadvantaged in their interaction with the bail system. This disadvantage is reflected in the bail decision-making process itself and a lack of appropriate support services. This combination often entrenches existing disadvantage. For example, homeless people may be refused bail because decision makers think they pose too great a risk of failing to appear. If appropriate transitional accommodation was available, decision makers may come to different conclusions. Addressing the disadvantage faced by marginalised groups requires not only reform of the Bail Act, but also the provision of appropriate support services to ensure the Act is applied in a non-discriminatory manner⁶.

The following sections offer a range of practical solutions to address these issues, with the ultimate aim of reducing pressure on the criminal justice system and making our communities safer in the long term.

A sustained, whole of community approach

A number of communities in Victoria experience persistent and entrenched disadvantage. A new approach is needed so we do not continue to fail the communities that bear the greatest burden of disadvantage. A sustained long-term commitment across the Government, community and business sectors is urgently required to resolve this complex problem.

Jesuit Social Services calls on the Victorian Government, in partnership with the community, to act immediately to put in place appropriate structures, plans and resources targeted to our most vulnerable communities to effectively break the web of disadvantage.

We need a multi-layered, cooperative and coordinated strategy that is owned and driven by the community. It must involve all layers of government and the business and community sectors, reflecting shared responsibility and joint commitment to resolve this entrenched problem. This strategy must take account of the unique characteristics and circumstances of local communities and be sustained over the long term. It must be:

- **Targeted** to specific areas that meet the most severe criteria for disadvantage
- **Tailored** to the community's needs and particular circumstances
- **Integrated and cooperative**, involving cooperation between multiple stakeholders
- **Delivered over a long term horizon**, acknowledging that short-term policies do not work in addressing the experience of disadvantage among communities.
- **Community owned and driven**
- **Engaged at the individual, family and community and national levels.**

We call on the Victorian Government, in partnership with the community, to act immediately to put in place appropriate structures, plans and resources targeted to the State's most vulnerable communities to effectively break the web of disadvantage.

Legal support

Of particular concern for Jesuit Social Services is the extent to which failures in access to legal aid enable circumstances in which people, particularly the poor and disadvantaged, are drawn further into the criminal justice system. In late 2015 we were reminded by Victoria's Supreme Court that:

Legal aid is closely connected with human rights. For the poor and disadvantaged who are most vulnerable to having their human rights infringed, legal aid can be indispensable for obtaining redress against the infringement and vindication of their rights through the legal process.⁷

We know, for example, that people with cognitive impairment, mental health problems, intellectually disabilities, and those with an acquired brain injury are significantly overrepresented in their contact with the justice system and substantially overrepresented in our youth detention facilities and in adult prisons. Forty two per cent of men and 33 per cent of women in prison have an ABI compared to 2 per cent in the community⁸, and as outlined below this cohort requires a tailored response to ensure that criminal justice system does not unfairly discriminate against them.

The Enabling Justice Project

Jesuit Social Services and the Centre for Innovative Justice at RMIT established the Enabling Justice project in 2015 to explore the experiences people with an ABI in the criminal justice system and to offer alternative responses, including advocacy in order to address their over-representation in the criminal justice system.

A justice user group was created and one-on-one interviews were held. Justice users themselves identified areas in need of reform and participated in discussions about issues and ideas for improving the criminal justice system.

A Consultation Paper was produced to give voice to the experiences and views of the justice users involved in the project. The full consultation paper can be found at <http://jss.org.au/enabling-justice-project-consultation-paper/>. Some of the issues in the consultation paper include:

- People with ABI feel vulnerable in police interactions and would benefit from clearer language and respectful communication.
- Improving police communication with all people will assist people whose ABI is unknown
- Plain, clear language and respectful communication at Court is important for people to understand and engage with what is happening to them, but it is rarely experienced
- Current sentencing options for people with an ABI are too limited, meaning that prison is often the only available option
- A term of imprisonment should be a punishment of last resort for low-level offending
- A breach of a Community Corrections Order may be an indication of a cognitive impairment and/or multiple and complex needs and should prompt referral to a solution-focused Court or list rather than an immediate return to mainstream Court and prison.

A final report of the project will be released in early 2017.

As outlined in our submission to Victoria Legal Aid's Means Test Review Consultation⁹, people suffering disadvantage are in particular need of legal support during initial bail applications, yet this is not recognised in current practice.

As highlighted earlier, the growth in prisoner numbers in Victoria is mostly driven by increasing numbers of unsentenced prisoners who have been denied bail. Tighter bail arrangements are sweeping the disadvantaged into our prisons, making it essential that access to legal representation is provided at all stages of the bail and remand process.

The eligibility processes for legal aid too often work to the detriment of disadvantaged groups. At the same time, people suffering disadvantage have the attributes that often make it more likely that remand will be recommended². It is vital that Victoria Legal Aid has the resources and responsibility to maximise its capacity to be present in the court for bail cases.

This need for increased access – and the economic and social justifications for it – are apparent from the evidence, which shows that increased numbers on remand do not translate to increased numbers of

² Instability of housing, relationships, income, access to treatment and employment, as well as mental health problems, lead toward refusal of bail and toward assessments of a risk of reoffending.

sentenced prisoners. The majority of those on remand return to the community, rather than prison, when they have a further appearance before court – with legal aid or other legal support in place, they either successfully apply for bail or otherwise have their matter finalised in court. For the period 1 July 2014 to 3 June 2015, there were 8,258 prisoners discharged from prison, 3,296 or 40% of them unsentenced¹⁰. Being on remand can often be a result of inadequate legal representation.

Victoria Legal Aid guidelines appropriately provide legal aid for people in custody, yet too often a person only receives the legal support they need when they have passed the point when it would first have made a real difference. Provision of early legal aid would ensure disadvantage is considered and addressed more thoroughly in the first instance.

We call on the Victorian Government to fully resource the provision of legal assistance at all stages of the bail and remand process, especially at the earliest stages.

Coordinating information to inform bail decisions

Jesuit Social Services recognises the need for bail decision makers to strike an effective balance between the individual needs of an accused awaiting trial and the protection of the broader community. Whilst an accused's needs will be fluid at any given time, for a bail decision maker to be in the best possible position to strike this balance the information available must be up to date with relevant needs/risks that are 'live' at the time of the decision.

When referring to the bail decision maker, it is important to recognise that a large number of accused are bailed by Police who often have limited information (and sometimes competing goals) concerning an individual's needs at the time of arrest. As a decision maker, the police in these circumstances are heavily reliant on instructions from the accused themselves as they relate to previous outcomes and bail conditions.

Whilst Magistrates' bail decisions are recorded in the one central database, police bail decisions and those of the judiciary in higher courts do not necessarily reach that same database.

The issue of data sharing was highlighted in the Royal Commission into Family Violence¹¹, which found that:

Sharing information about risk within and between organisations is crucial to keeping victims safe. It is necessary for assessing risks to a victim's safety, preventing or reducing the risk of further harm, and keeping perpetrators 'in view' and accountable. Despite the importance of information sharing, agencies in the family violence system do not share information routinely or systematically.

The Commission subsequently recommended the introduction of a specific family violence information-sharing regime and establishing a Central Information Point, involving the co-location of relevant agencies (such as Victoria Police) that will be able to access their respective organisations' databases to obtain and collate crucial information for managing risk. The Central Information Point would provide information, primarily about perpetrators, to the proposed Support and Safety Hubs and other key agencies so that they can engage in safety planning with the victim.

In a similar manner, we recommend that a central database of reasons for the success or failure of bail applications be created (i.e. to record outcomes and conditions imposed), so that whenever an accused comes before the police/bail justice/court, they could refer to the database and have a better idea as to the acceptability of the risk posed in granting bail.

This type of register could capture a range of complex issues that a person may be experiencing, such as an acquired brain injury, alcohol and drug dependency, lack of stable accommodation, history of family violence, mental health problems, lack of stable employment or being the primary carer. This information could then be considered as a matter of routine at each bail application, and assist in identifying referrals to support programs where necessary.

We call on the Victorian Government to introduce a central database for the recording of all bail outcomes, conditions and reasoning for the purpose of: flagging an accused person's individual needs; identifying likely risks should they be released; and facilitating referrals to support services where appropriate.

Changes to the Bail Act

Specific provisions concerning marginalised and disadvantaged groups

Given what we know about the experiences of vulnerable people in the criminal justice system, Jesuit Social Services supports recommendation 9 as outlined in the 2007 VLRC report on bail reform to introduce a purposes provision to ensure the bail system does not perpetuate the historical disadvantage faced by Indigenous Australians in their contact with the criminal justice system, and suggests the inclusion of other vulnerable groups.

We recommend the Victorian Government insert a Bail Act "purposes" provision to ensure the bail system does not perpetuate the disadvantage faced by marginal and disadvantaged accused, including those:

- with cognitive impairments and mental health problems
- who, for geographical or other reasons, are unable to access specialist courts and services
- who, as a result of complex disadvantage, are not proactive in accessing legal aid.
- who are Indigenous.

Exceptional circumstances

In regards to whether additional offences should be added to the list of offences which place an accused person into the show cause or exceptional circumstances categories, based on Jesuit Social Services' commitment to the presumption of innocence (and respect for the judiciary) we believe that, instead of adding further offences to this list, the 'unacceptable risk' test in s 4(2)(d) of the *Bail Act 1977* should continue to be applied. This would allow the judiciary to continue to use their discretion in striking the

We recommend:

- the Government does not add further categories of offences to the show cause or exceptional circumstances lists
- that the 'unacceptable risk' test in s 4(2)(d) of the *Bail Act 1977* should continue to be applied to allow the judiciary to continue to use their discretion in striking the right balance between community safety and the presumption of innocence.

right balance between community safety and the presumption of innocence. Any further test is unnecessary.

Retaining provisions for children and young people

The use of remand in Victoria is often unnecessary and far too common to be considered a last resort, an issue highlighted recently with regards to children and young people. According to data from the Department of Health and Human Services¹² concerning remand numbers since the introduction of the amendments to the Bail Act in December 2013 (which created an offence to contravene certain bail conditions):

- The number of individual young people admitted to remand by quarter increased from 112 in the second quarter of 2013-14 to 200 young people in the third quarter of 2015-16, an increase of 79 per cent.
- Most children and young people who are remanded do not go on to receive a custodial sentence. On average, since 2012-13, approximately only 20 per cent of those remanded were sentenced to a custodial order.

While these amendments have since been reversed, the proportion of young people on remand remains high, and we must continue to ensure that children and young people are not unnecessarily detained while unsentenced. This requires a culture of practice and support among decision makers so that children and young people are diverted from custody into the community.

We call on the Victorian Government to retain provisions in the Bail Act so that children will not be charged with the offence of breaching bail conditions.

Expanding integrated models of court programs

Thousands of Victorians go before the Magistrates Court each year, many of whom have multiple and complex needs. As highlighted by the Victorian Ombudsman, alternative justice and sentencing approaches – which assist people involved in the court system who are experiencing a range of issues, including disability, substance abuse, cognitive impairment or mental illness – are achieving positive results by reducing reoffending and helping address the underlying drivers of crime. These include¹³:

- Koori Courts operating in Melbourne and regional Victoria: reduction in recidivism among Koori defendants
- the Court Integrated Services Program in Melbourne, Sunshine and the Latrobe Valley: almost \$2 million in avoided costs of imprisonment per annum
- the Assessment and Referral Court List at the Melbourne Magistrates' Court for people with mental illness or cognitive impairment: an estimated benefit of between \$2 and \$5 for every dollar spent
- the Neighbourhood Justice Centre Collingwood: 16.7 per cent reduction in reoffending within 2 years
- Criminal Justice Diversion Program for first-time or low-risk offenders: 94 per cent of participants successfully completed the program
- the CREDIT/Bail Support Program: 2.5 per cent of participants who successfully completed this program received a custodial sentence, compared to 30 per cent of non-participants

These proven court based approaches do not have state-wide coverage and have limited capacity to meet demand. The success of these programs presents a strong case for expanding these models to other communities throughout Victoria, which would benefit from wider coverage and increased access to these and other specialised courts.

We call on the Government to expand integrated models of court programs to address unacceptable risk issues and prevent the significant number of people with multiple and complex needs from cycling in and out of the justice system.

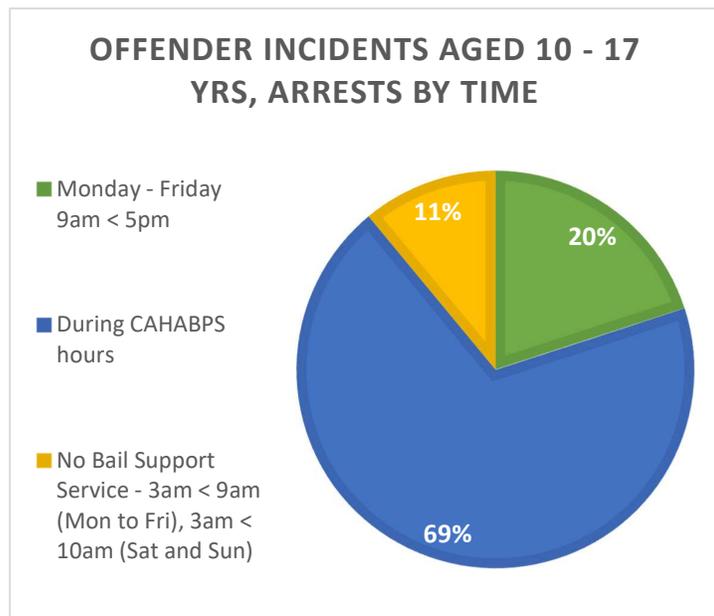
Expanding resources for after-hours services

Data from the Honorary Justice Office¹⁴ indicates the high number of bail hearings occurring after hours. Between May 2015 and May 2016:

- there were 12,044 requests for Bail Justices from Victoria Police and the Department of Health and Human Services, of which 83 per cent (9,991) requests for bail/remand matters related to adults (other matters included interim accommodation orders and bail/remand matters relating to children)
- 11,159 matters were allocated to Bail Justices
- 75 per cent (8,418) of bail justice outcomes were remanded to the next court sitting, 13 per cent (1,396) bailed with conditions and 1 per cent (133) bailed without conditions.

In relation to accused persons bailed with conditions, there is a lack of data available regarding the types of conditions and/or the structures put in place to support those conditions. However, what we know is that most of the support services necessary to bolster the cases of bail applicants tend to operate during ordinary business hours, meaning there is a distinct lack of after-hours support for people on bail, particularly adults.

For example, almost all services for young people are only open between 9am and 5pm on weekdays. A key component of after-hours support is the Central After Hours Assessment and Bail Placement Service (CAHABPS) which assesses children, provides necessary supports, and advocates in favour of bail to police and bail justices. Analysis of Crime Statistics Agency data shows that eleven per cent of arrests occur outside of the CAHABPS hours of operation. There is a clear need to extend the opening hours of the service between 3.00 am and 10.00am to ensure equal and consistent access to the program after hours and provide in-person assessments in regional areas during peak periods (i.e. where there are high levels of arrests of young people out of hours).



We welcome the recent announcement of additional funding to enhance the Central After-Hours Assessment and Bail Placement Service, and call on the Government to develop and fund a service based on this model for vulnerable adults (for example, the VLRC recommended the service be developed for people with a cognitive impairment).

We call on the Government to expand the Central After-Hours Assessment and Bail Placement Service to include vulnerable groups over the age of 18.

Bail support programs

Jesuit Social Services strongly believes a range of evidence-based alternatives to custodial remand must be introduced or expanded, particularly covering out-of-hours support. It is essential that an accused can undertake therapeutic programs and reside in bail accommodation, where necessary. As noted by the Irish Penal Reform Trust¹⁵:

The most effective way to improve compliance with bail conditions, particularly where the accused person has a chaotic life and complex personal challenges, lies in the provision of bail supports and services that allow the accused to remain within his or her community, and address offending-related behaviour in a familiar environment. Examples of bail supports include bail information schemes, bail support/supervision schemes, remand fostering, bail hostels, and bail reviews on custodial remand.

Research and evaluations have identified the following key features linked to successful outcomes for bail support services¹⁶:

- cross-agency collaboration in providing a holistic response to client needs
- detailed assessment for program suitability
- good working relationships with (and confidence of) court officers and effective liaison arrangements with other service providers
- specialist staff/program coordinators located at court
- program flexibility and individually tailored approach to support and referral
- consistency of philosophy and practice
- immediacy of intervention and ongoing support.

These features should form the basis of a holistic, integrated network of bail support services across Victoria.

The case for bail supports – Irish Penal Reform Trust

Bail supports aim to prevent offending on bail, ensure appearance at court and reduce remands to custody to the essential minimum. They are particularly effective in reducing use of remand of young people, women, and those with addictions or mental illness, personal difficulties or unstable lifestyle.

Scottish research on supervised bail has found that assistance with offending-related difficulties is of benefit even after the remand period, including positive change in behaviour over time, a desire to avoid trouble or jail, learning to avoid conflict situations, and refraining from drinking or taking drugs.

Bail supports and services also have been demonstrated to be successful in ensuring that young people in particular attend court. An evaluation of schemes in England and Wales found that young people attended all court hearings in 94% of programmes, while in Ontario, Canada, 81% of bail supervision programme clients attended all of their court appearances.

Bail supports have also been shown to be effective in reducing the number of remands to custody, with a direct correlation between an increase in the use of bail supports and services and a decrease in the number of young people being remanded in custody.

Data for supervision services in Scotland also shows that 80% of those completing their bail supervision period did not receive a custodial sentence, strongly suggesting that the service fulfilled its aim of restricting the use of custody.

Canadian research has shown that bail supports are more cost effective than custodial remands. In Ontario, bail supervision and verification programmes cost approximately \$3 a day per client in comparison to custody costs of \$135 a day per inmate. Similarly in Scotland, off-setting the cost of supervised bail against the reduction in prison costs relating to remand over a three-year period resulted in a net benefit of between £2 million and £13 million.

Bail supports and services which allow the accused to remain within their community, address offending-related behaviour where that is relevant, [and] encourage attendance at court increase court efficiency, decrease the number of remands and result in cost savings.

We call on the Government to expand bail support programs across the state, with a focus on after-hours support, and particularly for the adult cohort

Restorative justice

Undue reliance on detention in criminal justice policy is both ineffective and costly. There is little evidence that tougher sentencing policy improves community safety through deterrence or incapacitation.¹⁷ In fact, several studies have found that imprisonment increases the likelihood of offending behaviour and has the potential to negatively affect prisoners, particularly younger, lower-risk offenders.^{18 19}

Restorative practices are more effective in reducing re-offending and making our communities safer. Jesuit Social Services' work with young people in the justice system in Victoria uses a problem-solving approach to offending that is based on principles of restorative justice, which balances the needs of offenders, victims and the community and aims to help the young person make amends for the harm done. This approach is effective: 80 per cent of restorative justice program participants had not

reoffended after two years²⁰ (compared with over half of the young people who had been in youth detention going on to reoffend).²¹

Restorative justice is more cost-effective than keeping a young person in detention. For every \$1 invested on Youth Justice Group Conferencing, for example, the Victorian Government saves at least \$1.21 in the short term, and this saving is likely to increase in the long term.²² On every level, it makes more sense to divert young people away from the justice system.

Currently, diversion is not widely or consistently offered and does not necessarily meet young people's unique needs. For example, in 2015/16, Aboriginal young people were about a third as likely to receive only a caution or warning as non-Aboriginal youth offenders.²³

A well-implemented system of restorative justice responses is critical to ensuring that young people do not become entrenched in the criminal justice system.

We call on the Government to expand proven restorative justice programs across the state.

¹ <http://jss.org.au/wp-content/uploads/2016/12/States-of-Justice-December-2016-FINAL-1.pdf>

² Sentencing Advisory Council (2016) *Victoria's Prison Population 2005 to 2016*, https://www.sentencingcouncil.vic.gov.au/sites/default/files/publication-documents/Victorias_Prison_Population_2005_to_2016.pdf; Victoria Government (2016) *Stronger New Bail Laws For Serious Offenders*, <http://www.premier.vic.gov.au/stronger-new-bail-laws-for-serious-offenders/>.

³ <http://jss.org.au/wp-content/uploads/2016/12/States-of-Justice-December-2016-FINAL-1.pdf>

⁴ State Government of Victoria, *Getting it Done: Victorian Budget 16/17: Service Delivery*, Budget Paper no. 3 (2016) 270–271; State Government of Victoria, 2006–07: *Service Delivery*, Budget Paper no. 3 (2006) 185.

⁵ Vinson, T. and Rowsthorne, M. (2015) *Dropping of the edge 2015*, Jesuit Social Services and Catholic Social Services Australia, Richmond and Curtin.

⁶ Victorian Law Reform Commission(2007) *Review of the Bail Act: Final Report* (Victorian Law Reform Commission, 2007), page 186. http://www.lawreform.vic.gov.au/sites/default/files/Web_version_Bail_Report.pdf

⁷ *Bayley v Nixon* and Victoria Legal Aid (2015) VSC 744 (18 December 2015) [37]

⁸ Victorian Ombudsman (2015) *Investigation into the rehabilitation and reintegration of prisoners in Victoria*, September 2015, page 87.

⁹ <http://jss.org.au/wp-content/uploads/2016/09/SUB-20160905-Victoria-Legal-Aid-Means-Test-Review-Consultation-paper-FINAL.pdf>

¹⁰ Victorian Ombudsman (2015) *Investigation into the rehabilitation and reintegration of prisoners in Victoria*, <https://www.ombudsman.vic.gov.au/getattachment/5188692a-35b6-411f-907e-3e7704f45e17>

¹¹ Royal Commission into Family Violence (2016) Final Report, <http://files.rcfv.com.au/Reports/Final/RCFV-All-Volumes.pdf>.

¹² Youth Justice Ministerial Roundtable, June 2016, DHHS briefing.

¹³ Victorian Ombudsman (2015) *Investigation into the rehabilitation and reintegration of prisoners in Victoria*; Department of Justice (2009) *Economic Evaluation of the Court Integrated Services Program (CISP): Final report on economic impacts of CISP*, https://www.magistratescourt.vic.gov.au/sites/default/files/Default/cisp_economic_evaluation_final_report.pdf.

¹⁴ Honorary Justice Office (2016) *Report on the Bail Justice service in Victoria*, Department of Justice and Regulation.

¹⁵ Irish Penal Reform Trust (2015) *Trust Bail and Remand Position paper*, http://www.iprt.ie/files/IPRT_Position_Paper_11_on_Bail_and_Remand_sml.pdf.

¹⁶ M & P Henderson & Associates Pty Ltd (2008) *Bail Support Program Evaluation*, Report for Corrections Victoria, March 2008, https://assets.justice.vic.gov.au/corrections/resources/4abe9ba6-19fe-4070-933e-45da2582277e/bsp_evaluation_final_report.pdf

¹⁷ Wan, Moffatt, Jones & Weatherburn (2012) The effect of arrest and imprisonment on crime, *Crime and Justice Bulletin*, No. 158, NSW Bureau of Crime Statistics and Research, Sydney.

¹⁸ Nagin, D., Cullen, T. & Jonson, C. (2009) 'Imprisonment and Reoffending', *Crime and Justice: A Review of Research*, Vol. 38.

¹⁹ Gendreau, P., Goggin, C. & Cullen, F. T. (1999) in Michael Tonry (ed) *The Effects of Prison Sentences on Recidivism*, Report to the Corrections Research and Development and Aboriginal Policy Branch, Ottawa, Solicitor General of Canada, pp. 115-200.

²⁰ KPMG (2010) *Review of the Youth Justice Group Conferencing Program – Final report*, Department of Human Services, Melbourne, Victoria.

²¹ Australian Institute of Health and Welfare (2016).

²² KPMG (2010) *Review of the Youth Justice Group Conferencing Program – Final report*, Department of Human Services, Melbourne, Victoria.

²³ Victorian Government (2016) *Aboriginal Affairs Report 2016*, Department of Premier and Cabinet, Victorian Government, Melbourne.