

Public Submission from the Centre for
Multicultural Youth and the Youth Affairs
Council of Victoria (YRIPP management
agencies)

To the Victorian Law Reform Commission

In response to:

Supporting Young People in Police Interviews -
Background Paper



Centre for Multicultural Youth

The logo for Youth Affairs Council of Victoria Inc. features the words 'youthaffairs' in a lowercase, red, sans-serif font. Below this, the words 'COUNCIL OF VICTORIA INC.' are written in a smaller, uppercase, black, sans-serif font. A thick, red, curved line arches over the text from the left side of the page towards the right.

youthaffairs
COUNCIL OF VICTORIA INC.

Inquiries to:

Sally Reid
Manager, Program Innovation
Centre for Multicultural Youth
304 Drummond Street
Carlton
Victoria 3053
Tel: 03 9340 3741
Email: sreid@cmynet.au

Table of Contents

TABLE OF CONTENTS	2
ABOUT THE CENTRE FOR MULTICULTURAL YOUTH	3
ABOUT THE YOUTH AFFAIRS COUNCIL OF VICTORIA	3
ABOUT THE YOUTH REFERRAL AND INDEPENDENT PERSON PROGRAM (YRIPP)	3
ABOUT THIS SUBMISSION	4
INTERVIEWS WITH YOUNG PEOPLE IN POLICE CUSTODY: A HUMAN RIGHTS’ FRAMEWORK	4
THE NAME ‘INDEPENDENT PERSON’	5
Q4. Is ‘independent person’ an appropriate title, or would another title be better?	5
ROLE OF THE INDEPENDENT PERSON	6
Q5. Should the role of an independent person be set out in legislation?	6
Q8. What should happen if the police question a young person in custody without a parent, guardian or independent person present?	6
Q1. What should be the role of an independent person who is present when the police are questioning a young person in custody whose parents or guardian are not available?	7
Q6. If the role of an independent person is set out in legislation should it include any of the following things.....	7
Q11. Should the independent person be able to arrange legal representation on behalf of the young person without express permission if they believe it is in the best interest of the young person?	7
Role of Independent Person: Allegations against the police	10
Role of Independent Person: Referral function	11
Role of Independent Person: The Bail Process	11
Role of Independent Person: Vulnerability.....	13
WHO SHOULD PERFORM THE INDEPENDENT PERSON ROLE: AGENCY AND INDIVIDUALS	14
Q3. Should certain people be prohibited from acting as an independent person?.....	15
Q10. Should independent persons be trained? If so, what should the training involve?	16
PARENTS VS INDEPENDENT PERSONS: WHO SHOULD PERFORM THE ROLE	19
Q2. Should the role of the independent person be any different to the role which the parents or guardian should play if they were available?	19
Q7. Are there any circumstances in which the police should be required to arrange for an independent person to be present even when a parent or guardian is available?	19
Q9. Should the police be required to provide an independent person (or a parent or guardian) with a written summary of the detained young person’s rights?	19
Q12. Does the YRIPP system work efficiently? How could it work better?	24
CONCLUSION AND RECOMMENDATIONS	26

About the Centre for Multicultural Youth

The Centre for Multicultural Youth (CMY) is a community-based organisation that advocates for the needs of young people from refugee and migrant backgrounds. CMY combines policy development and direct service delivery within a community development framework. This approach gives CMY strong connections with young people and their communities while enabling change on a local, state and national level.

About the Youth Affairs Council of Victoria

The Youth Affairs Council of Victoria (YACVic) is the peak body representing the youth sector in Victoria. YACVic provides a means through which the youth sector and young people voice their opinions and concerns in regards to policy issues affecting them. YACVic works with and makes representations to government and serves as an advocate for the interests of young people, workers with young people and organisations that provide direct services to young people. YACVic also promotes and supports the participation of young people in debate and policy development areas that most affect them. YACVic's resources are primarily directed towards policy analysis and development, research and consultation and to meeting the information, networking, education and training needs of our constituency.

About the Youth Referral and Independent Person Program (YRIPP)

The Centre for Multicultural Youth and the Youth Affairs Council of Victoria are the management agencies for the Youth Referral and Independent Person Program (YRIPP).

YRIPP aims:

- To work with and improve the existing system of Independent Person support provided to young people in police custody; and
- To divert young people, including refugee, newly arrived and Indigenous young people, from progression to higher levels of the criminal justice system, based on culturally appropriate early intervention and diversion support.

YRIPP provides:

- Appropriately trained volunteer Independent Persons to attend police interviews with young people under 18
- A 1300 telephone number for police to call 24/7 when they require the attendance of an IP at their station
- Access to:
 - 24/7 legal advice for young people in police custody (staffed by VLA solicitors)
 - 24/7 Independent Third Person support (through OPA)
- Multilingual brochures for parents/guardians outlining the purpose of a parent or guardian's presence at police interviews
- Referrals for at-risk young people to local health and welfare services to reduce the chances of future offending; and
- A partnership approach, working with local networks to ensure the program complements the existing service system

Established as a small pilot in nine police stations in 2004, YRIPP now operates in over 100 police stations across the State. YRIPP is a unique partnership between community agencies and Victoria Police. It is currently funded by Victoria Police and is a partnership of the Centre for Multicultural Youth, the Youth Affairs Council of Victoria, UnitingCare, Community Legal Centres, the Victorian Aboriginal Legal Service and other agencies.

About this Submission

This submission is based on:

- The specialist knowledge of CMY and YACVic in relation to issues relating to young people and young people from diverse cultural backgrounds
- The experiences of the implementation of YRIPP over the past 5½ years
- The views of YRIPP volunteers as expressed through:
 - an anonymous, on-line survey conducted by YRIPP of its Independent Persons and completed by 68 volunteers.
 - YRIPP facilitated VLRC consultations with volunteers
- Sally Reid's Churchill Report, Independent Persons or Appropriate Adults? Supporting Young People in Police Interviews, comparing the UK to Victorian situation in this area. The current submission supports the findings and recommendations of that research
- An analysis of related legislation and case law across Victoria and interstate
- Other literature in the area, including the Australian Law Reform Commission's 1997 report 84, *Seen and Heard: priority for children in the legal process* referred to hereafter as *Seen and Heard*.

Interviews with Young People in Police Custody: A Human Rights' Framework

In 2002, John Boersig in his article: The duty of a 'responsible person' under section 13 of the *Children (Criminal Proceedings) Act 1987* (NSW), looked at the role of 'responsible persons' in NSW and argued that in understanding the role, we should shift from a paternalistic to a 'rights based' approach which focuses on the child's best interests.

CMY and YACVic are in agreement with this position and believe that the role of the Independent Person should be seen within a human rights framework which takes the vulnerability of children as the starting point. Boersig's position suggests that the mere presence of a support person in a 'watchdog' role is inadequate - the role is a critical and active one.

This argument would appear to be strengthened by recent moves in Victoria in terms of the introduction of the *Charter of Human Rights and Responsibilities* (2007) and some of the child specific provisions coming out of it which are reflective of the International Convention on the Rights of the Child, ratified by Australia in 1990. An example is Section 23 which states that *A child who has been convicted of an offence must be treated in a way that is appropriate for his or her age*. Like the Convention, the Charter has a focus on the best interests of the child and the importance of family.

The *Charter* imposes a substantive obligation on public authorities such as the Victoria Police, to act compatibly with human rights and a procedural obligation to properly consider relevant human rights in decision-making processes. Not doing so will be considered unlawful, unless the public authority ‘could not reasonably have acted differently’.

Our starting point is therefore the question: “*What should the Independent Person role look like to ensure a child/young person can fully exercise their rights at the police station and during the police interview?*”.

Seen and Heard sets down a comprehensive agenda for addressing many of the issues facing young people in their interaction with the legal system and more specifically for this review, the police. Many of these issues concord with YRIPP’s experience of young people in police interviews today. CMY and YACVic continue to support the implementation of many of these recommendations with respect to the police interview process and criminal justice processes more generally.

Seen and Heard recommends that the Commonwealth develop national standards for juvenile justice, that reflect Australia’s international human rights obligations. These standards should set the framework, require best practice and establish benchmarks for performance and should in turn be developed into uniform legislative provisions in all states and territories (paragraphs 18.9, 18.10). YACVic and CMY are in agreement with the notion of the development of national standards relating to youth justice and particularly that they cover this area which *Seen and Heard* describes as “interview friends”.

The following recommendations aim to ensure adequate and appropriate protection of young people in police interviews:

The name ‘Independent Person’

Q4. Is ‘independent person’ an appropriate title, or would another title be better?

There is much ambiguity regarding the term ‘Independent Person’. This is due to the fact that in YRIPP’s experience, it is often taken literally, particularly by police, to mean ‘independent of all parties to the police interview’ and even independent of the young person. This causes significant issues on the ground for YRIPP, for example where an IP suggests a young person receive legal advice (in a way that a parent might), this is sometimes seen as ‘taking sides’ or overstepping boundaries.

If looking at legal precedent and listening to interpretations from for example, Judge Jennifer Coate (previous President of the Children’s Court), the spirit of the legislation was that the person should be independent of the justice system or police but *there in place of a parent or guardian to support the young person*. This is the role that is required.

The term Independent Person causes role confusion in Victoria at the local level and hampers the performance of the role in accordance with the spirit of the legislation. Furthermore, there is confusion amongst police and other agencies between the Independent Person and the Office of the Public Advocate’s Independent Third Person Roles.

The name also creates problems for YRIPP internally as a program. YRIPP refers young people to health and welfare support services after the police interview. Some pre-existing non-YRIPP Independent Persons (and Independent Persons who still operate in non-YRIPP police stations) feel that Independent

Persons referring young people to health and welfare support services is not appropriate as “once we get involved in the young person’s affairs, we are no longer *independent*”.

A more appropriate name would facilitate better protection of the rights of vulnerable young people in police interviews.

The change in name was generally supported by YRIPP volunteers in recent VLRC consultations. In addition, 62% of respondents to the YRIPP volunteer survey supported a name change. Importantly, whatever the term chosen, YRIPP volunteers surveyed felt that it was important that the term not include the word ‘friend’ to avoid confusion for the young person around the potential for future contact.

RECOMMENDATION 1

CMY and YACVic propose that there be a change to the name ‘Independent Person’ to better reflect the spirit of the legislation. The term CMY and YACVic suggest is “Support Person”(SP) which removes the ambiguities currently encountered around the role and allows for future broadening of the role to include support to those with different vulnerabilities.

Role of the Independent Person

Q5. Should the role of an independent person be set out in legislation?

CMY and YACVic believe that the rights of, duties afforded to and role of the Independent Person in the justice process should be defined by statute and that this role should be defined as an interventionist one. 94% of YRIPP Independent Persons who completed the survey agreed that the role and responsibilities of an IP should be set out in legislation.

In addition, there should be a legislative requirement for police to read out the IP role at the commencement of the interview to set the parameters for all involved. 78% of YRIPP survey respondents agreed with this.

RECOMMENDATION 2

CMY and YACVic believe that the rights of, duties afforded to and role of the Independent Person (Support Person) in the justice process should be defined by statute and that this role should be defined as an interventionist one.

Q8. What should happen if the police question a young person in custody without a parent, guardian or independent person present?

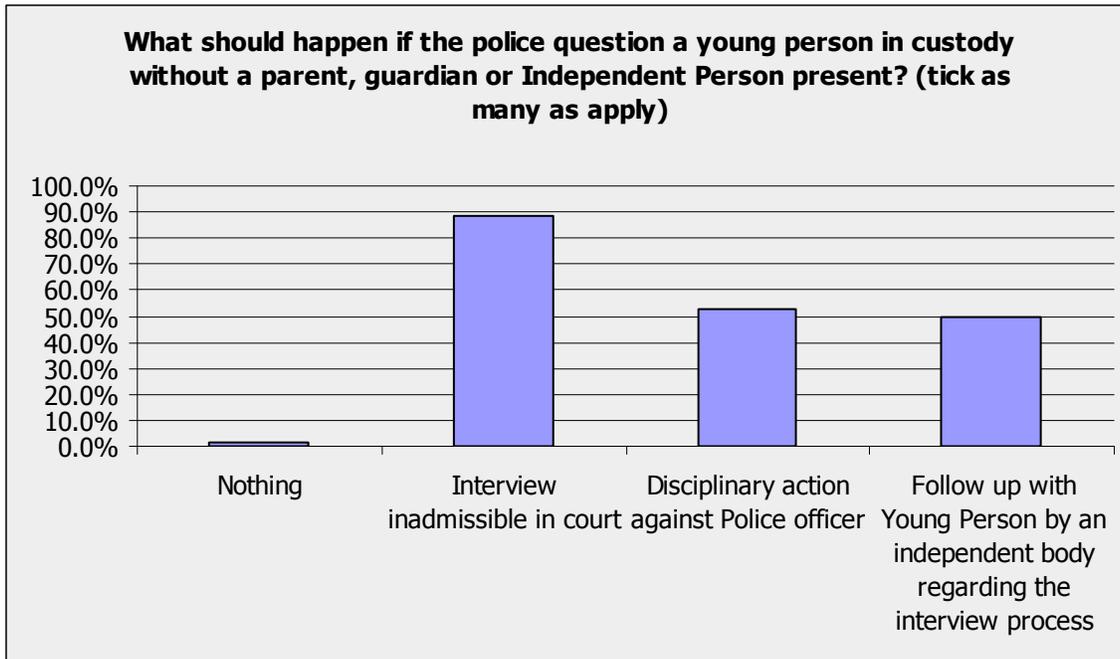
In line with the *Seen and Heard* recommendation (212), CMY and YACVic believe that national standards for juvenile justice should be developed which include:

- *An interview friend must be present during police questioning of a child suspect and have an opportunity to confer in private with the child prior to questioning. Statements made in the absence of an interview friend should not be admissible in evidence against the child [emphasis added].*

This is currently part of Victorian legislation. There are exceptions to this requirement however police should be required to justify situations where they use such exemptions.

88% of YRIPP volunteer survey respondents agreed that the interview should be inadmissible in court if the police questioned a young person in custody without a parent/guardian or IP present (refer to table below).

YRIPP IP Survey Responses (68 respondents)



RECOMMENDATION 3

CMY and YACVIC believe that statements made in the absence of an Independent Person should not be admissible in evidence against the young person.

Q1. What should be the role of an independent person who is present when the police are questioning a young person in custody whose parents or guardian are not available?

Q6. If the role of an independent person is set out in legislation should it include any of the following things...

Q11. Should the independent person be able to arrange legal representation on behalf of the young person without express permission if they believe it is in the best interest of the young person?

Although the Independent Person’s presence is helpful to the police in the processing of suspects, the role of the Independent Person should be to support a vulnerable young person in custody and to ensure their rights are respected.

Broadly, the role should include:

- To act in the best interests of the young person.
- To provide emotional support to the young person
- To provide assistance to the young person (for example” facilitating access to services)

- To observe whether the interview is being conducted fairly and to intervene if it is not
- To identify any communication problems between the police and the young person and to help to address these
- To verify that the young person understands their legal rights (the ultimate responsibility for which should remain with the police.
- To assist the young person to exercise their legal rights (for example through advising them to receive legal advice and facilitating this process)
- To link the young person with health and welfare support services as required

YRIPP IP Survey		
If the role of an Independent Person is set out in legislation should it include any of the following things? (Tick as many as apply)		
Answer Options	Response Percent	Response Count
To act in the best interests of the person;	66.2%	45
To protect the welfare of the person;	76.5%	52
To provide assistance and emotional support to the person;	72.1%	49
To observe whether the interview is being conducted fairly and to take appropriate action if it is not;	94.1%	64
To identify any communication problems with the person and help them to understand what is said by the police;	95.6%	65
To ensure the person understands their basic legal rights (such as that the person is not obliged to say anything during questioning, that anything the relevant person says during questioning may be used in evidence, that the person has the right to legal advice or that the person may communicate with or attempt to communicate with a legal practitioner as well as a right to use an interpreter if necessary and specialised communication tools if required, the right to communicate with their consular office if required).	95.6%	65
To assist the person to exercise any of their rights	85.3%	58
	<i>answered question</i>	68
	<i>skipped question</i>	0

RECOMMENDATION 4
CMY and YACVic propose that the role of the Independent Person be to support a vulnerable young person in custody and to ensure their rights are respected.

CMY and YACVic believe that as per the Appropriate Adult role in the UK, the role of the Independent Person should be a relatively interventionist one. For example, in the UK, an Appropriate Adult can not only advise a young person to seek legal advice but they can over-ride a young person’s wishes and call a solicitor on their behalf. This is something a parent/guardian would have no hesitation in doing if it were in the best interests of the child.

Making the Independent Person role one which includes the ability to advise a young person (for example to receive legal advice) is essential to ensuring the Independent Persons stay within the boundaries of their role. Without this capacity, an Independent Person is at risk of inappropriately providing the advice themselves, for example, to do a 'no comment' interview.

Seen and Heard, looked at the role of the 'interview friend' in Australian jurisdictions. Amongst its recommendations were that national standards for juvenile justice be developed which include the following:

'...the function, responsibilities and powers of the interview friend should be defined by statute. The definition should encompass the interview friend's role in providing comfort, support and protection for the young person as well as ensuring the young person is aware of his or her legal rights. The interview friend should not be a substitute for legal advice or representation.'
(Recommendation 212)

CMY and YACVic believe that the legislation should go further than being *aware* of rights to feeling able to *exercise* those rights. This was supported by 85% of YRIPP survey respondents (refer to table above) who believed that an IP should assist a young person to exercise their rights.

The 2006 judgement of Justice Bell in the matter of Toomalatai supports this. Justice Bell quotes a NSW Supreme court decision by Justice Hidden where he states that:

'The primary aim of such a provision is to protect children from the disadvantaged position inherent in their age, quite apart from any impropriety on the part of police. That protective purpose can only be met by an adult who is free, not only to protest against perceived unfairness, but also to advise the child of his or her rights [emphasis added]. As the occasion requires, this advice might be a reminder of the right to silence, or an admonition against further participation in the interview in the absence of legal advice ...Further, within appropriate limits, the adult might assist a timid or inarticulate child to frame his or her answer to the allegation'. (In H (A Child), Hidden J as cited in DPP v Toomalatai [2006] VSC 256 (15 May 2006)

Although this case was in NSW, Bell states that this is equally applicable to Independent Persons carrying out the role in Victoria stating that the role envisaged is active not simply that of an observer. CMY and YACVic are broadly in agreement with this position.

It should be noted, however, that CMY and YACVic would not support Independent Persons helping children frame their answers to allegations. We believe that this would comprise legal advice for which the Independent Person is unqualified. Instead we would support a situation where an Independent Person encouraged a young person to receive legal advice and facilitated this process. This should extend to overriding a young person's wishes and calling a lawyer for them where the Independent Person believes this is in the young person's best interests.

RECOMMENDATION 5

CMY and YACVic propose that the role of the Independent Person include encouraging a young person to receive legal advice and facilitating this process. The role should also include the right to override a young person's wishes and call a lawyer to speak to the young person where the Independent Person believes this is in the young person's best interests.

Role of Independent Person: Allegations against the police

Young people often confide in YRIPP volunteers about their experiences with the police. This sometimes results in allegations of inappropriate police conduct. CMY and YACVic believe that the IP's role as defined by statute should aim to remove the current ambiguity around what to do in situations where a young person makes an allegation of police misconduct.

YRIPP is currently in a position where considerations include balancing the need to gain and maintain a young person's trust as well as privacy concerns against duty of care considerations (for the individual young person as well as future young people who might come into contact with the relevant police officer). In the absence of legislation in this area, current YRIPP practice is that the Independent Person and the program respect the young person's wishes and confidences, even where this means not reporting such complaints. However YRIPP is concerned about the duty of care in such cases.

In the experiences of CMY, YACVic and YRIPP, young people will generally choose not to complain. Reasons for this include that they want to get out of the police station as quickly as possible, that they fear reprisals or that they believe that 'nothing will happen anyway'. Lack of faith by young people in complaint mechanisms is partly a result of the lack of independent investigation into police complaints. It is difficult for IPs and YRIPP to reassure young people in this regard as the program management shares the concern about the lack of independent complaint mechanisms.

On the flip side of this, the YRIPP partners are aware that without raising these issues, the program cannot impact at a systemic level. Nevertheless, until there is faith in the system and independent investigating of police in Victoria, YRIPP would not support mandatory reporting.

YRIPP volunteers surveyed were of the view that there should be some independent form of protection mechanism (outside of the Victoria Police umbrella) in place to ensure that young people are not susceptible to police misconduct or mistreatment.

Legislative clarity in the area of the Independent Person's role in relation to complaints made against police would assist whichever agency is charged with the responsibility of providing Independent Persons and also provide backing for Independent Persons in the performance of their duties.

The below reflects Independent Person responses to the YRIPP survey in relation to this issue. There is a lack of agreement around what the role should be in such situations which is reflective of the issues raised above.

Which of the following statements do you agree with?		
Answer Options	Response Percent	Response Count
Independent Persons should be legally required to report allegations of police misconduct made by Young Persons in police stations, even if the young person does not want them to.	35.3%	24
Independent Persons should be legally required to maintain the young person's confidentiality in relation to allegations of police misconduct, where the young person does not consent to a formal complaint being made.	51.5%	35
Don't know	13.2%	9
	<i>answered question</i>	68
	<i>skipped question</i>	0

RECOMMENDATION 6

CMY and YACVic believe that there should be a clear statement in statute relating to the duty of an Independent Person in cases of alleged police misconduct.

Role of Independent Person: Referral function

In addition to support before and during the police interview, CMY and YACVic believe the role of the Independent Person should include a referral component, similar to that currently undertaken by YRIPP Independent Persons. The Independent Person is well placed to contribute to Victoria's diversionary initiatives at a crucial point in the processing of the young person.

A long period of time often elapses between the police interview and final determination by the Children's Court of a criminal matter. In that time, the criminal justice system rarely intervenes to provide referrals for young people and/ or their families to support services that may be able to address issues underlying their offending. The referral function which links young people with health and welfare support services, provides a key opportunity for early intervention to support the young person in a range of areas of need.

YRIPP currently refers 25%-30% of young people to support services after the police interview. These include legal support services, counselling, refugee/migrant services, Indigenous specific services, housing services, education and employment services and other supports. This provides a significant opportunity for addressing the underlying causes of the young person's alleged offending and diversion from the criminal justice system.

RECOMMENDATION 7

CMY and YACVic support the role of the Independent Person including a referral function.

Role of Independent Person: The Bail Process

Bail is an undertaking given by the accused person that if released from police custody they will attend court at a given time and place.

Section 356(7) of the *Children Youth and Families Act* (2005) requires if a member of the police force inquires into a case under section 10 of the *Bail Act* (1977), a parent or guardian of the child in custody or an independent person must be present. Furthermore, the *Children Youth and Families Act* (2005) states that an Independent Person can take steps to facilitate the granting of bail, for example, by arranging accommodation S356 (8).

Currently, the Victoria Police Manual states that:

Where bail is to be opposed by police at a hearing by a Bail Justice and the child is not legally represented, police must notify the local DHS Youth Justice Unit (during business hours), or the Central After Hours Assessment and Bail Placement Service [CAHABPS] (after hours), who may make arrangements for a representative to be present at the bail hearing to put alternative options for the Bail Justice's consideration.

The Central After Hours Assessment and Bail Placement Service (CAHABPS), is a statewide service that operates within the Youth Justice and Youth Support Services division of the Department of Human Services and in accordance with relevant legislation. Any young person who is aged between 10 and 18 years, who is at risk of remand and / or requires appropriate accommodation to facilitate a bail placement, is eligible for CAHABPS involvement. Usually, a young person will be granted bail by police after being charged with an offence. However, in some circumstances the police may oppose bail and the young person's application for bail needs to be heard.

Once in attendance, DHS/CAHABPS representatives can undertake a thorough assessment and provide appropriate advice at the bail hearing regarding the suitability of a young person for Bail placement (in accordance with the Bail Facilitation and Bail Advice Guidelines). However due to limited resources, DHS / CAHABPS are *not* always in attendance for the hearing. In such situations, YRIPP Independent Persons will often support the young person through the police interview (although without conducting an assessment nor providing a view on the appropriateness of bail/remand).

It is unclear whether DHS / CAHABPS is actually the Independent Person for the purposes of the bail hearing (as required by the legislation). CAHABPS / DHS are essentially part of the youth justice system and as such, make recommendations as to whether or not a person should receive bail or be remanded in custody. This differs from the notion of the Independent Person role which does not put forward views on appropriate actions and is intended as a support role for young people (in a similar manner to the support of a parent or guardian, albeit providing more information).

Most volunteers surveyed by YRIPP would like clarification around the role of the Independent Persons in relation to Cautions and Bail. The right of young people to refuse to be photographed should also be outlined in legislation.

It would appear that regardless of whether or not DHS/CAHABPS is in attendance, their role does not fulfil the requirement of 'Independent person'.

RECOMMENDATION 8

The Independent Person's role in Bail Hearings should be the same as the rest of the Independent Person role, namely, supporting the young person through the process, including outlining to the young person what is going to happen and assisting with referral options if required.

Role of Independent Person: Vulnerability

Youth Vulnerability

CMY and YACVic would strongly recommend broadening the scope of any legislative change by exploring the viability of providing Independent Persons (Support Persons) for all young people. A broader definition of *youth* vulnerability should be included in the legislation (for example all young suspects, victims and witnesses), with specialised training for Independent Persons to accommodate working with all these groups and particular groups within this (for example refugee young people, Indigenous young people etc).

Furthermore, due to the difficulties police often have in determining whether a young person has a cognitive impairment, all young people under 18 should receive an Independent Person with specialised training in providing service to young people with cognitive impairments.

RECOMMENDATION 9

CMY and YACVic recommend that all young people under 18 receive the support of an Independent Person, whether they be a victim, witness or suspect and whether or not they have additional vulnerabilities such as a cognitive impairment.

Broader Vulnerability

CMY and YACVic would also recommend broadening the scope of any legislative change by exploring the viability of providing Independent Persons (Support Persons) for all vulnerable people in police custody, not just young people (for example people with a cognitive disability, Indigenous people, refugees and others with similar vulnerabilities) as per the UK model. This broadened approach to vulnerable persons in police custody would ensure a more consistent and uniform response to all those in custody.

Currently legislation only identifies being under 18 as the reason for requiring an Independent Person. Should the legislation identify broader 'vulnerability' (such as cognitive impairment, in addition to age) as the criteria for requiring a support person in custody?

Answer Options	Response Percent	Response Count
Yes	76.5%	52
No	17.6%	12
Don't know	5.9%	4
	<i>answered question</i>	68
	<i>skipped question</i>	0

77% of YRIPP Independent Persons agreed that the legislation should provide a role for supporting broader vulnerability than just young people. Many volunteers suggested they should also be able to assist victims, witnesses and people with cognitive impairments. They felt that with additional training this would fit well within the scope of their role.

RECOMMENDATION 10

CMY and YACVic recommend that the VLRC explore the viability of broadening the scope of legislation relating to Independent Persons to include all vulnerable people in police custody.

Who should perform the Independent Person role: Agency and Individuals

In terms of the current provision of Independent Persons in police interviews, YRIPP is funded by Victoria Police to provide this service in over 100 police stations across the State. Victoria Police have always been an important and valued partner in YRIPP. They have been represented on the program's steering committee since YRIPP's inception in 2003 and are involved in the training of Independent Persons. Victoria Police are also the users of the service, calling for Independent Person volunteers to attend police stations when a parent or guardian is unavailable to attend a police interview with their child.

As well as supporting young people, however, Independent Persons provide an accountability mechanism around police interviews. They can be subpoenaed to give evidence in court, for the prosecution or the defence, in relation to the police interview process. It is therefore essential that the Independent Person is not only independent of police but is perceived to be independent of the police (by the young person and the court).

YRIPP presents an accountability mechanism for police and an advocacy service for young people. As an accountability mechanism in relation to the conduct of police interviews, in some cases, YRIPP has had occasion to make complaints to the Office of Police Integrity or Ethical Standards Department. YRIPP questions the impact of the current funding arrangements (and the desire for funding beyond June 2010) on the Independent Person's capacity to fully and appropriately carry out their role.

Administering the program through Victoria Police presents a very real conflict of interest, which compromises the independence and integrity of the program and undermines its intent. YRIPP volunteers surveyed asserted that it is important that YRIPP remain completely independent of Victoria Police (funding, reporting and review functions) to ensure autonomy, objectivity and capacity to pursue any systemic issues that emerge.

Interestingly, the National Appropriate Adult Network in the UK, the body funded by the Home Office to provide guidance to Appropriate Adult programs (the equivalent of Victoria's Independent Person and Independent Third Person Programs) sees it as inappropriate that any funding should be provided by police for such programs. Their charter notes that:

"Appropriate Adults are, and need to be seen to be independent of the police. The role is not a passive one and they will intervene as necessary..."

CMY and YACVic therefore consider that an alternative placement should be found for the program within government or an appropriate statutory authority.

CMY and YACVic believe that legislating for a single agency or government body to be responsible for the provision of Independent Persons (in a similar way to the UK's *Crime and Disorder Act 1998* which

legislates for Youth Offending Teams to support young people with Appropriate Adults) would be a positive step in ensuring the availability of suitable persons to perform the role when police require it. 94% of YRIPP volunteers surveyed believe that there should be a single service that provides IPs to all police stations across Victoria.

This would help to ensure that the role is performed in a consistent manner in line with the standards which should be developed in this area.

The Independent Third Person program, a very similar program for people with disabilities, is located within the Office of the Public Advocate. In line with this model, consideration should be given to locating the Independent Person program within the Office of the Child Safety Commissioner (whether or not they then choose to subcontract the service). This is particularly relevant if broader definition of youth vulnerability is included in the legislation, as outlined above.

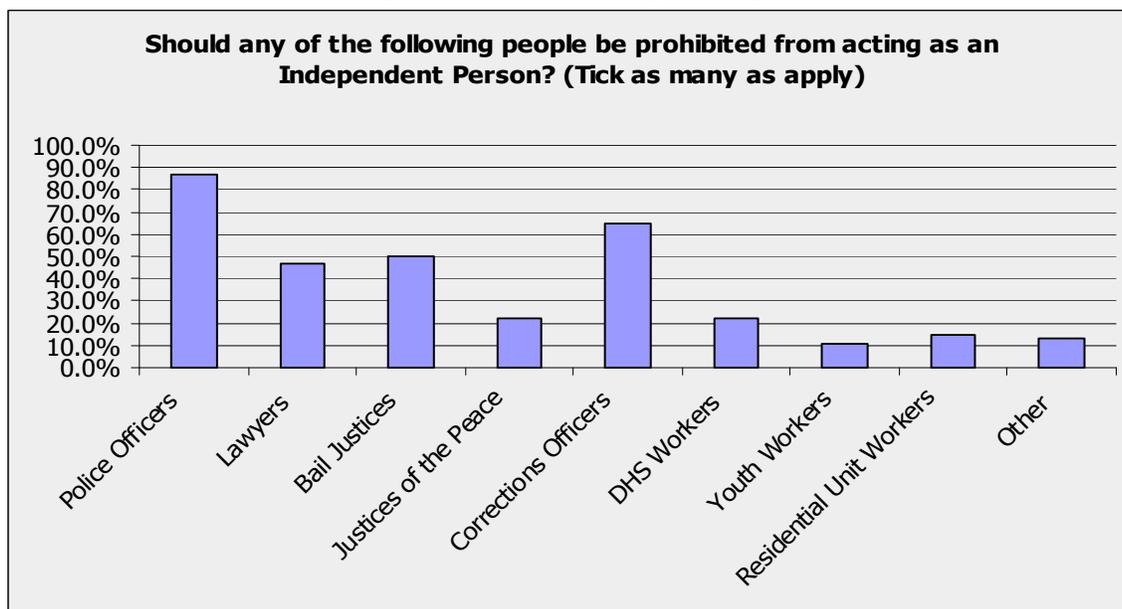
RECOMMENDATION 11
CMY and YACVic support the introduction of legislation for a single agency or government body to be responsible for the provision of Independent Persons. In line with this model, consideration should be given to locating the program within the Office of the Child Safety Commissioner.

Q3. Should certain people be prohibited from acting as an independent person?

Under Victorian law, anybody can currently perform the IP role, regardless of whether they have any training in the role or conflict of interest in attending. Even at the 107 police stations in which YRIPP operates, police are advised internally that they should be using the program but there is nothing in either their standing orders nor in the legislation that stipulates this.

YRIPP has extensive screening, interviewing, training and assessment as well as policies and procedures including conflict of interest policies, to ensure the volunteers are appropriate to perform the role.

Conflict of Interest – YRIPP Independent Person Survey, 68 respondents



During the consultations, many volunteers who are currently law students stated that practicing lawyers should not be excluded from doing the Role of the Independent Person. They stated that they would like to continue to be involved with the program even after they are admitted to practice. One volunteer highlighted the fact that not all practicing lawyers are criminal lawyers and therefore non-criminal lawyers should not be excluded from doing the role of the Independent Person.

RECOMMENDATION 12

CMY and YACVic would consider that certain people should be prohibited from undertaking the role, particularly police officers and those involved in any decision making roles within the justice / youth justice system (such as Bail Justices). Furthermore, anybody who the young person might perceive as being 'part of the system' should be prohibited from acting as an Independent Person.

Q10. Should independent persons be trained? If so, what should the training involve?

There are a number of Victorian cases where evidence has been excluded on the basis that the Independent Person did not appropriately perform the role. This would appear to be due to a lack of training around their responsibilities or familiarity with the young person's rights.

Example 1 In the matter of Gilbert 1994, Justice Hampel excluded evidence after a young person confessed to a very serious offence after the IP told him to "just tell the truth and I'll take you home". This led to Hampel finding that given his age and intellectual capacity, the comment had acted as an inducement for him to answer the questions.

Example 2 In the matter of Toomalatai where the IP had received no training for his role, Judge Bell stated:

When Mr Toomalatai was interviewed, he had present an independent person who was taken from a list of volunteers kept by the police for this purpose. But before the interview began, the independent person admonished Mr Toomalatai for being involved in the incident. He told him his father – from whom he was estranged – would be devastated. He conveyed the impression it would be in his interests to speak to the police. During the interview that followed shortly afterwards, Mr Toomalatai made admissions that were both gushing and reckless. The independent person just sat passively by. The failings of the independent person were so serious, the disadvantages faced by Mr Toomalatai in the interview were so great and the admissions made by him in the interview are so unreliable that it would be unfair to allow evidence of the admissions to be used against him in the trial. Judge Bell in DPP v Toomalatai [2006] VSC 256 (15 May 2006)

Example 3 A Victorian Judge, when judging a civil case against police for assaulting a young Aboriginal man in 2000, drew attention to the IPs duty to act in the case of an allegation relating to police misconduct.

It would seem to me that [the Independent Person] had a very poor understanding of just what his role was as that independent person. Had he done what I perceive to be at least his moral, if not his legal duty, to report that complaint to an appropriate senior officer other than the alleged perpetrators, then this matter may not have attracted the angst that it has. (Judge Campbell, County Court of Victoria, Damages list, 31 May 2004)

YRIPP's experience suggests that there are likely to be many cases that do not get to court. When YRIPP started operating and began working with people in the role, we had existing Independent Persons say to us that at a particular point in the interview: *"This is the point at which I tell the young person it would be a good idea to apologise to the police for what they've done"*. This was extremely concerning in terms of ensuring the young person has an understanding of his or her rights.

The above would suggest that unless Independent Persons are appropriately trained in the role, a young person's rights are not adequately protected.

The current legislative vacuum in this area also leaves agencies like CMY and YACVic with serious concerns about their agencies' potential liability in situations where Independent Persons' actions are seen as inappropriate by a court. This is particularly concerning in the absence of a definition around what is, in fact, appropriate performance of the role. Judge Campbell's decision is particularly difficult for YRIPP's management agencies because it would appear to suggest an obligation on Independent Persons to perform their role in a certain way without providing legislative backing for them to perform it in this way. This is necessary for Independent Persons to point to when at the police station to back up their actions in what is an intimidating environment.

CMY and YACVic propose that the legislation detail the persons required to perform the IP role and that they should be 'recognised' IPs, with a definition of what this entails (for example having satisfactorily completed the designated training program of the agency responsible for the provision of IPs). This would obviously have to go hand in hand with strategies to ensure the availability of persons to perform this role.

In terms of training, 93% of YRIPP volunteer survey respondents thought that IPs should have a minimum amount of training in order to undertake the role.

Training should include the equivalent of the current YRIPP training modules (around 28 hours of training including self directed work). All Independent Person volunteers with YRIPP have been trained by Victoria Police, the Victorian Aboriginal Legal Service, Youth law and the Centre for Multicultural Youth. This includes training on volunteering with YRIPP (policies and procedures), the legal perspective on the Independent Person role, police processes, working with young people including refugee and migrant young people and Indigenous young people in custody as well as training in referral processes and protocols.

In addition, if the Independent Person role were extended from the current YRIPP role to supporting young people with cognitive impairments, a specialist module would need to be delivered on this.

Seen and Heard identifies a range of issues that confront young people from non English speaking backgrounds in the justice process (for example inadequate and inappropriately targeted information concerning law, procedures, rights and obligations, legal and correctional institutions inadequately dealing with their particular needs and problems, problematic relations with police, inadequate research and evaluation of multicultural issues in the juvenile justice area. The report also identified a range of issues confronting Indigenous young people in the process and the consequent need for specialised training for those working with these groups in the justice system and providing additional assistance in understanding rights. *Seen and Heard* states:

4.58 Many Indigenous children come from rural and remote areas and are affected by the same problems as other rural and remote children in their contact with legal processes. [114] Many

have difficulties similar to those facing children of non-English speaking background, due to language and/or cultural barriers. For Indigenous children these problems may be exacerbated by an expectation that they speak 'standard' English or that their mannerisms and understandings are the same as those of other Australian English speakers.[115]

4.59 In addition, the difficulties that commonly arise in all children's involvement in legal processes, including barriers to access, lack of understanding, marginalisation and agency complexities, affect Indigenous children on a greater scale. Indigenous children are vastly over-represented in those legal processes that have links with adverse outcomes and other legal processes.[116] Statistics from New South Wales indicate that Indigenous children are over-represented in exclusion and suspension proceedings.[117] In the care and protection system, they are over-represented in each stage of the process, from notification to substantiation to placement away from home.[118] They are over-represented in each stage of juvenile justice processes, from charges, arrest and appearances in court to the more serious sentences.[119]The extensive contact by Indigenous children with these legal processes is of great concern to the Inquiry.

4.60 The operation of legal processes, particularly those involved in the care and protection and juvenile justice systems, must also be viewed against past practices which have discriminated against Indigenous peoples. The forced separation of Aboriginal children from their families has caused widespread breakdown of family relationships and structures and loss of personal, family and cultural identity among Indigenous people. Past assimilation policies and practices which tore apart families and communities continue to have a negative impact on individuals, families and communities.[120]

This concurs with the knowledge and experiences of the partner agencies and emphasises the importance of training in cultural diversity issues for Independent Persons.

YRIPP is the only program that we know of that provides specialist training modules on working with Indigenous and culturally diverse young people and feedback from Independent Persons has been that this has been essential for appropriate performance of the role.

RECOMMENDATION 13

CMY and YACVic believe that Independent Person training should include the equivalent of the current YRIPP training modules with specialist modules also delivered on supporting victims and offenders as well as supporting people with cognitive impairments if the role were extended to cover these areas.

Parents vs Independent Persons: Who should perform the role

Q2. Should the role of the independent person be any different to the role which the parents or guardian should play if they were available?

Q7. Are there any circumstances in which the police should be required to arrange for an independent person to be present even when a parent or guardian is available?

Q9. Should the police be required to provide an independent person (or a parent or guardian) with a written summary of the detained young person's rights?

Clearly, what a parent/guardian and a trained Independent Person bring to the role is very different. A parent/guardian:

- has legal responsibility for their child and arguably may even have the 'right' to attend an interview;
- is generally concerned about the welfare of their child;
- may have some influence over their child, whether positive or negative.

Human rights principles provide some guidance as to the rationale for parents being contacted by the police as soon as their child is arrested. General Comment No.10 by the Committee on the Rights of the Child provides at paragraphs 53 and 54 that:

53. Parents or legal guardians should also be present at the proceedings because they can provide general psychological and emotional assistance to the child. The presence of parents does not mean that parents can act in defence of the child or be involved in the decision-making process. However, the judge or competent authority may decide, at the request of the child or of his/her legal or other appropriate assistance or because it is not in the best interests of the child (art. 3 of CRC), to limit, restrict or exclude the presence of the parents from the proceedings.

54. The Committee recommends that States parties explicitly provide by law for the maximum possible involvement of parents or legal guardians in the proceedings against the child. This involvement shall in general contribute to an effective response to the child's infringement of the penal law. To promote parental involvement, parents must be notified of the apprehension of their child as soon as possible.¹

CMY and YACVic are in agreement with maximising family involvement in the justice process, including police interviews. Unlike an Independent Person, however, a parent/guardian:

- may not actually know the best ways of protecting the welfare of their child nor have the confidence to do so at the police station; and
- would not generally have knowledge of the police custody/interview process nor the expertise to perform the tasks required of the appropriately trained Independent Person. The "support person" who attends the station with a young person should have the expertise to negotiate this system.

The presence of either a parent or a trained 'support person' has also been found to have impacted upon the legal outcome for the young person. According to a Canadian report: '*Parents' involvement in*

¹ Forty-fourth session, Geneva, 15 January – 2 February 2007

youth justice proceedings: perspectives of youth and parents' (Badali and Broeking 2004) which examined the cases of 70 young people who came into contact with the criminal justice system and interviewed 19 parents:

Outcomes were examined at various stages of the youth justice process, from the police station through the disposition phase. At the police station, young people who reported being given the opportunity to access support were more likely to contact a parent and/or a lawyer at the station. Contacting a lawyer was negatively associated with answering police questions and making a statement, while parents' presence at the station was positively associated with making statement. Parental presence had positive impact on young people's release from the police station. For those detained, parental presence at the bail hearing was positively associated with release from detention.

Also noteworthy is that a third of parents interviewed in the study actually felt that they should assist the police when at the station with their child.

CMY and YACVic agree with the *Seen and Heard* recommendations that:

208. The national minimum standards for juvenile justice should provide that police should inform a young suspect's carers or the relevant community services department, whichever is most appropriate in the particular circumstances, of his or her whereabouts as soon as possible after he or she is detained.

209. Police should receive regular reminders of the importance of ensuring that young people's carers are notified of their child's detention in custody. and

212. The national standards for juvenile justice should include the following:

Where an interview friend is a relative or friend of the young suspect who has not received training in the role he or she should be given the opportunity to watch a short video outlining his or her responsibilities prior to interrogation. The young person should also watch the video which should also inform the suspect of his or her rights during police interview. Where the police station does not have video facilities information brochures should be provided. This material should be prepared by each police service in consultation with relevant community organisations and OFC and should be conveyed in language easily understood by young people.

YRIPP volunteers were also in agreement with this position as evidenced by the table below:

Should the police be required to provide the parent/guardian or Independent Person with a written summary of the detained young person's rights? ie. For cases where parent/guardian/Independent Person are not aware of young person's rights		
Answer Options	Response Percent	Response Count
Yes	76.5%	52
No	16.2%	11
Don't know	7.4%	5
Other (please specify)		9
<i>answered question</i>		68
<i>skipped question</i>		0

CMY and YACVic believe that where parents / guardians are provided with such a video, this should be available in multiple languages or alternatively, an interpreter telephone service to ensure all cultural groups have access to the information.

RECOMMENDATION 14
 CMY and YACVic recommend that where a parent/guardian who has not received training in the IP role attends the police interview, that prior to the interview, he or she should watch a short video outlining the process and his or her responsibilities. This should be available in multiple languages or linked with a telephone interpreting service to ensure all groups have access to the information.

The support provided by a parent/guardian compared with that provided by an Independent Person is very different. The Independent Person's focus is on rights, processes and referral while a parent's function is more around emotional support. For this reason, CMY and YACVic believe that the ideal situation would be for both a parent/guardian and an Independent Person to be present at the police interview. Recognising the resource implications of this, however, it is at least important that where there are additional vulnerabilities (for example language and/or cultural issues) that both parents and Independent Persons attend the police interview.

For example, refugee young people are often experiencing a range of additional vulnerabilities at the police station which are likely to impact on communication at this time. These relate to:

- Past experiences of trauma;
- Difficulties understanding the Victorian legal system including often coming from a more collectivist justice model than an individual one;
- Feeling disempowered by lack of knowledge and therefore have significantly reduced ability to meaningfully participate in one's own case;
- Experience of the legal system in one's country of origin and what police represent for someone coming from a country with a persecutory regime where police are responsible for violence, killings, assaults, disappearances, separation, isolation, prohibition of traditional practices, deprivation of human rights;
- The important role of family and community for many refugee and migrant young people but family members being disempowered in the process through a lack of inclusion, lack of understanding and language issues. This is despite the fact that they could be very useful in

terms of things like assisting to get the young person to court, helping to ensure they abide by bail conditions etc;

- Language and issues relating to interpreters such as:
 - police not calling them (especially for parents but also for young people) because of time / resource constraints and lack of knowledge around the fact that while a person might have good conversational English, they may lose their language in difficult situations and may not have technical legal understanding;
 - young people/parents may choose not exercise their right to an interpreter due to face saving or fear of the process as well as concerns about confidentiality within small communities. This further excludes young people and families from the process.

Note that the Independent Person should never be used in place of an interpreter for a parent as this only serves to further marginalise refugee and migrant parents from the justice process. CMY and YACVic agree with *Seen and Heard's* recommendation 216:

Those States and Territories that have not already done so should enact legislation giving young suspects and their interview friends the right to an interpreter during police interview if they are unable to communicate orally with reasonable fluency in the English language. Each police service should ensure that its officers are trained in recognising communication difficulties in young suspects. These requirements should also be included in the national standards for juvenile justice.

Parents Vs Independent Persons – YRIPP Independent Person Survey, 68 respondents

Are there circumstances where you believe an Independent Person should be present even when a parent or guardian is present at interview?		
Answer Options	Response Percent	Response Count
Yes always.	19.1%	13
Yes in special circumstances eg. where parent has a cognitive impairment	48.5%	33
No never	2.9%	2
Don't know	5.9%	4
Yes in 'other' circumstances (please specify)	23.5%	16
		22
	<i>answered question</i>	68
	<i>skipped question</i>	0

Are there circumstances where you believe an Independent Person should be present INSTEAD of the parent or guardian even when a parent or guardian is available? (Tick as many as apply)

Answer Options	Response Percent	Response Count
Yes always	8.8%	6
Yes where parent is a victim or witness or co-offender	91.2%	62
Yes if young person has concerns about parent attending	82.4%	56
Yes if police have concerns about an aggressive parent	82.4%	56
Yes for other reason	8.8%	6
No never	1.5%	1
Don't know	0.0%	0
If 'Other' please specify		10
	<i>answered question</i>	68
	<i>skipped question</i>	0

Which of the following statements do you agree with: Where the parent or guardian does not speak English:

Answer Options	Response Percent	Response Count
Police should have to get them an Interpreter at the interview	32.4%	22
Police should have the discretion to have EITHER an Independent Person instead of the parent OR an Interpreter for the parent at the interview	11.8%	8
Police should have to get an Interpreter for the parent AS WELL AS an Independent Person at the interview	52.9%	36
Don't know	2.9%	2
	<i>answered question</i>	68
	<i>skipped question</i>	0

RECOMMENDATION 15

CMY and YACVic recommend that both a parent/guardian and an Independent Person be present at police interviews with young people under 18. If limited resources render this impractical, both parent/guardian and IP should at least be present where there are additional vulnerabilities (for example language and/or cultural issues).

RECOMMENDATION 16

Although parents/guardians should always be informed of a young person's attendance at the station, the young person should have a say in whether their parent/guardian should attend the police interview or whether they would prefer to have a trained Independent Person present.

Q12. Does the YRIPP system work efficiently? How could it work better?

Volunteer Responses to YRIPP survey

Does the YRIPP system work efficiently?		
Answer Options	Response Percent	Response Count
Yes	88.2%	60
No	2.9%	2
Don't know	8.8%	6
How could it work better?		31
	<i>answered question</i>	68
	<i>skipped question</i>	0

Training

Over 88% of survey respondents believe that the YRIPP system works efficiently. Moreover, most Independent Persons felt respected and well supported by YRIPP staff. This in turn makes them feel more confident about upholding the rights of young people in police stations. The majority of volunteers were quite positive about the role and said that YRIPP had been very successful in professionalising the role. Most volunteers asserted that they felt very well equipped to do the role following the YRIPP Training.

Infrastructure

Notably, whilst YRIPP supports expansion and acknowledges that infrastructure is in place for the program to increase its scope and size, this would have considerable resourcing implications. Significantly, operational costs in rural areas are larger despite the lower number of interviews in comparison to metropolitan police stations. Therefore a balancing is required between the number of Independent Persons necessary to operate the program in a rural area versus the low number of interviews undertaken. Crucially, if Independent Persons are not called often enough, this can lead to deskilling and disengagement, resulting in low volunteer retention rates. In the face of these issues, YRIPP proposes that different models of delivery for metropolitan and country areas be considered.

Rostering

Importantly, the introduction of YRIPP was partly due to the recognition by partner agencies (including Victoria Police, the Federation of Community Legal Centres, the Youth Affairs Council of Victoria, the Centre for Multicultural Youth Issues and other agencies) that police selection of and direct calls to IPs were not appropriate practice and that police should not be involved in the coordination or selection of Independent Persons in individual cases. Indeed, due to the close relationship between some police and some Independent Persons, there were concerns raised by several of the agencies in relation to whether these volunteers were truly 'independent' and in particular, whether they were perceived as such by young people being interviewed at police stations. YRIPP is aware of at least one case that was referred to the Office of Police Integrity and before the courts where it was argued that the selection of a particular IP by Victoria Police was inappropriate. Random selection of volunteers is preferred by YRIPP.

Many volunteers liked the YRIPP on-call rostering system which allows Independent Persons flexibility to make themselves available at times that suit their schedule. They also enjoyed the fact that they are

usually only required to attend police stations within 20 minutes from their home. Most volunteers asserted that having a call centre facilitating contact between Independent Persons and Police ensures that those performing the role are truly random and independent.

Referral

Whilst volunteers are clear on the limitations of their role as Independent Persons, such as they fact that they will not have further contact with the young person outside of the interview process, the vast majority of volunteers saw the referral aspect of their role as a positive step towards reducing recidivism and ensuring that young people are adequately supported.

Quality Control and Accountability

Currently volunteers are required to complete an Interview Report Sheet (IRS) for every interview they attend. The extensive information collected allows both for situations where notes of an interview are subpoenaed as well as program management of issues arising (such as follow up with the Independent Person or the particular police station around inappropriate practices of either group).

Most volunteers see the IRS as a form of checklist to ensure they are properly performing their role. For example, one volunteer stated that he thought the IRS was a great practical tool because he felt it “walked him through the interview process” and prompted him to ask things he may have otherwise forgotten. He said the detailed IRS form increased accountability, and he felt comforted by fact a YRIPP Staff member would be able to read through it and feedback on any concerns they may have, thereby ensuring that oversights or mistakes in the future are avoided.

Conclusion and Recommendations

CMY and YACVic believe that the Independent Person role should be seen in the context of a human rights' framework. Specifically, we propose:

1. that there be a change to the name 'Independent Person' to better reflect the spirit of the legislation. The term CMY and YACVic suggest is "Support Person"(SP) which removes the ambiguities currently encountered around the role and allows for future broadening of the role to include support to those with different vulnerabilities.
2. that the rights of, duties afforded to and role of the Independent Person in the justice process should be defined by statute and that this role should be defined as an interventionist one.
3. that statements made in the absence of an Independent Person should not be admissible in evidence against the young person
4. that the role of the Independent Person be to support a vulnerable young person in custody and to ensure their rights are respected.
5. that the role of the Independent Person include encouraging a young person to receive legal advice and facilitating this process. The role should also include the right to override a young person's wishes and call a lawyer to speak to the young person where the Independent Person believes this is in the young person's best interests.
6. that there should be a clear statement in statute relating to the duty of an Independent Person in cases of alleged police misconduct.
7. that the role of the Independent Person include a referral function.
8. that the Independent Persons' role in Bail Hearings be the same as the rest of the Independent Person role, namely, supporting the young person through the process, including outlining to the young person what is going to happen and assisting with referral options if required.
9. that all young people under 18 receive the support of an Independent Person, whether they be a victim, witness or suspect and whether or not they have additional vulnerabilities such as a cognitive impairment.
10. that the VLRC explore the viability of broadening the scope of legislation relating to Independent Persons to include all vulnerable people in police custody.
11. the introduction of legislation for a single agency or government body to be responsible for the provision of Independent Persons. In line with this model, consideration should be given to locating the program within the Office of the Child Safety Commissioner
12. that certain people should be prohibited from undertaking the role, particularly police officers and those involved in any decision making roles within the justice / youth justice system (such

as Bail Justices). Furthermore, anybody who the young person might perceive as being 'part of the system' should be prohibited from acting as an Independent Person.

13. that Independent Person training should include the equivalent of the current YRIPP training modules with specialist modules also delivered on supporting victims and offenders as well as supporting people with cognitive impairments if the role were extended to cover these areas.
14. that where a parent/guardian who has not received training in the IP role attends the police interview, that prior to the interview, he or she should watch a short video outlining the process and his or her responsibilities. This should be available in multiple languages or linked with a telephone interpreting service to ensure all groups have access to the information
15. that both a parent/guardian and an Independent Person be present at police interviews with young people under 18. If limited resources render this impractical, both parent/guardian and IP should at least be present where there are additional vulnerabilities (for example language and/or cultural issues).
16. that although parents/guardians should always be informed of a young person's attendance at the station, the young person should have a say in whether their parent/guardian should attend the police interview or whether they would prefer to have a trained Independent Person present.