

Just Outcomes for Young People

A submission to the Inquiry into Victoria's Criminal Justice System by the Legal and Social Issues Committee, Parliament of Victoria

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Youth Affairs Council Victoria (YACVic) is the peak body and leading advocate for young people aged 12–25 and the youth sector in Victoria.

Our vision is that the rights of young people in Victoria are respected, and they are active, visible and valued in their communities.

The recommendations in this report were developed in collaboration with dozens of young people with lived experience of the criminal justice system. YACVic is thankful for the support and expertise of everyone who contributed to this work.



YACVic respectfully acknowledges the Aboriginal and Torres Strait Islander people of this continent. We pay our respects to the ancestors and Elders past and present of all Aboriginal nations in Victoria.

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Executive Summary

Youth Affairs Council Victoria (YACVic) welcomes the opportunity to contribute to the Inquiry into Victoria's Criminal Justice System.

As the peak body for Victoria's young people and youth sector, YACVic believes that all children and young people deserve the opportunity to lead a well-supported, fulfilling life. We share the Victorian Government's commitment to making Victoria the best place in the world for young people to grow up, and we will continue to work alongside Government on the state's forthcoming Youth Strategy and other projects to this end.

At the same time, YACVic also recognises the unique experiences young people have within Victoria's criminal justice system. Given the rapidly increasing proportion of young people held on remand, as well as the lack of age-specific support and opportunities for meaningful youth participation, YACVic believes that Victoria's criminal justice system risks setting young people up to fail. Rather than working with young offenders and giving them their best chance to forge positive lives after contact with the justice system, the current system is punitive and is counterproductive to their rehabilitation, and to ensuring community safety after their release.

In preparing this submission, we have worked closely with the Youth Disability Advocacy Service (YDAS), a core agency of YACVic, to ensure that disabled young people's experience of Victoria's Criminal Justice System is included. Established in 2006, YDAS is an advocacy organisation working directly with disabled young Victorians to achieve their human rights and support them to fully participate in all aspects of their lives. YDAS provides individual advocacy, systemic advocacy, leadership programs for disabled young people and sector capacity building programs.

YACVic also amplifies the work of the Koorie Youth Council (KYC), the representative body for Aboriginal and Torres Strait Islander young people in Victoria. KYC advocates to government and community to advance the rights and representation of Aboriginal and Torres Strait young people. Their work, including the 2018 *'Ngaga-dji: Young voices creating change for justice'* report, has created vitally important spaces for Aboriginal children to be heard on youth justice, and shape justice solutions that work. YACVic recognises the unjust outcomes that Aboriginal and Torres Strait Islander young people face in the criminal justice system, and acknowledges the expertise of KYC and its members in addressing those ongoing injustices.

Victoria's human rights obligations are clear when it comes to the treatment of young people in the criminal justice system: in particular, according to these obligations, detaining young people must be a last resort. However, the discretionary approach and haphazard availability of alternative

options means that the youth justice system currently incarcerates and remands children and young people by default. Too often decisions about young people's futures are made by adults – including police officers, bail justices, youth justice workers – who do not understand their unique needs, and make harmful assumptions which punish them rather than address disadvantage. As a result, young people are being incarcerated when they simply should not be.

Our submission highlights that the experiences of young people in the criminal justice system not only need urgent rectification, but also present significant opportunities to address systemic disadvantage and create the right conditions for these young people to rehabilitate and ultimately lead fulfilling and productive lives. The 43 recommendations made here therefore include both preventative, 'pre-habilitative' and early intervention measures, as well as changes to support systems that will keep young people out of jail for good.

Together, these recommendations address key inequities around remand, recidivism and other issues across the system. Challenging these inequities will play a vital role in freeing up resources in an already strained justice system, and in working towards just outcomes for the children and young people we represent.

Summary of Recommendations

Bail and Remand

Recommendation 1: Repeal the reverse-onus provisions in the bail laws

Recommendation 2: Create a presumption in favour of bail for all offences, with the onus on the prosecution to demonstrate that bail should not be granted

Recommendation 3: Repeal the offences of committing an indictable offence while on bail, breaching bail conditions and failure to answer bail

Recommendation 4: Expand the hours for bail hearings and existing bail supports, such as the Central After-Hours Assessment and Bail Placement Service (CAHABPS), to have at least some after-hours coverage at minimum, and with 24-hour access as the objective

Recommendation 5: Establish a comprehensive state-wide bail support program for children and young people

Recommendation 6: Ensure that any bail support for children and young people necessarily includes appropriate accommodation services, for example in the form of supported bail residences

Recommendation 7: Consider how service operating hours might be impacting access when reviewing service gaps in Victoria's homelessness sector as per Recommendation 2 from the Final Report from the *Inquiry into Homelessness in Victoria*

Recommendation 8: Develop and implement a Protocol for Victoria Police and other enforcement agencies to use in responding to people experiencing homelessness, with a view to keep young people experiencing homelessness out of prison where possible

Recommendation 9: Monitor and evaluate whether the operating hours of each outer suburban and regional Children's Court reflect the behaviours and needs of the young people they service

Recommendation 10: Ensure that any other state-wide supports are implemented with a view to equal access for young people in rural and regional Victoria

Recommendation 11: Support disabled young people to access bail through an alternative process specifically designed for offenders with intellectual disabilities, rather than the mainstream bail system

Cautioning and other interactions with Victoria Police

Recommendation 12: Legislate the fair and equitable use of police cautioning, and monitor the implementation of this legislation and review within two years of the reform

Recommendation 13: Resource targeted youth outreach programs as part of Victoria's integrity system, particularly from the Independent Broad-based Anti-Corruption Commission, which educate young people on their rights, including how to report police misconduct

Recommendation 14: Mandate assessable, and ongoing disability training for all Victorian Police, to embed a human rights and social model understanding of disability, informed by the CRPD. Training must address how to identify, refer and support young people with undiagnosed disabilities.

Recommendation 15: Employ disabled people to deliver disability training to Victoria Police, as people with lived experience bring clarity and personal understanding to this training

Recommendation 16: DFFH's *Guidelines for Disability Service Providers and Victoria Police* are reviewed by persons with lived disability experience to ensure they reflect the social and human rights models of disability

Recommendation 17: Mandate a requirement to make reasonable adjustments for disabled young people to ensure that access to supports and adjustments is not discretionary

Recommendation 18: Amend Victoria Police guidelines to ensure mandatory breaks for all disabled persons brought in for questioning

Recommendation 19: Legislate the Independent Third Person Program to ensure that disabled young people can access this support irrespective of their disability, age or location, or whether they are an alleged offender, victim or witness

Recommendation 20: Refine and expand the Embedded Youth Outreach Program so that it is delivered across each LGA in the State.

Recommendation 21: Resource the youth sector to work in the community alongside police in general, with a view to improving service referral outcomes for young people

Diversion

Recommendation 22: Extend eligibility for diversion programs to all children and young people, regardless of their offence, in line with Australia's obligation to ensure detention is a last resort

Recommendation 23: Urgently review the CCYD as per the Youth Justice Strategic Plan 2020-2030, and publish the findings no later than May 2022

Early intervention

Recommendation 24: Resource community- and place-based partnerships with schools and service providers which support young people and their families holistically

Recommendation 25: Embed targeted poverty alleviation strategies across policy development, noting the role of poverty alleviation in reducing young people's contact with the criminal justice system

Services and support systems in prison

Recommendation 26: "TAFE should be available on-site in Malmsbury, offering courses like Trade, Construction, Engineering and Business Management"

Recommendation 27: Urgently implement all nine recommendations from the Victorian Auditor-General Office's *'Managing Rehabilitation Services in Youth Detention'* report

Recommendation 28: Ensure continuity of support for young people in transition between Parkville and Malmsbury centres

Recommendation 29: Embed family, cultural and community at every stage of supports to keep children connected within safe, supportive networks

Recommendation 30: Involve young people with lived experience of the justice system in co-designing communication guidelines for youth justice workers, including for when workers are reassigned, and for workers in the legal sector more broadly

Recommendation 31: Set FTE targets to hire a certain number of youth justice workers with lived experience of the justice system in each of Victoria's youth detention centres

Recommendation 32: Train youth justice workers in key youth work skills, particularly around youth engagement and participation

Recommendation 33: Develop and trial participatory activities for young people in detention

Recommendation 34: Increase funding of disability support service providers for persons with disability in the criminal justice system to ensure disabled young people who are ineligible for the NDIS can access support

Recommendation 35: Embed and resource Aboriginal Community Controlled Organisations to operate inside youth detention centres and lead the health and wellbeing treatment for Aboriginal and Torres Strait Islander young people in custody

Recommendation 36: Ensure all services in detention are person-centred, trauma-informed and support the young person's journey through the service system when entering and exiting prison

Beyond prison: preventing recidivism

Recommendation 37: Research and co-design a transitional support system for young people exiting detention with structured, legitimate activities and therapeutic models of support as primary objectives

Recommendation 38: Provide paid work opportunities for young people in detention in order to facilitate their economic participation after release

Recommendation 39: Implement a co-design model for parole conditions so that young people feel ownership and agency over their futures

Recommendation 40: Establish a trial halfway house option for young people to support their transition out of the justice system through wraparound support

Recommendation 41: Expand 'dual track' eligibility to all young offenders aged 25 and under, noting the ongoing psychological, emotional and social growth which characterises this age period

Recommendation 42: Ensure all young offenders aged 25 and under, whether in adult or juvenile detention, have access to age-specific case management which

supports them to achieve milestones such as completing education, securing employment and acquiring housing

Recommendation 43: Raise the age of criminal responsibility to at least 14.

In This Submission

This submission draws on and amplifies the lived experience of young people who have been involved in the criminal justice system. These experiences were shared with YACVic and YDAS through group consultations and individual advocacy. Their voices are presented throughout the submission in the context of existing literature on youth justice policy and practice, in Victoria and elsewhere.

YACVic conducted three in-person consultations with 26 young people with lived experience of the criminal justice system. The consultations took place between December 2020 and August 2021 and were designed and facilitated by young staff at YACVic.

Involving young people at all stages of the consultation process is part of YACVic's commitment to meaningful youth participation, and we are deeply grateful for the young people who participated in the consultations. We also acknowledge the efforts of Banksia Gardens Community Services in planning and organising consultations alongside our team.

In the consultation process, we asked young people about:

- What they feel would improve the youth justice system in Victoria; and
- What key sources of support in their lives may help them avoid offending and/or re-offending.

Our approach is informed by a belief that young people are experts of their own lives,

and that as service users and targets of interventions, young people must be at the centre of decision making about issues that affect them, including the challenges they face in the criminal justice system.

We believe this approach to youth participation, shared by the Victorian Government and enshrined in its 2016 Youth Policy, must be extended to include young people who have been involved in the criminal justice system.¹

The young people with whom we consulted were aged 15-21 years and had a diverse range of backgrounds and experiences, including the following:

- Aboriginal and/or Torres Strait Islander
- Culturally and linguistically diverse (CALD)
- Refugee and/or migrant background
- Experienced mental ill-health
- Experienced homelessness
- Experienced out-of-home care
- Experienced unemployment
- From a rural or regional community

This submission has further drawn on YDAS' individual advocacy. Working directly with and advocating for disabled young people involved with the justice system has informed the recommendations relating to disabled young people made in this submission.

Finally, this submission was supported by a literature review which canvassed available information and analysis about youth justice. This has included work by Victorian, Australian and international authors and organisations. We acknowledge the expertise of organisations such as the Victorian Council of Social Service, the Sentencing Advisory Council, the Commission for Children and Young People and the Victorian Ombudsman, as well as community-based organisations like KYC, the Centre for Multicultural Youth and Jesuit Social Services.

Importantly, we note that a shared agenda for change has existed in the youth sector for a number of years now. By drawing together this agenda with the voices and lived experience of young people, we have sought to enrich and reemphasise calls for meaningful, evidence-based and transformative change towards a just and equitable policy ecosystem for Victoria's young people.

Names in this submission have been changed to protect the identity of young people.

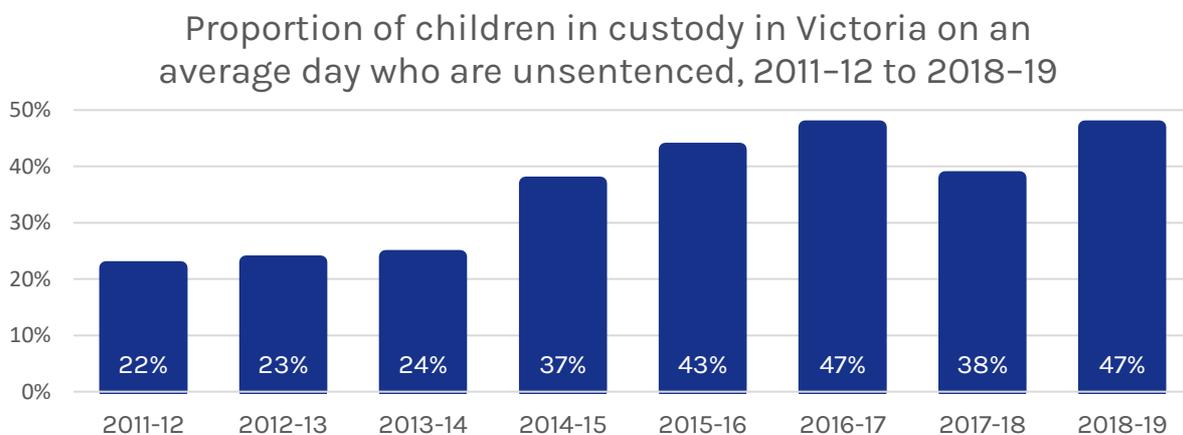
Factors influencing Victoria's growing remand and prison populations

Most children in the justice system would not have been incarcerated at all if not for remand.

Rising number of young people on remand

Young people face unique challenges and experience worse outcomes in Victorian prisons compared to other Victorians. Not only does imprisonment itself have deleterious consequences on a young person's wellbeing and development, but it can exacerbate underlying vulnerabilities such as poverty, homelessness and mental ill-health.² Young people, particularly those experiencing complex disadvantage, are disproportionately affected by the harms of detention. Increasingly, this includes the harms of being held in remand.

While the proportion of unsentenced prisoners in custody has increased for all age groups over the past decade, young people have been consistently and substantially overrepresented throughout this time. For example, a 2015 Ombudsman report found that 38 per cent of prisoners under the age of 25 were on remand, compared to 24 per cent of the general prison population.³ As of 2019, the proportion of young people on remand has increased to 47 per cent, more than double the figure a decade earlier:⁴



Source: Sentencing Advisory Council (2020). *Children Held on Remand in Victoria: A Report on Sentencing Outcomes*

In addition, two thirds of young people held on remand did not ultimately receive a custodial sentence⁵—that is, they would not have been incarcerated at all if not for remand. This unnecessary contact with the criminal justice system contravenes the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (the ‘Beijing Rules’): it fails to uphold the principle of detention as a last resort given the inherent harm of prolonged detention on children.⁶ An approach to youth justice that is consistent with Australia’s human rights obligations would see pre-trial detention in only exceptional circumstances.

The use of remand on children regardless of whether they are guilty is also alarming because this is often a “first entry point” for young people into the criminal justice system.⁷ Whether or not they are ultimately sentenced as guilty, young people on remand—even for short periods—experience an unnecessary and deleterious disruption to schooling, employment and housing that may have lasting consequences into adulthood.⁸ Far from providing any rehabilitative value, the current remand system is causing long-term harm to young people.

Regardless of guilt or innocence the prolific use of pre-sentence detention on children not only contravenes human rights principles but creates an unnecessarily congested justice system that comes at a steadily growing cost to Victorian taxpayers.⁹

Bail laws negatively impact young people

Amendments to the *Bail Act 1977* (Vic) in 2018 which increased the threshold for bail have directly contributed to the growing number of children and young people unnecessarily held on remand.¹⁰ The amendments, placing the onus of proving eligibility for bail onto those accused of crime, have disproportionately restricted young people’s access to bail. For example, the new complexity of bail applications means that fewer young people are granted bail or are even applying in the first place—in these cases, the outcome necessarily defaults to remand¹¹. According to human rights principles as outlined in the Beijing Rules, the very opposite should be true: bail must be the default for children and young people, rather than detention.

One mechanism which may also be contributing to the difficulty for young people of obtaining bail is the use of bail justices to grant after-hours bail. Eighty per cent of remanded children are admitted outside court hours, mostly by bail justice volunteers who may not be legally trained and tend to be more risk-averse than courts themselves.¹² The bail justice system may improve access to bail after court hours for young people, but by comparison the Bail and Remand Court of the Magistrates’ Court operates until 9:00 p.m. seven days a week. In the absence of bail reform, an expansion of court hours for young people will improve bail outcomes.

Furthermore, even when granted bail, young people are less likely to understand and be able to comply with the conditions for bail.¹³ Evidence from our consultations echoed this issue: young people generally felt that bail conditions were arbitrary and poorly explained. This is exacerbated by the lack of a state-wide bail support programs for children and young people which assists them to comply with bail.¹⁴ YACVic welcomes the Victorian government's commitment to "delivering effective support and supervision to young people on bail",¹⁵ and recommends a state-wide bail support program for children and young people as a critical step forward.

YACVic supports the following recommendations made by the Human Rights Law Centre in May 2021:¹⁶

Recommendation 1:
Repeal the reverse-onus provisions in the bail laws

Recommendation 2:
Create a presumption in favour of bail for all offences, with the onus on the prosecution to demonstrate that bail should not be granted

Recommendation 3:
Repeal the offences of committing an indictable offence while on bail, breaching bail conditions and failure to answer bail

In addition, we make the following recommendations to support young people's access to bail:

Recommendation 4:
Expand the hours for bail hearings and existing bail supports, such as the Central After-Hours Assessment and Bail Placement Service (CAHABPS), to have at least some after-hours coverage at minimum, and with 24-hour access as the objective

Recommendation 5:
Establish a comprehensive state-wide bail support program for children and young people

Housing

A related factor often underpinning bail refusals, and therefore the numbers of young people unnecessarily on remand, is young people's lack of access to housing.

Homelessness is a critical issue for many young people due to their vulnerability to poverty, family violence and other challenges with accommodation.¹⁷ In addition, housing services for young Victorians have limited hours of operation.¹⁸ They are also scarcely available to children under the age of 16 who are independently homeless, that is living independently from parents or guardians.¹⁹

These barriers and challenges drive a perception that young people should be remanded 'for their own good', or that remand is the only option, despite the harmful impacts of this course of action.²⁰

Not having adequate accommodation cannot be the sole reason for refusing a young

person bail, but there are still instances where accommodation would have been the sole deciding factor for granting it.²¹ Many organisations have emphasised that current bail laws and practices produce inequitable outcomes for people experiencing homelessness, and young people are a particularly vulnerable cohort in this regard²². To address the salience of housing in relation to bail outcomes and create a viable default option instead of remand, YACVic recommends:

Recommendation 6:

Ensure that any bail support for children and young people necessarily includes appropriate accommodation services, for example in the form of supported bail residences²³

Recommendation 7:

Consider how service operating hours might be impacting access when reviewing service gaps in Victoria's homelessness sector as per Recommendation 2 from the Final Report from the *Inquiry into Homelessness in Victoria*

Police are often the first to apprehend offenders, so they have significant influence over what happens to them next - in particular, whether offenders are brought before bail justices at all, or whether they may be referred to a social service more suitable to their situation, like housing. For young people, the judgment of the officers who apprehend them can have wide-ranging impacts. Therefore, YACVic echoes Recommendation 29 from the Final Report

from the *Inquiry into Homelessness in Victoria* as our eighth recommendation below:

Recommendation 8:

Develop and implement a Protocol for Victoria Police and other enforcement agencies to use in responding to people experiencing homelessness,²⁴ with a view to keep young people experiencing homelessness out of prison where possible

Geographic Location

Young people in rural and regional Victoria are also more likely to be remanded. Not only are housing services sparser, but there are also fewer resources for community and diversionary programs, leaving remand as ostensibly one of few options available to courts and decision-makers.²⁵

One young person in YACVic's consultation expressed a view that there needs to be an "outer-suburban Children's Court". YACVic notes that such courts already exist in Victoria, but also that limited hours of operation or other barriers may be impacting young people's access to court. Broadly, any state-wide youth justice mechanism, including bail support, must be accessible to all young people regardless of location.

Recommendation 9:

Monitor and evaluate whether the operating hours of each outer suburban and regional Children's Court reflect the behaviours and needs of the young people they service

Recommendation 10:

Ensure that any other state-wide supports are implemented with a view to equal access for young people in rural and regional Victoria

The current bail system fails young people with intellectual and psychosocial disabilities

Data from the Youth Parole Board shows that, in 2015-16, 24 per cent of young people in custody presented with 'issues concerning their intellectual functioning', while 30 per cent presented with mental ill-health and 18 per cent had a history of self-harm or suicidal ideation.²⁶ While the Sentencing Advisory Council's report acknowledges the complex issues of children on remand, the report did not interrogate the link between disability and remand further.

Disabled young people who are not able to give an undertaking that they will comply with bail conditions should not be dealt with through the bail system.²⁷ Young people with intellectual and psychosocial disabilities are particularly at risk of not being able to understand terms stated to them during the legal process. The Law Institute of Victoria provides examples of these terms as being words like 'offence', 'legal practitioner' and 'bail' (among others). Where a disabled young person does not understand a term or a process that they are involved in (for example, a question during a police interview) they are susceptible to suggestive questions and could give incorrect or false information, increasing their time spent on remand.²⁸ Supports must be provided to

disabled young people so that they are afforded their right to understand the process they are involved in.

People with diagnosed and undiagnosed intellectual disabilities or mental ill-health are thought to often end up on remand "simply due to a lack of appropriate alternative".²⁹ The Law Institute of Victoria considers that disabled young people are "set up to fail". This is evident where a young person with complex intellectual disabilities is refused bail because the decision maker believes the young person does not understand the conditions of bail. This choice is also made due to a lack of resources such as assisted living services. Where a young person with complex intellectual disabilities is best supported in assisted living, all effort should be focused on accessing these services. Instead, bail is often refused simply because it is the 'easier' solution, rather than using resources to locate and transition the young person to those services.

Recommendation 11: Support disabled young people to access bail through an alternative process specifically designed for offenders with intellectual disabilities, rather than the mainstream bail system

A breadth of diversion programs must be available to all young people across the state

For any young person who has committed an offence, diversion programs are a vital means to avoid the criminalisation and

stigma associated with entry into the court and prison systems, and to remain connected to their education, employment, housing and family/social relationships. Furthermore, diversion programs align with the 'Beijing Rules' by providing a default option for young people which supplants detention and does not see them punished unless absolutely necessary.³⁰

YACVic appreciates the Victorian government's commitment to diversion and notes the range of options already available for young people at different stages of involvement in the justice system. Our submission considers two stages of involvement where diversion can occur, pre-charge and post-charge, and we have organised our recommendations accordingly.³¹

Pre-charge diversion such as police cautioning is the most effective form of diversion, but also the most haphazardly applied

Before a young person is charged, police cautioning is an important diversionary mechanism which prevents their entry into the criminal justice system 'there and then'. However, the application of police cautioning has been criticised as inconsistent.³²

Because it is not underpinned by legislation, police cautioning can be discretionary and vary significantly across locations. Young people who attended our consultations reported a high degree of discretion in how they were treated by police; there was an

overwhelming sense that 'snap judgments' and unfair assumptions about a young person's character were defining their interactions with police. These attitudes often led to violence, for example a young woman recalled a police officer saying to her, "If there were no cameras here [at the train station] I'd bash you". Without clear principles around how police should interact with and caution the young people they encounter, there is no doubt that the relationship between police and young people will continue to be adversarial.

Police discretion also adversely impacts racially diverse young people. In our consultations, every single young person was acutely aware of how race and gender impacts police treatment, especially of racially diverse young men, and several people recalled clear experiences of racial profiling. It is unsurprising that these accounts of racism are reflected in statistics around police cautioning outcomes. For example, Aboriginal young people were found to be 2.9 times less likely to receive a caution than their non-Aboriginal peers.³³ This has also worsened over time, with a decline in cautioning outcomes for Aboriginal children and young people, from 14.6 per cent in 2008 to just 3.9 per cent in 2015.³⁴

A more rigorous approach to pre-charge diversions such as police cautioning is undoubtedly needed, not least because they are the most effective form of diversion.³⁵

Recommendation 12: Legislate the fair and equitable use of police cautioning, and monitor the implementation of this

legislation and review within two years of the reform

We also recognise a broader need to address the issue of police accountability.

Accountability is a key mechanism for ensuring police treat community members equitably and fairly.

Organisations such as the Koori Youth Council, Victorian Aboriginal Legal Service, Djirra and the Federation of Community Legal Centres, have all previously made recommendations towards holding police to account.³⁶ This is further echoed in the Smart Justice for Young People coalition's (SJ4YP) recommendation to resource oversight of complaints of police misconduct in this Inquiry.

We emphasise these calls for accountability, and where young people are concerned, recommend:

Recommendation 13:

Resource targeted youth outreach programs as part of Victoria's integrity system, particularly from the Independent Broad-based Anti-Corruption Commission, which educate young people on their rights, including how to report police misconduct

Interactions with police infringe disabled young people's human rights

Disabled young people face further challenges when apprehended by police.

Interactions between police and disabled young people demonstrate that lack of understanding of the diversity and nuance of disability is pervasive and deeply entrenched in the police force. A lack of understanding about disability is evident, where police deny disabled people reasonable adjustments or supports, or use excess force when they perceive the disabled person to be a threat.

Trends from YDAS' individual human rights advocacy work highlight how current police practices are putting disabled young people's health and safety at risk, and point to the need for a human rights approach to disability instead.

For example, it is common for clients to advise YDAS that certain action or inaction by police made them feel uncomfortable, unsafe or at risk of harm. In response to cases of mistreatment by police, YDAS advocates to protect clients' human rights by lodging complaints with the Victoria Police, Police Conduct Unit (PCU), the Office of the Public Advocate and the Australian Human Rights Commission.

Patricia's Story

Patricia, a disabled young person, informed YDAS that they had felt targeted by the police because of their disability. Patricia has a disability that affects their mobility. Patricia told YDAS that the police's lack of understanding of disability made them afraid to walk around the city at night. When Patricia is tired, they can have difficulty walking and their speech will slur. Because Patricia has disabled friends who have been wrongfully targeted by police when their 'signs' of disability have become more visible, Patricia is fearful of the police targeting them and misunderstanding their disability and instead perceiving them as being intoxicated or on drugs. As a result of this fear, Patricia is anxious when they need to leave the city after work via public transport to return home. Patricia's story is common in the disability community, and highlights how for many disabled young people the Police are a source of fear, rather than protection.

Patricia's story raises the issue of police 'profiling' on the basis of disability. Many disabled young people have reported to YDAS that they have experienced 'profiling' at least once in their life, through the forms of the police making assumptions about their condition, victimising them on the basis of their condition, or demonstrating fundamental disregard or disrespect on the basis of their condition.

Patricia's story demonstrates a lack of understanding about disability within the police force. This must be addressed immediately through mandatory, assessable, and ongoing disability training for all Victorian police. It is critical that disability training is not delivered as a 'box-ticking' exercise but is meaningful and instils in police a deep understanding of the range and diversity of disability. It should emphasise intellectual and psychosocial disabilities and be delivered from a human rights and 'social model of disability' lens.

Towards the Social Model of Disability

A human rights and social model of disability understanding is essential for police, to ensure that their interactions with disabled young people are not influenced by a preconceived stigma against disability. It is also key to ensure police carry a nuanced understanding of the diversity of disability so that they are able to recognise and respond appropriately. The problem of non-identification was aptly summarised by the Australian Human Rights Commission:

“[I]f a disability is not identified, the crude criminal justice response to offending behaviour cannot be modified to meet the needs of the offender and minimise the risk of continued involvement in the system.”³⁷

Diagnosis

When disabilities are left undiagnosed, young offenders are left without the support they need and are vulnerable.³⁸

In a report into the provision of services available under the NDIS for people with disabilities in contact with the criminal justice system, Development Disability Western Australia (DDWA) summarised the negative consequences which flow from non-diagnosis of persons with disability who come into contact with the criminal justice system.³⁹ These include: the person not being

able to understand their legal rights, making incorrect incriminating statements, panicking during encounters with police, running away from or resisting arrest, and taking responsibility for crimes committed by others in order to win someone’s favour or to please the police.⁴⁰ These outcomes were identified where the person had common undiagnosed disabilities such as borderline intellectual disability and acquired brain injury (ABI), which are estimated to affect 25-30% and 40-90% of Australian prisoners respectively.⁴¹

DDWA also considered that one factor contributing to the non-diagnosis of these disabilities is that persons who experience them will commonly not see or wish to acknowledge these impairments.⁴² As a result, they are very unlikely to seek out NDIS support of their own initiative and will often initially be suspicious of suggestions to obtain support for their disability.⁴³ Another factor contributing to non-diagnosis is that individuals can appear to be superficially quite independent but may have a range of complex disabilities which can affect communication, psychosocial, sensory and cognitive functioning.⁴⁴ Individuals who experience these behaviours can often have volatile and fast changing support needs, making it crucial that diagnosis occurs as soon as the young person comes into contact with the justice system.⁴⁵

One way to address this problem is to ensure that staff working in the justice system are trained to identify and refer young people who they consider may have a disability to the appropriate disability supports. This

would help to ensure that young people with disability are diverted away from the criminal justice system and instead put in contact with appropriate community-based services at an early stage. Where an offender with a correctly diagnosed disability must continue through the criminal justice system, early diagnosis will help ensure that prison staff have awareness of the person's disability so that they can be supported appropriately.

Social model training

More broadly, there is a need for training of police and justice system staff through the lens of the social and human rights models of disability.

The social model of disability views disability as a form of socially created oppression.⁴⁶ Under this model, disability is a socially produced injustice whereby a person's 'impairments' and 'limitations' are the result of physical or social barriers in society and are capable of being remedied through social change.⁴⁷ Disability is understood by looking at the "interaction between the setting in which the person with impairment lives and the person."⁴⁸

This model of disability can be contrasted to the medical model, which has historically been the mainstream understanding of disability. The medical model focuses purely on a person's impairment and sees the person with disability as the problem. It does not acknowledge the role society plays in limiting access and inclusion. Inherently problematic to the medical model concept is

that it makes distinctions among people with disabilities on the basis of severity.⁴⁹

The human rights model of disability views the inherent dignity of the human being and subsequently, but *only* if necessary, looks to the person's medical characteristics. Vitaly, the human rights model of disability places the individual in the centre of all decision-making and locates the perceived 'impairment' or 'problem' as outside the person and in society.⁵⁰

Both the social model and human rights model of disability share common elements. However, the models are best viewed as complementary and should be given equal weight from a policy perspective. The human rights model depends on the social model but extends the relationship beyond person and society to engender a sense of belonging between disabled people and all others.⁵¹

As the human rights model of disability is informed by the Convention of the Rights of Persons with Disability (CRPD), police and justice system staff training should also instil an understanding of the CRPD, as the treaty promotes an understanding and a respect for the rights of persons with disability.⁵²

These models are important to ensure that the rights of disabled young people are upheld when interacting with police. We recommend:

Recommendation 14:

Mandate assessable, and ongoing disability training for all Victorian Police,

to embed a human rights and social model understanding of disability, informed by the CRPD. Training must address how to identify, refer and support young people with undiagnosed disabilities.

Recommendation 15:

Employ disabled people to deliver disability training to Victoria Police, as people with lived experience bring clarity and personal understanding to this training

Police also fail to provide reasonable adjustments to disabled young people

YDAS has assisted clients who were denied reasonable adjustments when interacting with the police. Commonly, such denials occurred during police interviews and took the form of a failure to provide an accommodation such as a requested break from questioning or to allow the disabled young person to have a support person present with them during the interview.

Police are required to provide reasonable adjustments to accommodate disabilities when exercising their police duties under the *Equal Opportunity Act 2010 (Vic)*, the *Disability Discrimination Act 1992 (Cth)* and the *Victorian Charter of Human Rights and Responsibilities Act 2006 (Vic)*. A failure to do so may constitute disability discrimination.

Despite these legislative requirements, YDAS has identified repeated instances where clients with Autism Spectrum Disorder (ASD), Intellectual Disability (ID) and Panic Disorder

(PD) have not been provided with support, breaching their human rights and increasing the time these young people spend engaged with the criminal justice system.

A failure to provide a suspect who has an intellectual disability with an Independent Third Person (ITP) while being interviewed by police also constitutes a denial of disabled person's human rights and is a breach of the Police's standing orders.⁵³ Independent Third Persons are people trained to support and assist disabled people during police interviews to ensure they are not disadvantaged during the interview process.⁵⁴

In 2018 the now Department of Fairness, Families and Housing (DFFH) updated its *Guidelines for Disability Service Providers and Victoria Police*.⁵⁵ These guidelines list a number of 'general considerations' that police should take when interviewing a person with disability.⁵⁶ We recommend that:

Recommendation 16:

DFFH's *Guidelines for Disability Service Providers and Victoria Police* are reviewed by persons with lived disability experience to ensure they reflect the social and human rights models of disability

Recommendation 17:

Mandate a requirement to make reasonable adjustments for disabled young people to ensure that access to supports and adjustments is not discretionary

One current issue with the Guidelines is the recommendation that Police 'allow for a break if necessary' when interviewing a person with disability. The 'option' of a break at the discretion of the police is wholly inadequate and in many cases would negatively impact the disabled young person's health and wellbeing.

Recommendation 18:

Amend Victoria Police guidelines to ensure mandatory breaks for all disabled persons brought in for questioning

Ben's Story

Ben, a young man with ASD, ID and PD was denied supports by police while they were investigating alleged offences by Ben. Denial of supports were in the form of:

- Failing to explain the contents of documents, hearing orders and directions to Ben, who was not able to read or comprehend these materials.
- Failing to uphold Ben's right to privacy during questioning, by placing a phone call with Ben's family members on speakerphone during questioning.

When the police proceeded to interview Ben without a support person present and with the assumption that Ben could understand the contents of the documents being discussed, Ben grew stressed, frightened and anxious. Despite Ben's family members informing the police of Ben's disabilities, the police stated to Ben's family "he is an adult...[and] he has to deal with the consequences of his actions."

As a result of these denials of reasonable adjustments to accommodate Ben's disability, Ben's interaction with the criminal justice system was prolonged and their mental health significantly declined. Ben's time spent interacting with police, from investigation to court hearing spanned over a year (2020-2021), and at no point during Ben's interaction with the police did the police acknowledge or rectify their continued failure to accommodate Ben's disability. This reveals systemic issues within Victoria Police of a failure to understand disability and to exercise their duties in a way that preserves disabled persons' human rights.

Unfortunately, Ben's experience is not unique. The Australian Human Rights Commission collated research which presents repeated instances where support persons were denied for people with intellectual and psychosocial disabilities who were seeking to make a report to the police.⁵⁷ The Commission observed that while independent support person programs are provided for in Victoria (referred to as 'Independent Third Persons'), this program is non-statutory.⁵⁸

Recommendation 19:

Legislate the Independent Third Person Program to ensure that disabled young people can access this support irrespective of their disability, age or location, or whether they are an alleged offender, victim or witness

Value of youth work expertise

Police approaches to working with young people are discriminatory, discretionary and inconsistent. This denies young people effective cautioning pathways, access to their human rights, and ultimately entrenches vulnerable young people in the criminal justice system.

We believe this treatment of young people is avoidable, particularly given the recent success of the Embedded Youth Outreach Program (EYOP). The program pairs Police Officers with Youth Workers from the Youth Support and Advocacy Service (YSAS) to provide after-hours responses to young people who come into contact with police. An evaluation of the program found that it increased the capacity of both police and youth workers to provide support, assessment and service referral to young people, many of whom were engaged by EYOP while offending.⁵⁹

The program's after-hours operation and focus on service referral, which actively turns young people away from detention and remand, are undoubtedly assets. The program demonstrates that youth workers and social workers have a key role to play in improving the outcomes of interactions between young people and police, and addressing the underlying injustices which cause involvement in the criminal justice system.

EYOP also speaks to previous calls by the Police Association Secretary Wayne Gatt, who said, "We would like to see the same amount

of time that we currently spend responding to incidents at Malmsbury and Parkville reallocated into time spent working with people in the community to divert them to support".⁶⁰ The program has potential to meaningfully improve outcomes for all youth justice system stakeholders.

EYOP was a clear success in ensuring interactions between young people and police uphold the human rights of young people, including the Beijing Rules. In so doing, the program drives service access and diversion over detention and remand. YACVic would welcome an expansion of the pilot, or a replication of its best qualities across the state—particularly the role of youth workers to help produce just outcomes for young people experiencing disadvantage.

Concerning police interactions with young people, YACVic recommends:

Recommendation 20: Refine and expand the Embedded Youth Outreach Program so that it is delivered across each LGA in the State.

Recommendation 21: Resource the youth sector to work in the community alongside police in general, with a view to improving service referral outcomes for young people

In the absence of pre-charge diversion, post-charge diversion must be available to all young people

YACVic notes that the Children’s Court Youth Diversion service (CCYD) has administered thousands of diversions since being expanded state-wide in 2017.⁶¹ However, we remain concerned that young people who commit an offence with a mandatory penalty are automatically excluded from eligibility from the CCYD and other post-charge diversion programs. We also note the perception that post-charge diversion is only for people with little or no criminal history—this perception has further reduced children and young people’s access to diversion, particularly Aboriginal children and young people, and therefore needs to be addressed.⁶²

The age of the offender should supersede other considerations with regard to diversion eligibility. Young offenders have a unique capacity for rehabilitation and a right not to be detained where alternatives are possible,⁶³ and the breadth of existing diversion programs makes it clear that alternatives are there. These programs should be considered the primary course of action rather than simply alternatives to imprisonment and remand.

Diversion provides value to not only young people but also victims of crime and the community more broadly. Besides protecting young people from the criminogenic conditions and stigma of incarceration,

diversion can play an additional function in helping young people make amends with victims while still taking responsibility for their behaviour. This further helps avoid a protracted and expensive process within the already-crowded youth justice system.

Therefore, YACVic recommends:

Recommendation 22:

Extend eligibility for diversion programs to all children and young people, regardless of their offence, in line with Australia’s obligation to ensure detention is a last resort

Recommendation 23:

Urgently review the CCYD as per the Youth Justice Strategic Plan 2020-2030, and publish the findings no later than May 2022

Prioritise prevention and early intervention

While there is much work to be done at young people’s point of entry into the criminal justice system, there must also be work done to address the structural drivers of crime and prevent entry in the first place.

The importance of prevention and early intervention approaches that work entirely ‘upstream’ of the criminal justice system cannot be understated. These approaches have long been the consensus of the community and community legal sector, and we expect this will be emphasised in submissions from sector partners also. We echo in particular calls by SJ4YP to prioritise

early support, intervention and prevention, as the most effective ways to promote health and wellbeing and reduce child and youth offending.

To reduce pressure on Victoria's growing prison population, there is undoubtedly a need to 'pre-habilitate' young people who are at-risk, for example by resourcing programs and services which support their parents, families and communities.⁶⁴ This approach has been described by SJ4YP and others as 'justice reinvestment' and is a framework we strongly support, due to both social and economic returns. A justice reinvestment framework can and should begin as early as primary school.⁶⁵

We recognise that in many ways, justice reinvestment may resemble existing forms of family support. However, it would benefit from greater resourcing and more intensive, place-based application in partnership with schools, professionals and credible, local community workers.⁶⁶ Pathways to Prevention, a research-driven early intervention program based in a disadvantaged Brisbane suburb, saw a decade-long partnership with seven local primary schools which delivered family support services in a tailored, flexible and strength-based manner. Researchers behind the program found that even children from families with relatively low levels of involvement saw significant improvement in behaviour and wellbeing, factors that are correlated with a lower chance of involvement in the justice system.⁶⁷ Family supports are vital because although family

circumstances may contribute to educational disengagement, disciplinary practices in school do not effectively account for this.⁶⁸

A similar program in Victoria is The Geelong Project, which operates with a 'Community of Schools and Services' model, that involves partnerships between local schools and service providers such as Barwon Child Youth and Family.⁶⁹ A core part of The Geelong Project is a school-based survey which identifies young people at risk of homelessness, and while preventing homelessness is the stated goal of the program, its ability to identify vulnerable young people and provide holistic support is important in understanding the needs of young people and addressing those needs early on.

Recommendation 24:

Resource community- and place-based partnerships with schools and service providers which support young people and their families holistically

Poverty alleviation is key

While partnerships with schools and communities are an important form of prevention and early intervention, broader policies that address and alleviate poverty must also play a role. Speaking about their family, a young person in a consultation said:

"If we got paid more, I wouldn't need to shoplift. Mum's on Centrelink but she can't afford to buy stuff and afford groceries."

More money would make life easier. I wouldn't have to go to the shops and steal things.”

- Eva

Poverty alleviation may not seem like a direct change to the criminal justice system, but it will be instrumental in reducing the number of people entering the system. This is a connection that the community sector has previously made and emphasised, for example in VCOSS's 2015-16 Budget Submission, titled *Building a Victoria without poverty*.⁷⁰ Many of these recommendations,

including justice reinvestment, reducing the cost-of-living burden, tackling unemployment and fostering social connection, continue to be relevant and are crucial protective factors for young people at risk of engaging with the justice system.

Recommendation 25:

Embed targeted poverty alleviation strategies across policy development, noting the role of poverty alleviation in reducing young people's contact with the criminal justice system

Strategies to reduce rates of criminal recidivism

“The first time I got locked up, it made me want to do crime even more...”

- Ben

Contact with the justice system makes young people more likely to reoffend.

Remand, and the frequency with which it is practiced on young people, is partly responsible for the increase in reoffending. For young people, remand is often a “first entry point”⁷¹ into the criminal justice system, and any point of entry into the system is in itself criminogenic: each additional year a child or young person is kept out of criminal courts is associated with an 18 per cent decrease in the likelihood of reoffending.⁷² A young man in a community consultation said his first time in detention “made [him] less scared” to reoffend.

Addressing issues with the remand system would therefore help to address recidivism as well. Otherwise, young people will continue to receive worse outcomes, with a recidivism rate eight per cent higher than for the general population.⁷³

However, preventing early entry into the criminal justice system is only part of the picture. There must also be greater support for those already experiencing involvement in the criminal justice system. Given that

the majority of people who enter the system will one day leave it, ideally for good, it is vital that supports are designed and planned with this in mind. Young people in particular, who have their whole lives ahead of them, must be supported to make the most of this in a tailored, age-appropriate manner.

“Current programs don't help young people to stop offending”

- Julius

The youth justice system fails to reduce youth offending.⁷⁴ It fails to prepare young people for the difficult transition out of prison and back into the community⁷⁵, and support services for young people on remand are particularly sparse.⁷⁶ Without support and preparation to exit the justice system, young people miss out on key life experiences from their formative years and leave prison unable to navigate the cultural norms and socio-economic responsibilities they have missed out on learning.⁷⁷

This lack of preparedness that young people feel when leaving prison dovetails with the alarming outcomes they are currently experiencing in this period. For example, people aged 25 and under are six times more likely to die in the first year after release from prison compared to the general population,

and young women in this age group are 20 times more likely to die in this period.⁷⁸

It must be noted that race—or rather, racism—tends to exacerbate these outcomes. Aboriginal and Torres Strait Islander young people already have limited access to diversion programs, but outside the justice system unequal outcomes in health, education and employment all contribute to the likelihood of reoffending. These outcomes are underpinned by a broader lack of self-determination in a system that does not value youth participation or the right to culture and self-determination as much as it should.⁷⁹ Young people of African descent also experience ongoing exclusion and stigma because of their race which may drive reoffending behaviour.⁸⁰ In all our consultations, young people were highly conscious of how racial discrimination was shaping the criminal justice system.

In this light, YACVic supports the Centre for Multicultural Youth's submission to this Inquiry which emphasises the structural determinants of racial overrepresentation in the justice system. We agree that any changes to the system must grapple with the underlying drivers of reoffending and overrepresentation, including racial discrimination. To this end, we echo their third recommendation for a Multicultural Youth Justice Strategy. Addressing social injustice is vital for effective criminal justice reform.

In addition, our submission adopts a person-centred view of the justice system to address

the challenges faced by young people when moving through the system. Service gaps, both during and after custodial sentences, as well as a lack of youth participation in shaping services and outcomes, currently undermine the agency of young people in reintegrating after prison, and are therefore contributing to the high recidivism rates for this age group.

Consistent, comprehensive and rehabilitative supports for young people in prison

An independent audit in 2018 found that rehabilitation and case management services in youth detention are haphazard and fail to meet the needs of young people.⁸¹ Several reasons were identified for this. There is: a shortage of case management staff; a focus on risk management and security at the expense of health and education; and no central point of responsibility to ensure case plans are applied consistently⁸². This created the outcome that most young people in youth detention who required a case plan were not able to get one.

These findings are disappointing. Case plans, at the very least, express a commitment to rehabilitating young people in detention, and have the potential to set young people up for longer-term success beyond prison. This is especially true when considering the range of services which could be offered but currently are not, including education services. The following recommendation is taken verbatim

from a young person who attended a consultation:

Recommendation 26:

“TAFE should be available on-site in Malmsbury, offering courses like Trade, Construction, Engineering and Business Management”

YACVic wishes to emphasise that programs like education and training have significant rehabilitative potential for young people, and are therefore a key opportunity to break the cycle of reoffending. We note also that education is a key theme among recommendations already made by the Auditor-General in 2018.⁸³ We further note that that report also highlighted issues with health services, including a poorly documented triage process which results in services not being prioritised or delivered consistently. This compromises young people’s access to healthcare, which is in itself a human right.⁸⁴ Given the comprehensiveness with which this report has already addressed these issues, we recommend:

Recommendation 27:

Urgently implement all nine recommendations from the Victorian Auditor-General Office’s *Managing Rehabilitation Services in Youth Detention* report

These recommendations are summarised below:

1. Incorporate education and program needs into case planning

2. Monitor the development of case plans and achievement of goals outlined
3. Adopt a performance measure for school attendance
4. Monitor service levels and demand through new reporting requirements
5. Review and facilitate young women’s equitable access to education and recreation
6. Complete the Department of Education and Training’s review of Parkville College
7. Improve record-keeping at Parkville College
8. Develop a memorandum of understanding between the Departments of Education and Justice and Community Safety to coordinate service delivery; and
9. Ensure young people access educational resources and facilities at Parkville College

One final observation about services in youth detention made by young people in our consultations was that they tend to be siloed between Parkville and Malmsbury, with transition between the centres as a key service gap. One young person felt anxious about moving as they had not been told what to expect at the other centre. They said:

“Handover between Parkville and Malmsbury needs to be detailed and young people should be better supported and prepared”

- Blake

Recommendation 28:

Ensure continuity of support for young people in transition between Parkville and Malmsbury centres

Culturally safe services

Concerning race and culture, the Auditor-General's report further identified a lack of culturally responsive services for culturally and linguistically diverse young people and Aboriginal and Torres Strait Islander young people⁸⁵; this is not the first time these concerns have been raised in Victoria.⁸⁶

“Support for families of young people in custody - especially in the CALD community, these should be trusted, cultural workers”
- Sam

While there have been recent attempts to hire more cultural support staff in youth detention, this does not go far enough in ensuring cultural responsiveness is embedded across youth detention's full scope of operations.⁸⁷ In particular, the delegation of responsibility for cultural support to specific staff fails to recognise the responsibility of *all* staff in youth detention for the cultural safety and wellbeing of young people in their care. Though race plays such a central role in criminal justice experiences and outcomes, it is often treated as a marginal issue for which only some people are responsible, and this must be addressed.

YACVic echoes a recommendation made by the Koorie Youth Council in their *Ngaga-dji: Young voices creating change for justice* report.⁸⁸

Recommendation 29:

Embed family, cultural and community at every stage of supports to keep children connected within safe, supportive networks

This recommendation was originally made concerning Aboriginal and Torres Strait Islander young people, and the importance of family and community connection to their culture cannot be understated. We stress that this recommendation applies to young people of all cultural backgrounds.

Centre young people's needs, experiences and participation

The Victorian Government has a responsibility to ensure that young people are included in decision-making which affects them. Article 12 of the *UN Convention on the Rights of the Child* clearly states that young people have the right to participate and contribute to decision making processes that affect them.⁸⁹

However, against the grain of this human rights obligation, the youth justice system erodes young people's agency in several ways.

Firstly, many young people who spoke with YACVic felt like they were left in the dark while involved in the justice system. Their agency was undermined by a significant lack of information sharing from all stakeholders, including correctional staff and youth justice workers, lawyers and police. This created a great deal of uncertainty for young people, particularly while detained:

“They don’t open the doors to talk to us, they don’t tell you anything”

- Peter

As well as the undermining of young people’s agency in the justice system, uncertainty has also been identified as a major contributor to poor mental health in other spaces of confinement.⁹⁰

A key source of uncertainty for young people is the youth justice worker—or often, workers—with whom they are paired. In our consultations, young people who had been incarcerated recounted a high turnover of youth justice workers with minimal prior communication or notice. This meant that they had to build rapport from scratch with someone who is a stranger. Conversely, young people who had poorer relationships with their youth justice worker felt that they had no input into these relationships. One young person stated, “My YJ never gets me what I want”, and there was a broad consensus that youth justice workers were not always attempting to understand their experiences.

YACVic believes youth justice workers must be assigned in a way that allows young people to have their needs heard and understood. This relationship is vital for a young person’s case planning and rehabilitation goals. As such we recommend:

Recommendation 30:

Involve young people with lived experience of the justice system in co-designing communication guidelines for youth

justice workers, including for when workers are reassigned, and for workers in the legal sector more broadly

Recommendation 31:

Set FTE targets to hire a certain number of youth justice workers with lived experience of the justice system in each of Victoria’s youth detention centres

Ensuring young people are informed and included in communication is far from the only possible measure towards upholding their agency. To involve young people in decision-making in a manner that is consistent with human rights obligations is to proactively reimagine young people’s participation in the criminal justice system.

Research in the UK has highlighted the lack of structured opportunities for young people to express their views in detention,⁹¹ even when such opportunities exist for young people in other contexts like schools and even policymaking—for example, through the Victorian Government’s Youth Congress.

Young people’s unique perspectives on the institutional practices of detention are valuable. Meaningful opportunities for them to help shape these practices can further generate a sense of citizenship and foster more positive relationships with those in positions of authority.⁹²

To translate the Victorian Government’s commitment to youth participation into the justice system, YACVic recommends:

Recommendation 32:

Train youth justice workers in key youth work skills, particularly around youth engagement and participation

Recommendation 33:

Develop and trial participatory activities for young people in detention

Widen access to disability support services for disabled young offenders in prison

Specific disability supports, such as those accessed under the NDIS, can break cycles of offending as they can assist disabled young offenders in finding secure housing and other social and financial support.⁹³

As the NDIS continues to evolve, these support services can be difficult to obtain as many are under resourced. There is a need to address this gap to ensure that support services are available to persons with disability who are either unable to access the NDIS (for example, they may be ineligible) or where the service has reached capacity.

Recommendation 34:

Increase funding of disability support service providers for persons with disability in the criminal justice system to ensure disabled young people who are ineligible for the NDIS can access support

Prepare young people to leave prison

While the above factors may be critical in repurposing youth detention to rehabilitate rather than punish, an important next step is to ensure services inside prison have some continuity outside prison also. This would maintain a young person's links with vital support systems and reduce their risk of reoffending.⁹⁴

Educational services are one key source of continuity. If a young person is learning in prison, it is vital they are able to have those credits recognised and continue pursuing education after release. Health services are another key source of continuity, and this is important both when entering and exiting prison. For example, re-diagnosing illness with different providers inside and outside detention can be time-consuming and exacerbate those illnesses.

A strong example of this in practice is underway at Danila Dilba in the Northern Territory. A community controlled Aboriginal healthcare provider, Danila Dilba operates nine clinics across the Territory including a recently opened centre inside Don Dale Youth Detention Centre.⁹⁵ This model addresses several of the concerns raised throughout this section, from cultural appropriateness to the ability for services to centre a young person's links with community outside prison. YACVic welcomes the \$40 million committed to Aboriginal Community Controlled Organisations (ACCOs) in the Victorian Budget 2020/21⁹⁶ and believes this

could be a vital resource to address youth reoffending.

Recommendation 35:

Embed and resource Aboriginal Community Controlled Organisations to operate inside youth detention centres and lead the health and wellbeing treatment for Aboriginal and Torres Strait Islander young people in custody

Recommendation 36:

Ensure all services in detention are person-centred, trauma-informed and support the young person's journey through the service system when entering and exiting prison

Effective, age-appropriate and evidence-based transitional supports

After serving a sentence or completing a period of remand, young people require transitional support that is tailored to their individual needs. Transitional support of this nature is a vital resource to help young people navigate the challenges of leaving prison, and if done well they can have considerable rehabilitative potential. However, there is a lack of age-specific, evidence-based supports in this area⁹⁷, therefore it currently represents a significant missed opportunity to provide young people with the support they need to avoid re-offending.

Research has suggested that transitional supports should provide 'structured, legitimate activities' for young people in

order to keep them from returning to the environment which led them to offend in the first place.⁹⁸ Employment can be one such activity, and young people should be supported to gain employment after leaving prison. One way to help them achieve this is to provide opportunities to complete paid work before release. Although this is widely cited to improve the transition back into mainstream society, no such programs currently exist in Victoria.⁹⁹ Rather, it has been up to organisations in the social and community sector to provide post-release transitional support.

Other 'structured, legitimate activities' may include school or leisure activities, and continuity here is likewise important. Any education provided in detention should be transferrable outside. Similarly, it is also important to young people that these activities be place-based and locally accessible. In our consultations, young people were emphatic about liking where they live, there was a sense that their neighbourhoods were 'theirs', somewhere they felt safe and a sense of attachment to the local community. Delivering services through Local Learning and Employer Networks (LLENs) may be one way to manage these considerations.

In any case, activities and transitional supports must not disrupt the geographical environment where these young people have grown up, but approach youth offending through a social ecological lens¹⁰⁰: that is, through the understanding that a young person's social context, their relationships

and identity development, are key to preventing reoffending. ‘Structured, legitimate activities’ must focus on building those positive relationships and protecting them where they already exist. These relationships facilitate a young person’s sense of cooperation, purpose and self-worth.¹⁰¹

Research demonstrates that therapeutic transition supports are more effective than non-therapeutic interventions when it comes to reducing reoffending¹⁰². Therapeutic interventions would include counselling, skill building and restorative models of justice, rather than disciplinary measures, which have been found to increase the likelihood of recidivism.

Recommendation 37:

Research and co-design a transitional support system for young people exiting detention with structured, legitimate activities and therapeutic models of support as primary objectives

Recommendation 38:

Provide paid work opportunities for young people in detention in order to facilitate their economic participation after release

Parole is a missed opportunity for rehabilitating young people

As the period immediately following release from detention, parole is a key opportunity to connect young people into transitional supports. However, in its current form the parole program is contributing to the high

recidivism rates among young people.¹⁰³ In particular, many young people who attended the consultations spoke of parole as a set of stringent restrictions enforced with a ‘top-down’ approach, that did not leave room for their input. This was particularly salient in one consultation, where young people said:

“Parole Board often force you into programs you don't want to do or make you repeat things you've already done, and then breach you for not following it”

- Stephen

“Youth Justice appointments are often scheduled too far away. YJs should do outreach”

- Ronny

Young people identified that parole requirements to work with large numbers of services and workers were challenging. Not only were they not informed of these requirements before being granted parole, but it also led to breakdowns in communication where the young person did not have a single key contact to engage for support.

While parole restrictions are supposedly in their best interest, we believe that young people themselves should be considered experts on their own needs and must be consulted in decision-making around parole conditions. A more consultative, co-designed process would help young people feel like they have a say in these conditions, and therefore feel more invested in meeting them.

Parole conditions developed using co-design processes that meaningfully value diverse lived experiences will be more successful. Successful co-design with young people, building on a commitment to sharing responsibility and decision-making roles, empowers young people and all other stakeholders to learn from each other and collectively create the best outcome. YACVic recommends:

Recommendation 39:

Implement a co-design model for parole conditions so that young people feel ownership and agency over their futures

An area of parole conditions which has presented challenges to young people is the question of geography. Firstly, geographical restrictions in parole conditions themselves have increased over the past decade, which has made meeting those conditions more and more challenging for young people.¹⁰⁴ At the same time, housing insecurity is a prevalent issue among young people which may hinder their ability to meet these geographical restrictions—particularly if they are couch-surfing or moving between different sites of accommodation, as many young people experiencing homelessness are.¹⁰⁵ As Minister for Youth Justice Natalie Hutchins herself has said, a “safe and stable home” is vital for breaking the cycle of reoffending.¹⁰⁶ We believe this starts in the highly volatile period that is parole.

A strong solution to deal with this would be to tackle the root cause, that is insecure housing. A ‘halfway house’ model as has

been operating in the former Maribyrnong Immigration Detention Centre facility may be particularly effective. This model provides transitional housing to people who have interacted with the justice system so that they have a place to learn the skills they need to re-integrate into society and to support themselves after release. Having stable accommodation has helped people comply with parole conditions, find work, receive health treatment, and plan their next steps in life.¹⁰⁷

Given that young people are relatively less equipped with the life skills and experience to achieve these goals independently, halfway houses could be critical to helping them get on their feet again and receiving the support they need to not only meet their parole conditions, but be linked into the ‘structured, legitimate activities’ that will keep them out of prison. There is no doubt that this model—compared to the more reactive approach of building new prisons—not only better meets the needs of young people but provides better value for money.

Recommendation 40:

Establish a trial halfway house option for young people to support their transition out of the justice system through wraparound support

Reversing the ‘adultification’ of the criminal justice system

Researchers have indicated that Victoria’s criminal justice system has undergone several years of ‘adultification’, that is a

growing tendency to treat young people as adults.¹⁰⁸ Victoria's criminal justice system does not meaningfully consider the impact of a young offender's age on their experiences of the justice system or the consequences of their involvement.

YACVic's submission fundamentally calls for a justice system which treats young people in an age-appropriate manner, and which recognises their unique needs, as well as easier pathways for young people to be rehabilitated.

Importantly, we believe this must extend to young adults as well as children. YACVic notes that 18- to 20-year-old young people have a unique experience of the criminal justice system. Though legally adults, 18- to 20-year-old offenders have access to the 'dual track' system which allows a court to sentence them to youth detention rather than adult prison.¹⁰⁹ However, since 2017 young people in this age group who have committed certain offences have been excluded from 'dual track' eligibility.¹¹⁰ In addition, 21- to 25-year-old young people are not currently eligible for 'dual track' at all.¹¹¹

Throughout this submission, we have emphasised the unique potential for young offenders to be rehabilitated and this includes young adults aged 21-25. Research has shown that psychological, neurological and social development extends well into a person's twenties, and that major milestones for adulthood, such as completing education and moving into housing independently, now occur later in life.¹¹² This means that this

period is also critical for diversionary and rehabilitative intervention, and a sentence to adult prison, sometimes without consideration for alternatives, would work counter to this aim. Age-appropriate and rehabilitative case management in juvenile detention may be haphazard, but in adult prison it is non-existent. Therefore, YACVic recommends:

Recommendation 41:

Expand 'dual track' eligibility to all young offenders aged 25 and under, noting the ongoing psychological, emotional and social growth which characterises this age period

Recommendation 42:

Ensure all young offenders aged 25 and under, whether in adult or juvenile detention, have access to age-specific case management which supports them to achieve milestones such as completing education, securing employment and acquiring housing

Raise the age of legal responsibility

While young adults have these particular experiences of the criminal justice system, we would be remiss not to recognise that the system currently allows for the incarceration of children as young as 10. There is abundant literature which demonstrates this is deleterious, both from a psychological or developmental perspective as well as a criminological one.^{113,114,115,116}

These harms reflect accounts that the justice system is not 'overloaded' with many young

offenders, but is rather setting up a small number of young people for a lifetime of repeated involvement in the system, - because the age at which they first enter is significantly and directly contributing to this phenomenon.

This is in some part because criminal justice responses expose children to older prisoners with whom they would never have interacted otherwise. A young person in our consultations explicitly identified this issue. Young women are particularly impacted by this, given that in Victoria they do not have separate units based on age or process (remand vs. sentenced) so are exposed to adult prisoners from as early as 10 years of age.¹¹⁷

The age of criminal responsibility has been described as “the main legal barrier to the criminal justice system”.¹¹⁸ That many other nations have followed this declaration, and that most in the OECD have set an age of criminal responsibility of 14 or higher¹¹⁹, means that Australian jurisdictions are now out of step with international peers.

A higher age of criminal responsibility would bring Victoria in line with the principles outlined in the UN Convention on the Rights of the Child, particularly that children in conflict with the law should be treated without resorting to judicial proceedings¹²⁰— these principles are widely upheld around the world.

It would also directly address the high recidivism rates among young people and, in tandem with the other recommendations made in this submission, work towards ensuring all children and young people in Victoria are given their best chance to lead a well-supported, fulfilling life.

YACVic reiterates the recommendation of the collective Raise the Age campaign and the overwhelming consensus of Victoria’s social, community and community legal sectors, to:

Recommendation 43:

Raise the age of criminal responsibility to at least 14.

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