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Legislative Council

Legal and Social Issues Committee

Inquiry into youth justice centres in Victoria

Final Report

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Legal and Social Issues Committee

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Committee functions

The Legal and Social Issues Committee (Legislation and References) is established under the Legislative Council Standing Orders Chapter 23 – Council Committees, and Sessional Orders.

The committee's functions are to inquire into and report on any proposal, matter or thing concerned with community services, gaming, health, law and justice, and the coordination of government.

The Legal and Social Issues Committee (References) may inquire into, hold public hearings, consider and report on other matters that are relevant to its functions.

The Legal and Social Issues Committee (Legislation) may inquire into, hold public hearings, consider and report on any Bills or draft Bills referred by the Legislative Council, annual reports, estimates of expenditure or other documents laid before the Legislative Council in accordance with an Act, provided these are relevant to its functions.

Government Departments allocated for oversight:

- Department of Health and Human Services
- Department of Justice and Regulation
- Department of Premier and Cabinet

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This report is available on the Committee's website.

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Terms of reference

Inquiry into youth justice centres in Victoria

On 10 November, 2016, the Legislative Council agreed to the following motion:

That, pursuant to Sessional Order 6, this House requires the Legal and Social Issues Committee to inquire into and report on, no later than Tuesday, 1 August 2017*, issues at both Parkville and Malmsbury Youth Justice Centres including, but not limited to —

1. matters relating to incidents including definitions, numbers and any changes to the reporting of incidents;
2. the security and safety of staff, employees and young offenders at both facilities;
3. reasons for, and effects of, the increase in the numbers of young people on remand in the last 10 years;
4. implications of incarcerating young people who have significant exposure to trauma, alcohol and/or other drug misuse and/or the child protection system, or who have issues associated with mental health or intellectual functioning, in relation to—
 - a. the likelihood of reoffending;
 - b. the implications of separating young people from their communities and cultures;
5. additional options for keeping young people out of youth justice centres;
6. the culture, policies, practices and reporting of management at the centres;
7. the role of the Department of Health and Human Services in overseeing practices at the centres; and
8. any other issues the Committee consider relevant.

*The reporting date for this inquiry was extended to 27 February 2018.

Chair's foreword

This report, and its 33 findings and 39 recommendations, reflect problems across Victoria's youth justice system: from crime prevention, through to delays in the Children's Court, staffing problems within youth justice centres and, finally, what happens when young people are released from detention. The youth justice system should facilitate community safety, as well as accountability and rehabilitation for young offenders. When this inquiry began in November 2016, there were many visible signs that the system in Victoria was not doing this but instead was failing to deliver for both the community and young offenders.

The immediate prompt for the inquiry was a number of well-publicised critical incidents in Victoria's youth justice system, including riots and escapes, as well as an awareness that in recent years the cohort of young people who are incarcerated has changed. Most notably, we now see young offenders whose first contact with youth justice is a serious or violent criminal act. This is different to the past, when a young person's first offence was often relatively minor, such as shoplifting, but over time may have developed into more serious or possibly violent offending.

Today, Victoria also has a larger proportion of children and young people on remand compared to only ten years ago. In the past, the ratio of young people on remand to those sentenced was about 80 per cent sentenced to 20 per cent on remand. However, these figures have now reversed to 80 per cent remand and 20 per cent sentenced.ⁱ This is a significant change and has implications for youth justice facilities, most of which were built to house young people who had been sentenced. It is acknowledged that those on remand, and facing an unknown future, are usually more unsettled and potentially more volatile than those who are sentenced and know what lies ahead of them.

Staffing is another area of concern. There has been a high turnover in youth justice custodial staff, as well as a heavy reliance on casual and agency staff, all of which helped create poor morale and an unhealthy workplace culture within the centres. This, too, has contributed to the lack of confidence in Victoria's youth justice system.

In August 2016, the Victorian Government engaged Penny Armytage and James Ogloff to carry out a review of youth justice in Victoria. Their report, delivered in July 2017 and made public soon after, was highly critical of the current state of the system. This inquiry has drawn on the Armytage and Ogloff Report, as well as other recent reports into youth justice in Victoria.

It took considerable persistence to obtain access to some of these, and indeed, to obtain responses to further questions and concerns raised by Committee members. That contributed to the Committee twice delaying this Final Report.

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

While some queries remain outstanding, several longstanding queries were addressed in a letter from Ms Julia Griffith, Deputy Secretary Youth Justice, which was received on 22 February, as our Final Report was nearing completion. Rewriting would have necessitated further delays. We have therefore included Ms Griffith's letter in full as Appendix 5.ⁱⁱ

Given the delays in finalising our inquiry, the Committee sought updated information to ensure that our Final Report was as accurate as possible. In each case, we have included the most recent statistics made available to us. Unfortunately, in several instances this could not be described as current.

I thank the members of the Committee for the constructive way they approached this inquiry, and thank our secretariat staff, Patrick O'Brien, Michelle Kurrle and Prue Purdey, for their great support and hard work in helping to deliver this report.

Margaret Fitzherbert MLC
Chair

ii Ms Griffith's letter addresses some of the data and record keeping issues regarding isolation and lockdowns that were central to the Interim Report of our inquiry, which was tabled on 12 December 2017. The Committee found that excessive use of isolation and lockdowns in youth justice centres, which was partly linked to staffing issues, contributed to unrest in the centres.

Executive summary

Chapter 1

Chapter 1 provides an overview of the youth justice system in Victoria, including the 2017 machinery of government change in responsibility from the Department of Health and Human Services to the Department of Justice and Regulation. It includes a history of youth justice in Victoria up to the passing of the *Children, Youth and Families Act 2005* and the *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017*.

The chapter explains the differences between young offenders and adult offenders, a difference which underpins the youth justice system. It concludes by outlining the problems faced by the youth justice system in Victoria. These problems are addressed in detail throughout this Final Report.

Chapter 2

Chapter 2 contains data on youth offending in Victoria and Australia. It profiles the nature of youth offending, including the most common crimes committed and the fact that first-time offending is becoming more serious in nature with a recent increase in the number of charges per case.

Chapter 3

Chapter 3 examines diversion programs for young offenders. Diversion works best when it has the support of communities and the police. The chapter examines some conceptual problems with diversion, including potential negative impacts to a young person. The chapter explores the notion that the youth justice system can in fact lead to improved outcomes for young people. It concludes with an overview of Victoria's current diversion programs and a discussion on the concept of early intervention.

Chapter 4

Chapter 4 examines the Children's Court of Victoria, which is comprised of a number of divisions and the Youth Parole Board. It reveals that the number of cases heard by the Court has declined over recent years, yet problems remain with delays to some young people's cases. This is mostly due to an increase in the number of charges per case. The chapter then explains sentencing guidelines for young offenders, including relevant human rights charters, and the role of the dual track system for young adults.

Delays in processing time are problematic because they create instability in a young person's life and, if convicted, remove the link between cause and effect; that is, the link between the crime and the sentence. This problem is exacerbated when young people do not understand the court process.

Chapter 5

Chapter 5 looks at remand for young offenders in Victoria. It reveals that this is currently a serious problem as both the number of young people on remand and the time they spend on remand has grown. These increases have been linked with recent problems such as unrest in youth justice facilities, as young offenders on remand are unsettled and do not receive the same programs as sentenced young offenders. Explanations for the increase vary from: part of a 'tough on crime' response by police and the courts; a necessary response to the increase in violent young offenders; to a need for systemic reform.

The chapter concludes with a discussion on programs intended to reduce delays in remand. These include the Fast Track Remand Court, the Central After Hours Assessment and Bail Placement Service, the Intensive Bail Supervision Program, and the Youth Justice Advice Service.

Chapter 6

Chapter 6 examines Victoria's therapeutic approach to youth justice, which recognises the impact that trauma or disadvantage has on young offenders' behaviour and provides the relevant services to address the young offenders' needs. The overall aim of therapeutic models is to ensure that contact with the youth justice system does not cause further harm to a young person nor contribute to their reoffending. Several examples from overseas jurisdictions are provided.

Chapter 6 continues with a discussion on the initial assessment of young offenders when they first have contact with the youth justice system. This assessment has been identified as often inadequate and inconsistent. It then discusses how a lack of appropriately trained and experienced staff in youth justice centres impedes the successful implementation of a therapeutic model. The chapter concludes by identifying problems with the inappropriate use of lockdowns, isolation and separation in youth justice facilities and how these problems contributed to recent unrest.

Chapter 7

Chapter 7 discusses deficient oversight of youth justice in Victoria. A loss of experienced, full-time staff and failure to consistently adhere to policies and procedures had a negative impact on operations in youth justice centres, including the delivery of rehabilitation services. The Committee also received evidence of examples of poor managerial accountability in youth justice centres

and the way in which this harmed workplace culture within the facilities. In particular, staff felt that how they responded to violence in the facilities would not be supported by management.

The chapter concludes with a discussion on the Commission for Children and Young People, the Victorian Ombudsman and the Victorian Equal Opportunity and Human Rights Commission, three organisations that oversee youth justice in Victoria, and the Optional Protocol to the Convention against Torture.

Chapter 8

Chapter 8 looks at the physical infrastructure of Victoria's youth justice facilities and its relationship with rehabilitation. The Committee found that safe and secure facilities are one part of a stable youth justice system. However, the Committee also heard that Victoria's facilities are ageing, dangerous and no longer suitable for the profile of young offenders they currently house. These factors contributed to the unrest in facilities. The chapter then presents evidence on how jurisdictions in the United States and Spain operate their youth justice facilities.

The problems at Victoria's youth justice facilities, especially Parkville, are partly due to the fact that they were designed and built many years ago. They housed a different profile of young offenders in the past and Parkville was not designed to house large numbers of remandees. The chapter concludes with an update on the new youth justice facility being built at Cherry Creek in Melbourne's west.

Chapter 9

Chapter 9 covers staffing in youth justice centres. Rehabilitation will not succeed without positive professional relationships between staff and young offenders. This means that there must be a stable workforce of well-trained staff who are in their roles long enough for these relationships to develop. A high turnover of staff has seen an over-reliance on agency staff leading to the casualisation of the workforce.

These staffing problems have led to an excessive use of lockdowns and disruption of service delivery, which has helped create instability in the centres. The chapter concludes with a discussion of the training, remuneration and qualifications that a youth justice workforce needs.

Chapter 10

Chapter 10 provides an overview of post-release services for young offenders in Victoria. Measuring the success of post-release services is difficult and the Committee could not find any role within DJR with responsibility for monitoring post-release services. The chapter concludes with an explanation of why transition support, particularly stable housing, is so important in helping young offenders avoid reoffending.

Chapter 11

Chapter 11 discusses Victoria's approach to Koori youth justice. Key issues include: a failure to address over-representation of Koori young people in youth justice; not prioritising Koori-led oversight and leadership of youth justice responses; limitations in current services, including geographical spread and the ability to provide culturally appropriate services.

The chapter provides a summary of Koori youth justice programs and services, including: the community-based Koori Youth Justice Program; the Koori Intensive Support Program; the Children's Koori Court; and the Victorian Aboriginal Legal Service. It concludes with a discussion of 'justice reinvestment', which is an approach to rehabilitation based on addressing the needs of offenders while also attending to the needs of victims and communities.

Acronyms

AOD	Alcohol and other drugs
CALD	Culturally and Linguistically Diverse
CPSU	Community and Public Sector Union
DHHS	Department of Health and Human Services
DJR	Department of Justice and Regulation
LIV	Law Institute of Victoria
OPCAT	Optional Protocol to the Convention against Torture
SESG	Security and Emergency Services Group
SERT	Safety and Emergency Response Team
VCAL	Victorian Certificate of Applied Learning
VCE	Victorian Certificate of Education
VET	Vocational Education and Training
VONIY	Victorian Offending Needs Indicator for Youth
YSAS	Youth Support and Advocacy Service

Recommendations

1 Overview of youth justice in Victoria

RECOMMENDATION 1: That the Department of Justice and Regulation consider developing an intake assessment system that takes into account other additional factors along with chronological age, such as developmental age and cognitive development. 11

2 Young offenders and youth offending behaviour

RECOMMENDATION 2: That the Victorian Government develop programs to identify and respond to the causal factors contributing to the over-representation of CALD groups in youth justice. 25

RECOMMENDATION 3: That the Victorian Government implement programs to identify and respond to emerging trends in youth offending behaviour. These programs should evaluate effective responses to these trends, including identifying and addressing the underlying causes of the change in behaviour and how best to respond to these changes. 25

RECOMMENDATION 4: That the Victorian Government develop a program involving the Department of Health and Human Services and the Department of Justice and Regulation to identify links between out-of-home-care and young offending and respond appropriately. 29

3 Diversion programs

RECOMMENDATION 5: That the Victorian Government provide sufficient ongoing funding for Victoria Police Youth Resource Officers to continue their work. 36

RECOMMENDATION 6: That the Victorian Government express the concept of diversion in terms of ensuring young offenders avoid incarceration as well as being diverted from reoffending behaviour. 41

RECOMMENDATION 7: That the Children’s Court review its group conferencing program to determine whether it can occur prior to sentencing. This may include giving Victoria Police the power to refer young people to group conferencing or equivalent programs prior to contact with the Court. 43

RECOMMENDATION 8: That the Department of Health and Human Services and the Department of Justice and Regulation periodically review and publically report on the effectiveness of diversion programs. 48

4 Children’s Court

- RECOMMENDATION 9:** That the Victorian Government establish a rehabilitative mentoring program for young offenders. 54
- RECOMMENDATION 10:** That the Children’s Court use less formal language during trials to ensure that young people better understand the court process and the link between their sentence and their offence/s.. . . . 64
- RECOMMENDATION 11:** That the Children’s Court develop protocols to ensure that young people on trial are better educated about the court process and supported by people they trust, such as family members or community leaders, throughout the court process. 64

5 Remand

- RECOMMENDATION 12:** That the Department of Justice and Regulation develop and implement rehabilitation programs suitable for young people on remand.. . . . 72
- RECOMMENDATION 13:** That the Department of Justice and Regulation review the training provided to bail justices. 78
- RECOMMENDATION 14:** That the Department of Justice and Regulation conduct research into the drivers of the increase in remand in the youth justice system in Victoria. 85

6 Therapeutic approaches to youth justice

- RECOMMENDATION 15:** That the Victorian Government consider establishing a youth forensic mental health precinct. 96
- RECOMMENDATION 16:** That the Department of Justice and Regulation periodically evaluate mental health services in the youth justice system to ensure services meet ongoing needs. 96
- RECOMMENDATION 17:** That the Department of Education and Training’s Early Childhood and School Education Group consider whether the successful methods at Parkville College, including teacher training and lesson structures, can be adapted to provide further assistance to at-risk students in mainstream schools. 99
- RECOMMENDATION 18:** That the Victorian Government provide a continuation of alcohol and other drug services for young offenders in need of treatment following their release from detention. 100
- RECOMMENDATION 19:** That the Victorian Government establish a trial program of Youth Therapeutic Orders based on the ‘What Can Be Done’ model. 102

RECOMMENDATION 20: That screening and assessment procedures for all young people who come into contact with the youth justice system be strengthened in areas including (but not limited to): physical and mental health; cognitive impairment; education; substance misuse; risk to and from others. This assessment should be carried out immediately by appropriate professionals to determine what services are provided while incarcerated and, if needed, post-release. 105

RECOMMENDATION 21: That the Department of Justice and Regulation include all instances where young offenders are locked in a room separate from others and from the normal routine of the centre as isolation as per the Act. 111

RECOMMENDATION 22: That the Department of Justice and Regulation continue audits of isolation registers begun by the Department of Health and Human Services. The registers should accurately record the use of isolation to ensure that any increased use of isolation is easily identified.. . . . 114

RECOMMENDATION 23: That the Department of Justice and Regulation develop a program that responds to identified trends in the improper implementation of isolation at youth justice centres, such as incorrect locations and poor document keeping. 114

7 Structure and oversight

RECOMMENDATION 24: That the Department of Justice and Regulation continue to publish quarterly isolation, separation and lockdown reports. 123

RECOMMENDATION 25: That the Department of Health and Human Services and the Department of Justice and Regulation develop an appropriate information-sharing system that ensures continuity of care for young people in their care. 124

RECOMMENDATION 26: That the Victorian Government consider amending the *Protected Disclosure Act 2012* to allow the Victorian Ombudsman to interview witnesses of any age during investigations relating to the youth justice system. 128

RECOMMENDATION 27: That the Commission for Children and Young People provide an annual report on the youth justice system to the Department of Justice and Regulation. The report should detail how well the youth justice system is adhering to the Act and relevant agreements. 129

RECOMMENDATION 28: That the Victorian Government consider how best to give effect to the Optional Protocol to the Convention against Torture. 129

9 Youth justice custodial staff

RECOMMENDATION 29: That the Department of Justice and Regulation commit to employing an appropriately qualified and diverse workforce in youth justice centres.156

RECOMMENDATION 30: That youth justice staff receive regular training in cultural competence topics, tailored wherever possible to meet the needs of young people in their care.156

RECOMMENDATION 31: That the Department of Justice and Regulation ensure a sufficient number of experienced, permanent youth justice staff is employed at facilities at all times. There must be a minimal reliance on agency or casual staff. . . .165

RECOMMENDATION 32: That the Department of Justice and Regulation standardise staff rosters across youth justice facilities. This should be done in such a way as to increase stability for staff members and young offenders in the facilities. .165

RECOMMENDATION 33: That the Department of Justice and Regulation formalise the staff handover process for shift changes at youth justice centres to ensure information about clients in the centres is communicated among staff.169

RECOMMENDATION 34: That the Department of Justice and Regulation review custodial youth justice workers’ staffing structures to ensure that career development is encouraged.173

10 Post-release services and recidivism

RECOMMENDATION 35: That the Department of Justice and Regulation assess the effectiveness of post-release services provided to young offenders and publish the findings in the Department’s Annual Report.183

RECOMMENDATION 36: That relevant Victorian Government agencies consider a research project to establish why former young offenders stop offending. The project should measure the comparative influence of youth justice programs compared to individual traits.183

RECOMMENDATION 37: That relevant Victorian Government agencies assess young offenders’ support networks prior to their release to provide support services that help prevent reoffending.186

RECOMMENDATION 38: That the Victorian Government improve access to appropriate housing options for young offenders leaving youth justice centres.187

11 Aboriginal and Torres Strait Islander young people

RECOMMENDATION 39: That the Department of Justice and Regulation engage the Children’s Koori Court to determine if its successful practices can be adapted more widely across court processes.194

The inquiry into youth justice centres in Victoria – what happens next?

There are several stages to a parliamentary inquiry.

The Committee conducts the Inquiry

This report on youth justice centres is the result of extensive research and consultation by the Legal and Social Issues Committee at the Parliament of Victoria.

We received written submissions, spoke with people at public hearings, reviewed research evidence and deliberated over a number of meetings. Experts, government representatives and individuals expressed their views directly to us as Members of Parliament.

A parliamentary committee is not part of the Government. Our Committee is a group of members of different political parties (including independent members). Parliament has asked us to look closely at an issue and report back. This process helps Parliament do its work by encouraging public debate and involvement in issues. We also examine government policies and the actions of the public service.

The report is presented to Parliament

This report was presented to Parliament and can be found on the Committee's website (www.parliament.vic.gov.au/lisic/inquiries/article/3198).

A response from the Government

The Government has six months to respond in writing to any recommendations we have made. The response is public and put on the inquiry page of Parliament's website when it is received (www.parliament.vic.gov.au/lisic/inquiries/article/3199).

In its response, the Government indicates whether it supports the Committee's recommendations. It can also outline actions it may take.

Overview of youth justice in Victoria

1.1 Introduction

In Victoria, youth justice had been the responsibility of the Department of Health and Human Services (DHHS) until 3 April 2017, when responsibility was transferred to the Department of Justice and Regulation (DJR). Corrections Victoria was handed management of youth justice facilities.¹

According to DJR, the objectives of the Victorian youth justice system are to:

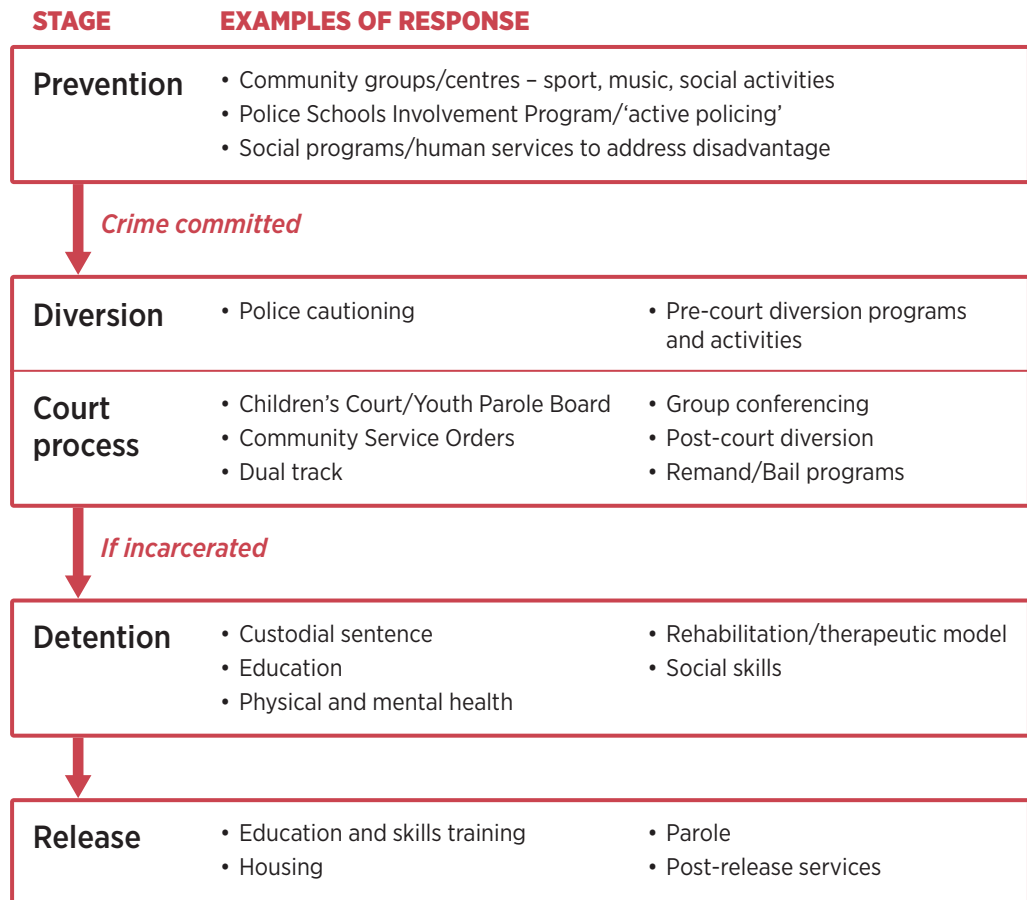
- Where appropriate, support diversion of young people charged with an offence from the criminal justice system
- Minimise the likelihood of reoffending and further progression into the criminal justice system through supervision that challenges offending behaviours and related attitudes and promotes pro-social behaviours
- Provide supervision and rehabilitation through the provision of case management and other services to assist young people to address offending behaviour and support successful reintegration into the community
- Work with other services to strengthen community-based options for young people enabling an integrated approach to the provision of support that extends beyond the court order
- Engender public support and confidence in the Youth Justice Service.²

Figure 1.1 shows the spectrum of contact with the youth justice system in Victoria, from prevention through to detention and release, with examples of related responses. It is an overview of the whole system and young people may experience some or all levels of contact. For example, a successful diversion program will prevent incarceration.

1 Daniel Andrews, *Building A Stronger And More Secure Youth Justice System*, media release, Melbourne, 6 February 2017; Caitlin Grover, *Youth Justice in Victoria: Research Paper No. 2, April 2017*, Parliamentary Library and Information Service, Melbourne, 2017. p. 3.

2 Department of Health and Human Services, *Youth Justice in Victoria: Fact Sheet*, Department of Health and Human Services, Melbourne, 2015.

Figure 1.1 Spectrum of contact with the youth justice system in Victoria



These stages and related actions are discussed in detail throughout this Final Report.

Overall then, a youth justice system aims to make the community safer by reducing rates of youth offending and reoffending. It does this through a combination of approaches, including early intervention, crime prevention, holding young offenders accountable for their actions, and providing rehabilitation and support services to young people once incarcerated.

1.2 The history of youth justice in Victoria

Juvenile justice in Victoria has been regarded historically as one of the better performing jurisdictions.³

Victoria's youth justice system has long been well regarded, nationally and internationally, for its comparatively low incarceration rates and effective diversion and rehabilitation programs.⁴ The roots of the current system (facilities, legislation and attitudes) are found in the first 'training centres' for young offenders in Victoria. These were created in 1960 alongside broad social welfare reforms brought about with the enactment of the *Social Welfare Act 1960*.⁵ A variable sentencing approach for young offenders of different ages (including the dual track system) and a sentencing emphasis on state wardship or community-based orders can also be traced back to this period.

In 1989, following the Carney review of social welfare services in Victoria, the *Children and Young Person's Act 1989* was enacted. It:

- Separated services for young offenders from those provided for children in protective custody
- Encouraged community-based sentences wherever possible
- Expressly forbade the use of punishment using 'unreasonable physical force, corporal punishment, psychological pressure intended to intimidate or humiliate, physical or emotional abuse, discrimination' as well as isolation
- Hastened the de-institutionalisation of some youth justice facilities and encouraged the broad use of non-custodial sentencing options, including enshrining detention as a last resort.⁷

³ Lisa Ward, Sentencing Advisory Council, *Transcript of evidence*, 17 March 2017. p. 40.

⁴ Liana Buchanan, Commissioner for Children and Young People, Commission for Children and Young People, *Transcript of evidence*, 17 March 2017. p. 15; Victorian Government, *Submission*, no. 173, Senate Inquiry into Children in Institutional Care, Senate Community Affairs References Committee, Australian Senate; Senate Community Affairs References Committee, *Protecting vulnerable children: A national challenge*, Australian Senate, Canberra, 2005; Julie Edwards, Chief Executive Officer, Jesuit Social Services, *Transcript of evidence*, 19 April 2017. p. 5; Lisa Ward, Sentencing Advisory Council, *Transcript of evidence*, 17 March 2017. p. 40; Green, et al., *Submission*, no. 41. p. 20.

⁵ Youth justice was provided in Victoria as far back as 1864, however, this was framed in different cultural and historical context to the system currently underway in Victoria and therefore, is less applicable to the current inquiry.

⁶ Green, et al., *Submission*, no. 41. p. 3; Victorian Government, *Submission*, no. 173, Senate Inquiry into Children in Institutional Care, Senate Community Affairs References Committee, Australian Senate; Senate Community Affairs References Committee, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, Australian Senate, Canberra, 2004.

⁷ Victorian Government, *Submission*, no. 173, Senate Inquiry into Children in Institutional Care, Senate Community Affairs References Committee, Australian Senate; Senate Community Affairs References Committee, *Protecting vulnerable children: A national challenge*, Australian Senate, Canberra, 2005.

Following the introduction of the *Children and Young Person's Act 1989*, Victoria had the lowest rate of youth detention in the country.⁸ This positive trend in youth justice continued through the 1990s and into the early 2000s.⁹ In 2008, the Victorian Auditor-General announced that services for young offenders in Victoria showed a clearly articulated strategic plan, effective coordination of services across agencies, good case management and planning practice, and effective risk factor assessment tools.¹⁰

1.2.1 The *Children, Youth and Families Act 2005*

In 2005, the *Children, Youth and Families Act 2005* (the Act) was enacted to update and replace the *Children and Young Persons Act 1989* and the *Community Services Act 1970*.¹¹ The Act aims to:

- Promote children's best interests, including a new focus on children's development
- Support a more integrated system of effective and accessible child and family services, with a focus on prevention and early intervention
- Improve outcomes for children and young people in the child protection and out-of-home-care service system.¹²

The Act also outlines the constitution of the Children's Court and the criminal responsibilities of young people in Victoria.¹³ Other relevant legislation includes:

- *Sentencing Act 1991*
- *Crimes Act 1958*
- *Crimes (Mental Impairment and Fitness to be Tried) Act 1997*
- *Bail Act 1997*
- *Bail Amendment Act 2013*
- *Serious Sex Offenders Registration Act 2004*
- *Family Violence Protection Act 2008*.

The Act provides the Children's Court with ten sentencing options for young offenders:

- Dismissal (without conviction)
- Non-accountable undertaking (without conviction)

8 Victorian Government, *Submission*, no. 173, Senate Inquiry into Children in Institutional Care, Senate Community Affairs References Committee, Australian Senate; Senate Community Affairs References Committee, *Protecting vulnerable children: A national challenge*, Australian Senate, Canberra, 2005.

9 Victorian Government, *Submission*, no. 173, Senate Inquiry into Children in Institutional Care, Senate Community Affairs References Committee, Australian Senate; Senate Community Affairs References Committee, *Protecting vulnerable children: A national challenge*, Australian Senate, Canberra, 2005.

10 Human Rights Law Centre, *Submission*, no. 38. p. 5.

11 *The Children, Youth and Families Act 2005, The Child Wellbeing and Safety Act 2005: A framework to promote children's safety wellbeing and development*, Victorian Government, Melbourne, 2006.

12 *Ibid.*

13 *Children, Youth and Families Act 2005* (Victoria), 96/2005.

- Accountable undertaking (without conviction)
- Good behaviour bond (without conviction)
- Fine (with or without conviction)
- Probation (with or without conviction)
- Youth supervision order (with or without conviction)
- Youth attendance order (with conviction)
- Detention in youth residential centre (with conviction)
- Detention in youth justice centre (with conviction).¹⁴

Further, the Act requires the Children’s Court to have regard to all of the following when sentencing young offenders:

- The need to strengthen and preserve the relationship between the child and the child’s family
- The desirability of allowing the child to live at home
- The desirability of allowing the education, training or employment of the child to continue without interruption or disturbance
- The need to minimise the stigma to the child resulting from a court determination
- The suitability of the sentence to the child
- If appropriate, the need to ensure that the child is aware that he or she must bear responsibility for any action by him or her against the law
- If appropriate, the need to protect the community, or any person, from the violent or other wrongful acts of the child.¹⁵

The *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017* changed youth residential centre orders allow a maximum sentence of two years for offences dealt with by the Magistrates’ Court and four years for offences dealt with by the County Court. Youth justice centre orders allow a maximum sentence of three years for a single offence and four years for aggregated offences.¹⁶

Historically, less than five per cent of cases result in a sentence of youth detention.¹⁷ The majority of youth detention sentences have been in response to offences against the person or property offences.¹⁸

¹⁴ Ibid. s360(1).

¹⁵ Ibid. s362(1); Sentencing Advisory Council, *Sentencing Children and Young People in Victoria*, Sentencing Advisory Council, Melbourne, 2012.

¹⁶ *Children, Youth and Families Act 2005* (Victoria), 96/2005. s413(2), 413(3)(b) *Sentencing Act 1991* (Victoria), 49. s32(3)(b), s409(1)(b)

¹⁷ Sentencing Advisory Council, *Sentencing Children and Young People in Victoria*, Sentencing Advisory Council, Melbourne, 2012. p. x.

¹⁸ Ibid. p. x.

The Committee is aware that the *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017* was recently passed. It has a wide scope, including changes to the Act, youth control orders and placement of remandees. However, as this legislation was being debated while this Inquiry was underway the Committee can only comment on it briefly in this Final Report.

1.2.2 Policy, facilities and oversight

Victoria's current youth justice policy, *A Balanced Approach to Youth Justice in Victoria*, was established in 2000. The policy focuses on:

- Diverting young offenders from entering the youth justice system or from progressing further into a life of crime
- Improving rehabilitation of high-risk young offenders
- Expanding the then existing pre-release, transition and post-release support programs for custodial clients to reduce the likelihood of reoffending.¹⁹

The policy notes the changing nature and number of offenders in youth justice at the time (2000), the need to take the complex needs of young offenders into consideration, the over-representation of certain subsections of the population among young offenders, and the role of diversion and early intervention programs.²⁰

Victoria currently has two Youth Justice Custodial Precincts:

- Parkville Youth Justice Precinct (Melbourne's inner-north) comprises two custodial centres and accommodates:
 - 10–14-year-old males remanded or sentenced
 - 15–18-year-old males remanded or sentenced
 - 10–17-year-old females remanded or sentenced
 - 18–21-year-old females sentenced to a Youth Justice Centre Order by the Adult Court in Victoria.
- Malmsbury Youth Justice Precinct (around 100 kilometres north of Melbourne) accommodates:
 - 15–18-year-old males remanded or sentenced
 - 18–21-year-old males sentenced to a Youth Justice Centre Order by the Adult Court in Victoria.²¹

¹⁹ Hon Christine Campbell MP - Minister for Community Services, *A Balanced Approach to Juvenile Justice in Victoria*, media release, Melbourne, August 2000. p. 3

²⁰ Ibid.

²¹ Malmsbury Senior Youth Justice Centre has traditionally been used for 'dual track' clients – older offenders who the court deemed had high likelihood of rehabilitation. (Judge Michael Bourke, Chair, Youth Parole Board, *Transcript of evidence*, 17 March 2017. P. 44, John Burch, *Submission*, no. 54. pp. 3-4); Department of Health and Human Services, *Youth Justice in Victoria: Fact Sheet*, Department of Health and Human Services, Melbourne, 2015.

In November 2016, the Grevillea Unit of Barwon Prison was gazetted as a youth justice facility after riots damaged Parkville Youth Residential Centre.²² In May 2017, following a series of legal challenges in the Supreme Court, Grevillea was closed as a youth justice facility. Most of the young people detained there were moved to Parkville, with a small number moved to Malmsbury.²³

Victoria has also committed to building a new youth justice facility in Melbourne's west. This is discussed further in Chapter 8.

The youth justice system extends beyond detention facilities to include:

- The Children's Court
- Victoria Police
- Aboriginal elders
- Legal professionals
- Various not-for-profit organisations and support service providers.

Independent agencies with oversight responsibilities of the youth justice system include:

- Commission for Children and Young People
- Victorian Ombudsman
- Victorian Auditor-General
- State Coroner
- Victorian Equal Opportunity and Human Rights Commission
- Office of the Public Advocate.²⁴

In Victoria, the real recurrent expenditure on youth justice services (detention-based supervision, community-based supervision and group conferencing) over the past five years is as follows:

- 2012–13: \$124.3 million
- 2013–14: \$121.7 million
- 2014–15: \$127.6 million
- 2015–16: \$144.9 million

²² Hon. Jenny Mikakos MP - Minister for Families and Children, *Government gazettes Grevillea Unit of Barwon Prison*, media release, Melbourne, 29 December 2016; Hon. Jenny Mikakos MP - Minister for Families and Children and Hon. Gayle Tierney MP - Minister for Corrections, *Young offenders to be put in adult prison*, media release, Melbourne, 17 November 2016.

²³ Emma Younger, 'Barwon Prison: Teens moved after court rules children should not be held in adult jail', *ABC News*, 11 May 2017; Human Rights Law Centre, *Legal challenge in Supreme Court against Victorian Government's decision to detain children in maximum security adult prison*, media release, Human Rights Law Centre, Melbourne, March 31 2017; Human Rights Law Centre, *Supreme Court finds Government acted unlawfully in transferring children to Barwon jail*, media release, Human Rights Law Centre, Melbourne, 21 December 2016.

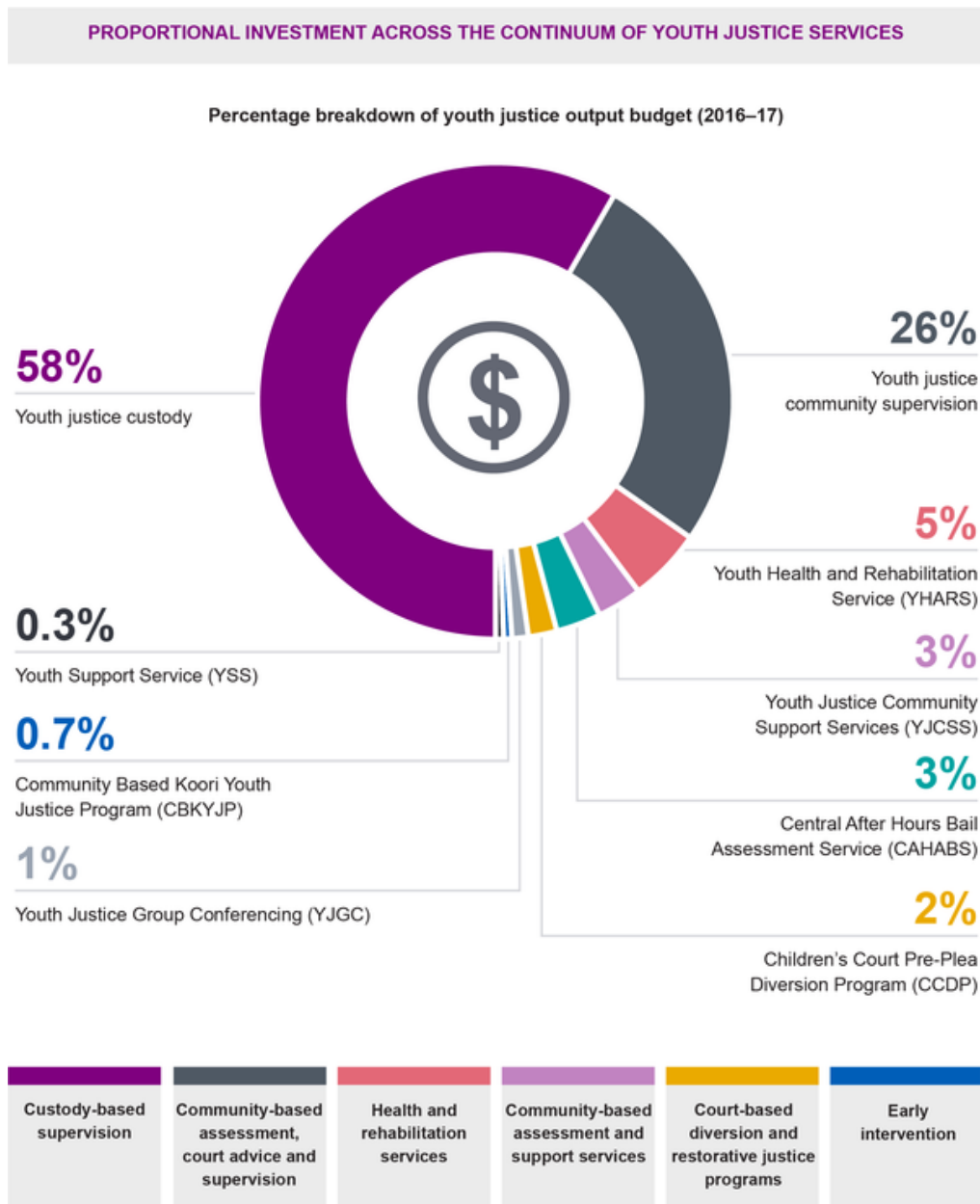
²⁴ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 1*, Victorian Government, Melbourne, 2017. Parts 2.6 and 2.7 discuss these agencies in more detail.

- 2016–17: \$158.2 million.²⁵

The 2017-18 Victorian Budget allocated \$165.3 million for these services.²⁶

Figure 1.2 shows how funding for youth justice is split across the system. It shows that detention absorbs over half of the total budget.

Figure 1.2 Youth justice funding



Source: Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 1*, Victorian Government, Melbourne, 2017. p 72.

²⁵ Source: Productivity Commission, Report on Government Services 2018, Table 17A.8. Amounts are in 2016–17 dollars.

²⁶ *Victorian Budget 2017-18: Service Delivery: Budget Paper No. 3*, Department of Treasury and Finance, Melbourne. p. 279.

1.3 Differences between young offenders and adult offenders

The youth justice system in Victoria, as with many jurisdictions, is based on extensive evidence that young offenders are fundamentally different to adult offenders. As the Victorian Ombudsman, Ms Deborah Glass, told the Committee: “The system must recognise that dangerous children are different from adults.”²⁷ Hence, young offenders are responded to differently than adult offenders.²⁸

Developmental cognitive neuroscience and psychology shows that adolescent brains are still developing at the time of offending. This incomplete brain development is linked to increased risk-taking, poor consequential thinking and a lack of impulse control, which increase the chances of an adolescent offending.²⁹ It also makes young people particularly vulnerable to mental health problems, drug and alcohol misuse, and peer pressure.³⁰

This development is sometimes expressed in terms of developmental and chronological ages. Ms Trish McCluskey of family services provider Berry Street described the gap between young people’s developmental and chronological ages as “markedly different”.³¹ In New Zealand, a judge asked to imagine an ideal Youth Court recently stated:

I could also dream about every young person coming to the Youth Court with his or her own MRI scan, gene map, and full brain chart revealing all known neuro-developmental disorders and with precise calculation of their actual developmental age rather than relying upon the rather arbitrary age limits we currently use. In other words, a young person would be dealt with in the Youth Court jurisdiction after a clear scientific examination assessing the actual state of their psycho-social and cognitive development.³²

Our legal system assumes that young people do not have the same insight, judgement and self-control as a rational adult and are, therefore, less likely to consider the consequences of their actions prior to committing to them.³³ (The *United Nations Convention on the Rights of the Child* sets the internationally acceptable age of criminal responsibility at 12, higher than Victoria’s current age of 10.) Young people between the ages of 10 and 13 are also subject to the presumption of *doli incapax*, which requires the prosecution to prove that

²⁷ Deborah Glass, Ombudsman, Victorian Ombudsman, *Transcript of evidence*, 17 March 2017. p. 3.

²⁸ Caitlin Grover, *Youth Justice in Victoria: Research Paper No. 2, April 2017*, Parliamentary Library and Information Service, Melbourne, 2017. p. 6.

²⁹ Ibid.p. 6; Julie Edwards, Chief Executive Officer, Jesuit Social Services, *Transcript of evidence*, 19 April 2017. p. 4; Lisa Ward, Sentencing Advisory Council, *Transcript of evidence*, 17 March 2017. p. 40.

³⁰ Caitlin Grover, *Youth Justice in Victoria: Research Paper No. 2, April 2017*, Parliamentary Library and Information Service, Melbourne, 2017.p. 6; Helen Fatouros, ‘Is our youth justice system really broken?’, Paper presented at the *Castan Centre for Human Rights Law Conference*, Melbourne, 2016. p. 7.

³¹ Trish McCluskey, Director, Strategic Initiatives, Berry Street, *Transcript of evidence*, 19 April 2017. p. 23.

³² Judge Andrew Becroft, ‘The Youth Courts of New Zealand in Ten Years Time: Crystal Ball Gazing or Some Realistic Goals for the Future?’, Paper presented at the *National Youth Advocates/Lay Advocates Conference*, Auckland, Aotearoa New Zealand, 2015. p. 1.

³³ Caitlin Grover, *Youth Justice in Victoria: Research Paper No. 2, April 2017*, Parliamentary Library and Information Service, Melbourne, 2017. p. 6.

the young person knew that their actions were morally wrong as compared to ‘mischievous’ or ‘naughty’.³⁴ As a result, young people are held to be less culpable for their actions than adults who have committed the same offence.³⁵

Ms Lisa Ward of the Sentencing Advisory Council explained to the Committee that courts in Victoria consider developmental differences when sentencing young offenders,³⁶ noting that neurobiology underlies Victoria’s ‘dual track’ system.³⁷ Ms Ward said:

...research in developmental psychology and neurobiology [shows] that the brains of young adults really have more in common with the brains of children than they do with adults. Impulsivity, cognition, risk-taking behaviour are all more similar with that group of 18 to 20-year-olds, and certainly in some jurisdictions there have been arguments to increase the age jurisdiction there. Interestingly the existence of Victoria’s dual track system may well be seen to be ahead of the science in that regard in that it provides a response to children and recognises that development is not even across the cohort — some are more vulnerable and immature than others.³⁸

Some researchers have found the issue of developmental and chronological ages problematic. Victoria is unique in imposing separate responses for people in custody aged 10–14 years and 15–17 years. Youth residential centre order sentencing options are available for young offenders aged 10–14 years, who must be separated from those aged 15–17 years if sentenced to youth justice centre orders.³⁹

Armytage and Ogloff found this ‘artificial’ distinction problematic. They state:

The distinction intends to provide materially different responses in custody. However, it is based on arbitrary age groups and does not consider the seriousness of the crime committed or a young person’s individual characteristics.⁴⁰

Separation by age can also hinder the correct tailoring of programs and rehabilitative approaches to developmental and criminogenic needs.⁴¹ Armytage and Ogloff note that the treatment and programs offered to young people in youth justice facilities seem to be identical, despite the age group separation. For example, they state that with the 10–14 years age group ‘...there are no distinguishing physical features such as furnishing, paint colours or outdoor spaces that are specific to this age group or that indicate a more ‘child-friendly’

34 Reserve Magistrate Peter Power, *Research Materials: Chapter 10 Criminal Division - Procedure*, Children’s Court of Victoria, Melbourne, 2016. p. 26.

35 Caitlin Grover, *Youth Justice in Victoria: Research Paper No. 2, April 2017*, Parliamentary Library and Information Service, Melbourne, 2017. p. 6.

36 Lisa Ward, Sentencing Advisory Council, *Transcript of evidence*, 17 March 2017. p. 37.

37 The dual track system refers to Victoria’s unique practice of allowing magistrates discretion in sentencing 18–21-year-olds and allowing them to serve all or part of their sentence in a youth justice facility. As such, young offenders may be aged 24 by the time they leave the system. The dual track system is discussed in more depth in Chapter 4 (Section 4.2.2).

38 Lisa Ward, Sentencing Advisory Council, *Transcript of evidence*, 17 March 2017. p. 40.

39 Females are not kept separate due the small number detained.

40 Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 1*, Victorian Government, Melbourne, 2017. p. 18.

41 Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. pp. 81, 83

approach'. In the end, age separation '...has not resulted in any discernible difference in the services delivered.'⁴² (The Committee agrees with Armytage and Ogloff's recommendation regarding no longer separating 10–14-year-olds from 15–17-year-olds.)

Clearly, this is not an exact science. For example, chronological age justifies automatically keeping 10–17-year-olds separate from adults, the very reason a youth justice system exists. Yet developmental age is considered in Victoria's dual track system but only up to the age of 21 years. Beyond this age, the justice system considers chronological age only.⁴³

Importantly, this link between incomplete brain development and offending improves the chances of rehabilitation,⁴⁴ which is why some young offenders are said to 'grow out' of offending behaviours.⁴⁵ Regarding sentencing, Ms Ward said that "...the very fact that development and maturation is underway is seen as an opportunity for the criminal justice system to intervene to halt the trajectory into the adult justice system."⁴⁶

The youth justice system, then, acknowledges that the pace of young people's neurobiological development allows more opportunities for positive intervention and rehabilitation than with adult offenders.

RECOMMENDATION 1: That the Department of Justice and Regulation consider developing an intake assessment system that takes into account other additional factors along with chronological age, such as developmental age and cognitive development.

1.4 Problems with the youth justice system in Victoria

While the majority of young offenders have committed offences against the person, in well-operated youth justice facilities this does not result in continuing violence in custodial settings.⁴⁷

It has become increasingly apparent in recent years that Victoria's youth justice system is not functioning as well as it once did. Over several years, the youth justice centres at Parkville and Malmsbury have experienced unrest, from low-level disruptive behaviour through to riots and escapes. These incidents required the police and emergency services to attend, damaged facilities, injured staff and detainees, and eroded trust in the system among the wider

⁴² Ibid. pp. 82, 84-6.

⁴³ See also the discussion on sentencing in Chapter 4.

⁴⁴ Julie Edwards, Chief Executive Officer, Jesuit Social Services, *Transcript of evidence*, 19 April 2017. p. 4.

⁴⁵ Caitlin Grover, *Youth Justice in Victoria: Research Paper No. 2, April 2017*, Parliamentary Library and Information Service, Melbourne, 2017. p. 7.

⁴⁶ Lisa Ward, Sentencing Advisory Council, *Transcript of evidence*, 17 March 2017. p. 37.

⁴⁷ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. p 103.

community.⁴⁸ As Professor Laidler told the Committee: “If you do not protect the community from the worst offending kids, the community will not tolerate the proper treatment of other kids.”⁴⁹

The cost to police for call outs to Malmsbury and Parkville between July 2016 and June 2017 was estimated at around \$310,429.97.⁵⁰

The youth justice system has also been the subject of legal challenges, such as the Supreme Court rulings that the placement of young offenders in the Grevillea Unit of Barwon Prison was illegal, and concerns about human rights breaches in relation to the treatment of young offenders.⁵¹ The Victorian Ombudsman also raised concerns about the wellbeing of young people held at Grevillea both in her 2017 *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville*⁵² and in evidence to the Committee.⁵³

Armytage and Ogloff found that when compared with other jurisdictions around Australia:

- The overall number of young people involved with youth justice has plateaued since 2013–14
- Once in contact with Victoria’s youth justice system, the life outcomes of young people is very poor and there is no outcomes data to indicate a change in their offending patterns
- The over-representation of Koori young people is getting worse
- Victoria has the highest rates of assaults in custody, including staff to young person, young person to young person and young person to staff member
- Victoria is the most expensive system per young person in Australia, yet is failing to deliver sufficient change or positive outcomes for young people.⁵⁴

It is important to note that caution should be taken when comparing data from different jurisdictions. For example, lower costs could reflect less investment in rehabilitation programs or less intensive case management of young people on community-based supervision orders. Youth justice budgets are also influenced by factors such as types of young offenders, geography, population size and the ability to reduce costs through economies of scale.

48 Neil Comrie, *Review of the Parkville Youth Justice Precinct (Stage One): Executive Summary*, Department of Health and Human Services, Melbourne, 2017; Neil Comrie, *Review of the Parkville Youth Justice Precinct (Stage Two)*, Department of Justice, Melbourne, 2017; Anglicare, *Submission*, no. 36. pp. 3-4; Law Institute of Victoria, *Submission*, no. 31. p. 14
Youth Affairs Council of Victoria, *Submission*, no. 10. p. 27.

49 Professor Terry Laidler, Transcript, *Transcript of evidence*, 17 March 2017. p. 61; See also comments from Malmsbury residents in Section 8.3 of this Final Report.

50 Victoria Police, *Response to Questions on Notice*, 2017.

51 Emma Younger, ‘Barwon Prison: Teens moved after court rules children should not be held in adult jail’, *ABC News*, 11 May 2017; Human Rights Law Centre, *Legal challenge in Supreme Court against Victorian Government’s decision to detain children in maximum security adult prison*, media release, Human Rights Law Centre, Melbourne, March 31 2017; Human Rights Law Centre, *Supreme Court finds Government acted unlawfully in transferring children to Barwon jail*, media release, Human Rights Law Centre, Melbourne, 21 December 2016.

52 Victorian Ombudsman, *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville*, Victorian Ombudsman, Melbourne, 2017.

53 Deborah Glass, Ombudsman, Victorian Ombudsman, *Transcript of evidence*, 17 March 2017. p. 22.

54 Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 1*, Victorian Government, Melbourne, 2017. p. 127.

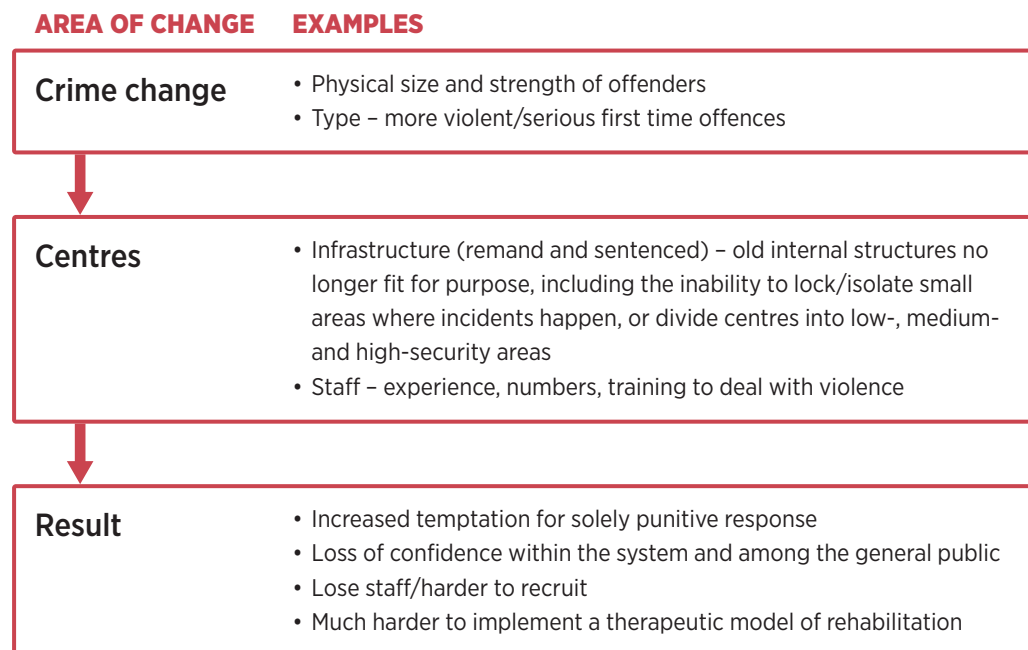
Armytage and Ogloff add that the system is ‘inherently troubled’ and is doing more harm than good for some young offenders. They conclude: ‘Indeed, the Reviewers were unable to identify any elements of the operating model that are functioning efficiently.’⁵⁵

The Committee heard that the major problems with the youth justice system in Victoria are:

- The system, including court systems and physical infrastructure, has not been able to adapt to the changing nature of youth offending and youth offenders (for example, increasingly serious first-time offending)
- Increasingly punitive and restrictive responses to incidents creating further tension within centres
- A loss of overall focus including a failure to define and measure outcomes
- Long-term staffing problems, including difficulties in hiring and retaining sufficient staff to operate centres safely, inadequate staff training and difficulties in retaining staff
- Inadequate provision of rehabilitative and support services to young people across the spectrum of contact with the youth justice system
- Unusually and unnecessarily high remand populations and short sentence lengths, which the system has been unable to adequately respond to.

These problems, which are discussed throughout this Final Report, are visualised in Figure 1.3.

Figure 1.3 Current problems in Victoria’s youth justice system



55 Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. p. 227.

It is important to pause here to note that despite high-profile recent incidents, youth crime rates are declining across Victoria (although crimes against the person have been rising) and the number of young people arrested or sentenced for offences remains at or below 1 per cent.⁵⁶ Victoria's youth justice system is, for the most part, evidence based and has been proven to work in the past, with Armytage and Ogloff identifying that the system has '...both a strong foundation and the building blocks to evolve.'⁵⁷ Regardless, the problems are real and must be rectified as soon as possible.

1.4.1 Changes since 2010

*A number of people in our sector tend to point to the 2010 Ombudsman's report and what followed then in terms of a stronger focus on security, we would say, to the detriment of a relationship, therapeutic-based approach.*⁵⁸

It is impossible to point to one moment in time when Victorian's youth justice system changed for the worse. However, 2010 stands out as a critical moment.

In October 2010, the then Victorian Ombudsman George Brouwer investigated a number of incidents at the Melbourne Youth Justice Precinct, including several escapes. The *Investigation into conditions at the Melbourne Youth Justice Precinct* report expressed concern about the conditions and conduct of the Parkville facility. It labelled the conditions overall as 'disgraceful'.⁵⁹

The whistleblower complaints that prompted the Ombudsman's investigation indicate that these problems predate the investigation. In a combined submission to this Inquiry, Bronwyn Naylor, Elizabeth Grant and Rohan Lulham argue:

The underlying issues however have been evident for some time. It has been stated that the Victorian youth justice system has flagged issues with successive governments for more than a decade, such that recent dysfunction and critical incidents are the result of years of inaction....⁶⁰

The Department of Human Services accepted all 27 recommendations made by the Ombudsman, including Recommendation 1: 'Review the suitability of the Precinct in light of my investigation with a view to replacing it with a new facility.'⁶¹ As mentioned above, it was only recently that the construction of a new facility was announced by the Victorian Government.

⁵⁶ Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria*, Sentencing Advisory Council, Melbourne, 2016. p. 15; Sentencing Advisory Council, *Changes to Sentencing Practice: Young Adult Offenders*, Melbourne, 2015. p. 1; Youth Affairs Council of Victoria, *Submission*, no. 10. pp. 7-8; YouthLaw, *Submission*, no. 12. p. 6; Victorian Council of Social Services, *Submission*, no. 20. p. 4.

⁵⁷ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 1*, Victorian Government, Melbourne, 2017. p. iv.

⁵⁸ Julie Edwards, Chief Executive Officer, Jesuit Social Services, *Transcript of evidence*, 19 April 2017. pp. 6.

⁵⁹ *Ibid.* pp. 5-6.

⁶⁰ Bronwyn Naylor, et al., *Submission*, no. 59. p. 5.

⁶¹ *Victorian Ombudsman, Investigation into conditions at the Melbourne Youth Justice Precinct*, Victorian Ombudsman, Melbourne, 2010, page 40.

Evidence to the Committee suggests that in response to the Ombudsman's report, the Victorian Government implemented a range of changes to youth justice in Victoria. The Ombudsman highlighted problems with staffing, culture and facilities, which the Government addressed through increasing funding at Parkville and establishing Parkville College.⁶² However, some stakeholders in this Inquiry identified the development of a stronger security focus at the expense of rehabilitation and cited this as a major source of the contemporary problems faced by the youth justice system.⁶³

1.4.2 Influence of the media

What we know is that the tough-on-crime rhetoric that we hear — I would have to say probably from all sides of politics, particularly as we get closer to the state election — is in no way evidence-informed or useful, and in no way does it contribute to making the community safer.⁶⁴

There has been extensive media coverage of youth justice in Victoria. This is understandable, considering the many problems the system has experienced. However, Armytage and Ogloff found that some of the coverage has had a negative influence on community perceptions of the youth justice system, as well as demotivating youth justice staff.⁶⁵

Several stakeholders in this Inquiry raised similar concerns. For example, Dr Bernie Geary from the Youth Parole Board told the Committee: "I have said before that it is a race to the bottom. It is a political race to the bottom to see who can be meanest to these kids that we gave such a crappy start to, quite frankly."⁶⁶

There has been a clear attitudinal change recently in some parts of the Victorian community, including the Victorian Parliament, away from rehabilitation and towards punitive responses.⁶⁷ For example, a May 2017 *Herald Sun* article was critical of young offenders receiving hot meals and cooking lessons, adding: "The well-fed teens can also scoff a toastie midmorning, and fruit and yoghurt throughout the day."⁶⁸

Community concern about youth offending following recent events within the system, in particular violent escapes, is understandable. The Act is clear in stating that the community must be protected from the violent acts of young people. This protection includes incarcerating some young offenders.

62 Deborah Glass, Ombudsman, Victorian Ombudsman, *Transcript of evidence*, 17 March 2017, p. 4; Victorian Ombudsman, 'Ombudsman's Recommendations: Third Report on their Implementation', viewed 3 May 2017, p. 5; Julie Edwards, Chief Executive Officer, Jesuit Social Services, *Transcript of evidence*, 19 April 2017, p. 6.

63 Julie Edwards, Chief Executive Officer, Jesuit Social Services, *Transcript of evidence*, 19 April 2017, pp. 5-6. Hugh de Krester, Executive Director, Human Rights Law Centre, *Transcript of evidence*, 14 June 2017, p. 33.

64 Julian Pocock, Director, Public Policy and Practice Development, Berry Street, *Transcript of evidence*, 19 April 2017, p. 22.

65 Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Executive Summary*, Victorian Government, Melbourne, 2017.

66 Dr Bernie Geary, Board Member, Youth Parole Board, *Transcript of evidence*, 17 March 2017, p. 50.

67 Julie Edwards, Chief Executive Officer, Jesuit Social Services, *Transcript of evidence*, 19 April 2017, pp. 5-6.

68 James Dowling, 'Youth criminals bribed with pizza, video games and takeaway food in return for good behaviour', *Herald Sun*, 15 May 2017.

However, evidence shows that punitive ('tough on crime') narratives and responses do not reduce crime levels or reoffending behaviour. Ms McCluskey spoke to the Committee about the tough of crime approach and said: "I think it is entirely understandable, but it is like a great deal of myths. If it worked, it would be great, but what we know is that it simply does not."⁶⁹

The Committee heard that some states in the United States of America have recently turned away from excessively punitive approaches to youth offending. Mr Vincent Schiraldi, a Senior Research Fellow at the Harvard Kennedy School of Government, spoke to the Committee about his experience working in youth justice in Washington DC and New York City. He urged Victoria to learn from the mistakes made in the United States, saying:

There was a pair of researchers, John Dilulio the most prominent among them, who led the charge on this from a research standpoint and dubbed America's children a 'rising tide of juvenile superpredators' — very scary language, some of which found its way actually into legislation. So the federal legislation in 1996 was called the Violent Youth Predator Act of 1996. This affected both parties. Bill Clinton was as vocal a cheerleader for this as was Newt Gingrich, both of whom have since recanted pretty substantially. Bill Clinton, in his autobiography, talked about how criminal justice and juvenile justice policies got out of control, and Newt Gingrich has openly and very vocally called for an end to mass incarceration in the United States. So it has been a pretty substantial shift, and a bipartisan one, in the US since the 90s and particularly for juveniles.⁷⁰

It is clear that youth justice is complex, hence the system requiring an ongoing commitment to multi-faceted programs and policies. Mr Julian Pocock, a Director at Berry Street, discussed the importance of 'narrative framing', or use of language, when considering young offenders. He highlighted the difference between emotional and logical responses to youth offending behaviour, including the best way to keep the community safe. Mr Pocock said:

...the most useful thing we can do is work with perpetrators in ways that have evidence and are effective, rather than going down a path of demonising perpetrators to the extent that all we do is fuel fear of crime in the community and create policy responses [that] create more victims than would otherwise have been created.⁷¹

Inaccurate media narratives perpetuate negative stereotypes that cast young people as something to be feared and youth offending as an overwhelming problem. This achieves nothing aside from damaging young people in contact with the youth justice system (and some of their peers who are not). Professor John Tobin from Melbourne Law School told the Committee: "If I keep saying to those little boys, young men, young adults out at Malmsbury and Parkville, 'You are bad. You're a criminal', that is what they will become."⁷²

⁶⁹ Trish McCluskey, Director, Strategic Initiatives, Berry Street, *Transcript of evidence*, 19 April 2017. p. 23.

⁷⁰ Vincent Schiraldi, Justice Policy Institute (USA), *Transcript of evidence*, 22 March 2017. p. 13.

⁷¹ Julian Pocock, Director, Public Policy and Practice Development, Berry Street, *Transcript of evidence*, 19 April 2017. pp. 22-3.

⁷² Professor John Tobin, *Transcript of evidence*, 27 June 2017. p. 60.

The Committee received submissions from young offenders engaged in education at Parkville College. One submission from a young offender who was at the time incarcerated at the Grevillea Unit at Barwon Prison shows a more nuanced understanding of youth offending than much of the media. It states: ‘Everyone says [we’re] all bad people. We’re not we just do silly things when we’re out. I don’t feel my voice is being heard really, no one really cares. That I’m nice but I just do silly things when I’m out.’⁷³

Another overlooked result of inaccurate media coverage is the harm done to staff. In Chapter 9, the Committee considers staffing issues in youth justice centres in Victoria. Problems with staff morale, conditions and retention are significant and the major source of many of these issues is the poorly functioning system. This makes it harder for staff to implement therapeutic models of rehabilitation and is a barrier to recruiting new staff needed for the system to operate at its full potential.

The Victorian Government is responsible for the community being and feeling safe. The best way to achieve this is to ensure the youth justice system uses evidence-based practice that balances rehabilitation and security.

1.5 The future

The Committee spoke with the Secretary of DJR, Mr Greg Wilson, at a public hearing on 27 June 2017. He briefly outlined the Department’s plans for the youth justice system, including:

- A dedicated youth justice division
- A new leadership team with experience in operational leadership, both in custodial and community settings. This team includes two new executive directors, one to oversee the youth justice operations and another responsible for youth justice policy, strategy and business services
- A general manager for youth justice in each of the Department’s eight regions
- Expanding the scope of the Office of Correctional Services Review, which monitors and reviews the performance of Victoria’s correctional system, to include youth justice
- Placing experienced general managers in Parkville and Malmsbury alongside four operational managers.⁷⁴

These changes are discussed in more detail throughout this Final Report.

⁷³ Parkville College, *Submission*, no. 44. p. 7.

⁷⁴ Greg Wilson, Secretary, Department of Justice and Regulation, *Transcript of evidence*, 27 June 2017.

2

Young offenders and youth offending behaviour

We have got a new cohort that has appeared in the last number of years of young men particularly, but it includes women, who essentially have jumped in at the deep end of criminal offending.⁷⁵

2.1 Introduction

Youth offending rates have been declining across Australia over recent years. In Victoria, the number of young offenders declined by 37 per cent between 2006 and 2015. However, several concerning trends have emerged:

- An increase in violent crimes against the person
- An increase in serious first-time offending
- An increase in the number of charges per case.

The Committee received evidence that a large group of young offenders come from 12 postcodes within Victoria.⁷⁶

2.2 Youth offending numbers and the nature of youth offending

In 2015–16:

- 1.4 per cent of young people in Victoria were alleged to have committed a crime
- Less than 1 per cent of young people in Victoria were sentenced
- Only 0.02 per cent were sentenced to detention (103 people). These are among the lowest rates of young people in detention in Australia.⁷⁷

Further, young people are responsible for a decreasing proportion of all crime in Victoria.⁷⁸ Table 2.1 outlines young people's involvement in the Victorian criminal justice system.

⁷⁵ Stephen Leane, Assistant Commissioner, Victoria Police, *Transcript of evidence*, 19 April 2017. p. 44.

⁷⁶ Tony Vinson and Margot Rawsthorne, *Dropping off the Edge 2015: Persistent communal disadvantage in Australia*, Jesuit Social Services and Catholic Social Services Australia, 2015. p. 60.

⁷⁷ Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria*, Sentencing Advisory Council, Melbourne, 2016. p. 15; Sentencing Advisory Council, *Changes to Sentencing Practice: Young Adult Offenders*, Melbourne, 2015. p. 1; Youth Affairs Council of Victoria, *Submission*, no. 10. pp. 7-8; YouthLaw, *Submission*, no. 12. p. 6; Victorian Council of Social Services, *Submission*, no. 20. p. 4.

⁷⁸ YouthLaw, *Submission*, no. 12. p. 6; Julie Edwards, Chief Executive Officer, Jesuit Social Services, *Transcript of evidence*, 19 April 2017. p. 14.

Table 2.1 Young people's involvement in the Victorian criminal justice system in 2015

	Number	Percent of Victoria's population aged 10 to 17
Victorian population aged 10 to 17	548,862	100.00
Processed by police (including withdrawals, acquittals, pre-charge diversion (e.g. cautions), pre-sentence diversion (e.g. diversion).	7,507	1.40
Resolved	4,166	0.80
Sentenced	3341	0.60
Detention	103	0.02

Note: The figures above vary in being presented as either a calendar year or a financial year and should be interpreted accordingly.

Source: Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria*, Sentencing Advisory Council, Melbourne, 2016. p. 2.

Table 2.2 shows the number and proportion of offences according to four offender 'groups' identified by the Crime Statistics Agency. The 'low' offending group have a low level of offending across all ages. In contrast, the 'high' offending group are young people whose offending increases rapidly from a young age. The 'adolescent limited' group refers to a larger group of young people whose offending is likely due to a maturity gap. They 'outgrow' their offending and do not continue to offend into adulthood. Offending behaviour peaks at around 15 for this group. The 'late developing' group refers to young people who have no history of offending prior to 15 before rapidly increasing to match the 'high' group by age 17.⁷⁹

Table 2.2 Number and proportion of offences by offence type and offender group

Offender group	Crimes against the person		Property and deception offences		Drug offences		Public order and security offences		Justice procedures offences		Other offences	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Low	4,735	21.4	13,124	59.4	1,095	5.0	1,973	8.9	671	3.0	515	2.3
Adolescent limited	3,188	23.3	8,137	59.5	326	2.4	1,102	8.1	800	5.8	135	1.0
Late developing	1,931	21.0	5,447	59.2	267	2.9	665	7.2	843	9.2	50	0.5
High	2,445	17.6	9,363	67.3	257	1.9	813	5.8	920	6.6	116	0.8

Source: Paul Sutherland and Melanie Millsteed, *Patterns of recorded offending behaviour amongst young Victorian offenders*, Crime Statistics Agency, Melbourne, 2016. p. 4.

⁷⁹ Paul Sutherland and Melanie Millsteed, *Patterns of recorded offending behaviour amongst young Victorian offenders*, Crime Statistics Agency, Melbourne, 2016. p. 4.

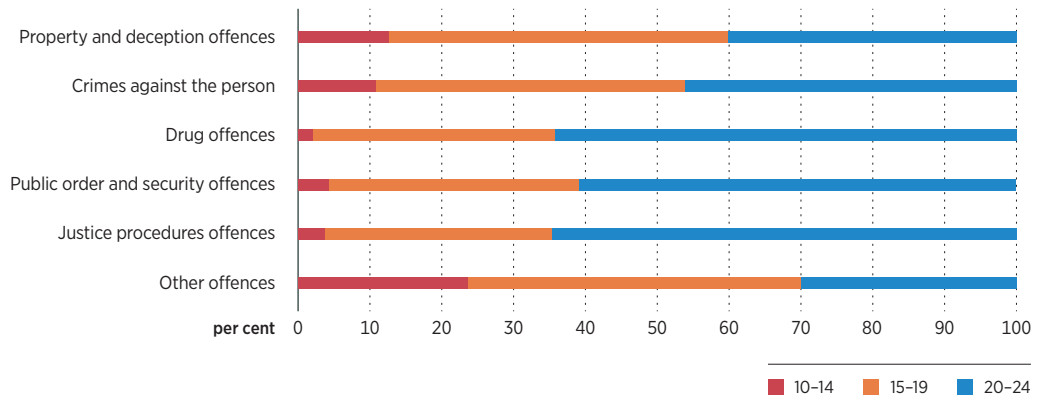
Table 2.3 Detention rates per 1,000 young people aged 10 to 17 years in youth detention facilities in each state and territory, 2015–16

Jurisdiction	Number	Rate per 1,000 Young People
Western Australia	843	3.36
South Australia	414	2.62
New South Wales	1,445	1.98
Australian Capital Territory	68	1.92
Australia (excluding the Northern Territory)	4,153	1.83
Queensland	853	1.74
Victoria	500	0.90
Tasmania	30	0.59
Northern Territory	n.a.	n.a.

Source: Sentencing Advisory Council, 'Young People in Detention', <www.sentencingcouncil.vic.gov.au/statistics/sentencing-statistics/young-people-in-detention>, viewed 1 February 2018.

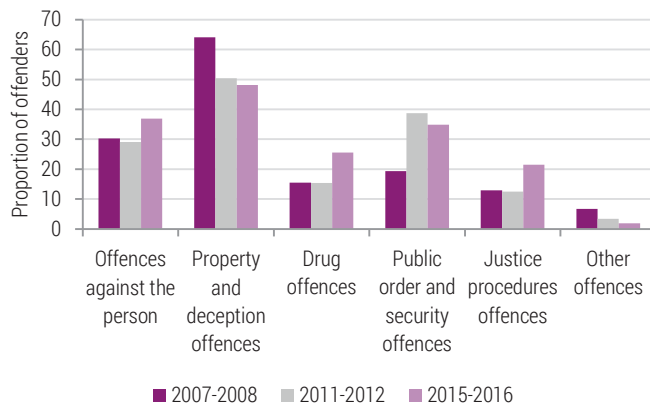
Figures 2.1–2.6 present data on the types of offences committed by young people in Victoria over time and across age ranges.

Figure 2.1 Types of offences committed by offenders ages 10-24



Source: Adapted from Crime Statistics Agency, *Alleged offender incidents data tables: January to December 2016*, Crime Statistics Agency, Melbourne 2017. Table 8.

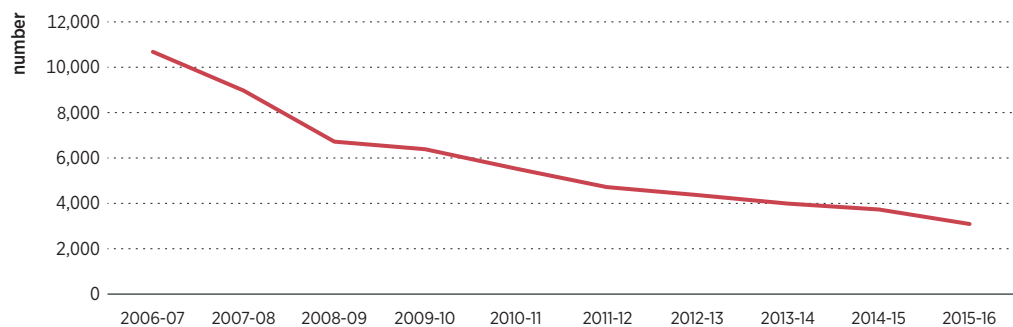
Figure 2.2 Proportion of young offenders aged 10–24 recorded for each crime type



Note: “Other offences” here refers to miscellaneous offences not described by the previous categories such as driving offences, transport offences, regulatory offences.

Source: Adapted from Melanie Millsteed and Paul Sutherland, *How has Youth Crime in Victoria Changed over the Past 10 Years?*, Crime Statistics Agency, Melbourne, 2016. In Caitlin Grover, *Youth Justice in Victoria: Research Paper No. 2, April 2017*, Parliamentary Library and Information Service, Melbourne, 2017. p. 21.

Figure 2.3 Number of cases sentenced in the Children’s Court, 2006–2016



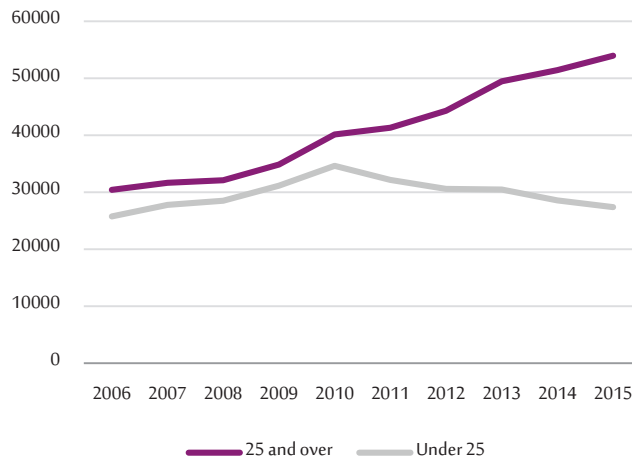
Source: Crime Statistics Agency, ‘Cases Sentenced in the Children’s Court’, viewed 31 January 2018; See also: Sentencing Advisory Council, ‘Sentencing Outcomes in the Children’s Court’, viewed 1 February 2018.

Figure 2.4 Proportion of incidents recorded by offender age group 2007–2016



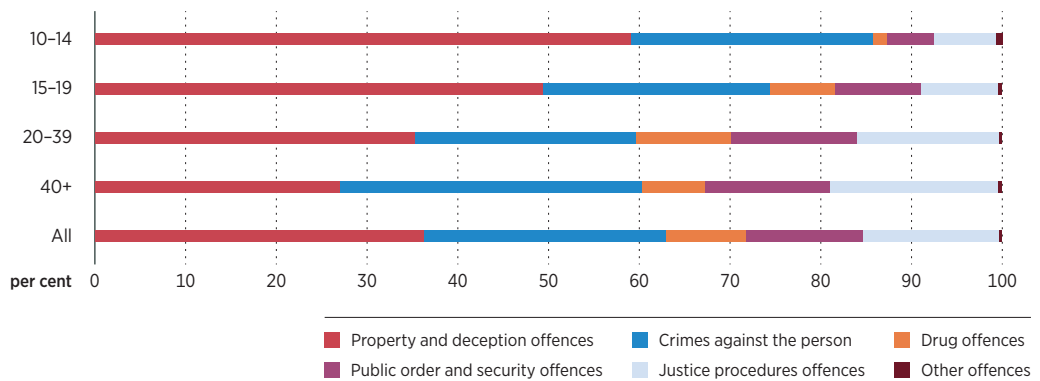
Source: Melanie Millsteed and Paul Sutherland, *How has Youth Crime in Victoria Changed over the Past 10 Years?*, Crime Statistics Agency, Melbourne, 2016. p. 1.

Figure 2.5 Annual number of unique offenders aged under 25 or 25-and-older, 2006–2015



Source: Paul Sutherland and Melanie Millsteed, *Downward trend in the number of young offenders, 2006 to 2015*, Crime Statistics Agency, Melbourne, 2016. p. 1.

Figure 2.6 Percentage of alleged offender incidents by offence time and age group, April 2015–March 2016



Source: Crime Statistics Agency, *Alleged offender incidents data tables: January to December 2016*, Crime Statistics Agency, Melbourne 2017.

From 2010–2015, the number of cases sentenced in the Children’s Court decreased by 43 per cent and the number of charges sentenced declined by 20 per cent from 2010–2015. However, since 2013 there has been an increase in the number of charges per case.⁸⁰ The result is that a small cohort of repeat offenders are now responsible for one-quarter of all crimes committed by young people in Victoria.⁸¹

⁸⁰ Lisa Ward, Deputy Chair, Sentencing Advisory Council, *Transcript of evidence*, 17 March 2017. p. 37. Ms Ward told the Committee that and this increase applies even when the impact of the bail-related offences that were introduced in 2013 and lead to an increase in charges are taken into account. These changes were repealed in 2016.

⁸¹ Dr Jessie Mitchell, Policy Manager, Youth Affairs Council Victoria, *Transcript of evidence*, 19 April 2017. p. 11.

Although young offenders typically commit low-level offences such as theft,⁸² a small number of young offenders in Victoria (1.6 per cent or 182 young people) are committing repeated, serious or violent offences. This group is small and begins offending at the serious end of the crime spectrum, rather than increasing the number and severity of their offences over time, as seen in other groups such as the ‘adolescent limited’ group.⁸³ This group is responsible for the majority of young offending in Victoria and represents a recent shift in youth offending behaviour.⁸⁴

Victoria Police Assistant Commissioner Stephen Leane told the Committee that this small group:

...have jumped in at armed robberies, they have jumped in at home invasions and they have jumped in at carjackings particularly...So we now have got two cohorts of offenders — one the chronic and one the new and emerging — that we have really had to deal with.⁸⁵

Assistant Commissioner Leane identified several factors behind the emergence of serious first-time offenders, including:

- Increased networking and abilities to coordinate through the use of technology
- An increase in ‘performative offending’ behaviour, where young people commit crimes to show off in response to the value they feel the community places on them.⁸⁶

Assistant Commissioner Leane also addressed this issue of some young people feeling ‘locked out’ of their communities. He said:

So we have a bunch of young people across our community that have not done well in school and therefore are not engaging. They, for want of racial background, religious background, do not feel part of mainstream society. They do read online news, which is negative towards either their race or religion, so they feel they are not part of that world and they develop an anger and feel locked out.⁸⁷

Some culturally and linguistically diverse (CALD) groups are currently over-represented in youth justice, particularly Maori, Pacific Islander and South Sudanese young people. However, it is important to note that this over-representation is not caused by ethnicity. Several years ago, for example,

82 Caitlin Grover, *Youth Justice in Victoria: Research Paper No. 2, April 2017*, Parliamentary Library and Information Service, Melbourne, 2017. p. 8.

83 Neil Comrie, *Review of the Parkville Youth Justice Precinct (Stage Two)*, Department of Justice, Melbourne, 2017. p. 1; Youth Affairs Council of Victoria, *Submission*, no. 10. p. 8; YouthLaw, *Submission*, no. 12. pp. 6-7; Victorian Council of Social Services, *Submission*, no. 20. p. 4.

84 Neil Comrie, *Review of the Parkville Youth Justice Precinct (Stage Two)*, Department of Justice, Melbourne, 2017. p. 1; Youth Affairs Council of Victoria, *Submission*, no. 10. p. 8; YouthLaw, *Submission*, no. 12. pp. 6-7; Victorian Council of Social Services, *Submission*, no. 20. p. 4; Victorian Ombudsman, *Investigation into children transferred from the youth justice system to the adult prison system*, Victorian Ombudsman, Melbourne, 2013. p. 5; Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria*, Sentencing Advisory Council, Melbourne, 2016.

85 Stephen Leane, Assistant Commissioner, Victoria Police, *Transcript of evidence*, 19 April 2017. p. 44.

86 Andrew Crisp, Deputy Commissioner, Victoria Police, *Transcript of evidence*, 19 April 2017. pp. 49, 56.

87 Stephen Leane, Assistant Commissioner, Victoria Police, *Transcript of evidence*, 19 April 2017. p. 44.

Vietnamese young people were over-represented in youth justice. Rather, socioeconomic and demographic factors linked with particular groups have the greatest impact and these can be overcome by engagement strategies, as occurred with other ethnic groups in the past.⁸⁸

The Committee agrees with Armytage and Ogloff's recommendation regarding addressing the over-representation of CALD groups in youth justice.

RECOMMENDATION 2: That the Victorian Government develop programs to identify and respond to the causal factors contributing to the over-representation of CALD groups in youth justice.

Youth Affairs Council's Dr Jessie Mitchell argued that changes in the profile of young offenders and the reasons for and ways in which they offend is itself not a new phenomenon. Dr Mitchell stated that a well-functioning youth justice system should be able to respond adequately to these changes as they arise. She told the Committee:

Some of us are old enough to remember things like the heroin scares and the so-called ethnic gangs of the 1980s and 1990s, and then later on concerns about things like knife crime and cyberbullying. These are all significant issues, and we are right to be very concerned about them. I think we do need to foster a justice system that is sufficiently responsive and nimble, and has the kind of research base at their fingertips that they can continue to respond to new problems. I think it is realistic to assume that new problems are going to continue to emerge.⁸⁹

The police and government departments responsible for tackling youth offending must communicate regularly to monitor and assess changes in youth crime and behaviour. This will ensure that the youth justice system is prepared for different groups of young people as they come under its responsibility.

RECOMMENDATION 3: That the Victorian Government implement programs to identify and respond to emerging trends in youth offending behaviour. These programs should evaluate effective responses to these trends, including identifying and addressing the underlying causes of the change in behaviour and how best to respond to these changes.

The Committee also received evidence that young offenders are being 'commissioned' by organised crime groups, further complicating the motivation behind offending. Assistant Commissioner Leane told the Committee that young offenders:

...are finding markets for what they are stealing. So they have moved fairly progressively from performative offending to 'There's some value in this', and there are now criminals who are prepared to take advantage of these young people, to commit crime for them. So that is the cycle that we have to break.⁹⁰

⁸⁸ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 1*, Victorian Government, Melbourne, 2017. p. 176.

⁸⁹ Dr Jessie Mitchell, Policy Manager, Youth Affairs Council Victoria, *Transcript of evidence*, 19 April 2017. p. 11.

⁹⁰ Stephen Leane, Assistant Commissioner, Victoria Police, *Transcript of evidence*, 19 April 2017. pp. 49-50.

Changes introduced in the *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017* (so-called ‘Fagin’s Law’) make this activity a specific offence.⁹¹

Young people who come into contact with the youth justice system at an early age are more likely to reoffend than older offenders and are among the more persistent reoffenders in Victoria’s system.⁹² It is also important to keep in mind, as Armytage and Ogloff point out, that diverting young people who have committed non-violent crime from the youth justice system will see violent crime increase as a percentage of all offences.⁹³ The need for services to intervene early with young offending is discussed in Chapter 3.

Victoria’s youth justice response must address serious offending. However, the approach to the small group of serious offenders should not dictate the system’s overall strategy. Rather, it must respond to all young offenders with flexibility and the ability to address individual subsets.

2.3 Young offenders and disadvantage

*You always have to look at what the early aspects of these young people’s lives involved and what opportunities there were to intervene and intervene differently on those children’s path to offending.*⁹⁴

It is impossible to respond to young offending without first identifying, and then addressing, related social factors. There is a strong link between young people in contact with the youth justice system and disadvantage, including high incidences of early childhood trauma, cognitive impairments or delays, mental health issues, drug or alcohol abuse, and disconnection from education.⁹⁵ Armytage and Ogloff recommend using neuropsychologists to help young offenders and staff understand the relationship between cognitive development and behaviour.⁹⁶

Assistant Commissioner Leane told the Committee that the link between disadvantage and offending behaviour has long been known. He said:

We have always had a cohort of young people who come into our criminal justice system, whether it is through care applications from families that are dysfunctional or early-onset child offending, and they have a trajectory of offending. I am sure you

⁹¹ *Children, Youth and Families Act 2005* (Victoria), 96/2005; *ibid.* s321LB.

⁹² Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria*, Sentencing Advisory Council, Melbourne, 2016. pp. 25-6.

⁹³ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 1*, Victorian Government, Melbourne, 2017. p. 144.

⁹⁴ Liana Buchanan, Commissioner for Children and Young People, Commission for Children and Young People, *Transcript of evidence*, 17 March 2017. p. 22.

⁹⁵ For more information, data and research on the themes discussed in this section, including offending and cohort data, please see: Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria*, Sentencing Advisory Council, Melbourne, 2016; Youth Parole Board, *Annual Report*, Youth Parole Board, Melbourne, 2016; Jodi Henderson, Executive Director, Youth Justice Operations, Department of Justice and Regulation, *Transcript of evidence*, Opening statement. p. 2; Judge Michael Bourke, Chair, Youth Parole Board, *Transcript of evidence*, 17 March 2017. p. 49.

⁹⁶ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. p. 44.

would have heard from others and will hear from other witnesses who will say we are probably failing that group, and we have for all of my career. Many of those just progress into the adult criminal justice system.⁹⁷

In Victoria, the following groups are disproportionately represented among young offenders:

- Those who have had contact with the child protection system
- Those who have had contact with or are currently living in residential care or out-of-home-care
- Young Aboriginal and Torres Strait Islanders, Maori and Pacific Islanders, and Sudanese (the Youth Parole Board found that these three groups comprise more than 40 per cent of young offenders in detention or on parole)
- Those from specific disadvantaged geographic locations
- Those with a history of homelessness or housing instability.⁹⁸

The significant role that social factors play in young offending is highlighted in data collected by the Youth Parole Board. This data is commonly referred to by a range of stakeholders in Victoria to highlight the association between young offenders and disadvantage. While none of these factors on their own cause youth offending behaviour, these factors often compound in young people who end up in the youth justice system.

The Committee presents the data here similarly to note the link between youth offending and disadvantage. However, it also notes that a fuller understanding of the data can only be achieved when direct comparisons are made with the general population (for example, see Table 2.4 below).

Of the children and young people sentenced or on remand in 2015–16:

- 45 per cent had been subject to a previous child protection order⁹⁹
- 19 per cent were subject to a current protection order
- 63 per cent were victims of abuse, trauma or neglect
- 62 per cent had previously been suspended or expelled from school
- 30 per cent presented with mental health issues
- 18 per cent had a history of self-harm or suicidal ideation
- 24 per cent presented with issues concerning their intellectual function
- 11 per cent were registered with Disability Services¹⁰⁰

⁹⁷ Stephen Leane, Assistant Commissioner, Victoria Police, *Transcript of evidence*, 19 April 2017. p. 44.

⁹⁸ For example: Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria*, Sentencing Advisory Council, Melbourne, 2016. pp. 20-1; Youth Parole Board, *Annual Report*, Youth Parole Board, Melbourne, 2016; Lisa Ward, Sentencing Advisory Council, *Transcript of evidence*, 17 March 2017. pp. 39, 42; Deborah Glass, Ombudsman, Victorian Ombudsman, *Transcript of evidence*, 17 March 2017. p. 3; Liana Buchanan, Commissioner for Children and Young People, Commission for Children and Young People, *Transcript of evidence*, 17 March 2017. pp. 21-2.

⁹⁹ This increased to 66% in those aged under 15.

¹⁰⁰ This is likely to be higher in reality as under-reporting is common.

- 10 per cent had a history of alcohol misuse
- 16 per cent had a history of drug misuse
- 66 per cent had a history of both alcohol and drug misuse
- 12 per cent had offended while under the influence of alcohol but not drugs
- 20 per cent had offended while under the influence of drugs but not alcohol
- 58 per cent had offended while under the influence of both alcohol and drugs
- 12 per cent were parents
- 38 per cent had a family history of parental or sibling imprisonment
- 12 per cent spoke English as a second language
- 10 per cent were homeless with no fixed address or residing in insecure housing prior to custody.¹⁰¹

In their report, Armytage and Ogloff include data from England comparing neurodevelopment disorders among the general population and young offenders. This is reproduced in Table 2.4.

Table 2.4 Prevalence rates of neurodevelopment disorders among young people in England, 2012

Neurodevelopmental disorder	Reported prevalence rates among young people in the general population	Reported prevalence rates among young people in custody
	per cent	per cent
Learning disabilities	2-4	23-32
Dyslexia	10	43-57
Communication disorders	5-7	60-90
Attention deficit hyperactive disorder	1.7-9.0	12
Autistic spectrum disorder	0.6-1.2	15
Traumatic brain injury	24.0-31.6	65.1-72.1
Epilepsy	0.45-1 .00	0.7-0.8
Foetal alcohol syndrome disorder	0.1-5.0	10.9-11.7

Note: These factors often compound – that is, more than one risk factor is likely to present. This is also known as comorbidity.

Source: Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending – Part 1*, Victorian Government, Melbourne, 2017. p. 158.

In Victoria, the over-representation of disadvantaged young people in the youth justice system reflects ongoing social problems. The data indicates that there are ‘upstream’ problems in the youth justice system that must be addressed before ‘end-to-end’ improvements, including in courts or detention facilities, can be implemented successfully.¹⁰²

¹⁰¹ Youth Parole Board, *Annual Report*, Youth Parole Board, Melbourne, 2016; Victorian Council of Social Services, *Submission*, no. 20. p. 6.

¹⁰² Youth Affairs Council of Victoria, *Submission*, no. 10. p. 16; Caitlin Grover, *Youth Justice in Victoria: Research Paper No. 2, April 2017*, Parliamentary Library and Information Service, Melbourne, 2017. p. 26.

Of particular note is the high percentage of children from current or former child protection, residential care, or out-of-home care backgrounds in the youth justice system (around one-quarter of young people under the age of 18 who are subject to supervision are also clients of Child Protection). Mr Julian Pocock of Berry Street described these factors as “...probably the strongest predictor of whether or not someone will end up in youth justice.”¹⁰³

Armytage and Ogloff argue that child protection is not a cause of offending. They support their view by stating that as there are 14,000 substantiated child protection reports each year, offending numbers would be higher if child protection were a cause. Of greater concern, according to Armytage and Ogloff, is the lack of cooperation between the child protection and youth justice systems.¹⁰⁴

Young people leaving care, especially those with complex needs, may not be developmentally ready to transition to independence at 18. This has been raised in numerous research studies. Young people often do not have access to adequate post-care support, which can lead to an increased likelihood of homelessness and further offending behaviour. While the child protection system does not necessarily cause this offending behaviour, inadequate transition support at this age is linked to an increased likelihood of ongoing and increased offending. This period has therefore been identified as a high-risk period for young people to escalate their offending and end up in either the dual track or adult justice systems.¹⁰⁵

Anglicare informed the Committee that:

When such young people are left to fend for themselves in an environment where securing housing and substantive employment is much more difficult than it once was, those who cannot cope are at greatly increased risk of turning to maladaptive and antisocial behaviours; right during the very stage of their life course where offending risk peaks on the age–crime curve.¹⁰⁶

RECOMMENDATION 4: That the Victorian Government develop a program involving the Department of Health and Human Services and the Department of Justice and Regulation to identify links between out-of-home-care and young offending and respond appropriately.

¹⁰³ Julian Pocock, Director, Public Policy and Practice Development, Berry Street, *Transcript of evidence*, 19 April 2017. p. 22.

¹⁰⁴ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 1*, Victorian Government, Melbourne, 2017. p. 166; See also: ‘Child Protection, residential care, secure welfare and Youth Justice coordination’ and ‘Poor service integration and information sharing’ in *ibid*; For example: ‘Consultations revealed that effective service coordination between child protection and youth justice workers is not occurring in a structured and systematic way.’ p. 123

¹⁰⁵ Philip Mendes, et al., *Good Practice in Reducing the Over-Representation of Care Leavers in the Youth Justice System. Leaving Care and Youth Justice - Phase Three report*, Monash University, Melbourne, 2014. pp. 63-4; Anglicare, *Submission*, no. 36; *ibid*. p. 9.

¹⁰⁶ Anglicare, *Submission*, no. 36. p. 9.

Socioeconomic background and, more specifically, geographic location are other strong indicators of youth offending. In Victoria, 25 per cent of young people on youth justice orders come from 2.6 per cent of postcodes.¹⁰⁷ Young people from the most disadvantaged areas are:

- Six times more likely to be under supervision than those from the highest socioeconomic areas
- Twice as likely to have criminal convictions
- Three times more likely to experience long-term unemployment
- Between two-to-three times more likely to have experienced domestic violence and be on disability support.¹⁰⁸

A comparison of known risk and protective factors to youth offending is outlined in Table 2.5.

Table 2.5 Risk and protective factors associated with youth offending

	Risk factors	Protective factors
Community	<ul style="list-style-type: none"> • Poverty • Low neighbourhood attachment and community disorganisation • Availability of drugs 	<ul style="list-style-type: none"> • Culture of cooperation • Stability and connectedness • Good relationships with adults outside family • Opportunities for meaningful contribution
School	<ul style="list-style-type: none"> • Academic failure • Poor relationships in school • Early and persistent antisocial behaviour and bullying • Low parental interest in children 	<ul style="list-style-type: none"> • A sense of belonging • Positive achievements • Attendance at preschool
Family	<ul style="list-style-type: none"> • History of problematic alcohol and drug use • Family conflict • Alcohol and drugs interfering with family rituals • Harsh/coercive or inconsistent parenting • Marital instability or conflict • Favourable parental attitudes towards risk-taking behaviour 	<ul style="list-style-type: none"> • Connectedness to family • Feeling loved and respected • Proactive problem-solving and minimal conflict during infancy • Maintenance of family rituals • Warm relationship with at least one parent • Absence of divorce during adolescence
Individual/peer	<ul style="list-style-type: none"> • Alienation, rebelliousness, hyperactivity, aggression, novelty seeking • Seeing peers taking drugs • Friends engaging in problem behaviour • Favourable attitude toward problem behaviour • Early initiation in problem behaviour 	<ul style="list-style-type: none"> • Temperament/activity level, social responsivity, autonomy • Development of special talents, hobbies and enthusiasm for life • Work success during adolescence

Source: Caitlin Grover, *Youth Justice in Victoria: Research Paper No. 2, April 2017*, Parliamentary Library and Information Service, Melbourne, 2017. p. 24 citing Amanda McAtamney and Anthony Morgan, 'Key issues in antisocial behaviour', no. Summary Paper No. 5, Australian Institute of Criminology, 2009.

¹⁰⁷ Jesuit Social Services, *Submission*, no. 37. p. 9; Julie Edwards, Chief Executive Officer, Jesuit Social Services, *Transcript of evidence*, 19 April 2017. p. 2; Jesuit Social Services, *Thinking Outside: Alternatives to remand for children (Research Report)*, Jesuit Social Services, Richmond, 2013.

¹⁰⁸ Jesuit Social Services, *Response to Questions on Notice*.

Table 2.5 highlights why the multifaceted nature of youth offending means no factor can be addressed in isolation. For example, a program that improves school retention rates or increases mental health services in a disadvantaged area will likely lead to a decrease in youth offending, even if its role as a contributing factor is not measured.

Armytage and Ogloff in fact state that the recent decline in the number of cases receiving a sentence in the Children’s Court can be attributed in part to improvements in social factors such as education and health.¹⁰⁹ They go on to say:

The youth justice system alone cannot address these characteristics, given that they affect a person throughout their life, both before and after their exposure to the youth justice system. Rather, responding to the complex needs of young people requires an integrated, whole-of-government approach that helps vulnerable children before they offend and continues after a young person exits the youth justice system.¹¹⁰

In other words, social factors come into play in preventing crime, although Armytage and Ogloff caution against labelling disadvantage as a cause of crime. Multi-systemic therapy provides family and community-based support to young offenders by addressing the environmental factors related to offending, thereby improving the chance of rehabilitation (see Figure 2.7 below).

Armytage and Ogloff found that youth justice workers increasingly have to address social issues at the expense of the offending behaviour and criminogenic needs of young offenders. As one of the workers told the Review: “You can’t get in there and talk about offending behaviour with a kid who has nowhere to sleep at night.”¹¹¹

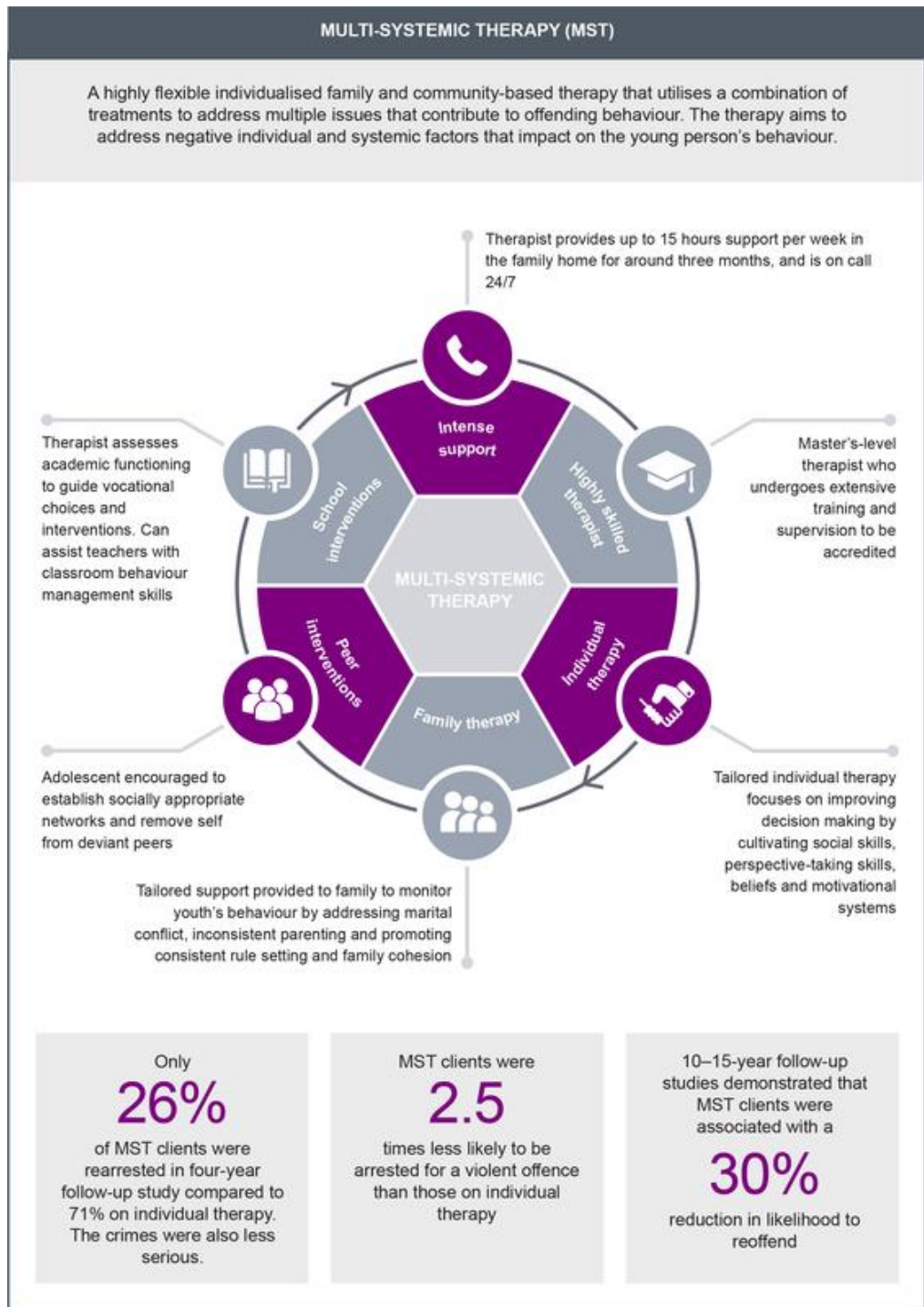
FINDING 1: The causes of youth crime are a combination of social and individual factors. Effective youth justice systems are based on an acknowledgement that social factors play a role in both crime prevention and rehabilitation and identify how to respond to individual offenders.

¹⁰⁹ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 1*, Victorian Government, Melbourne, 2017. p. 153.

¹¹⁰ *Ibid.* p. 138.

¹¹¹ *Ibid.* p. 209.

Figure 2.7 Multi-systemic therapy



Source: Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. p. 204.

3

Diversion programs

If you are going to divert some resources to diversion, the key players will be youth community outreach workers and police, but I would see their main task as engaging local communities to actually “swallow up” these kids.¹¹²

3

3.1 Introduction

There are three types of crime prevention:

- Primary crime prevention aims to stop crime before it occurs by addressing social factors
- Secondary crime prevention intervenes with individuals and/or communities at high risk of becoming involved or entrenched in crime
- Tertiary crime prevention responds to offending after it has occurred and seeks to prevent reoffending.¹¹³

Diversion programs are aimed at young offenders identified as being better served by avoiding a court appearance or being incarcerated. They can be short-term (as little as one day) or long-term (up to several weeks) programs that provide community-based rehabilitation and support services that address the causes of offending. Some examples of youth diversion programs are provided below.

Diversion is sometimes confused with early intervention (discussed briefly at the end of this Chapter) and primary crime prevention, however it differs in that it ‘diverts’ those who have already offended as opposed to trying to stop offending in the first place.¹¹⁴

3.2 Diversion – where and when

Diversion operates in the areas occupied by secondary and tertiary crime prevention, as researcher Paul Nejelski points out:

In diversion, the child has committed an antisocial act which could bring him within the court’s jurisdiction; he has been designated as an immediate candidate for court adjudication and formal processing. In prevention, services are made available to a broad range of children (who might in the future commit antisocial acts) to keep them from being designated as court clients.¹¹⁵

¹¹² Professor Terry Laidler, *Transcript of evidence*, 17 March 2017. p. 64.

¹¹³ Kelly Richards, ‘Blurred lines : reconsidering the concept of ‘diversion’ in youth justice systems in Australia’, *Youth Justice: An International Journal*, vol. 14, no. 2, 2014., pp. 122-139.

¹¹⁴ Victorian Aboriginal Legal Service, *Submission*, no. 15. p. 14; Victorian Council of Social Services, *Submission*, no. 20. p. 33; Dr Jessie Mitchell, Policy Manager, Youth Affairs Council Victoria, *Transcript of evidence*, 19 April 2017. pp. 2-3.

¹¹⁵ Paul Nejelski, ‘Diversion: The Promise and the Danger’, *Crime & Delinquency*, vol. 22, no. 4, 1976. p. 393-410.

Diversion can occur at several points across the youth justice spectrum and is based on the belief that custodial sentences should be considered as a last resort only.¹¹⁶ Although it is most common pre-sentencing, it also has a role to play in post-release services.

The principles of diversion feature strongly in the human rights charters and current youth justice policy that underpin the Victorian youth justice system.¹¹⁷ As noted in Chapter 1, Victoria has an historically strong and successful youth justice system. An important feature of the system has been its emphasis on evidence-based non-custodial interventions such as diversion.¹¹⁸ Section 356C of the recently enacted *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017* lists the purposes of diversion in Victoria.

Advocates of diversion argue it has been proven to:

- Lower the incidence of youth crime and recidivism, resulting in safer communities and easing the burden on the youth justice system
- Cost less than custodial sentences and remand
- Improve connections between young people and ‘protective factors’ against youth offending behaviour, such as family, school, housing and specialist services
- Facilitate tailored community-based interventions (e.g. Aboriginal and Torres Strait Islander-specific programs or programs aimed at helping individuals who feel ‘locked out’ from the wider community).¹¹⁹

For example, based on evaluations from 2011, the following diversion programs showed:¹²⁰

- More than 80 per cent of young people who complete the Youth Justice Group Conferencing program had not reoffended two years later
- The ROPES pre-plea diversion program has a 90 per cent rate of non-reoffending after two years
- The Right Step pre-plea diversion program has a 61 per cent rate of non-reoffending after two-years.

¹¹⁶ Youth Affairs Council of Victoria, *Submission*, no. 10. p. 37; Victorian Aboriginal Legal Service, *Submission*, no. 15. p. 15; Royal Australian and New Zealand College of Psychiatrists, *Submission*, no. 16. p. 8; Cohealth, *Submission*, no. 19. p. 22; Victorian Council of Social Services, *Submission*, no. 20. p. 6; Berry Street, *Submission*, no. 26. p. 4.

¹¹⁷ Victorian Aboriginal Legal Service, *Submission*, no. 15. p. 13; Cohealth, *Submission*, no. 19. p. 22; Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria*, Melbourne, 2016. pp. 24-5.

¹¹⁸ Youth Affairs Council of Victoria, *Submission*, no. 10. pp. 8, 40-1; YouthLaw, *Submission*, no. 12. p. 27.

¹¹⁹ Caitlin Grover, *Youth Justice in Victoria: Research Paper No. 2, April 2017*, Parliamentary Library and Information Service, Melbourne, 2017. p. 8; *Ibid.* p. 23 citing Melanie Millsteed and Paul Sutherland, *How has Youth Crime in Victoria Changed over the Past 10 Years?*, Crime Statistics Agency, Melbourne, 2016; Lisa Ward, Sentencing Advisory Council, *Transcript of evidence*, 17 March 2017. p. 41; Youth Affairs Council of Victoria, *Submission*, no. 10. pp. 36-7, 56-7; Victorian Aboriginal Legal Service, *Submission*, no. 15. p. 14; Victorian Council of Social Services, *Submission*, no. 20. pp. 7, 24, 33; Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria*, Melbourne, 2016. p. 84; YouthLaw, *Submission*, no. 12. pp. 27-8.

¹²⁰ Youth Affairs Council of Victoria, *Submission*, no. 10. p. 56; Dr Jessie Mitchell, Policy Manager, Youth Affairs Council Victoria, *Transcript of evidence*, 19 April 2017. pp. 2-3.

More recently, an alcohol diversion program in Dandenong launched in 2015 reduced reoffending in the area by 30 per cent.¹²¹

Mr Julian Pocock of Berry Street argued that diversion programs must also achieve two further outcomes: help the young offender develop as a person; and ensure the young offender understands the impact their offending has had on their victims (known as case or group conferencing – see below).¹²²

Community-based diversion programs are also effective in reducing the number of young people on remand. Dr Bernie Geary explained that the Youth Parole Board looks to communities it can trust to support young offenders released into their care, thereby reducing the likelihood of reoffending.¹²³

Professor Terry Laidler, a psychologist with a wide forensic skill base including experience with the Mental Health Reform Council, stated that diversion programs work best when they involve communities. He said: “In principle, the best diversion programs are programs that have quite extensive community engagement. So the diversion is into community activities, be it basketball or drama or community service-type stuff.”¹²⁴

Diversion programs need to have the support of the police to be effective. This is sometimes expressed in terms of ‘proactive’ or ‘preventative’ policing. Victoria Police supports the concept of diversion programs, as Assistant Commissioner Stephen Leane told the Committee:

Our first position, as with every police officer, is to prevent the crime in the first place. Our first position with a young person who commits crime is to prevent them from committing further crime in the future...to get them engaged with the community and to grab those young people wherever we can and try to find a circuit-breaker so they can stop offending.¹²⁵

Assistant Commissioner Leane considered the Neighbourhood Justice Centre in Collingwood (inner-Melbourne) to be an example of a successful diversion program.¹²⁶

Implementing new diversion programs and expanding and strengthening existing programs can be expensive. In the long term, though, they are argued to cost the youth justice system less (because they cost less than incarcerating young offenders) and reduce youth offending, thereby making communities safer.¹²⁷ Quantifying exactly how much diversions programs save the youth justice system

121 See: Charlotte Grieve, ‘Proven to work’: scheme tackling alcoholism helps keep young offenders out of jail’, *The Guardian Australia*, 11 January 2018.

122 Julian Pocock, Director, Public Policy and Practice Development, Berry Street, *Transcript of evidence*, 19 April 2017. p. 25.

123 Dr Bernie Geary, Board Member, Youth Parole Board, *Transcript of evidence*, 17 March 2017. p. 54.

124 Professor Terry Laidler, *Transcript of evidence*, 17 March 2017. p. 64.

125 Stephen Leane, Assistant Commissioner, Victoria Police, *Transcript of evidence*, 19 April 2017. p. 48.

126 *Ibid.* p. 51.

127 Professor Terry Laidler, *Submission*, no. 7. p. 5.

in Victoria is difficult, though.¹²⁸ This is because many programs are funded for a short time only or are not available across the whole of the State. The Committee believes that the value of diversion programs lies in the positive effect they have on young lives. However, it also believes there is merit in understanding the financial benefit of diversion programs.

The Secretary of the Police Association, Mr Wayne Gatt, warned the Committee that diversion programs are threatened when specialist police are redeployed to other areas. Mr Gatt said:

We say that police have been restricted in their ability to even identify these people at risk, because we do not and have not had as many police officers in the last few years as we have in the past committed to proactive policing outcomes. Since the 80s we have seen the number of police completely dedicated to youth initiatives diminish.¹²⁹

...We say it is just as equally important that those roles remain untouched, that they are resourced, experienced, trained and coordinated in a way that they can get out there and do the work that they need to do. It is important.¹³⁰

As at May 2017, there were 59 Victoria Police Youth Resource Officers. According to Mr Gatt, the vast majority of those have reported being removed at times from their core duties ‘...due to an overall lack in resources and a focus on reactive policing.’¹³¹

The Committee did not analyse police numbers as part of this Inquiry.

RECOMMENDATION 5: That the Victorian Government provide sufficient ongoing funding for Victoria Police Youth Resource Officers to continue their work.

The Committee received strong evidence that supporting and increasing youth justice diversion programs is one of the most effective approaches for reducing youth offending in the community. Youth justice diversion programs in Victoria have been proven to be more effective than detention at reducing the rates of reoffending and, by extension, improving community safety.¹³²

3.3 Conceptual problems with diversion

It is not always clear what is meant by the term ‘diversion’. For example, are young people to be diverted from the criminal justice system or from offending? Also, is diversion a separate concept to crime prevention and early intervention?

¹²⁸ Although a 2014 paper projected that Queensland could save \$263 million by 2030 from a \$10 million investment; Alexandra Bratanova and Jackie Robinson, ‘Cost effectiveness analysis of a “justice reinvestment” approach to Queensland’s youth justice services’, Pro Bono Centre, University of Queensland School of Law, 2014.

¹²⁹ Wayne Gatt, Secretary, The Police Association Victoria, *Transcript of evidence*, 30 May 2017. p. 17.

¹³⁰ *Ibid.* p. 19.

¹³¹ Wayne Gatt, *Response to Questions on Notice*. p. 1.

¹³² For example, see: YouthLaw, *Submission*, no. 12. pp. 27-8; Dr Jessie Mitchell, Policy Manager, Youth Affairs Council Victoria, *Transcript of evidence*, 19 April 2017. pp. 2-3; Youth Affairs Council of Victoria, *Submission*, no. 10. p. 56; Jodie O’Leary, *Submission*, no. 24. pp. 2-3; Lisa Ward, Deputy Chair, Sentencing Advisory Council, *Transcript of evidence*, 17 March 2017. p. 39.

These are important decisions because, as researcher Kelly Richards points out, confusion around the concept of diversion can lead to ineffective youth justice policies and programs with unclear objectives. Richards states: ‘Perhaps most importantly, and to put it crudely, youth ‘diversion’ policies and programs need to be clear about whether they intend to intervene more or less with young people and their families.’¹³³

Richards refers to an article by Jordan and Farrell which states: ‘...diversion strategies aim to redirect young offenders away from the criminal justice system, primarily to avoid the stigmatising and criminogenic impacts associated with interactions with the justice system.’¹³⁴

Stating that young offenders need to be diverted from contact with the youth justice system expresses an unwarranted lack of trust in the system and what youth justice workers are able to achieve. Indeed, the success of jurisdictions such as Missouri in the United States, where 70 per cent of young offenders avoid further contact with the youth justice system three years after release,¹³⁵ shows that detention combined with therapeutic rehabilitation can improve a young person’s life.

The Committee accepts that there are clear financial benefits to the court system that flow from diversion, for example, cautioning. It sees no reason to change this approach. It also accepts the benefits of ensuring that young people with minor offences avoid the possibly stigmatising effect of attending court.

Ideally, services should be available to all young people before they come into contact with the youth justice system, as the Committee argues in its discussion on disadvantage in Chapter 2 of this Final Report. However, where this does not happen the youth justice system can be a positive intervention. For some young offenders attending court is unavoidable. Given this, the Committee believes that diversion should be expressed in terms of ensuring young offenders avoid unnecessary contact with the youth justice system, not the system per se, as well as being diverted from reoffending behaviour. This is clearly a different view than that of Armytage and Ogloff who believe that the words ‘last resort’ should form part of Victorian legislation.

Opportunities for positive interventions and provision of support services should be available across the spectrum of youth justice contact. These services should be identifying and intervening with young people at risk of contact with the youth justice system early and effectively. While services within the system can be a point of positive intervention for young people, this should not be the first point at which young people access these services.

¹³³ Kelly Richards, ‘Blurred lines : reconsidering the concept of ‘diversion’ in youth justice systems in Australia’, *Youth Justice: An International Journal*, vol. 14, no. 2, 2014. pp. 122-139.

¹³⁴ Lucinda Jordan and James Farrell, ‘Juvenile justice diversion in Victoria: A blank canvas?’, *Current Issues in Criminal Justice*, vol. 24, no. 3, 2013. pp. 419-437.

¹³⁵ Jesuit Social Services, *#JusticeSolutions Tour: Expanding the conversation*, Jesuit Social Services, Melbourne, 2017. p 18; See also Chapter 10 for comparative rates of recidivism in Victoria.

Arguments for avoiding the youth justice system show an uncritical adherence to the theory of ‘labelling’, where a young offender’s self-identity is effected by how they are referred to and treated by authorities and the wider community. There is no doubt that the risk of labelling is real. For example, a young offender contributing to this Inquiry writes:

I personally feel like the media label us as terrifying and bad people and that people should fear for their lives. I would like people in the community to know that I made a mistake and before the crime I committed, I had no criminal record. I got sentenced three years, and when I leave I am going for my learners, getting a house and I have a job. So am I really a bad person?¹³⁶

That young offenders can be stigmatised is acknowledged in the *Children, Youth and Families Act 2005*. For example, s362(1)(b) states that in making a sentencing decision the Court must have regard to ‘the need to minimise the stigma to the child resulting from a court determination.’¹³⁷ Further, Children’s Court procedural guidelines and sentencing principles assume stigma attached to a conviction.¹³⁸

The Committee believes that contact with the youth justice system does not have to be harmful and therefore avoided at all costs. Although contact with the youth justice system can confirm deviant self-ideation, this only occurs when that system is designed to treat young offenders simply as criminals and label them as such. There is nothing automatic about this. A system designed to treat young offenders as people in need of and deserving help in their lives, the therapeutic model that Victoria aspires to, is not a system that it should be assumed will do only harm.

Similarly regarding incarceration, the Law Institute of Victoria expresses a common view among many stakeholders in the youth justice field when in states: ‘There is virtually no evidence available which indicates that incarceration reduces the likelihood of young people reoffending following release, with all the available evidence suggesting that it can in fact increase the risk of recidivism.’¹³⁹

The LIV is far from alone in arguing this and can refer to many academic articles that make this exact argument. Yet the Committee spoke with and heard from several young offenders throughout this Inquiry for whom detention is not a disruption to their education, but rather their first opportunity for an uninterrupted period of schooling.

Equally, for some young offenders detention is not where they are exposed to disruptive influences but where they are given time and a settled space to improve their lives. The same young offender who commented above about being

¹³⁶ Parkville College, *Submission*, no. 44. p. 2.

¹³⁷ *Children, Youth and Families Act 2005* (Victoria), 96/2005. S362(1)(b).

¹³⁸ Sentencing Advisory Council, *Sentencing Children and Young People in Victoria*, Sentencing Advisory Council, Melbourne, 2012. p. 54.

¹³⁹ Law Institute of Victoria, *Submission*, no. 31. p. 21.

labelled by society also writes: ‘My time at Parkville has made me grow up, seeing the immaturity in here has made me realise I am better than this. I am improving my behaviour so much.’¹⁴⁰

This is not to deny the potentially damaging components of incarceration, such as the ‘school of crime’ argument,¹⁴¹ damage done to social and family relationships, or the risk of exacerbating undiagnosed or untreated mental health issues, for example. Yet accepting that there is *only* an iatrogenic effect of incarceration dismisses the achievements of floor staff, teachers and health professionals who work with incarcerated young offenders. If incarceration does nothing but increase the chances of reoffending, there would be no point in implementing a therapeutic model in youth detention centres. Whereas, to argue in favour of providing therapeutic treatment and education to detained young offenders is to argue that detention can and does in fact achieve some good.

The Sentencing Advisory Council states that although there is a statistical correlation between incarceration and reoffending, proving a causal link is much more difficult. It says:

It does not necessarily follow that sentencing orders with lower reoffending rates are ‘more effective’ than those associated with higher reoffending rates. Rather, the same factors that contribute to the court’s choice of sentence (such as the seriousness of the offence, the offender’s prior convictions, and prospects of rehabilitation) tend to affect the likelihood of that offender reoffending.¹⁴²

In other words, the serious nature of the crimes committed by young offenders that result in detention sentences, especially violent offending, makes it more likely that they will reoffend. Conversely, the more minor nature of offences that involve diversion programs means those young offenders are less likely to reoffend. It is also important to note that many young offenders who are eventually detained reach that point after committing several offences over a period of time during which they are taking part in diversion programs; that is, the diversion programs were not successful for those young offenders.

As well, the studies on this issue seen by the Committee do not take into account the environment into which young offenders are released, i.e. the social and family environment, which have a large influence on the future behaviour of these young people.¹⁴³

The Sentencing Advisory Council has identified a number of other factors associated with rates of reoffending, including:

- Age at the time of first sentence¹⁴⁴
- Gender

¹⁴⁰ Parkville College, *Submission*, no. 44. p. 2.

¹⁴¹ Also known as deviant peer contagion.

¹⁴² Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria*, Melbourne, 2016. p. 12.

¹⁴³ See Chapter 10 of this Final Report.

¹⁴⁴ The Sentencing Advisory Council found that the earlier a young person comes into contact with the justice system, the more likely they are to reoffend in future, to reoffend more seriously, and more likely to continue to offend as adults (Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria*, Melbourne, 2016. pp. xii-xiii, 25, 27-8, 52).

- Number of prior sentences
- Total number of charges for which the young person has been sentenced before.¹⁴⁵

A more comprehensive consideration of reoffending behaviour, contributing factors and youth justice recidivism generally is provided in Chapter 10 of this Final Report.

The LIV further states that the factors that influence reoffending are complex and that more comprehensive research is required to determine which factors influence reoffending and how best to mitigate them. Its submission says:

A simple comparison of the recidivism rates of different sentencing orders can be misleading due to the effect of factors such as the seriousness of the offence and prior convictions on both the sentence and the likelihood of reoffending. More comprehensive social sciences methodologies are required to isolate the effect of incarceration.¹⁴⁶

What's more, the very low numbers involved (549 youth justice centre and youth residential centre orders in Victoria in 2016-17¹⁴⁷) means that reoffending rates when converted to a percentage will be high.

It is even possible to argue that a high percentage of reoffending means that young offenders should be detained for longer, to allow therapeutic treatment more time to produce the desired outcome of rehabilitation. Armytage and Ogloff refer to the recent Taylor Review of the youth justice system in the United Kingdom that argued increasing the length of custodial sentences would both promote the use of detention as a last resort and improve the chances of successful rehabilitation. Despite agreeing that detention should be used a last resort, Armytage and Ogloff found that detention should be of '...sufficient length of time to deal with [young offenders'] criminogenic risk. Very short periods in custody have no benefit and considerable detriment.'¹⁴⁸

Armytage and Ogloff further state that currently in Victoria:

...sentences are unable to serve the purpose of rehabilitation [and] the purpose of detention for offender rehabilitation and whether a minimum period of time is accepted as necessary to give effect to this purpose requires further exploration. This should include consideration of the development of a plan for the young person while in custody as well as allowing time for a young person to settle and to break the cycle of offending, a view posited by health experts.¹⁴⁹

¹⁴⁵ Ibid. p. xii.

¹⁴⁶ Law Institute of Victoria, *Submission*, no. 31. p. 21.

¹⁴⁷ Youth Parole Board, *Annual Report*, Melbourne, 2016-17. p. 28.

¹⁴⁸ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Executive Summary*, Victorian Government, Melbourne, 2017. p. 15.

¹⁴⁹ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. p. 76.

The challenge, then, is to create a youth justice system that actually rehabilitates. As Armytage and Ogloff argue, the state must consider the welfare of young people as well as justice.¹⁵⁰

FINDING 2: Being incarcerated is just one of the many factors that influence the likelihood of a young person reoffending.

FINDING 3: Detention can be an apt response for young offenders who have committed serious offences and are most in need of help. Detention must be combined with tailored therapeutic and rehabilitative services to benefit these young people.

RECOMMENDATION 6: That the Victorian Government express the concept of diversion in terms of ensuring young offenders avoid incarceration as well as being diverted from reoffending behaviour.

3.4 Diversion options

3.4.1 Existing programs

An overview of Victoria's current diversion programs offered and where they fit in to the youth justice system is shown in Table 3.1.

Table 3.1 Current Victorian diversion programs

Pre-charge/Pre-court/ Post-sentencing	Programs and services
Pre-charge/Pre-court	<ul style="list-style-type: none"> Youth Support Service Community-Based Koori Youth Justice Program
Pre-court	<ul style="list-style-type: none"> Youth Referral and Independent Persons Program Central After Hours Assessment and Bail Placement Service
Pre-court/Pre-sentence	<ul style="list-style-type: none"> Diversion in the Children's Court (pilot, pre-plea) Youth Justice Bail Supervision Youth Justice Court Advice Service
Pre-sentence	<ul style="list-style-type: none"> Youth Justice Group Conferencing
Pre-sentence/Post-sentencing	<ul style="list-style-type: none"> Youth Justice Community-Based Supervision Koori Youth Justice Program – statutory response Youth Justice Community support service Youth Justice Custodial Supervision (remand and sentence) Custodial based health services and rehabilitation programs (YHARS) Access to tertiary health services including clinical mental health services Right Step ROPES
Post-sentencing	<ul style="list-style-type: none"> Youth Justice support service

¹⁵⁰ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Executive Summary*, Victorian Government, Melbourne, 2017.

Some key policies and diversion programs in Victoria are briefly considered here.¹⁵¹

Police cautioning

Police in Victoria can issue formal and informal cautions to young offenders. Factors influencing the decision include the seriousness of the crime, the circumstances of the offence, and the extent of the damage or injury caused. Cautioning has been found to be effective in deterring 80 per cent of young people from offending one year after the caution and 65 per cent after three years.¹⁵²

Police cautions are not legislated in Victoria, unlike in other jurisdictions in Australia. The Committee heard that this creates:

- Inconsistency in diversion decisions
- Unintentional bias and targeting of minorities resulting in them being less likely to receive cautions
- Variability across the State in the number of young people being diverted.¹⁵³

Assistant Commissioner Leane told the Committee that Victoria Police recognises the value of cautioning young people. He spoke positively of Children's Court pre-plea diversion programs that police are involved with in Melbourne's north-west (see Section 'Children's Court pre-plea diversion pilot program' below). These allow police to engage with young offenders in ways such as following-up with young people who have received cautions to ensure that the cycle of offending had been broken.¹⁵⁴

Deputy Commissioner Andrew Crisp advised the Committee that police cautioning may be used more frequently than official records suggest. This is because police officers can use their discretion to engage with young offenders without having to keep an official record of their activity.¹⁵⁵

Youth justice group conferencing

Youth justice group conferencing (also referred to as restorative justice) brings together young offenders, their victims, the community and other relevant stakeholders to:

- Develop the young person's understanding of the impact of their offending on the victim, their family and/or significant others and the community

¹⁵¹ Further information about diversion and other pre-sentencing programs is available from: Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 1*, Victorian Government, Melbourne, 2017. Chapter 3.

¹⁵² Caitlin Grover, *Youth Justice in Victoria: Research Paper No. 2, April 2017*, Parliamentary Library and Information Service, Melbourne, 2017. pp. 8-10.

¹⁵³ *Ibid.* pp. 8-10.

¹⁵⁴ Stephen Leane, Assistant Commissioner, Victoria Police, *Transcript of evidence*, 19 April 2017. p. 51.

¹⁵⁵ *Ibid.* p. 51; Andrew Crisp, Deputy Commissioner, Victoria Police, *Transcript of evidence*, 19 April 2017. pp. 51-2.

- Improve the young person’s connection to family/significant others and their integration into the community
- Negotiate an outcome plan that sets out what the young person will do to make amends for their offending
- Divert the young person from a more punitive sentence.¹⁵⁶

In Victoria, group conferencing is available after a young person (aged 10–18 years) has been charged with their first offence and is considered for probation or a youth supervision order.

Group conferencing has been proven to be successful as a diversion program.¹⁵⁷ One young offender told Armytage and Ogloff:

I believe in group conferencing and restorative justice, as the young person needs to hear about the damage they have done, as it can make them change. When you’re sentenced you’re sent to court because of breaching “the law”, but in conference it’s about “wrong to the victim”.¹⁵⁸

Armytage and Ogloff also report that group conferences held following the 2016 Moomba Riots were effective.¹⁵⁹ They add that group conferencing helps young offenders develop empathy for their victims and believe group conferencing programs should be expanded in Victoria.¹⁶⁰

The Committee heard that group conferencing is more effective the earlier it happens after an offence has been committed.¹⁶¹ Mr Pocock raised New Zealand as an example of how group conferencing has been more successful when implemented “...at the front of the diversion line [because] young people who are offending need to be confronted with the consequences of their behaviour through youth justice group conferencing models as soon as possible, not as late as possible.”¹⁶²

FINDING 4: Group conferencing is more effective in ensuring young offenders understand the consequences of their actions the sooner it occurs after an offence.

RECOMMENDATION 7: That the Children’s Court review its group conferencing program to determine whether it can occur prior to sentencing. This may include giving Victoria Police the power to refer young people to group conferencing or equivalent programs prior to contact with the Court.

¹⁵⁶ Caitlin Grover, *Youth Justice in Victoria: Research Paper No. 2, April 2017*, Parliamentary Library and Information Service, Melbourne, 2017. pp. 11-2; Youth Affairs Council of Victoria, *Submission*, no. 10. pp. 55-6.

¹⁵⁷ Youth Affairs Council of Victoria, *Submission*, no. 10. p. 56.

¹⁵⁸ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 1*, Victorian Government, Melbourne, 2017. p. 217.

¹⁵⁹ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. p. 107.

¹⁶⁰ *Ibid.* p. 182.

¹⁶¹ Trish McCluskey, Director, Strategic Initiatives, Berry Street, *Transcript of evidence*, 19 April 2017. pp. 26-7; Julian Pocock, Director, Public Policy and Practice Development, Berry Street, *Transcript of evidence*, 19 April 2017. p. 25.

¹⁶² Julian Pocock, Director, Public Policy and Practice Development, Berry Street, *Transcript of evidence*, 19 April 2017. p. 25.

In New Zealand, 80 per cent of young offenders are placed in community-based diversion programs supported by specialised police officers. The programs include legally binding plans for young people focused on reconnecting them with education, employment, life skills, mentoring, and other approaches which address the underlying causes that contribute to their offending.¹⁶³

In Victoria, only courts can divert young people to group conferencing, unlike other jurisdictions where this power is also available to police (every other jurisdiction in Australia except Western Australia). The range of young people able to be considered for group conferencing was expanded through changes to the Act in 2014.¹⁶⁴

Children's Court pre-plea diversion pilot program

The Children's Court pre-plea diversion program commenced as a pilot in 2015 in four metropolitan courts and three regional courts in the Grampians. The program targets children charged with their first or second low-level offence whose sentence does not require supervision. It links them to casework-based intervention and support services tailored to their circumstances that address the causes of their offending. (The importance of tailoring diversion programs to match young offenders' needs was highlighted in evidence provided by Ms Lisa Ward of the Sentencing Advisory Council, who stated: 'If the youth justice system treats everyone the same, there is the risk that you really will be mistargeting the intervention.'¹⁶⁵)

Diversion assessments are conducted by case managers, families, Victoria Police and legal representatives. Case managers report back to the court about suitability for diversion and, if the program has been completed successfully, the young person's compliance.¹⁶⁶ The program pilot had a 94 per cent successful completion rate and showed improved engagement in education, employment prospects and mental health outcomes in participants.¹⁶⁷ The program has since been expanded statewide under the *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017*.¹⁶⁸

¹⁶³ Youth Affairs Council of Victoria, *Submission*, no. 10. p. 58; YouthLaw, *Submission*, no. 12. pp. 24-5; Cohealth, *Submission*, no. 19. p. 27; Julian Pocock, Director, Public Policy and Practice Development, Berry Street, *Transcript of evidence*, 19 April 2017. p. 25.; Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. p. 183.

¹⁶⁴ Caitlin Grover, *Youth Justice in Victoria: Research Paper No. 2, April 2017*, Parliamentary Library and Information Service, Melbourne, 2017. pp. 11-2; Victorian Council of Social Services, *Submission*, no. 20. pp. 33-4.

¹⁶⁵ Lisa Ward, Sentencing Advisory Council, *Transcript of evidence*, 17 March 2017. p. 41.

¹⁶⁶ Youth Affairs Council of Victoria, *Submission*, no. 10. p. 55; Childrens Court of Victoria, 'Youth Diversion', viewed 7 June 2017.

¹⁶⁷ Victorian Council of Social Services, *Submission*, no. 20. p. 34; Youth Affairs Council of Victoria, *Submission*, no. 10. p. 56.

¹⁶⁸ Caitlin Grover, *Youth Justice in Victoria: Research Paper No. 2, April 2017*, Parliamentary Library and Information Service, Melbourne, 2017. p. 14; Youth Affairs Council of Victoria, *Submission*, no. 10. p. 9; Childrens Court of Victoria, 'Youth Diversion', viewed 7 June 2017; YouthLaw, *Submission*, no. 12. p. 29; Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017 Part 9.

ROPES Program

The ROPES Program is a statewide court diversion program operating since 2002 aimed at young people under the age of 18 at the time of their first minor offence. The young person must admit to their offence (which must be triable summarily, but not punishable by a minimum or fixed sentence or penalty) and be deemed a suitable candidate for the program. The program involves a ropes or rock climbing course with police officers (thereby aiming to build positive interactions and experiences with police) as well as education about the implications of a criminal record. Inclusion in the program is dependent upon a police recommendation of suitability.¹⁶⁹ Successful completion of the program results in police recommending to the court that the charge be struck out.¹⁷⁰ The ROPES program has reported a success rate of around 90 per cent..¹⁷¹

Right Step

Right Step is a more intensive, case management-based diversion plan tailored to individual circumstances offered in the Moorabbin Children's Court. Right Step focuses on specific issues such as substance abuse, mental illness, family breakdown, housing and disconnection from education. It runs for eight weeks and upon completion the case manager reports to the magistrate. If satisfied the young offender has completed the program, the magistrate will dismiss the charge(s). Recent evaluation of Right Step has shown that 61 per cent of young offenders who successfully complete the Right Step program do not go on to reoffend after two years.¹⁷²

Youth Justice Community Support Service

The Youth Justice Community Support Service aims to address drivers of youth offending through casework, support programs, and referrals to services for young people and their families. Victoria Police is currently able to refer at-risk youth to the program.¹⁷³ The community support service is offered by a

169 Caitlin Grover, *Youth Justice in Victoria: Research Paper No. 2, April 2017*, Parliamentary Library and Information Service, Melbourne, 2017. pp. 10-1; Judge Paul Grant, 'Interventions that work: dealing with young people in conflict with the law.', Paper presented at the *Young People, Crime and Community Safety: engagement and early intervention - Australian Institute of Criminology International Conference*, Australian Institute of Criminology, Melbourne, 2008. pp. 1-3; Smart Justice for Young People, *Youth Diversion makes sense*, Smart Justice for Young People, Melbourne. pp. 3, 5; Reserve Magistrate Peter Power, *Research Materials: Chapter 11 Sentencing*, Children's Court of Victoria, Melbourne, 2016. pp. 176-7.

170 Caitlin Grover, *Youth Justice in Victoria: Research Paper No. 2, April 2017*, Parliamentary Library and Information Service, Melbourne, 2017. pp. 10-1; Youth Affairs Council of Victoria, *Submission*, no. 10. p. 55.

171 Youth Affairs Council of Victoria, *Submission*, no. 10. p. 56; Judge Paul Grant, 'Interventions that work: dealing with young people in conflict with the law.', Paper presented at the *Young People, Crime and Community Safety: engagement and early intervention - Australian Institute of Criminology International Conference*, Australian Institute of Criminology, Melbourne, 2008. pp. 1-3; Smart Justice for Young People, *Youth Diversion makes sense*, Smart Justice for Young People, Melbourne. p. 8; Reserve Magistrate Peter Power, *Research Materials: Chapter 11 Sentencing*, Children's Court of Victoria, Melbourne, 2016. pp. 176-7.

172 Youth Affairs Council of Victoria, *Submission*, no. 10. p. 56; Smart Justice for Young People, *Youth Diversion makes sense*, Smart Justice for Young People, Melbourne. pp. 3, 8.

173 YouthLaw, *Submission*, no. 12. p. 29.

consortium of not-for-profit providers, including Jesuit Social Services, Youth Support + Advocacy Service, Salvocare East, VincentCare, Wombat and VICSEG, together with DHHS.¹⁷⁴

Justice reinvestment programs

Justice reinvestment accesses community knowledge to allow communities to direct funding where it most effectively tackles the underlying causes that contribute to offending behaviour.¹⁷⁵ Justice reinvestment is discussed in Section 11.4.

FINDING 5: Employing a wide range of community-based diversion programs allows the youth justice system to tailor responses to individual young offenders and respond to changes in offending trends.

3.5 Areas for improvement

The Committee has identified several areas where Victoria's diversion programs can be improved. While Victoria has implemented a range of diversion pilot programs, to date few have received ongoing funding or been rolled out across the State.¹⁷⁶ Pilot programs allow governments and departments to 'road test' proposed programs and the Committee acknowledges that not all programs are suitable for expansion or should continue past their initial implementation. However, not applying learning and evidence from successful trial programs or guaranteeing their funding beyond three or four years is an ineffective use of resources and reduces the positive impact these interventions have on young offenders and their communities.

The Committee heard evidence that diversion programs implemented in Victoria need to:

- Focus on specific at-risk groups (e.g. over-represented populations, very young offenders, small cohorts of young people with multiple offences etc.)
- Provide more varied group and individual support options
- Run at different times, such as after hours or on weekends

¹⁷⁴ Caitlin Grover, *Youth Justice in Victoria: Research Paper No. 2, April 2017*, Parliamentary Library and Information Service, Melbourne, 2017. pp. 26-7.

¹⁷⁵ Legal and Constitutional Affairs References Committee, *Value of a justice reinvestment approach to criminal justice in Australia*, The Australian Senate, Canberra, 2013; YouthLaw, *Submission*, no. 12. p. 31; Change the Record, *Submission*, no. 61. p. 3; Victorian Ombudsman, *Investigation into the rehabilitation and reintegration of prisoners in Victoria*, Victorian Ombudsman, Melbourne, 2015.

¹⁷⁶ Youth Affairs Council of Victoria, *Submission*, no. 10. pp. 50-1; Victorian Council of Social Services, *Submission*, no. 20. p. 34; Trish McCluskey, Director, Strategic Initiatives, Berry Street, *Transcript of evidence*, 19 April 2017. p. 26.

- Run for different lengths of time – currently the main diversion programs run in the short- or medium-term (up to eight weeks), but some segments of the population need more intensive, focused and longer-term intervention than these existing programs are able to provide.¹⁷⁷

Overall, the coordination and wider implementation of diversion programs can be improved.¹⁷⁸ Currently, program implementation varies across the State and does not connect with community-based specialist support services (such as drug and alcohol programs, mental health services etc.) as well as it should. This variation is particularly glaring in rural and regional areas, which remain underserved. The uneven distribution and lack of coordinated service delivery increases the likelihood of inequitable diversion outcomes based on where an at-risk child or young person lives. This form of ‘postcode justice’ risks entrenching disadvantage and compounding risk factors for offending in some parts of Victoria.¹⁷⁹

Dr Julie Edwards, CEO of Jesuit Social Services, spoke on this subject, telling the Committee that lack of coordination was more of a problem than lack of resourcing. She said:

...what we find often is there are a plethora of services in fact. It is not that they are under-served, but what is lacking often is a clear vision...and purpose about what people are trying to achieve there. So what happens is often there are a whole lot of disparate services that are not coordinated in a way to produce the larger, bigger, long-term effects that we want.¹⁸⁰

Similarly, Judge Michael Bourke from the Youth Parole Board identified the lack of an organised system reaching at-risk communities. He argued that despite the best of intentions, social services in Victoria underachieve in how they engage with and divert at-risk young people. Judge Bourke told the Committee:

...our system has not had a settled, organised, permanent process of getting out there and finding out who they are and linking up the youth justice system to them. They are out there willing to do it, but I think there needs to be something really settled, with good people and highly organised to make sure that you are out there speaking to the right people and listening to them and setting up the programs and assisting the programs, and using the programs that they have got there.¹⁸¹

Judge Bourke and Professor Laidler both argued that one government department should identify, assess, and coordinate support services and programs across Victoria. This would make it easier for justice representatives, such as the police, the Youth Parole Board and the Children’s Court, to obtain

177 Professor Terry Laidler, *Transcript of evidence*, 17 March 2017. p. 67; Youth Affairs Council of Victoria, *Submission*, no. 10. pp. 9, 57; YouthLaw, *Submission*, no. 12. p. 32; Victorian Aboriginal Legal Service, *Submission*, no. 15. p. 12; Victorian Council of Social Services, *Submission*, no. 20. pp. 9, 34; Australian Association of Social Workers, *Submission*, no. 27. p. 8.

178 Australian Association of Social Workers, *Submission*, no. 27. pp. 7-8; Judge Michael Bourke, Chair, Youth Parole Board, *Transcript of evidence*, 17 March 2017. p. 52; Dr Bernie Geary, Board Member, Youth Parole Board, *Transcript of evidence*, 17 March 2017. p. 52; Julie Edwards, Chief Executive Officer, Jesuit Social Services, *Transcript of evidence*, 19 April 2017. p. 7.

179 Caitlin Grover, *Youth Justice in Victoria: Research Paper No. 2, April 2017*, Parliamentary Library and Information Service, Melbourne, 2017. p. 13.

180 Julie Edwards, Chief Executive Officer, Jesuit Social Services, *Transcript of evidence*, 19 April 2017. p. 7.

181 Judge Michael Bourke, Chair, Youth Parole Board, *Transcript of evidence*, 17 March 2017. p. 52.

information about the support services and diversion options available in Victoria. This approach would likely cut down on the ‘luck’ element that determines how young people currently access diversion and support services.¹⁸²

Ms Deborah Glass, Victorian Ombudsman, argued that the complexity of factors that influence a young person’s offending behaviour is beyond the remit of a single department. Rather, a ‘joined up’ or ‘whole of government’ response is required to ensure that diversion is effective. Ms Glass said:

...there has to be an approach which recognises that it is about child protection — that it is about health, mental health, drugs and alcohol abuse, education, housing. So all of these things are factors in why kids end up in youth justice in the first place and indeed why so many people end up in our prison system, so if you simply give the problem to a single department to solve, they will not solve it.¹⁸³

Mr Julian Pocock of Berry Street added that both DHHS and DJR have researched evidence-based diversion approaches for Victoria, however, neither of these have been made public or acted upon by Government. He said:

There was a paper from the Department of Justice some time ago, ‘Practical Lessons, Fair Consequences’, which sought advice on what would constitute an appropriate set of diversion programs. There has not been, as far as we are aware, really detailed follow-up from government about how to respond to the evidence that was provided to that discussion paper. There is other work that the Department of Justice and Regulation have gathered, all of which has not seen the light of day.¹⁸⁴

The Committee supports Mr Pocock’s view that all evidence on the efficacy of diversion programs gathered by the Victorian Government should be made public (when appropriately de-identified) in order to inform best practice and continual improvement.¹⁸⁵

Ideally, then, Victoria’s diversion approach should be broad, consistent and coordinated enough to identify at-risk individuals and communities and provide a strong safety net of support services. Vulnerable communities and young people can be identified by specific risk factors, such as geographic location and education levels. Therefore, place-based, ‘wrap-around’ service delivery should be implemented to improve individual outcomes and protect the whole community.¹⁸⁶

RECOMMENDATION 8: That the Department of Health and Human Services and the Department of Justice and Regulation periodically review and publically report on the effectiveness of diversion programs.

¹⁸² Ibid. p. 52; Professor Terry Laidler, *Transcript of evidence*, 17 March 2017. p. 67.

¹⁸³ Deborah Glass, Ombudsman, Victorian Ombudsman, *Transcript of evidence*, 17 March 2017. p. 6.

¹⁸⁴ Julian Pocock, Director, Public Policy and Practice Development, Berry Street, *Transcript of evidence*, 19 April 2017. p. 25.

¹⁸⁵ Ibid. p. 25.

¹⁸⁶ YouthLaw, *Submission*, no. 12. p. 30; Julie Edwards, Chief Executive Officer, Jesuit Social Services, *Transcript of evidence*, 19 April 2017. p. 3; Trish McCluskey, Director, Strategic Initiatives, Berry Street, *Transcript of evidence*, 19 April 2017. p. 26.

3.6 Early intervention

The concept of early intervention is discussed only briefly here, as it is closely linked with social disadvantage, discussed in more detail in Chapter 2.

Clearly, there is a strong need for sustained, early interventions aimed at young people who are at risk of offending. Ms Ward argued that this group was ‘a glaring target for intervention’ and intervening and diverting this group was an effective way to reduce offending. She said:

The key to reduced offending by young people really is to interrupt that trajectory, to look at a whole lot of waypoints in that trajectory to intervene and stop the movement through into the adult criminal justice system. These early intervention responses are obviously likely to be located outside the justice system in partnership with schools, primary health, Child FIRST, child protection.¹⁸⁷

Armytage and Ogloff called for increased funding for early intervention programs as the current arrangement ‘...reduces the ability of the youth justice system to intervene to address the risk of offending and harm to community when that risk is first identified in adolescence.’¹⁸⁸

The Victorian Government recently announced new funding and support for early intervention programs.¹⁸⁹

The Committee agrees with Armytage and Ogloff that strengthening early intervention programs will allow the youth justice system to effectively intervene in the lives of young people at risk of offending.¹⁹⁰

¹⁸⁷ Lisa Ward, Sentencing Advisory Council, *Transcript of evidence*, 17 March 2017. pp. 39, 42.

¹⁸⁸ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. p. 179.

¹⁸⁹ Youth Affairs Council of Victoria, *Submission*. pp. 9-10; YouthLaw, *Submission*. p. 31.

¹⁹⁰ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 1*, Victorian Government, Melbourne, 2017. pp. 38, 64, 66, 68.

4 The Children’s Court

*We have a Children’s Court because we accept, as a community, that young offenders should be dealt with differently to adults.*¹⁹¹

4.1 Introduction

The Children’s Court of Victoria was established in 1906.¹⁹² It operates as a special court under the provisions of the *Children, Youth and Families Act 2005*¹⁹³ and has jurisdiction over most matters relating to young people aged between 10–18 years.¹⁹⁴ This includes remand, which is discussed in Chapter 5 of this Final Report.

The Children’s Court is comprised of:

- Family Division – which hears child protection and intervention proceedings
- Criminal Division – which hears matters relating to criminal offending by children and young people
- Koori Court Criminal Division – which deals with matters relating to criminal offending by Koori children and young people other than sexual offences
- Neighbourhood Justice Centre – an Australian first community justice court in the City of Yarra, focusing on local problems and testing new approaches to crime prevention and safety.¹⁹⁵

Although it can sit anywhere, the Children’s Court sits mainly in locations in Melbourne, Broadmeadows and Moorabbin, as well as local magistrates’ courts in metropolitan and regional areas.¹⁹⁶

¹⁹¹ Helen Fatouros, ‘Is our youth justice system really broken?’, Paper presented at the *Castan Centre for Human Rights Law Conference*, Melbourne, 2016. p. 10.

¹⁹² Children’s Court of Victoria, ‘History’, viewed 1 August 2017; Judge Amanda Chambers, President, Children’s Court of Victoria, *Transcript of evidence*, 27 June 2017. p. 40.

¹⁹³ *Children, Youth and Families Act 2005* (Victoria), 96/2005. Part 7.

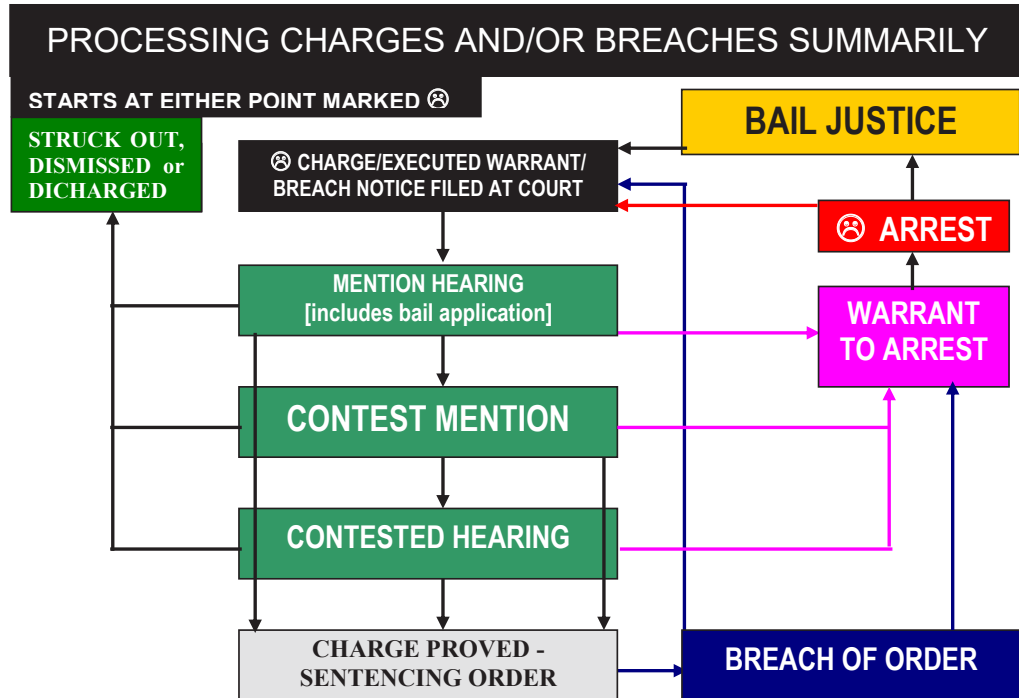
¹⁹⁴ Law Institute of Victoria, *Submission*, no. 31. p. 10; Helen Fatouros, ‘Is our youth justice system really broken?’, Paper presented at the *Castan Centre for Human Rights Law Conference*, Melbourne, 2016. p. 10; Jesuit Social Services, *Thinking Outside: Alternatives to remand for children (Research Report)*, Jesuit Social Services, Richmond, 2013. p. 21; Sentencing Advisory Council, *Sentencing Children and Young People in Victoria*, Sentencing Advisory Council, Melbourne, 2012. p. vii; s516(1)(b) of the *Children, Youth and Families Act 2005* specifically excludes seven death-related indictable offences (murder, attempted murder, manslaughter, child homicide, defensive homicide, arson causing death, and culpable driving causing death) from the Children’s Court’s jurisdiction.

¹⁹⁵ Judge Amanda Chambers, President, Children’s Court of Victoria, *Transcript of evidence*, 27 June 2017. p. 40; Reserve Magistrate Peter Power, *Research Materials: Chapter 2 Court Overview*, Children’s Court of Victoria, Melbourne, 2016. p. 5; Children’s Court of Victoria, ‘Role of the Court’, viewed 1 August 2017; Neighbourhood Justice Centre, ‘About Us’, viewed 15 August 2017; Neighbourhood Justice Centre, *Australia’s first community justice centre*, Neighbourhood Justice Centre, Melbourne.

¹⁹⁶ Judge Amanda Chambers, President, Children’s Court of Victoria, *Transcript of evidence*, 27 June 2017. p. 40; Children’s Court of Victoria, ‘Court Locations’, viewed 1 August 2017; Reserve Magistrate Peter Power, *Research Materials: Chapter 2 Court Overview*, Children’s Court of Victoria, Melbourne, 2016. p. 4; Jesuit Social Services, *Thinking Outside: Alternatives to remand for children (Research Report)*, Jesuit Social Services, Richmond, 2013. p. 21.

In recent years, the Children's Court has seen a large decline in the number of criminal matters it hears, from 6,633 cases in 2008–09 to 2,429 in 2014–15.¹⁹⁷

Figure 4.1 Children's Court of Victoria charge process



Source: Reserve Magistrate Peter Power, *Research Materials: Chapter 10 Criminal Division - Procedure*, Children's Court of Victoria, Melbourne, 2016. p. 13.

4.2 Related divisions and services

4.2.1 Youth Parole Board

The Youth Parole Board is established under s442 of the Act. It has jurisdiction over young people sentenced to a period of detention in a youth justice centre and determines whether they can serve part of their custodial sentence in the community (grant parole), supervised by parole workers.¹⁹⁸ It also has the power to transfer young people between youth justice centres, serve warnings to young people and cancel parole.¹⁹⁹

The Board is made up of a judge of the County Court, two community members, and one member from DJR.²⁰⁰ It meets twice a month at Parkville Youth Justice Precinct, though it does have ad hoc meetings as required and may hold meetings at Malmsbury.²⁰¹

197 Judge Amanda Chambers, President, Children's Court of Victoria, *Transcript of evidence*, 27 June 2017. p. 40.

198 *Children, Youth and Families Act 2005* (Victoria), 96/2005. s442.

199 Youth Parole Board, *Annual Report*, Youth Parole Board, Melbourne, 2016. pp. 1, 6-7.

200 Youth Parole Board, *Annual Report*, Melbourne, 2016-17. p. 10.

201 Youth Parole Board, *Annual Report*, Youth Parole Board, Melbourne, 2016. p. 3.

Generally, the Board considers all sentences of six months or more as eligible for parole. Sentences of less than this may be granted parole for up to one-third of the sentence.²⁰² In determining parole, the Youth Parole Board interviews young offenders and considers case histories, client service plans, progress reports, the parole plan and special reports such as psychiatric reports.²⁰³ The decision takes into account:

- Comments by custodial staff, parole officers, psychologists, medical practitioners and other professionals, including the Court
- The interests of and potential for risks to the community
- Victims' wellbeing
- The interests and age of the young person
- Capacity for parole to assist the young person's rehabilitation
- The nature and circumstances of the offences
- Submissions made by the young person, the young person's family, friends and potential employers.²⁰⁴

In 2016–17, the Youth Parole Board:²⁰⁵

- Considered 2,650 matters
- Issued 201 parole orders
- Cancelled 94 parole orders – 28 for reoffending and 66 for failing to comply with parole conditions
- Supervised the successful completion of 74 parole orders (some of which were current from the previous year)
- Gave 23 formal warnings concerning unsatisfactory behaviour in custody or on parole
- Transferred four young adults to an adult facility.

Young people on parole are supervised by youth parole officers. They work in conjunction with the Youth Justice Community Support Service to assist the young person to reconnect to their family and community, education or employment, and accommodation. Youth parole officers also monitor behaviour, including work or school attendance, and ensure compliance with special bail conditions. They then provide regular progress reports to the Youth Parole Board.²⁰⁶

²⁰² Department of Health and Human Services, *Youth Parole and Youth Residential Boards of Victoria (Fact Sheet)*, Department of Health and Human Services, Melbourne.

²⁰³ Youth Parole Board, *Annual Report*, Youth Parole Board, Melbourne, 2016. p. 2; Reserve Magistrate Peter Power, *Research Materials: Chapter 7 Criminal Division - General*, Children's Court of Victoria, Melbourne, 2016.

²⁰⁴ Youth Parole Board, *Annual Report*, Youth Parole Board, Melbourne, 2016. p. 4.

²⁰⁵ *Ibid.* p. viii.

²⁰⁶ *Ibid.* p. 11; Department of Human Services, 'Parole planning', viewed 24 August 2017.

The Committee considered the role of peer mentors and parole. Ms Clare Seppings spoke with the Committee about her Churchill fellowship that studied the rehabilitative role that ex-offenders can play as peer mentors. She discussed the value of tapping into the experience and expertise of ex-offenders, using the Irish Parole Board as an example. Ms Seppings said:

Quite interestingly, the chair of the Parole Board in Ireland regularly takes a former prisoner, an ex-prisoner, in with him every single time he goes into a centre, because, he said, 'They're not going to listen to me'. It is that kind of use of the expertise I mean. The Irish Penal Reform Trust, on their board, brought on an ex-offender who happens to be highly qualified as well and a teacher. They realised, 'How can we be making all these policies when we have got no idea about the system and how people are living that?'.²⁰⁷

Ex-offenders who wish to become mentors offer a rich source of lived experience, prosocial connections and appropriate modelling for young offenders. However, there is a feeling among some ex-offenders that they automatically fail the Working With Children Check.²⁰⁸ This is not the case, as only some offences immediately attract a Negative Notice (known as Category A Applications²⁰⁹).

RECOMMENDATION 9: That the Victorian Government establish a rehabilitative mentoring program for young offenders.

4.2.2 Children's Court Clinic

The Children's Court Clinic was established in 1989.²¹⁰ The Clinic conducts psychological and psychiatric assessments for the Children's Court of Victoria, as well as offering limited treatment to children and young people. The Children's Court Clinic conducts drug use assessments and makes recommendations to magistrates about appropriate treatment options in both family and criminal cases.²¹¹ Approximately 30 per cent of the Clinic's referrals come from the Criminal Division of the Children's Court. In 2013–14, the Clinic received 232 criminal division referrals.²¹²

Only magistrates may refer a child to be assessed by the Children's Court Clinic. However, other stakeholders, such as staff, lawyers and parents, can request the magistrate to order a Clinic report.²¹³

²⁰⁷ Claire Seppings, *Transcript of evidence*, 17 March 2017. p. 34.

²⁰⁸ Akolda, Youth Affairs Council Victoria, *Transcript of evidence*, 19 April 2017. p. 4.

²⁰⁹ 'Working with Children Check: Application assessment', viewed 2 October 2017.

²¹⁰ Reserve Magistrate Peter Power, *Research Materials: Chapter 12 Children's Court Clinic*, Children's Court, Melbourne, 2015. p.5.

²¹¹ Children's Court of Victoria, 'Children's Court Clinic', viewed 15 August 2017; The Salvation Army, *Submission*, no. 30. pp. 11-2.

²¹² Reserve Magistrate Peter Power, *Research Materials: Chapter 12 Children's Court Clinic*, Children's Court, Melbourne, 2015. p. 5.

²¹³ Children's Court of Victoria, 'Children's Court Clinic', viewed 15 August 2017.

4.2.3 Neighbourhood Justice Centre

The Neighbourhood Justice Centre is a neighbourhood-focused court in the City of Yarra that addresses local problems through creating partnerships within and external to the justice system. It opened in 2007 and is the first of its kind in Australia. It includes: a Community Justice Advisory Group comprised of residents, traders, police, council and local government; and a Client Services team providing assessment and development of individual treatment plans.

The Neighbourhood Justice Centre aims to address the causes of offending and can refer offenders to on-site specialist services such as drug and alcohol counselling, mental health services, and housing and employment support. It has been successful in reducing reoffending, with offenders 14 per cent less likely to reoffend compared to standard courts.²¹⁴

4.3 Sentencing

*It is not about tough and soft; it is not about good and bad. It is a balancing act that is often designed to manage competing objectives — for example, punishment, rehabilitation, which do not always sit comfortably together. It is a complex process that necessarily involves an individualised response to the case before a judge or a magistrate.*²¹⁵

4.3.1 Young offenders (10–18 years)

Unlike adult sentencing guidelines,²¹⁶ guidelines for sentencing young people do not list punishment, deterrence or protection of the community as part of the purpose of sentencing.²¹⁷²¹⁸ However, Armytage and Ogloff argue that these should be taken into account (see their Chapter 2).

The Children's Court may defer sentencing under ss360(2) and 414(4) of the Act if: this is in the young person's interests; the young person agrees; and the young person is found suitable for participation in group conferencing (see Chapter 3 of this Final Report).²¹⁹ Additionally, the decisions of the Children's Court must take into consideration relevant human rights charters, such as:²²⁰

214 Neighbourhood Justice Centre, 'About Us', viewed 15 August 2017; Neighbourhood Justice Centre, *Australia's first community justice centre*, Neighbourhood Justice Centre, Melbourne.

215 Helen Fatouros, Executive Director of Criminal Law Services, Victoria Legal Aid, *Transcript of evidence*, 30 May 2017. p. 38.

216 *Sentencing Act 1991* (Victoria), 49. s 5(1).

217 Law Institute of Victoria, *Submission*, no. 31. p. 10; Sentencing Advisory Council, *Sentencing Children and Young People in Victoria*, Sentencing Advisory Council, Melbourne, 2012. pp. 58-61.

218 In their recent Youth Justice Review and Strategy report, Penny Armytage and Professor James Ogloff believe that this should be considered. For further discussion, please see chapter 2 of their report. Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 1*, Victorian Government, Melbourne, 2017.

219 *Children, Youth and Families Act 2005* (Victoria), 96/2005. Ss 360(2) & 414(4); Law Institute of Victoria, *Submission*, no. 31. p. 172.

220 See Appendix 3 for more complete details of these and other human rights charters referred to in this Final Report.

- The Beijing Rules (13.1 and 19.1 – detention only as a measure of last resort and for the minimum necessary period)²²¹
- The Havana Rules:
 - 17 – Children to be brought to trial as quickly as possible
 - 28 – Children to be treated in a way that is appropriate for their age²²²
- Convention on the Rights of the Child:
 - Article 37(b) detention of children is a measure of last resort.²²³

Justice Bell states in *DPP v SL* that these human rights highlight ‘...that children are especially vulnerable to physical and emotional harm and negative formative influence in criminal detention, and to discriminatory exclusion in the operation of the processes of the criminal law.’²²⁴

The Supreme Court further held in *DDP v SL* that in order to meet human rights obligations under the Charter sentencing procedures for young people must be (chronological) age appropriate and rehabilitation focused.²²⁵ This has been upheld as also applying to young people on remand who apply for bail.²²⁶

The Act prioritises non-custodial sentences with s412(1)(c) stating that in order to sentence a young person to detention the Court must be satisfied that no other sentence is appropriate.²²⁷ In this way, Victoria adheres to the principle of detention as a last resort and for the shortest appropriate time.

Principles regarding detention are discussed in more detail in Chapter 3.

4.3.2 Young adults (18–21) and the dual track system

Sentencing of young adults (18–21) falls under the *Sentencing Act 1991* and decisions are made in the Magistrates, County or Supreme Courts. The *Sentencing Act 1991* allows these courts to consider sentencing young adults to serve their custodial sentences in youth justice centres rather than adult prisons as part of Victoria’s ‘dual track’ system.²²⁸ In order to qualify for a youth justice centre order the Court must be convinced that the offender has ‘...reasonable prospects of rehabilitation and that he or she is particularly impressionable, immature, or likely to be subjected to undesirable influences in an adult prison.’²²⁹

221 United Nations (1985), *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”)* United Nations.

222 United Nations (1990), *United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules)*, United Nations.

223 United Nations (1990), *Convention on the Rights of the Child*, United Nations.

224 *DPP v SL*, 2016; Law Institute of Victoria, *Submission*, no. 31. pp. 11-2.

225 *DPP v SE*, 2017; Law Institute of Victoria, *Submission*, no. 31. pp. 11-2.

226 *DPP v SE*, 2017; Law Institute of Victoria, *Submission*, no. 31. pp. 11-2.

227 *Children, Youth and Families Act 2005* (Victoria), 96/2005. S 412(1)(c).

228 Sentencing Advisory Council, *Changes to Sentencing Practice: Young Adult Offenders*, Melbourne, 2015. p. 2.

229 *Ibid.* p. 2; *Sentencing Act 1991* (Victoria), 49. s32(1).

The dual track system, which is unique to Victoria, is born from an understanding that some young adults are relatively immature and therefore both less culpable for their actions and more likely to benefit from rehabilitation in a youth justice setting as compared to an adult one.²³⁰ The principle of taking a young offender's age and prospects of rehabilitation into account when sentencing has been upheld in case law and in the Court of Appeal.²³¹

Further, *R v Mills* sets out general propositions for young adult offenders and the avoidance of sentencing young adults to adult prisons wherever possible, stating:

Youth of an offender, particularly a first offender, should be a primary consideration for a sentencing court where that matter properly arises.

In the case of a youthful offender, rehabilitation is usually far more important than general deterrence. This is because punishment may in fact lead to further offending. Thus, for example, individualised treatment focusing on rehabilitation is to be preferred. (Rehabilitation benefits the community as well as the offender.)

A youthful offender is not to be sent to an adult prison if such a disposition can be avoided especially if he is beginning to appreciate the effect of his past criminality. The benchmark for what is serious as justifying adult imprisonment may be quite high in the case of a youthful offender; and, where the offender has not previously been incarcerated, a shorter period of imprisonment may be justified. (This proposition is a particular application of the general principle expressed in s. 5(4) of the Sentencing Act.)²³²

The Committee received strong evidence in favour of Victoria's dual track system from stakeholders during this Inquiry and agrees it should be retained as part of the youth justice system.²³³ Research conducted by the Sentencing Advisory Council shows that between 2005 and 2009 approximately half of young adult offenders were sentenced to a youth justice facility.²³⁴

4.4 Identified problems with the Children's Court

The Committee found that sentencing of young offenders in Victoria is based on sound policy and heeds relevant human rights. However, there are areas for improvement, particularly in relation to case processing time and the amount of time young people spend on remand.²³⁵ Despite some changes being necessary, it is clear that a complete restructuring of the Children's Court or sentencing

²³⁰ Sentencing Advisory Council, *Changes to Sentencing Practice: Young Adult Offenders*, Melbourne, 2015. p. 2.

²³¹ *Ibid.* p. 2.

²³² *Ibid.* p. 2; *R v Mills*, 1998.

²³³ Youth Affairs Council of Victoria, *Submission*, no. 10. p. 71; YouthLaw, *Submission*, no. 12. p. 30; The Salvation Army, *Submission*, no. 30. pp. 11-2; Law Institute of Victoria, *Submission*, no. 31. p. 11; Cohealth, *Submission*, no. 19. p. 34; Victoria Alcohol and Drug Association, *Submission*, no. 39. p. 3; Victorian Council of Social Services, *Submission*, no. 20. p. 17; Dr Jessie Mitchell, Policy Manager, Youth Affairs Council Victoria, *Transcript of evidence*, 19 April 2017. p. 2.

²³⁴ Sentencing Advisory Council, *Changes to Sentencing Practice: Young Adult Offenders*, Melbourne, 2015. p. 3.

²³⁵ Issues about high numbers of children and young people on remand are considered in more detail in Chapter 5 of this report.

practices is not required. As Ms Helen Fatouros from Victoria Legal Aid told the Committee, neither police nor prosecutors are appealing the Court's decisions in large numbers, a clear sign that the Court is generally functioning well.²³⁶

4.4.1 Delays and slow sentencing times

*The Children's Court needs to be able to respond to young people's offending behaviour in a much more timely way, in days, not weeks.*²³⁷

The most common criticism of the Children's Court raised to the Committee concerned delays in processing cases.²³⁸ This is despite the large drop in cases heard by the Court in recent years. Of particular concern is the amount of time taken to process young people on remand.²³⁹

Judge Michael Bourke, Chair of the Youth Parole Board, told the Committee that the delays have increased over the past several years, with the Youth Parole Board taking notice in 2016 when they became worse than those in the adult system. By January 2017, some cases were taking over 100 days to be resolved.²⁴⁰ Further information from 2016 provided to the Committee by the Youth Parole Board showed the pre-sentence time for some cases taking close to half of the total sentence.²⁴¹

Table 4.1 Comparison of case processing times in the Children's Court and Magistrate's Courts in Victoria, 2012-16

		Children's Court	Magistrate's Court
		per cent	per cent
2012-13	Cases finalised <6 months	85	88.1
	Cases finalised 6 months <	15	11.9
2013-14	Cases finalised <6 months	87	87.0
	Cases finalised 6 months <	13	13.0
2014-15	Cases finalised <6 months	89	89.9
	Cases finalised 6 months <	11	10.1
2015-16	Cases finalised <6 months	88	84.3
	Cases finalised 6 months <	12	15.7

Source: Compiled from data from: Children's Court of Victoria, *Annual report 2014-15*, Children's Court of Victoria, Melbourne, 2015. p. 21; Children's Court of Victoria, *Annual Report 2015-16*, Children's Court of Victoria, Melbourne, 2016. p. 31; Magistrates Court of Victoria, *Annual Report 2015-16*, Magistrates Court of Victoria, Melbourne, 2016. p. 77.

²³⁶ Helen Fatouros, Executive Director of Criminal Law Services, Victoria Legal Aid, *Transcript of evidence*, 30 May 2017. p. 13.

²³⁷ Professor Terry Laidler, *Submission*, no. 7. p. 4.

²³⁸ Anglicare, *Submission*, no. 36. p. 11; Victoria Legal Aid, *Submission*, no. 35. p. 9; Judge Michael Bourke, Chair, Youth Parole Board, *Transcript of evidence*, 17 March 2017. p. 45; Professor Terry Laidler, *Transcript of evidence*, 17 March 2017. p. 61.

²³⁹ YouthLaw, *Submission*, no. 12. p. 20; Anglicare, *Submission*, no. 36. p. 11.

²⁴⁰ Judge Michael Bourke, Chair, Youth Parole Board, *Transcript of evidence*, 17 March 2017. p. 45.

²⁴¹ Judge Michael Bourke, *Opening Statement*. Attachment A.

Akolda, a former young offender, discussed the pre-sentencing delays he experienced with his case with the Committee:

AKOLDA — It was probably after going to court for, I do not know, eight months in a row. Just going in and out of court.... I cannot even remember how many times, but I remember it was almost over half a year of going in and out of court.

Ms CROZIER — Because you had breached bail or conditions?

AKOLDA — No, just because it kept getting adjourned. I breached bail once as well, but that did not change what I was already charged for.²⁴²

Ms Julie Edwards from Jesuit Social Services pointed to a lack of coordination among the players involved in young offenders' cases. She told the Committee:

We have also got clogging up of courts at the moment. So it might have been that a young person ends up coming into the Court and the magistrate or whoever stands it down again because the work has not been done, the lawyer has not properly been briefed et cetera, so they are back in remand rather than having it heard at that time.²⁴³

Mr Greg Wilson, Secretary of Department of Justice and Regulation, concurred, stating that in part delays were the Court 'just getting their cases together'. He acknowledged the need to reduce the number of young people on remand and ensure cases are finalised more quickly.²⁴⁴

Judge Bourke added that the problems creating these delays have likely been in existence for several years.²⁴⁵ Supporting this assumption are findings from the 2009 Drugs and Crime Prevention Committee *Inquiry into Strategies to Prevent High Volume Offending and Recidivism by Young People*. That Committee identified delays in case processing, including evidence from magistrates of a large amount of cases overburdening the system.²⁴⁶

Armytage and Ogloff state that currently '...timeliness is not driving a speedy resolution and not providing certainty for young people.'²⁴⁷ This led them to recommend:

²⁴² Akolda, Youth Affairs Council Victoria, *Transcript of evidence*, 19 April 2017. p. 9.

²⁴³ Julie Edwards, Chief Executive Officer, Jesuit Social Services, *Transcript of evidence*, 19 April 2017. p. 8.

²⁴⁴ Greg Wilson, Secretary, Department of Justice and Regulation, *Transcript of evidence*, 27 June 2017. p. 13; Julia Griffith, Deputy Secretary - Youth Justice, Department of Justice and Regulation, *Transcript of evidence*, 27 June 2017. p. 13.

²⁴⁵ Judge Michael Bourke, Chair, Youth Parole Board, *Transcript of evidence*, 17 March 2017. p. 45.

²⁴⁶ Drugs and Crime Prevention Committee, *Inquiry into Strategies to Prevent High Volume Offending and Recidivism by Young People*, The Committee, Melbourne, 2009. p. 231; As a result of this evidence the Committee recommended that cases where young people have been formally processed for a first offence they have their matter heard for first mention within two weeks of charges being laid. The Government supported this recommendation in principle, but rejected the suggested two week processing time and indicated that the new Part 5.1A introduced into the *Children, Youth and Families Act 2005* was sufficient to improve delays in processing in the Children's Court. This Part of the Act has since been repealed.

²⁴⁷ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. p. 56.

The Sentencing Advisory Council should be given a reference to consider the most effective approach for achieving timely justice for young offenders. This should include an examination of the drivers of delayed justice and include recommendations to address them.²⁴⁸

In Chapter 3, the Committee identified that long timeframes between offence and consequence means that young offenders are less likely to associate the sentence with the crime (including detention and treatment/services). This is especially so when a young person is charged with several offences over time. This disconnect can make the court process feel unfair to the young offender or mean that they do not associate their sentence with their crime, thus reducing the effectiveness of the sentence. Conversely, a small time period between charge and sentence creates a strong causal link between a young offender's actions and sentencing, better enabling rehabilitation.

Although delays should be reduced as much as possible, data shows that Victoria performs comparatively well compared to similar jurisdictions in the rest of Australia. Table 4.2 shows delays in Children's Courts across Australia as at 30 June 2016. It should be noted that figures for Tasmania, the ACT and the Northern Territory are from very low case numbers.

Table 4.2 Backlog of cases in Children's Courts across Australia at 30 June 2016

	Vic	NSW	Qld	WA	SA	Tas	ACT	NT
	%	%	%	%	%	%	%	%
> 6 months	12.1	17.0	22.0	13.7	18.2	24.3	23.4	28.3
> 12 months	4.0	2.2	11.0	2.5	4.1	13.3	13.0	12.7

Source: Productivity Commission, *Report on Government Services 2017*, Chapter 7 Courts, p. 23.

Chapter 5 discusses recent changes to remand aimed at reducing delays in the Children's Court.

4.4.2 Lack of case consolidation

*There is nothing more frustrating than having sentenced a child only to find there are matters that date back for some time but have only just been issued before the Court.*²⁴⁹

A major contributor to delays in the Children's Court is young offenders with multiple charges not having those charges consolidated into one court appearance. Judge Bourke noted that young people completing a sentence for one charge may then be remanded almost instantly for a court hearing on another charge, thus not being eligible for release or parole. He told the Committee:

²⁴⁸ Ibid. p. 61.

²⁴⁹ Judge Amanda Chambers, President, Children's Court of Victoria, *Transcript of evidence*, 27 June 2017, p. 45.

Judge BOURKE — There just seems to me to be insufficient coordination amongst police informants and possibly prosecutors whereby you can at the very least get everything that they are charged with heard at the same time and get a proper total sentence — they know where they are — and then you look at paroling them at the appropriate time during the course of it.

Ms SYMES — So they kind of go back on remand while they are waiting for — —

Judge BOURKE — That is right. We cannot parole them.²⁵⁰

When questioned on the need for better consolidation of cases, particularly in relation to the 12-month timeframe given to police to bring charges before the Court, Judge Chambers stated that the Court does have the capacity to prompt outstanding cases to be filed if the magistrate is aware that the pending matter exists. She explained:

It is important that prosecutors that sit in the Children's Court are aware of the matters that are outstanding and need to be brought before the Court. Often they cannot tell us that. We need to be able to know that so that if I am sitting in the fast-track remand court I can say, 'Well, I want those matters all brought in before me so I can case manage them all together and finalise them within the Court'. If there are pending matters and if I am told of pending matters, what I do is require the prosecution to contact those informants and give directions for them to be filed, which I can do under the *Criminal Procedure Act*, so that they are filed earlier for very good reasons.²⁵¹

However, Judge Chambers emphasised that some of the young people experiencing long periods on remand have the most complex cases which may contain multiple charges. Judge Chambers said:

I can give an example of a matter where a child had 156 days of presentence detention. Now, that is a long time in the life of a child to be awaiting the outcome, but they had 175 charges. They were serious — they were armed robberies, burglary, theft — so 175 charges have to be managed.²⁵²

Judge Chambers informed the Committee that she did not believe the Children's Court to be particularly under-resourced. However, she was of the view that the wider network of professionals involved with the Court's processes, such as legal aid lawyers, prosecutors and other practitioners, need to be adequately resourced so that young offenders' appearance at court is 'meaningful'.²⁵³

4.4.3 Organisation structure and processes

The Committee heard evidence about ways in which that the current structure of the Children's Court could be changed. Professor Terry Laidler, who has experience with parole in the adult system, advocated merging the Children's Court and the Youth Parole Board and adopting a more tribunal-like approach.

250 Judge Michael Bourke, Chair, Youth Parole Board, *Transcript of evidence*, 17 March 2017. pp. 46-7.

251 Judge Amanda Chambers, President, Children's Court of Victoria, *Transcript of evidence*, 27 June 2017. pp. 45-6.

252 *Ibid.* pp. 45-6.

253 *Ibid.* p. 44.

The aim would be to involve a range of professionals, such as psychologists and medical and legal professionals, in a way that improves the efficiency of the Court.²⁵⁴

Judge Amanda Chambers argued that the current multi-departmental approach within the Court is functioning well. However, she did suggest that Victoria could learn from the approach taken in New Zealand and its use of pre-court group conferencing involving similar professionals. She said:

...I think is a system that works demonstrably well is the New Zealand system. There you have judges hearing matters, but they can refer every child in that case to a conference that is supported by expertise. So they have education at that table; they have a multidisciplinary approach. It is through that process that comprehensive plans are developed for children and then brought before the judge and intensively monitored by the Court...²⁵⁵

4.4.4 Difficulty understanding court processes

Justice must be swift and understood by young offenders for rehabilitation to have the best chance of succeeding. However, court processes can be difficult for young people to comprehend. Combined with delays, this further undermines their understanding of their sentence and the efficacy of deterrence or rehabilitation.²⁵⁶

Dr Jessie Mitchell, Policy Manager at the Youth Affairs Council of Victoria, stated that court proceedings are often difficult for adults to comprehend, let alone disadvantaged young people experiencing, for example, intellectual disability and language or cultural barriers.²⁵⁷ For example, Mendes et al's 2014 study *Good Practice in Reducing the Over-Representation of Care Leavers in the Youth Justice System* found that out-of-home care leavers coming into contact with the youth justice system were confused about processes and had '...little recall or understanding regarding what had transpired and why, with respect to police, courts and youth justice orders.'²⁵⁸

The Victorian Ombudsman's *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville* contains similar evidence. As an example, the Ombudsman found that many of the young people transferred to Grevillea did not understand the legal processes involved in them being moved.²⁵⁹

²⁵⁴ Professor Terry Laidler, *Transcript of evidence*, 17 March 2017.p. 61.

²⁵⁵ Judge Amanda Chambers, President, Children's Court of Victoria, *Transcript of evidence*, 27 June 2017. p. 46.

²⁵⁶ Youth Affairs Council of Victoria, *Submission*, no. 10. p. 25; Dr Jessie Mitchell, Policy Manager, Youth Affairs Council Victoria, *Transcript of evidence*, 19 April 2017. p. 9.

²⁵⁷ Dr Jessie Mitchell, Policy Manager, Youth Affairs Council Victoria, *Transcript of evidence*, 19 April 2017. p. 9.

²⁵⁸ Philip Mendes, et al., *Good Practice in Reducing the Over-Representation of Care Leavers in the Youth Justice System. Leaving Care and Youth Justice - Phase Three report*, Monash University, Melbourne, 2014. p. 68.

²⁵⁹ Victorian Ombudsman, *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville*, Victorian Ombudsman, Melbourne, 2017. pp. 16, 38.

Akolda stated that he did not understand the process he had gone through and that the language used was difficult to understand. He told the Committee: "... at the start, at the Court, I did not really understand what was going on at all, and even when the judge was talking to me the words were too hard for me to comprehend it."²⁶⁰

Akolda also provided insights into how language and cultural barriers can affect support networks such as family:

Ms CROZIER — Was your mum with you during that process?

AKOLDA — No, because even if I had told her to come, she would not have even understood what she was there for anyway, so I just told her I was in trouble full stop. That was pretty much it.

Ms CROZIER — Would you have liked her to have been with you?

AKOLDA — Definitely, yes, but I did not really see the point of her being there, because I knew she would not understand, and I did not really understand myself.²⁶¹

The Committee received other negative evidence from young offenders regarding their experience with the legal system, some of which are included below:²⁶²

The judge in court puts me down and makes me sound like a bad person. My lawyer hasn't visited me once this time. I haven't spoken to her on the phone either.

My experiences of lawyers and the courts has been bad, because I'm Aboriginal, feel like they discriminate against me.

My experiences of lawyers and the courts are being treated like rubbish and that's it.

I don't speak to my lawyer much. Last time I spoke to them was a month ago. I had court but it wasn't with my lawyer. They have never come to visit me. She says its too far to drive, but it's her job.

My experiences with lawyers and the courts and Legal Aid are irresponsible. Firstly, my lawyer never rocked up to one of my court cases which made me get adjourned a bunch of times. I've been on remand for three months and I should be sentenced by now.

The Law Institute of Victoria's Ms Fleur Ward was concerned by this evidence and informed the Committee that the LIV plans to improve the quality of legal representation available to young people. She said:

I can only say to you that I sit on the Children's Law Specialisation Committee, and of course I am the chair of the children and youth issues committee of the LIV. We have been working together on improving the quality of representation, and I will take that back. But that is disgusting if that is their experience, and I am very sorry for it on behalf of any of my colleagues who may have participated in that.²⁶³

²⁶⁰ Akolda, Youth Affairs Council Victoria, *Transcript of evidence*, 19 April 2017. p. 3.

²⁶¹ *Ibid.* pp. 9-10.

²⁶² Parkville College, *Submission*, no. 44.

²⁶³ Fleur Ward, *Transcript of evidence*, 14 June 2017. p. 56.

The Committee also received evidence on the current video link technology in Victoria. Melbourne City Mission's submission to this Inquiry argues that a lack of access to a support team in the courtroom can increase young offenders' confusion regarding the process. It states:

These young people don't get to see anyone who's supporting them at this time. All they get to see is the magistrate talking to them, then they're asked questions or they're not even spoken to. Then the video link is gone and they don't even know what's happened – they don't know whether they've been remanded or not. They feel like they're sitting for hours in a room, [only to] be ignored when they're finally 'seen to'. They do sometimes have a third person there for support, but they are physically there in the courtroom and the young person doesn't know that, because they can't see them via the video link and aren't allowed to communicate with them. It's completely cut-off altogether.²⁶⁴

Any confusion would be exacerbated for young offenders with an intellectual disability.²⁶⁵

In Chapter 11, the Committee discusses the way in which the Children's Koori Court uses less formal language in its proceedings to great effect. The Committee believes that this approach could be extended throughout the whole Children's Court.

RECOMMENDATION 10: That the Children's Court use less formal language during trials to ensure that young people better understand the court process and the link between their sentence and their offence/s.

RECOMMENDATION 11: That the Children's Court develop protocols to ensure that young people on trial are better educated about the court process and supported by people they trust, such as family members or community leaders, throughout the court process.

²⁶⁴ Melbourne City Mission, *Submission*, no. 50. p. 17.

²⁶⁵ *Ibid.* p. 18.

5 Remand

*In some cases remand is justified, however we must remember that it involves the imprisoning of people who have not been convicted of a crime. It should therefore be the option of last resort.*²⁶⁶

5.1 Introduction

Young people in Victoria can be held on remand after being arrested for an alleged criminal offence, prior to entering a plea with the court, while awaiting trial, and while awaiting sentencing.²⁶⁷ The number of young offenders on remand in Victoria is a significant problem. According to Armytage and Ogloff:

- The number of young people on remand increased from 112 in the second quarter of 2013–14 to 210 young people in the first quarter of 2016–17
- The number of young people remanded with charges including contravening bail increased from 14 in the second quarter of 2013–14 to 114 in the first quarter of 2016–17
- In the second quarter of 2013–14, nine per cent of admissions to remand were for young people charged with breach of bail. By the third quarter of 2015–16, this percentage had increased to 57 per cent but fell to 42 per cent in the first quarter of 2016–17
- Admissions to remand after hours increased from 128 in the second quarter of 2013–14 to 225 in the first quarter of 2016–17.²⁶⁸

An increase in remand numbers indicates flaws in the current remand system. The increase has also been linked with problems arising ‘downstream’ in the system, such as unrest in facilities.

5.2 The link with bail

In Victoria, s4(2)(d) of the *Bail Act 1977* states that bail will be refused if the court believes that the accused person is likely to commit an offence or pose a risk to the public. Courts can also deny bail if they lack the information needed to make a decision about a case.²⁶⁹

²⁶⁶ Jesuit Social Services, *Submission*, no. 37. p. 20.

²⁶⁷ Victorian Council of Social Services, *Submission*, no. 20. p. 38.

²⁶⁸ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. p. 306.

²⁶⁹ *Bail Act 1977* (Victoria), 9008. s4(2)(d).

Jesuit Social Services' 2011 *Young people on remand in Victoria: Balancing individual and community interests* discusses the contrasting attitudes and interests at play when courts consider bail. It notes an increasing trend across Australia of denying bail.²⁷⁰

In Victoria, to the extent that it is not inconsistent with s346 of the *Children, Youth and Families Act 2005*, the *Bail Act 1977* applies to young people. For example, reasons for refusing bail and the factors the Children's Court must take into account when determining bail are drawn from the *Bail Act 1977*.²⁷¹

If a young person is not granted bail at the time they are arrested, their case is adjourned for 21 days and they are remanded for this time. Judge Amanda Chambers, President of the Children's Court, advised the Committee that during this time:

...the clear expectation of the court is that all matters are before the court — the parties are responsible, both prosecution and lawyers, for ensuring that we have all the matters and there is not something that is going to come down the track — and that the lawyers have spoken to the child and the prosecution before the matter comes back in that 21 days.²⁷²

As is discussed in the discussion on delays in the Children's Court in Chapter 4, this clear expectation is currently not being met in Victoria.

Young people cannot be remanded in custody for a period of longer than 21 days. If a young person is brought before the court at the expiration of their remand period, the court has the power to continue to further remand the child, provided that each remand period is no longer than 21 days.²⁷³ Young people on remand are typically held at the Parkville Youth Justice Precinct.

5.3 Current problems with remand

*Eighty per cent of your kids are pre-trial; they are in remand. That is outrageous. That is scandalous.*²⁷⁴

The main problems with remand in Victoria's youth justice system, which will be considered in detail in the following sections, include:

- Increasing numbers of young people on remand out of proportion to offending and sentencing rates and historic trends
- Young people held on remand for uncertain, and increasingly long, periods of time

270 Dr Matthew Ericson and Professor Tony Vinson, *Young people on remand in Victoria: Balancing individual and community interests*, Jesuit Social Services, Melbourne, 2011. p. 14.

271 *Bail Act 1977* (Victoria), 9008; *Children, Youth and Families Act 2005* (Victoria), 96/2005.

272 Judge Amanda Chambers, President, Children's Court of Victoria, *Transcript of evidence*, 27 June 2017. p. 43.

273 Reserve Magistrate Peter Power, *Research Materials: Chapter 9 Criminal Division - Custody and Bail*, Children's Court of Victoria, Melbourne, 2016. p. 2; Jesuit Social Services, *An escalating problem: Responding to the increased remand of children in Victoria*, Jesuit Social Services, Melbourne, 2015. p. 4.

274 Vincent Schiraldi, Justice Policy Institute (USA), *Transcript of evidence*, 22 March 2017. p. 16.

- Rates of young people returning to remand after being released on bail or parole and the cycle of young people leaving detention only to return on remand soon after
- Importance of, and current inadequacies in, the separation of sentenced and remand populations
- Lack of availability of support services to remandees
- Current trajectories and outcomes for remandees.

5.3.1 High numbers of young people on remand

Victoria's youth justice centres are currently housing an unprecedented number of young people on remand. The trend has been developing over several years and has reached the point where at times as many as 80 per cent of detained young people are on remand.²⁷⁵ Judge Chambers informed the Committee that between 2013 and 2015 the remand population increased by 57 per cent, albeit from low numbers (112 in 2013 to 176 in 2015).²⁷⁶

Ms Julie Edwards, CEO of Jesuit Social Services, stated that a custodial remand population of 80 per cent "is pretty much unheard of". She said:

That is pretty much the opposite of what it used to be in terms of 20 per cent, with 80 per cent being sentenced. In the adult criminal justice system, for example, right now, I have been to meetings at Corrections Victoria where they are concerned about it having risen to 30 per cent of people on remand.²⁷⁷

Victoria's remand numbers were once among the best in the country. According to a 2011 Australian Institute of Health and Welfare report, Victoria at that time had the lowest rate of youth remand in the country with 0.07 per 1000 young people (10–17-year-olds) in custody compared to a national average of 0.20 per 1000.²⁷⁸

Figure 5.1 is a reproduction of a graph produced in the Victorian Ombudsman's 2017 *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville*. It is based on data provided by DHHS depicting the number of individuals placed on remand between 2009–10 and 2016–17. The graph illustrates the dramatic, consistent rise in the youth remand population from 2012–13 onwards.

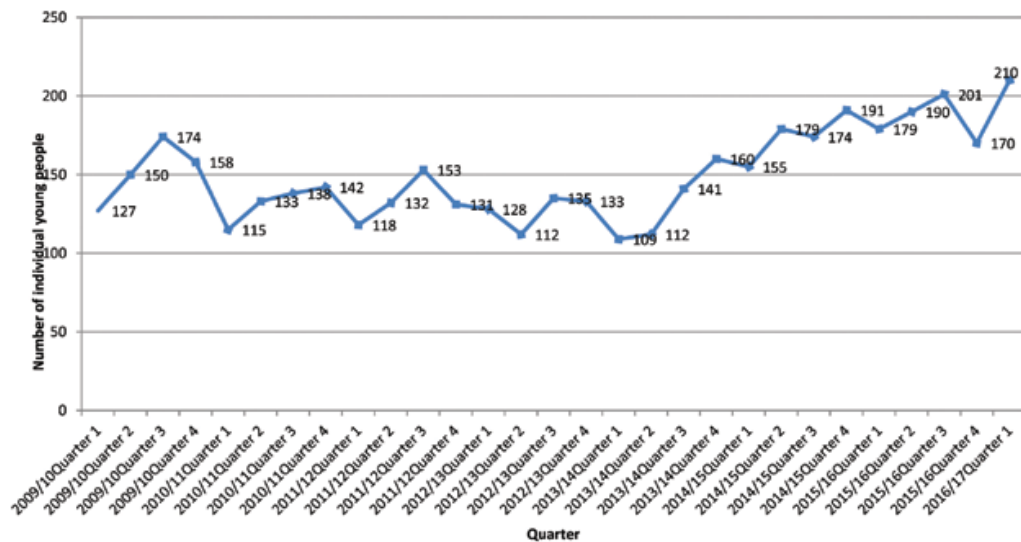
²⁷⁵ Australian Association of Social Workers, *Submission*, no. 27. p. 3; Caitlin Grover, *Youth Justice in Victoria: Research Paper No. 2, April 2017*, Parliamentary Library and Information Service, Melbourne, 2017. p. 49; Dr Matthew Ericson and Professor Tony Vinson, *Young people on remand in Victoria: Balancing individual and community interests*, Jesuit Social Services, Melbourne, 2011. p. 5.

²⁷⁶ Judge Amanda Chambers, President, Children's Court of Victoria, *Transcript of evidence*, 27 June 2017. p. 41.

²⁷⁷ Julie Edwards, Chief Executive Officer, Jesuit Social Services, *Transcript of evidence*, 19 April 2017. p. 3.

²⁷⁸ Jesuit Social Services, *Thinking Outside: Alternatives to remand for children (Research Report)*, Jesuit Social Services, Richmond, 2013. p. 13.

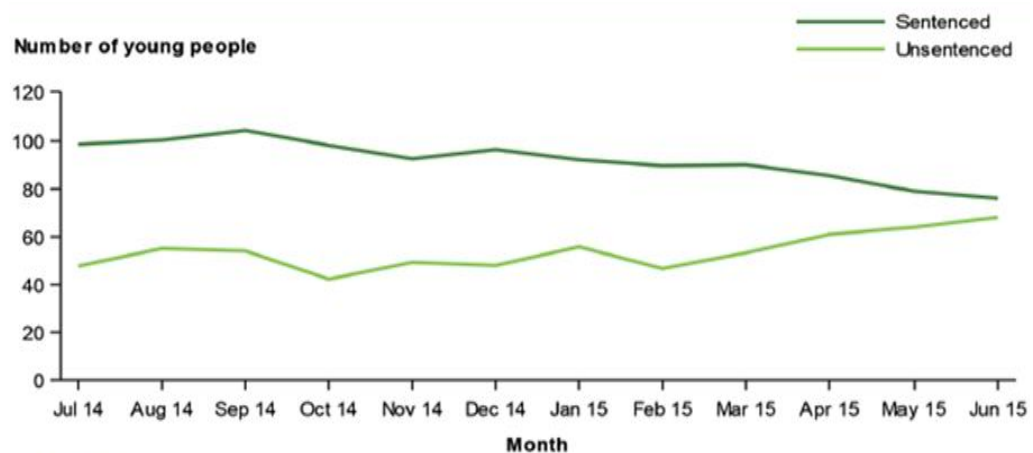
Figure 5.1 Number of individual young people admitted to remand, 2009–10 to 2016–17



Source: Victorian Ombudsman, *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville*, Victorian Ombudsman, Melbourne, 2017. p. 8.

Figure 5.2 shows that the unsentenced detention population increased as the sentenced population recently declined.²⁷⁹

Figure 5.2 Young people in remand on an average day by legal status and month, Victoria, 2014–15



Source: Australian Psychological Society, *Submission*, no. 34. p. 8.

High numbers of young people are also being returned to remand. Armytage and Ogloff showed that of 932 remand admissions in 2015–16:

- 36 per cent returned to remand for 22 to as many as 90 times in the same year
- 25 per cent returned to remand between 8 and 21 times

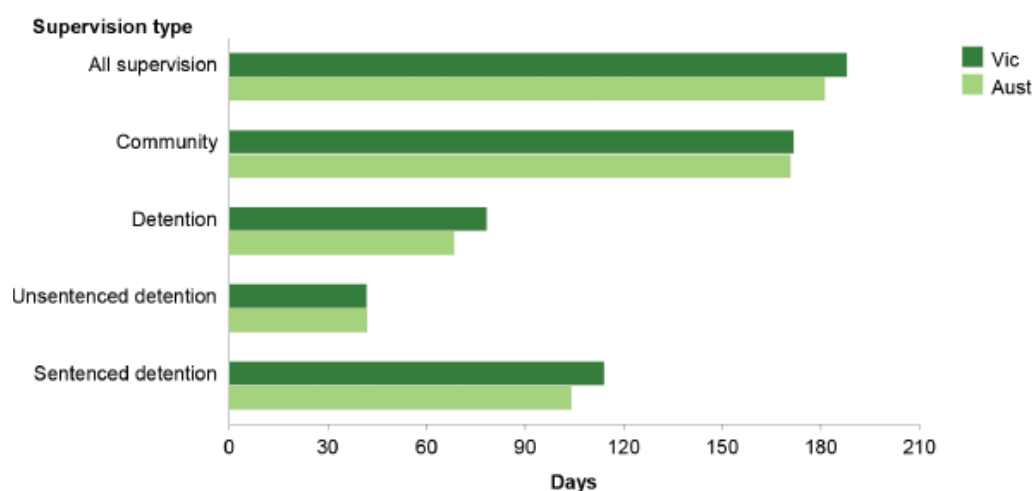
²⁷⁹ Australian Psychological Society, *Submission*, no. 34. p. 7; Judge Amanda Chambers, President, Children’s Court of Victoria, *Transcript of evidence*, 27 June 2017. p. 41.

- 24 per cent returned between two and seven times
- 15 per cent had only one remand order that year.²⁸⁰

5.3.2 Longer remand periods

According to Australian Institute of Health and Welfare data from 2014–15, the average length of time spent in unsentenced detention in Victoria was 40 days, compared to the sentenced detention time of 110 days (see Figure 5.3).²⁸¹

Figure 5.3 Average length of time young people spent under supervision during the year, by supervision type, Victoria and Australia, 2014–15



Source: Australian Psychological Society, *Submission*, no. 34, p. 8.

Armytage and Ogloff found that between 2005–06 and 2015–16 Victoria’s youth justice system experienced the following:

- A ‘significant’ increase in the number of young people placed on remand for between eight and 60 days
- A ‘concerning’ increase in the number of young people placed on remand for between 60 to more than 90 days.²⁸²

As mentioned, long delays between offence and sentencing reduces the ability of young offenders, particularly those with cognitive and developmental impairment, to understand the result of their offending. However, systemic problems and a lack of available alternatives (discussed below) are causing magistrates to rely increasingly on remand, particularly for young people with complex needs.

²⁸⁰ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. pp. 66–67.

²⁸¹ Australian Psychological Society, *Submission*, no. 34, p. 8.

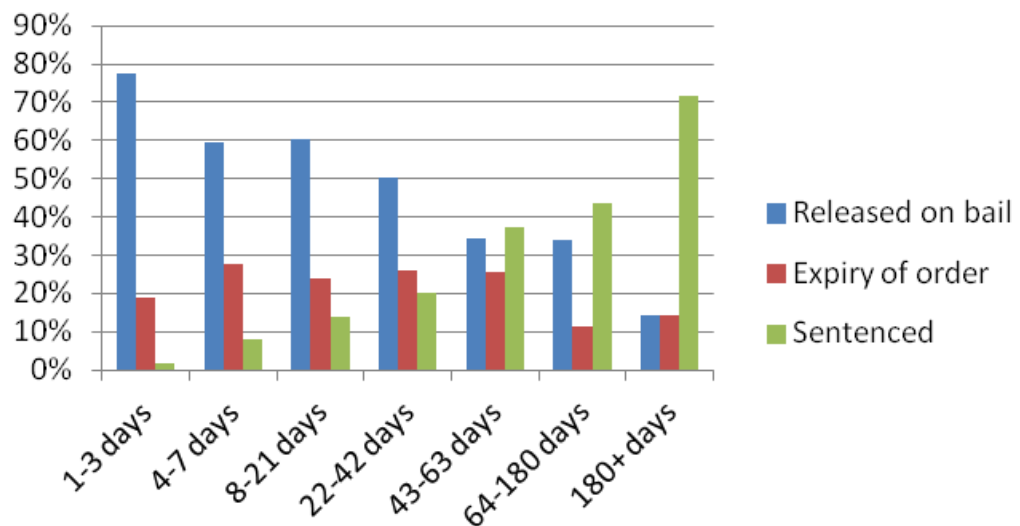
²⁸² Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. pp. 65–6.

5.3.3 Remand outcomes

*We absolutely have to get the approach right to be able to minimise the risk of them reoffending and minimise the criminogenic impact of them being housed on remand, for example, if they are not going to get a sentence of detention at the end of it.*²⁸³

Young people on remand are more likely to receive a custodial sentence and are more likely to be held on remand in the future than those on bail.²⁸⁴ However, of those young people on remand very few (20 per cent in 2012–13) actually go on to receive a custodial sentence. Combined with the number of young people released after very short periods of time on remand (1–2 days or overnight – see Figure 5.4), this indicates that remand is being used because of a lack of suitable alternatives.²⁸⁵ For example, Armytage and Ogloff report that although a range of youth justice programs to mitigate risk on bail exist, magistrates doubt their efficacy in keeping the community safe.²⁸⁶ Contributing factors are discussed in more detail below.

Figure 5.4 Major remand exit reasons by time on remand



Source: Jesuit Social Services, *Thinking Outside: Alternatives to remand for children (Research Report)*, Jesuit Social Services, Richmond, 2013. p. 67.

²⁸³ Hugh de Krester, Executive Director, Human Rights Law Centre, *Transcript of evidence*, 14 June 2017. p. 34.

²⁸⁴ Australian Association of Social Workers, *Submission*, no. 27. p. 5; Law Institute of Victoria, *Submission*, no. 31. p. 21; Australian Psychological Society, *Submission*, no. 34. pp. 12-3; Jesuit Social Services, *An escalating problem: Responding to the increased remand of children in Victoria*, Jesuit Social Services, Melbourne, 2015. p. 5.

²⁸⁵ YouthLaw, *Submission*, no. 12. p. 17; Hon. Paul Coghlan QC, *Bail Review: First advice to the Victoria Government*, Melbourne, 2017. p. 96; Australian Institute of Health and Welfare, *Young people in unsentenced detention: 2014-15 - Youth Justice fact sheet no. 67*, Australian Institute of Health and Welfare, Canberra, 2016; Victorian Council of Social Services, *Submission*, no. 20. p. 38; The Salvation Army, *Submission*, no. 30. p. 9; Department of Justice, *Youth Justice Remand Bail Strategy*, Department of Justice, Melbourne, 2013. p. 2; Victoria Legal Aid, *Submission*, no. 35. p. 10; Jesuit Social Services, *Thinking Outside: Alternatives to remand for children (Research Report)*, Jesuit Social Services, Richmond, 2013. pp. 60, 66.

²⁸⁶ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. p. 69.

5.3.4 Why this is a problem

Increases in the number of young people on remand and the length of time they spend on remand has been linked to associated problems for both young people and the wider justice system. The two biggest problems are:

- Disrupting young people’s lives and removing them from protective influences such as family, social support, education and employment
- Creating unsettled justice centres due to the uncertainty and frustration experienced by remandees.

Disruptive influence

Justice Bell ruled in *Woods V DPP* that detaining young people on remand should be avoided where possible because of the possible negative consequences of being on remand, including being separated from families, disruption to education and employment, and being denied access to therapeutic programs (available only when sentenced). Bell J considered these negative factors to be ‘...out of all proportion to the purpose of ensuring appearance at trial and protecting the community.’²⁸⁷

This is not an argument against remand per se, rather a reminder that remand times should be kept to a minimum. As Professor Ogloff highlighted in his evidence to the Committee, even seemingly short periods of disruption away from support networks and communities can have a large impact on young people. He said:

It is very important to think, for example, that for young people even a period that seems short — say, 46 days average length of remand or something — is essentially half a school term or almost a school term. So if you are not at school, you are separated from friends and family and you are trying to come back to community. Your environment is going to be entirely different.²⁸⁸

The *Sentencing Act 1991* states that time held in custody before a trial is deducted from a sentence. Armytage and Ogloff found that this has ‘...significant implications for youth justice, given the length of time young people spend on remand, the rate of readmission to remand and relatively short youth justice custodial sentences.’²⁸⁹ The result is that young people on remand have fewer opportunities than sentenced young people or those on bail to access support services while detained.²⁹⁰

²⁸⁷ Law Institute of Victoria, *Submission*, no. 31. p. 21; *Woods V DPP*, VSC, 2014.

²⁸⁸ Professor James Ogloff, *Transcript of evidence*, 27 June 2017. p. 20.

²⁸⁹ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. p. 61.

²⁹⁰ YouthLaw, *Submission*, no. 12. p. 19.

Ms Edwards argued that the youth justice system should provide services and develop release plans for young offenders on remand to address the underlying causes of their offending and to support them back in the community. She said:

Many of those young people on remand are still, in the majority, spending short remands, so a 40, 50-day sort of thing. Sorry, that is not a short period of time, but it is a period of time where you could actually do some very purposeful, intentional planning around what you are going to do to (a) address the offending and (b) make sure that there is purposeful, intentional activity when they are released back in the community, whether that be education, whether that be training.²⁹¹

The Committee acknowledges that it is difficult to provide services to young people yet to be convicted of a crime and who are on remand for very short periods. Yet until remand times are reduced, the youth justice system must develop programs suitable for remandees.

FINDING 6: Long periods of remand disrupt young offenders' lives and may reduce the potential for rehabilitation.

RECOMMENDATION 12: That the Department of Justice and Regulation develop and implement rehabilitation programs suitable for young people on remand.

Overcrowded and unsettled facilities

As not all young people are on the same remand cycle the remandee population is in a constant state of flux. Young people housed in remand centres could be released, moved to another unit after being sentenced, or returned for another remand period. Additionally, new remandees arrive regularly. These factors make it difficult to establish a stable environment and routine for young people.²⁹²

The DHHS Secretary, Ms Kym Peake, spoke about the disruptive influence the 21-day cycle has on remandees. She said that "...every three weeks remandees return to court to look at whether they are going to be sentenced, whether they are going to be released, whether they are going to be sentenced and released for time served."²⁹³

Remandees, then, are often without a set court date when they will receive a definite outcome. Unlike the sentenced population, remandees do not know the length of their sentence nor when they will be released. This explains the link between being on remand and unsettled behaviour in young people. The Committee heard that the increase in the remand population and associated unrest has contributed to the unsettled custodial environment in Victoria's youth justice centres,²⁹⁴ with the Youth Parole Board stating: 'There is no doubt but

²⁹¹ Julie Edwards, Chief Executive Officer, Jesuit Social Services, *Transcript of evidence*, 19 April 2017. p. 8.

²⁹² Kym Peake, Secretary, Department of Health and Human Services, *Transcript of evidence*, 14 June 2017. p. 2.

²⁹³ *Ibid.* p. 9.

²⁹⁴ Victoria Alcohol and Drug Association, *Submission*, no. 39. p. 2; Dr Bernie Geary, Board Member, Youth Parole Board, *Transcript of evidence*, 17 March 2017. p. 47; Youth Affairs Council of Victoria, *Submission*, no. 10. p. 23; Law Institute of Victoria, *Submission*, no. 31. p. 15; Victoria Alcohol and Drug Association, *Submission*, no. 39. p. 2.

that long periods of remand (up to and beyond 250 and 300 days) were a major originating cause of problems which came to be within custody.²⁹⁵ Indeed, many of the young offenders involved in the recent incidents were remandees.

Several stakeholders told the Committee that young offenders' behaviour improves after they have been sentenced. Professor Ogloff noted the link between sentencing and a 'settling' in behaviour, saying: "Once young people are sentenced there is often a settling period, because they now have some degree of certainty around the length of time they will be in the facility."²⁹⁶

Research also links being placed on remand, especially many times, to an increased risk profile for reoffending on the VONIY.²⁹⁷

FINDING 7: High remand numbers have had a negative impact on youth justice facilities, particularly on young offenders and staff.

5.4 Contributing factors

The Committee heard that the increase in young people on remand is not linked to increasing rates of youth offending, population increases, increasing rates of sentencing, changing demographic factors or changes in diversion approaches.²⁹⁸ Explanations for the increase are varied, including: part of a 'tough on crime' response by police and the courts; a necessary response to the increase in violent young offenders; and a system that is in need of reform.²⁹⁹

A number of factors have been identified to the Committee as contributing to the increased use of remand for young offenders in Victoria. These include:³⁰⁰

- Changes in the types of offences
- Changing sentencing and policing attitudes
- Court delays

²⁹⁵ Youth Parole Board, *Annual Report*, Youth Parole Board, Melbourne, 2016. p. xiv.

²⁹⁶ Professor James Ogloff, *Transcript of evidence*, 27 June 2017. pp. 21-2.

²⁹⁷ Jesuit Social Services, *Thinking Outside: Alternatives to remand for children (Research Report)*, Jesuit Social Services, Richmond, 2013. p. 73. Victorian Offending Needs Indicator for Youth (VONIY): is an assessment tool which helps to identify a young person's likelihood of reoffending based on identifying the level of risk and protective factors involved in each individual young person's case; Department of Health and Human Services, 'Victorian Offending Needs Indicator for Youth (VONIY)', viewed 8 August 2017.

²⁹⁸ Capital City Local Learning and Employment Network, *Submission*, no. 11. p. 2; Victoria Alcohol and Drug Association, *Submission*, no. 39. p. 1; Caitlin Grover, *Youth Justice in Victoria: Research Paper No. 2, April 2017*, Parliamentary Library and Information Service, Melbourne, 2017. p. 50; Lisa Ward, Sentencing Advisory Council, *Transcript of evidence*, 17 March 2017. p. 38; Jesuit Social Services, *An escalating problem: Responding to the increased remand of children in Victoria*, Jesuit Social Services, Melbourne, 2015. p. 4; Dr Matthew Ericson and Professor Tony Vinson, *Young people on remand in Victoria: Balancing individual and community interests*, Jesuit Social Services, Melbourne, 2011. p. 26.

²⁹⁹ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. p. 68.

³⁰⁰ Law Institute of Victoria, *Submission*, no. 31. pp. 19-20; Victoria Legal Aid, *Submission*, no. 35. p. 10; Australian Psychological Society, *Submission*, no. 34. pp. 10-1; Kelly Richards and Lauren Renshaw, *Bail and remand for young people in Australia: A national research project*, Australian Institute of Criminology, Canberra, 2013. Chapter 6; Victorian Law Reform Commission, *Review of the Bail Act: Final Report*, Victorian Law Reform Commission, Melbourne, 2007. pp. 162-5.

- Inadequate bail supports, including difficulties locating sponsors and adequate accommodation for young people on bail
- Changes to relevant bail and domestic violence legislation
- Homelessness and inadequate social housing
- Lack of access to support services including diversion programs and drug and alcohol support programs.

The causes are complex and sometimes interlinked such that no one element can be singled out as the key element to be changed.³⁰¹ Multifaceted reform is therefore needed.³⁰² Similarly, Victoria's remand problems are not likely to dissipate quickly. The Committee supports further research into the drivers of the use of remand in Victoria and longitudinal tracking of rates of remand and recidivism to identify and further facilitate improvement.³⁰³

Two of the major contributing factors regarding remand are changes to the *Bail Act 1977* and issues around bail support services.

5.4.1 **Bail Act 1977 changes**

Reforms in 2013 to the *Bail Act 1977* introduced provisions making it an offence to contravene bail.³⁰⁴ These provisions applied to both adults and young people and resulted in rapid increases in the number of young people facing the Children's Court for breaching their bail and then being placed on remand.³⁰⁵ Data from the Victorian Crime Statistics Agency shows that between 2013–14 and 2014–15 bail breaches almost doubled for 10–17-year-olds.³⁰⁶

One year after the introduction of the *Bail Act* changes DHHS statistics showed:

- A 57 per cent increase in the number of young people placed on remand
- A 45 per cent increase in the number of young people remanded after hours
- A significant increase in the number of Koori young people admitted to remand, including those aged between 10–14 years.³⁰⁷

³⁰¹ Victoria Legal Aid, *Submission*, no. 35. p. 10; Australian Psychological Society, *Submission*, no. 34. p. 9.

³⁰² Victoria Legal Aid, *Submission*, no. 35. p. 10.

³⁰³ Australian Psychological Society, *Submission*, no. 34. p. 9.

³⁰⁴ *Bail Amendment Act 2013* (Victoria), 44. S320A & B; Youth Affairs Council of Victoria, *Submission*, no. 10. p. 23; Capital City Local Learning and Employment Network, *Submission*, no. 11. p. 2; YouthLaw, *Submission*, no. 12. p. 17; Law Institute of Victoria, *Submission*, no. 31. p. 17; Victoria Alcohol and Drug Association, *Submission*, no. 39. pp. 1-2; Victoria Legal Aid, *Submission*, no. 35. p. 10; Center for Multicultural Youth, *Submission*, no. 51. p. 2; Victorian Council of Social Services, *Submission*, no. 20. p. 36; Australian Psychological Society, *Submission*, no. 34. p. 10; Caitlin Grover, *Youth Justice in Victoria: Research Paper No. 2, April 2017*, Parliamentary Library and Information Service, Melbourne, 2017. p. 45; Fiona Dowsley, Chief Statistician, Crime Statistics Agency, *Transcript of evidence*, 14 June 2017. p. 63; Jesuit Social Services, *An escalating problem: Responding to the increased remand of children in Victoria*, Jesuit Social Services, Melbourne, 2015. pp.2-3.

³⁰⁵ Victorian Council of Social Services, *Submission*, no. 20. p. 36; Victoria Alcohol and Drug Association, *Submission*, no. 39. pp. 1-2; Australian Psychological Society, *Submission*, no. 34. p. 10; Fiona Dowsley, Chief Statistician, Crime Statistics Agency, *Transcript of evidence*, 14 June 2017. p. 63; Jesuit Social Services, *An escalating problem: Responding to the increased remand of children in Victoria*, Jesuit Social Services, Melbourne, 2015. pp.2-3.

³⁰⁶ Law Institute of Victoria, *Submission*, no. 31. p. 17.

³⁰⁷ Jesuit Social Services, *An escalating problem: Responding to the increased remand of children in Victoria*, Jesuit Social Services, Melbourne, 2015. pp. 2-3.

The Victorian Ombudsman cites DHHS as stating that prior to the *Bail Act* changes the ratio of young people on remand to those sentenced was about 80 per cent sentenced to 20 per cent on remand. However, after the changes, these figures reversed to 80 per cent remand and 20 per cent sentenced (as noted above).³⁰⁸

Tables 5.1 and 5.2 show the increased use of remand following the 2013 changes.

Table 5.1 Remand orders commenced 1 July 2006 to 30 June 2016

Type of order	2006 -07	2007 -08	2008 -09	2009 -10	2010 -11	2011 -12	2012 -13	2013 -14	2014 -15	2015 -16
Youth residential centre remand	100	170	123	133	137	181	158	144	225	214
Youth justice centre remand	281	368	439	526	467	585	559	601	687	765
Total	381	538	562	659	604	766	717	745	912	979

Source: Youth Parole Board, *Annual Report*, Youth Parole Board, Melbourne, 2016. p. 27.

Table 5.2 Remand orders commenced from 1 July 2012 to 30 June 2016 (individuals)

Type of order	2012-13	2013-14	2014-15	2015-16
Youth residential centre remand	67	67	84	83
Youth justice centre remand	316	307	369	401
Total	383	374	453	484

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

In 2015, the Victorian Government acknowledged the high number of young people on remand and what it considered the unintended consequences of previous legislative changes by introducing the Bail Amendment Bill 2015. These reforms, which commenced in May 2016:

- Created new factors to be considered in bail decisions for young people
- Exempted young people from the offence of breach of a bail condition
- Created a presumption in favour of initiating criminal proceedings against young people by summons rather than arrest.³⁰⁹

Young people can still be arrested on suspicion of breaching bail, which may result in their bail being revoked. As such, bail breaches still make a contribution to remand figures.³¹⁰ It is telling, though, that remand numbers for young people

³⁰⁸ Victorian Ombudsman, *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville*, Victorian Ombudsman, Melbourne, 2017. p. 9.

³⁰⁹ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. p. 307.

³¹⁰ Law Institute of Victoria, *Submission*, no. 31. pp. 17-9.

have not declined since May 2016. This may indicate that the effect of these changes will take time to be noticed. Equally likely is that there are wider factors influencing the use of remand in Victoria.

5.4.2 Bail support programs

A significant contributing factor to the increase in young people on remand has been a lack of suitable bail support programs for young offenders.³¹¹ Bail support programs assist young people meet bail conditions through supervision and related support services. They have been shown to be one of the most effective methods for successfully reducing the use of remand.³¹²

YouthLaw describes how bail support services can help disadvantaged young people avoid being remanded. Its submission states:

For example, young people with cognitive impairment often breach bail conditions due to lack of understanding or support to meet conditions. Young people involved in bail supervision programs are provided with case management to reduce the risk of them reoffending while on bail and assisting them to comply with their bail conditions...[bail support programs] also help to address their needs related to accommodation, education and training, employment, health and development, family and other matters.³¹³

As suggested by YouthLaw, bail support programs can include a range of measures to assist young people on bail, including assistance with substance abuse, counselling and personal skills training, and family mediation.³¹⁴ The variety of options allows programs to be tailored to suit the needs of different young people, including those with complex needs. They also allow young people to remain in the community pending their trial and to maintain links with employment, education and family, ideally reducing the risk of reoffending.³¹⁵

³¹¹ YouthLaw, *Submission*, no. 12. pp. 17-18; Victorian Council of Social Services, *Submission*, no. 20. pp. 36-7; Melbourne City Mission, *Submission*, no. 50. p. 16; Jesuit Social Services, *Thinking Outside: Alternatives to remand for children (Research Report)*, Jesuit Social Services, Richmond, 2013. p. 60; Jesuit Social Services, *An escalating problem: Responding to the increased remand of children in Victoria*, Jesuit Social Services, Melbourne, 2015. pp. 4-5; Caitlin Grover, *Youth Justice in Victoria: Research Paper No. 2, April 2017*, Parliamentary Library and Information Service, Melbourne, 2017. p. 56; Victorian Law Reform Commission, *Review of the Bail Act: Final Report*, Victorian Law Reform Commission, Melbourne, 2007. pp. 159-60; Youth Affairs Council of Victoria, *Submission*, no. 10. p. 24.

³¹² YouthLaw, *Submission*, no. 12. pp. 17-8; Dr Matthew Ericson and Professor Tony Vinson, *Young people on remand in Victoria: Balancing individual and community interests*, Jesuit Social Services, Melbourne, 2011. p. 42; Jesuit Social Services, *Thinking Outside: Alternatives to remand for children (Research Report)*, Jesuit Social Services, Richmond, 2013. pp. 27, 68-9; Caitlin Grover, *Youth Justice in Victoria: Research Paper No. 2, April 2017*, Parliamentary Library and Information Service, Melbourne, 2017. p. 56; Melbourne City Mission, *Submission*, no. 50. p. 16; Victorian Law Reform Commission, *Review of the Bail Act: Final Report*, Victorian Law Reform Commission, Melbourne, 2007. pp. 159-60; Youth Affairs Council of Victoria, *Submission*, no. 10. p. 23.

³¹³ YouthLaw, *Submission*, no. 12. p. 18.

³¹⁴ Dr Matthew Ericson and Professor Tony Vinson, *Young people on remand in Victoria: Balancing individual and community interests*, Jesuit Social Services, Melbourne, 2011. p. 42; Jesuit Social Services, *Youth Justice: Strengthening our approach*, Jesuit Social Services, Melbourne, 2014. p. 3; Drugs and Crime Prevention Committee, *Inquiry into Strategies to Prevent High Volume Offending and Recidivism by Young People*, The Committee, Melbourne, 2009. pp. 238-9.

³¹⁵ Dr Matthew Ericson and Professor Tony Vinson, *Young people on remand in Victoria: Balancing individual and community interests*, Jesuit Social Services, Melbourne, 2011. p. 42.

However, despite the importance of bail support programs, concerns exist about the lack of services available and the way they are implemented. Judge Michael Bourke told the Committee that a shortage of programs explains why the recent reforms to the *Bail Act* did not reduce remand numbers as might have been expected. He said:

I think the fundamental problem is that no matter what the bail laws are, magistrates are loath to risk the community by granting bail to young people who they fear will not be properly supervised and who they fear will commit further offences...

I see the causes of that growth in remand to include these things...and lack of stringent, heavily supervised and accordingly well-resourced bail programs. Bail reform in I think 2015 to 2016 did not address that problem, that lack of bail programs. After a short relief it failed emphatically to reduce remand numbers.³¹⁶

Stakeholders in this Inquiry strongly advocated for increased resourcing for a range of bail support programs and services, including:

- Out-of-hours services
- Services to address offending behaviour
- Services for young people with complex needs
- Community-based services.³¹⁷

Of particular relevance is the need for out-of-hours bail support services. Up to 80 per cent of children and young people placed on remand are arrested and assessed for bail outside business hours.³¹⁸ Many of the shortest remand periods are recorded by young people detained after hours or on weekends who are remanded until the next available court session.³¹⁹ The majority of young people remanded after hours are released on bail once their case has been heard by a court.³²⁰

The time in which young offenders' needs are assessed is directly linked to how long they remain on remand. Research suggests that once the factors preventing bail are identified and addressed many young people can be released into the community.³²¹ However, if this assessment and subsequent coordination of services is slow or delayed the young person will spend unnecessary time

³¹⁶ Judge Michael Bourke, Chair, Youth Parole Board, *Transcript of evidence*, 17 March 2017. p. 44.

³¹⁷ YouthLaw, *Submission*, no. 12. pp. 18, 20; Anglicare, *Submission*, no. 36. p. 11; Victorian Council of Social Services, *Submission*, no. 20. pp. 7, 36-7; Melbourne City Mission, *Submission*, no. 50. p. 16; Dr Matthew Ericson and Professor Tony Vinson, *Young people on remand in Victoria: Balancing individual and community interests*, Jesuit Social Services, Melbourne, 2011. p. 46; Jesuit Social Services, *Youth Justice: Strengthening our approach*, Jesuit Social Services, Melbourne, 2014. p. 3.

³¹⁸ Jesuit Social Services, *Thinking Outside: Alternatives to remand for children (Research Report)*, Jesuit Social Services, Richmond, 2013. pp. 65-6, 68-9; Jesuit Social Services, *Youth Justice: Strengthening our approach*, Jesuit Social Services, Melbourne, 2014. p. 5; Jesuit Social Services, *Submission*, no. 37. p. 20; Kym Peake, Secretary, Department of Health and Human Services, *Transcript of evidence*, 14 June 2017. p. 2.

³¹⁹ Jesuit Social Services, *Thinking Outside: Alternatives to remand for children (Research Report)*, Jesuit Social Services, Richmond, 2013. pp. 65-6.

³²⁰ *Ibid.* pp. 65-6.

³²¹ *Ibid.* p. 70.

on remand.³²² Even if young people are on remand for a short period of time (1–2 days, for example), this can disrupt other young offenders in youth justice facilities. Assessment should occur as early as possible in a young person’s contact with the youth justice system.

Armytage and Ogloff found that assessment of young offenders is a major weakness in the current youth justice system in Victoria. They observed a lack of structured screening processes and risk and needs assessments, which makes it hard for the Children’s Court to know whether to grant bail or not. Armytage and Ogloff reviewed data for 2015–16, concluding that they would have expected lower rates of remand and higher rates of bail.³²³

The Committee heard concerns about the ability of bail justices to make bail decisions for young people. Bail justices are community volunteers who conduct bail hearings at police stations outside of normal court hours. This includes bail justices failing to utilise the Central After Hours Assessment and Bail Placement Service, not sufficiently understanding the Act, and not understanding the main considerations in determining bail for young people.³²⁴³²⁵

Between May 2015 and May 2016, out-of-hours decisions by bail justices remanded young people until the next court sitting in 75 per cent of cases.³²⁶

RECOMMENDATION 13: That the Department of Justice and Regulation review the training provided to bail justices.

5.4.3 Accommodation

*The most significant deficiency in bail support programs for young people throughout all states and territories is the lack of available and appropriate accommodation for young people.*³²⁷

The *Children, Youth and Families Act 2005* states that bail ‘must not be refused to a child on the sole ground that the child does not have any, or any adequate, accommodation’.³²⁸ Denying bail because of a lack of suitable accommodation also contradicts human rights concepts such as presumption of innocence, proportionate sentencing and the right not to be arbitrarily detained.³²⁹

³²² Ibid. p. 70; Victorian Law Reform Commission, *Review of the Bail Act: Final Report*, Victorian Law Reform Commission, Melbourne, 2007. p. 160; Jesuit Social Services, *Youth Justice: Strengthening our approach*, Jesuit Social Services, Melbourne, 2014. pp. 5-6.

³²³ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017.

³²⁴ Discussed in more detail in Section 5.3.2.

³²⁵ Victoria Legal Aid, *Submission*, no. 35. p. 9; Jesuit Social Services, *Thinking Outside: Alternatives to remand for children (Research Report)*, Jesuit Social Services, Richmond, 2013. pp. 63-4.

³²⁶ Jesuit Social Services, *Submission*, no. 37. p. 20.

³²⁷ Dr Matthew Ericson and Professor Tony Vinson, *Young people on remand in Victoria: Balancing individual and community interests*, Jesuit Social Services, Melbourne, 2011. p. 45.

³²⁸ *Children, Youth and Families Act 2005* (Victoria), 96/2005. S346(9).

³²⁹ Caitlin Grover, *Youth Justice in Victoria: Research Paper No. 2, April 2017*, Parliamentary Library and Information Service, Melbourne, 2017. p. 54; United Nations (1990), *Convention on the Rights of the Child*, United Nations; United Nations (1985), *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”)* United Nations; United Nations (1990), *United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules)*, United Nations.

However, the reality is that there is a lack of accommodation for some disadvantaged young people attending the Children’s Court. This creates a conflict between the provisions of the Act and young people’s best interests.³³⁰ In some cases, the Court feels that it has little option except to remand young people who lack a safe place to live.³³¹ As a result, young people with complex needs, such as mental health problems, drug and alcohol addictions, or an intellectual disability, who lack stable accommodation are more likely to be held on remand than granted bail.³³² Homeless young people, too, are extremely unlikely to meet bail conditions such as curfews, bans on the use of public transport or providing a contact address.

The problem of accommodation options constraining the Court’s ability to grant bail to young people is not recent. It was noted in 2012 in the Sentencing Advisory Council’s *Sentencing Children and Young People in Victoria* and the Drugs and earlier in the Victorian Parliament’s Crime Prevention Committee’s 2009 *Inquiry into Strategies to Prevent High Volume Offending and Recidivism by Young People*.³³³

Yet, this problem remains. Judge Bourke discussed magistrates’ reluctance to grant bail to young people who do not have a safe place to live. He told the Committee:

Magistrates did not feel comfortable granting bail to young people they otherwise would have. They did not want to have them at 14, 15 or 16 in remand, but they felt uncomfortable about where they were going to live, be it at a youth residential place, and whether they were going to be controlled properly. They feared that they would reoffend and even perhaps in some cases harm themselves, so the remand numbers went up.³³⁴

Similarly regarding parole, the Youth Parole Board reports:

³³⁰ Law Institute of Victoria, *Submission*, no. 31. p. 20; Sentencing Advisory Council, *Sentencing Children and Young People in Victoria*, Sentencing Advisory Council, Melbourne, 2012. p. 74; Amnesty International, *Submission*, no. 49. pp. 3, 6-7; Dr Matthew Ericson and Professor Tony Vinson, *Young people on remand in Victoria: Balancing individual and community interests*, Jesuit Social Services, Melbourne, 2011. pp. 12, 36; Jesuit Social Services, *An escalating problem: Responding to the increased remand of children in Victoria*, Jesuit Social Services, Melbourne, 2015. p. 4.

³³¹ Victoria Legal Aid, *Submission*, no. 35. p. 12; Australian Psychological Society, *Submission*, no. 34. p. 10; Victoria Legal Aid, *Submission*, no. 35. p. 12; Dr Matthew Ericson and Professor Tony Vinson, *Young people on remand in Victoria: Balancing individual and community interests*, Jesuit Social Services, Melbourne, 2011. p. 11; The Salvation Army, *Submission*, no. 30. p. 8; Victoria Legal Aid, *Submission*, no. 35. p. 12; Dr Matthew Ericson and Professor Tony Vinson, *Young people on remand in Victoria: Balancing individual and community interests*, Jesuit Social Services, Melbourne, 2011. pp. 12, 29; Jesuit Social Services, *An escalating problem: Responding to the increased remand of children in Victoria*, Jesuit Social Services, Melbourne, 2015. p. 4.

³³² Dr Matthew Ericson and Professor Tony Vinson, *Young people on remand in Victoria: Balancing individual and community interests*, Jesuit Social Services, Melbourne, 2011. p. 11; Caitlin Grover, *Youth Justice in Victoria: Research Paper No. 2, April 2017*, Parliamentary Library and Information Service, Melbourne, 2017. pp. 50-1; The Salvation Army, *Submission*, no. 30. p. 8; Victoria Legal Aid, *Submission*, no. 35. p. 12; Jesuit Social Services, *An escalating problem: Responding to the increased remand of children in Victoria*, Jesuit Social Services, Melbourne, 2015. p. 4; Australian Institute of Health and Welfare, *Children and young people at risk of social exclusion: Links between homelessness, child protection and juvenile justice*, Australian Institute of Health and Welfare, Canberra, 2012. pp. 6, 11.

³³³ Sentencing Advisory Council, *Sentencing Children and Young People in Victoria*, Sentencing Advisory Council, Melbourne, 2012. p. 175; Drugs and Crime Prevention Committee, *Inquiry into Strategies to Prevent High Volume Offending and Recidivism by Young People*, The Committee, Melbourne, 2009. p. 247.

³³⁴ Judge Michael Bourke, Chair, Youth Parole Board, *Transcript of evidence*, 17 March 2017. pp. 44-5.

...the demand for secure and suitable housing for young people involved with youth justice remains unmet. The impact of a young person not having appropriate accommodation often results in multiple deferrals of parole or a parole to less than optimal accommodation arrangements. This can affect a young person's ability to successfully re-engage in the community and desist from recidivist offending behaviours.³³⁵

5.4.4 Rural and regional areas

The Committee received evidence of insufficient bail support programs in rural and regional areas of Victoria.³³⁶ Young people from rural and regional areas are often remanded in custody in metropolitan Melbourne, exacerbating the disadvantages associated with being disconnected from family, education and other local support networks.³³⁷

Programs such as community-based bail support services are not currently available in rural and regional areas.³³⁸ Additionally, rural and regional young people have less access to specialist support services for problems such as alcohol and drug addiction, increasing their likelihood of being placed on remand.³³⁹

5.4.5 Children's Court delays

Delays in processing cases in the Children's Court have been identified as a significant contributing factor to the length of time young people spend on remand.³⁴⁰ The Children's Court is discussed in Chapter 4.

5.5 Solutions to problems with youth remand in Victoria

5.5.1 Existing programs

Fast Track Remand Court

In early 2017, the Victorian Government provided funding for the Fast Track Remand Court. Developed in consultation with Victoria Legal Aid and Victoria Police, the Fast Track Remand Court commenced on 29 May 2017 with two dedicated magistrates. It aims to deal with remand cases within ten weeks

³³⁵ Youth Parole Board, *Annual Report*, Youth Parole Board, Melbourne, 2016. p. xiv.

³³⁶ Jesuit Social Services, *Youth Justice: Strengthening our approach*, Jesuit Social Services, Melbourne, 2014. pp. 5-6; Victorian Council of Social Services, *Submission*, no. 20. pp. 36-7.

³³⁷ Jesuit Social Services, *Youth Justice: Strengthening our approach*, Jesuit Social Services, Melbourne, 2014. pp. 5-6.

³³⁸ *Ibid.* pp. 5-6.

³³⁹ Victoria Legal Aid, *Submission*, no. 35. p. 12.

³⁴⁰ Discussed in more detail in Chapter 4 of this report. Law Institute of Victoria, *Submission*, no. 31. p. 20; Victorian Council of Social Services, *Submission*, no. 20. pp. 9, 37; Australian Psychological Society, *Submission*, no. 34. p. 11; Jesuit Social Services, *Thinking Outside: Alternatives to remand for children (Research Report)*, Jesuit Social Services, Richmond, 2013. p. 67; Geelong Inter Church Social Justice Network, *Submission*, no. 25. p. 8; Capital City Local Learning and Employment Network, *Submission*, no. 11. p. 2; YouthLaw, *Submission*, no. 12. p. 17; Judge Amanda Chambers, President, Children's Court of Victoria, *Transcript of evidence*, 27 June 2017. p. 41.

maximum.³⁴¹ The Children’s Court then sought and received further funding to engage an extra magistrate and provide additional support for Victoria Legal Aid and Victoria Police prosecutors.³⁴²

The Fast Track Remand Court expects that all matters will be prepared and presented to the court to be resolved within the first 21 days of remand. If the matter is not resolved, the magistrate will determine how the matter may be resolved. If the matter goes to a contest, another magistrate oversees the contested hearing and the case is then either heard or adjourned.³⁴³

Ms Helen Fatouros, Executive Director of Criminal Law Services at Victoria Legal Aid, stated that the Fast Track Remand Court was not intended as “a total solution” but would play an important role in improving youth remand in Victoria. Ms Fatouros told the Committee:

It is not just about speed; it is also about the attention that we can provide the most complex cases, which are the remand cases, and it is about being able to have dedicated resources for all of the institutional players to run a remand court that works effectively and efficiently.³⁴⁴

Judge Chambers added that initial outcomes from the Fast Track Remand Court were positive. She provided the Committee with data on how the Court had performed in its first four weeks of operation, including:

- Dealing with average of eight matters per day
- 43 per cent of matters were adjourned for a plea of guilty or sentencing
- 17 per cent of matters were finalised
- 26 per cent of matters resulted in bail being granted
- Of these 26 per cent (25 individuals), only four individuals have gone on to reoffend and been returned to remand (16 per cent).³⁴⁵

Central After Hours Assessment and Bail Placement Service

The Central After Hours Assessment and Bail Placement Service is a statewide bail assessment and support service available to young people (10–18 years) who commit an offence and are being considered for remand by police or where bail accommodation may be required. It provides advice, support and information to young people, bail justices and the wider community regarding remand processes

³⁴¹ Timeline is as follows: 21 days from the date the child is remanded and the second mention, 21 days from the second mention to the contest mention or guilty plea, and no longer than four weeks from the date of contest mention; Children’s Court of Victoria (2017), *Fast Track Remand Court*, Children’s Court of Victoria.

³⁴² Judge Amanda Chambers, President, Children’s Court of Victoria, *Transcript of evidence*, 27 June 2017. p. 42.

³⁴³ *Ibid.* p. 43.

³⁴⁴ Helen Fatouros, Executive Director of Criminal Law Services, Victoria Legal Aid, *Transcript of evidence*, 30 May 2017. p. 40.

³⁴⁵ Judge Amanda Chambers, President, Children’s Court of Victoria, *Transcript of evidence*, 27 June 2017. p. 41-42.

for young people. The Central After Hours Assessment and Bail Placement Service is also responsible for assisting police with bail accommodation placements and provides referrals to additional support services.³⁴⁶

The Central After Hours Assessment and Bail Placement Service attends metropolitan police stations to assess young people's suitability for bail. In rural and regional areas, it provides this service over the phone.³⁴⁷ When a young person is considered for remand by police after hours the police must notify the Service and allow the young person contact with a worker prior to their remand hearing.³⁴⁸

The Central After Hours Assessment and Bail Placement Service has been positively received. Stakeholders in this Inquiry called for an expansion of the service to improve areas of concern, including:

- Limited opening hours (5.00 p.m. to 3.00 a.m. weekdays; 9.30 a.m. to 3.00 a.m. weekends and public holiday) which leaves times when no support is available
- Limited bail accommodation places available
- Lack of in-person services available in regional areas.³⁴⁹

The Committee notes, however, that only 11 per cent of arrests occur outside of the Service's current operating hours.³⁵⁰

Intensive Bail Supervision Program

The Intensive Bail Supervision Program was introduced in 2011 following as a successful trial in 2010. It is a voluntary program providing bail supervision support to assist young people aged between 10 and 18 years meet their bail conditions, including community-based supervision.³⁵¹ However, until recently the program was only offered in the north, west and south metropolitan regions.³⁵²

³⁴⁶ Department of Health and Human Services, 'Central After Hours Assessment & Bail Placement Service (CAHABPS)', viewed 11 August 2017.

³⁴⁷ Ibid; Caitlin Grover, *Youth Justice in Victoria: Research Paper No. 2, April 2017*, Parliamentary Library and Information Service, Melbourne, 2017. p. 56; Jesuit Social Services, *Thinking Outside: Alternatives to remand for children (Research Report)*, Jesuit Social Services, Richmond, 2013. pp. 25-7; YouthLaw, *Submission*, no. 12. p. 18; Jesuit Social Services, *Submission*, no. 37. p. 20; Law Institute of Victoria, *Submission*, no. 31. p. 30.

³⁴⁸ Department of Health and Human Services, 'Central After Hours Assessment & Bail Placement Service (CAHABPS)', viewed 11 August 2017; Jesuit Social Services, *Thinking Outside: Alternatives to remand for children (Research Report)*, Jesuit Social Services, Richmond, 2013. pp. 25-7; Victorian Law Reform Commission, *Review of the Bail Act: Final Report*, Victorian Law Reform Commission, Melbourne, 2007. p. 160.

³⁴⁹ Jesuit Social Services, *Youth Justice: Strengthening our approach*, Jesuit Social Services, Melbourne, 2014. p. 5; Jesuit Social Services, *Thinking Outside: Alternatives to remand for children (Research Report)*, Jesuit Social Services, Richmond, 2013. pp. 9, 67-8; Dr Matthew Ericson and Professor Tony Vinson, *Young people on remand in Victoria: Balancing individual and community interests*, Jesuit Social Services, Melbourne, 2011. p. 36; Law Institute of Victoria, *Submission*, no. 31. p. 30; Jesuit Social Services, *Submission*, no. 37. p. 20.

³⁵⁰ Julie Edwards, Chief Executive Officer, Jesuit Social Services, *Transcript of evidence*, 19 April 2017. p. 8.

³⁵¹ Caitlin Grover, *Youth Justice in Victoria: Research Paper No. 2, April 2017*, Parliamentary Library and Information Service, Melbourne, 2017. p. 56; Kelly Richards and Lauren Renshaw, *Bail and remand for young people in Australia: A national research project*, Australian Institute of Criminology, Canberra, 2013. pp. 87-8; Jesuit Social Services, *Thinking Outside: Alternatives to remand for children (Research Report)*, Jesuit Social Services, Richmond, 2013. pp. 68-9; Law Institute of Victoria, *Submission*, no. 31. p. 31.

³⁵² Caitlin Grover, *Youth Justice in Victoria: Research Paper No. 2, April 2017*, Parliamentary Library and Information Service, Melbourne, 2017. p. 56; Kelly Richards and Lauren Renshaw, *Bail and remand for young people in Australia: A national research project*, Australian Institute of Criminology, Canberra, 2013. pp. 87-8.

Evidence suggests that more stringent supervision and bail compliance requirements should be accompanied by appropriate supports and services to help young people address the underlying causes that contribute to their offending and comply with the terms of their bail. The LIV, for example, expressed concern about the inclusion of curfews without related therapeutic support services.³⁵³

Young people who have been granted bail can access the Intensive Bail Supervision Program. Recommendations to the court can be made by the Youth Justice Court Advice Service, the police, case managers, the Central After Hours Assessment and Bail Placement Service, and legal representatives.³⁵⁴

The Committee notes with concern Armytage and Ogloff's finding that magistrates doubt that the use of the word 'intensive' is of much significance. This is because the word at times means as little as one extra meeting at a Youth Justice Office. They report that magistrates they spoke with '...were not persuaded that the business hours and office-based model of bail supervision is an appropriate approach to mitigate the risk to the community.'³⁵⁵ This lack of faith, of course, makes it unlikely for bail to be recommended.

Youth Justice Court Advice Service

The Youth Justice Court Advice Service provides support to all young people appearing before the Children's Court or the Children's Koori Court aged between 18 and 20, including remandees.³⁵⁶ It offers advice relating to:

- Appropriate diversionary options, including links to community services
- Youth justice supervision and related programs
- Remand progress and existing court orders, including youth parole
- Community support services and culturally specific services
- Group conferencing, intensive bail supervision programs and youth assessment orders.³⁵⁷

This service is only available to young offenders who receive police bail, not those bailed by the court.³⁵⁸

³⁵³ Law Institute of Victoria, *Submission*, no. 31. p. 31.

³⁵⁴ Kelly Richards and Lauren Renshaw, *Bail and remand for young people in Australia: A national research project*, Australian Institute of Criminology, Canberra, 2013. pp. 87-8.

³⁵⁵ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. p. 69.

³⁵⁶ Department of Human Services, *Youth Justice Court Advice Service*, Department of Human Services, Melbourne, 2013; Dr Matthew Ericson and Professor Tony Vinson, *Young people on remand in Victoria: Balancing individual and community interests*, Jesuit Social Services, Melbourne, 2011. pp. 28-9.

³⁵⁷ Department of Human Services, *Youth Justice Court Advice Service*, Department of Human Services, Melbourne, 2013.

³⁵⁸ Dr Matthew Ericson and Professor Tony Vinson, *Young people on remand in Victoria: Balancing individual and community interests*, Jesuit Social Services, Melbourne, 2011. pp. 28-9.

5.5.2 Recent proposed changes

In December 2016, the Victorian Government proposed a range of reforms responding to the current problems with remand. These included:

- Increasing the maximum length of detention that can be imposed by the Children’s Court to four years
- Establishing Youth Control Orders³⁵⁹
- Extending the existing Youth Justice Bail Supervision scheme across the entire state
- Expanding the Central After Hours Assessment and Bail Placement Service’s operating hours to fill current gaps in the service.³⁶⁰

Both the increase in detention to four years and Youth Control Orders were introduced in the *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017*.

These announcements, particularly the expansion and further resourcing of the Central After Hours Assessment and Bail Support Placement Service and the Youth Justice Bail Supervision scheme, were welcomed by stakeholders in this Inquiry.³⁶¹

One caveat is the LIV’s concern that Youth Control Orders may be used in place of lower-level options. This would create the risk of young people being placed on remand for breaching bail if faced with ‘...unrealistic conditions that are unresponsive to the needs and circumstances of the young offender.’ The LIV encouraged monitoring of the application of the new orders to ensure that they would be used as alternatives to detention where applicable and not when lower-level sanctions would be more appropriate (expressed as ‘sentence escalation’).³⁶²

The Committee also notes that new group-based therapy, group conferencing and provision of specialist support services, such as alcohol and drug programs, are offered to all young people on remand.³⁶³ However, making these services mandatory may be of more benefit to young offenders with substance abuse problems. The Committee discusses this issue in more depth in Chapter 6.

³⁵⁹ A targeted supervision sentence including: curfews; restrictions on where a young person can go and who they have contact with; mandatory education, training or employment plans; and mandatory specialist programs, such as drug and alcohol counselling. They have yet to be made law.

³⁶⁰ Victoria Legal Aid, *Submission*, no. 35. p. 13; Caitlin Grover, *Youth Justice in Victoria: Research Paper No. 2, April 2017*, Parliamentary Library and Information Service, Melbourne, 2017. pp. 56-8; Daniel Andrews, *Sweeping Reforms to Crack Down on Youth Crime*, media release, Melbourne, 5 December 2016; Hon. Paul Coghlan QC, *Bail Review: Second advice to the Victorian Government*, Melbourne, 2017. pp. 35-6; YouthLaw, *Submission*, no. 12. p. 18; Youth Affairs Council of Victoria, *Submission*, no. 10. p. 9; Law Institute of Victoria, *Submission*, no. 31. p. 31.

³⁶¹ Victoria Legal Aid, *Submission*, no. 35. p. 13; YouthLaw, *Submission*, no. 12. p. 18; Victorian Council of Social Services, *Submission*, no. 20. pp. 36-7; Law Institute of Victoria, *Submission*, no. 31. pp. 30-1; Jesuit Social Services, *Submission*, no. 37. p. 20.

³⁶² Law Institute of Victoria, *Submission*, no. 31. p. 31.

³⁶³ Youth Parole Board, *Annual Report*, Youth Parole Board, Melbourne, 2016. p. 16; Daniel Clements, General Manager, Justice Programs, Jesuit Social Services, *Transcript of evidence*, 19 April 2017. p. 8.

RECOMMENDATION 14: That the Department of Justice and Regulation conduct research into the drivers of the increase in remand in the youth justice system in Victoria.

5.6 Alternatives from other jurisdictions

5.6.1 Bail hostels

Bail hostels operate in the UK and offer supervised community-based accommodation for young people on bail. Bail hostels can take the form of single homes or more traditional hostel-style accommodation, with both single- and multiple-bed options to suit different needs. They help young offenders with unstable housing situations avoid breaching their bail conditions due to lack of adequate accommodation.³⁶⁴

Arguments against bail hostels include:

- Community concerns about where the bail hostels are located
- Concerns of ‘net widening’ (where young people who would ordinarily be bailed in the community are instead bailed in a bail hostel)
- Difficulty in separating youth and adult bail hostels.³⁶⁵

Trials of bail hostels in other jurisdictions such as New South Wales and Western Australia encountered problems including:

- Low occupancy rates
- Security problems at the hostel
- High costs.³⁶⁶

However, Western Australia continues to use bail hostels,³⁶⁷ while countries such as France, Sweden and Japan use special youth residential facilities to house young people on bail.³⁶⁸

Bail hostels may be suitable for Koori young people if designed to provide culturally appropriate alternatives to remand.³⁶⁹

³⁶⁴ Dr Matthew Ericson and Professor Tony Vinson, *Young people on remand in Victoria: Balancing individual and community interests*, Jesuit Social Services, Melbourne, 2011. p. 34.

³⁶⁵ Ibid. p. 37; Matthew Willis, *Bail support: A review of the literature*, Australian Institute of Criminology, Canberra, 2017. p. 27

³⁶⁶ Matthew Willis, *Bail support: A review of the literature*, Australian Institute of Criminology, Canberra, 2017. p. 27

³⁶⁷ Ibid. p. 27

³⁶⁸ Jesuit Social Services, *Thinking Outside: Alternatives to remand for children (Research Report)*, Jesuit Social Services, Richmond, 2013. p. 30.

³⁶⁹ Dr Matthew Ericson and Professor Tony Vinson, *Young people on remand in Victoria: Balancing individual and community interests*, Jesuit Social Services, Melbourne, 2011. p. 36; Vincent Schiraldi, Justice Policy Institute (USA), *Transcript of evidence*, 22 March 2017. p. 17.

5.6.2 Remand fostering

Remand foster care, used in the UK and the USA, places young people in foster care for the duration of their time on bail. Research has shown that this residential care option has been effective for avoiding remand and bail breaches and has the potential to reduce reoffending behaviour.³⁷⁰ Jesuit Social Services argues that this model would be more cost effective in Victoria than bail hostels.³⁷¹

5.6.3 Juvenile Detention Alternatives Initiative

The USA's Juvenile Detention Alternatives Initiative program supports youth justice systems across the country to develop and implement assessment procedures for young people on remand. It allows these assessments to be shared between decision-makers and service providers thereby improving the effectiveness of remand assessments. These programs have more than halved the number of young people on remand in some states and helped to ensure that only those young offenders who pose the most risk to the community are held on remand.³⁷²

³⁷⁰ Jesuit Social Services, *Thinking Outside: Alternatives to remand for children (Research Report)*, Jesuit Social Services, Richmond, 2013. pp. 69-70.

³⁷¹ *Ibid.* pp. 69-70.

³⁷² *Ibid.* p. 70; Law Institute of Victoria, *Submission*, no. 31. pp. 31-2.

6 Therapeutic approaches to youth justice

Recognising the unique but highly complex vulnerability of young people in youth detention, and the impact that trauma has played in their offending behaviour, it is critical that custodial settings adopt a trauma-informed approach, where possible, to prevent them from re-entering the system.³⁷³

6.1 Introduction

Victorian's youth justice system combines elements of accountability and rehabilitation. Accountability for crimes that attract a sentence of incarceration comes in the form of a loss of a young person's liberty. Rehabilitation begins once a young offender's sentence has been determined and they enter a youth justice facility (that is, excluding remand). Overall, the system aims to protect society and reduce reoffending.

Victoria has been committed to achieving rehabilitation through a therapeutic model of youth justice for many years (also known as a trauma-based approach). The theory is discussed in detail below. A youth justice system needs to be underpinned by a clear theoretical base that is consistently applied. Without this, the system becomes disjointed and its aims much harder to achieve.

6.2 Therapeutic models

A trauma-informed approach to youth justice is based first and foremost on an understanding that juvenile offending is best addressed through treatment and rehabilitation.³⁷⁴

The Committee defines therapeutic models of youth justice as:

Treatment approaches which frame young offenders as vulnerable and in need of support and rehabilitation. Therapeutic approaches focus on behavioural change and personal development of young people, as compared to an approach focused on fear or punishment.³⁷⁵

³⁷³ Jesuit Social Services, *Submission*, no. 37. p. 29.

³⁷⁴ Royal Australian and New Zealand College of Psychiatrists, *Submission*. p. 16.

³⁷⁵ Based on: Jesuit Social Services, *Thinking Outside: Alternatives to remand for children (Research Report)*, Jesuit Social Services, Richmond, 2013.

A therapeutic approach to youth justice recognises the large proportion of young offenders who present with complex needs arising from significant prior trauma and in response provides appropriate services such as education, health and AOD services.³⁷⁶ It is an overall framework for contact with the youth justice system, including:

- Diversion, sentencing and remand
- Interactions between youth justice staff and young offenders
- Facility design
- Supporting young people when they are released into the community.³⁷⁷

Therapeutic models take different forms and are tailored to the jurisdiction and young people involved. Common features of a therapeutic model include:

- Teaching young people how to manage their emotions, particularly anger and impulsiveness
- Treating substance abuse
- Increasing social skills
- Improving attitudes to education
- Teaching employment skills and offering employment support
- Teaching ‘life skills such’ as cooking and personal finances.³⁷⁸

Armytage and Ogloff argue that participation in rehabilitation programs should be ‘enshrined in the ethos of youth justice centres’.³⁷⁹

The overall aim of therapeutic models of rehabilitation is to ensure that contact with the youth justice system does not cause further harm to young people nor contribute to their reoffending. This helps young offenders and keeps the community safer as well.³⁸⁰

In its submission to this Inquiry, Design Out Crime states what it sees as the core values of trauma-informed services, replicated below in Figure 6.1.

376 Victorian Aboriginal Legal Service, *Submission*, no. 15. p. 15; Dr Jessie Mitchell, Policy Manager, Youth Affairs Council Victoria, *Transcript of evidence*, 19 April 2017. p. 3; Australian Psychological Society, *Submission*, no. 34. pp. 17-8; Jesuit Social Services, *Submission*, no. 37. p. 23; Centre for Excellence in Child and Family Welfare, *Submission*, no. 43. pp. 5-6; Designing Out Crime, *Submission*, no. 46. p. 15.

377 Royal Australian and New Zealand College of Psychiatrists, *Submission*, no. 16. p. 16.

378 The Youth Court of New Zealand, *10 Suggested Characteristics of a Good Youth Justice System*, The Youth Court of New Zealand, Auckland, New Zealand, 2014.

379 Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 1*, Victorian Government, Melbourne, 2017. p. 55.

380 *Ibid.* p. 10; Jesuit Social Services, *Submission*, no. 37. pp. 23, 30; Associate Professor Margarita Frederico, *Submission*, no. 32. pp. 2-4; cohealth, *Submission*, no. 19. p. 31; Law Institute of Victoria, *Submission*, no. 31. p. 28.

Figure 6.1 Core values of trauma-informed services

Principle	Explanation
Understand trauma and its impact on individuals, families and communal groups	This expertise is critical to avoid misunderstandings between staff and clients that can re-traumatise individuals and cause them to disengage from a program. Two strategies promote understanding of trauma and its impacts: trauma-informed policies and training. Trauma-informed policies formally acknowledge that clients have experienced trauma, commit to understanding trauma and its impacts, and detail trauma-informed care practices. Ongoing trauma-related workforce training and support is also essential. For example, staff members need to learn about how trauma impacts child development and attachment to caregivers. Appropriate support activities might include regular supervision, team meetings and staff self-care opportunities.
Promote safety	Individuals and families who have experienced trauma require spaces in which they feel physically and emotionally safe. Children need to advise what measures make them feel safe. Their identified measures need to be consistently, predictably and respectfully provided. Service providers have reported that creating a safe physical space for children includes having child-friendly areas and engaging play materials. Creating a safe emotional environment involves making children feel welcome (e.g. through tours and staff introductions), providing full information about service processes (in their preferred language) and being responsive and respectful of their needs.
Ensure cultural competence	Culture plays an important role in how victims/survivors of trauma manage and express their traumatic life experience/s and identify the supports and interventions that are most effective. Culturally competent services are respectful of, and specific to, cultural backgrounds. Such services may offer opportunities for clients to engage in cultural rituals, speak in their first language and offer specific foods. Culturally competent staff are aware of their own cultural attitudes and beliefs, as well as those of the individuals, families and communities they support. They are alert to the legitimacy of inter-cultural difference and able to interact effectively with different cultural groups.
Support client's control	Client control consists of two important aspects. First, victims/survivors of trauma are supported to regain a sense of control over their daily lives and build competencies that will strengthen their sense of autonomy. Second, service systems are set up to keep individuals (and their caregivers) well informed about all aspects of their treatment, with the individual having ample opportunities to make daily decisions and actively participate in the healing process.
Share power and governance	Power and decision making is shared across all levels of the organisation, whether related to day-to-day decisions or the review and creation of policies and procedures. Practical means of sharing power and governance include recruiting clients to the board and involving them in the design and evaluation of programs and practices.
Integrate care	Integrating care involves bringing together all the services and supports needed to assist individuals, families and communities to enhance their physical, emotional, social, spiritual and cultural wellbeing.
Support relationship building	Safe, authentic and positive relationships assist healing and recovery. Trauma-informed services facilitate such relationships; for example, by facilitating peer-to-peer support.
Enable recovery	Trauma-informed services empower individuals, families and communities to take control of their own healing and recovery. They adopt a strengths-based approach, which focuses on the capabilities that individuals bring to a problem or issue.

Source: Designing Out Crime, *Submission*, no. 46. p. 16.

Professor John Tobin discussed rehabilitation of young offenders in terms of a 'rights-based approach' to justice. This means that young offenders and their carers share rights in a 'relational' model, where young people are made aware of their rights as well as their responsibility not to infringe the rights of others. Professor Tobin said:

You might come in and have rights to things as a young resident at Parkville, but you have got to have respect for the rights of those who are working to support you in situ as well, and there will be consequences that flow when those responsibilities are not actually undertaken.

...For me, coming from a rights-based approach and particularly children's rights, how do I make sure children see rights as not just something that they have got to exercise against you or me as a parent or as a member of the public, but in fact they have got to respect ours as well. That is part education, part of building the culture and the values.³⁸¹

Professor Tobin added that this approach does not mean that because young offenders may come from a troubled background they can do as they please. Rather it is a balanced response that considers their background when determining a sentence.³⁸²

Evidence of the efficacy of a well-delivered therapeutic model was provided by Ms Julie Edwards, CEO of Jesuit Social Services. She told the Committee that other jurisdictions internationally that better implement therapeutic approaches to rehabilitation do not experience the same problems that Victoria recently experienced. Ms Edwards said:

When you talk to people in other jurisdictions, asking, 'How do you manage the assaults?', they do not know what you are talking about. They go, 'We don't have the assaults', because of the culture of respect and rehabilitation that is being fostered in those environments.³⁸³

In 2015–16, Victoria had the highest number of young offenders in custody in Australia injured as a result of an assault (51) or serious assault (6). The next highest was Queensland with 32 and 1, respectively. Western Australia and the ACT both recorded zero assaults.³⁸⁴ (The Committee notes that caution should be taken when comparing jurisdictions with different population sizes.)

While therapeutic approaches are important, in particular a commitment to no further harm, Armytage and Ogloff are clear in their belief that such approaches alone do not reduce offending. As stated in Chapter 2, their support for this belief is the fact that although a high percentage of young offenders have suffered traumatic experiences, the majority of young people who experience trauma do not offend. In relation to Victoria, Armytage and Ogloff express two concerns:

- Trauma-informed models are highly complex and specialised, making them difficult for staff to fully understand and, importantly, implement (see below)
- Focusing on trauma at the expense of criminogenic factors will not reduce offending.³⁸⁵

³⁸¹ Professor John Tobin, *Transcript of evidence*, 27 June 2017. pp. 61-2.

³⁸² *Ibid.* p. 62.

³⁸³ Julie Edwards, Chief Executive Officer, Jesuit Social Services, *Transcript of evidence*, 19 April 2017. p. 5.

³⁸⁴ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 1*, Victorian Government, Melbourne, 2017. p. 135.

³⁸⁵ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. p. 48.

They add: ‘...it is important to separate individual interventions aimed at providing psychological care versus offender rehabilitation. Blending these purposes in intervention leads to client confusion and ethical complexity for clinical staff.’³⁸⁶

6.2.1 Other jurisdictions

The Committee investigated several other jurisdictions that have implemented therapeutic models of youth justice. Two examples are considered briefly here.

New Zealand

New Zealand’s Associate Minister of Justice (who is also the Associate Minister of Social Development) has stated:

We must accept that there are tensions in good youth justice policy. There is no place for the cynical, but everybody has seen it all before. No place for a “lock ‘em up and throw away the key” response; yet retribution, denunciation and reparation are legitimate principles in any criminal justice system.³⁸⁷

New Zealand’s *Youth Crime Action Plan 2013–2023, Report* states: ‘Addressing the vulnerability of children and their care and protection needs will progressively reduce the volume of youth offending.’³⁸⁸

The number of young people in New Zealand charged with an offence has fallen 16 per cent since 2011 to its lowest in 20 years. New Zealand places 80 per cent of its young people on community-based orders. The other 20 per cent, mostly aged between 14–17 years, are housed in four secure residential care facilities operating with an annual budget of approximately \$33 million.³⁸⁹ The four facilities are:

- Korowai Manaaki, Auckland (46 beds)
- Te Maioha o Parekarangi, Rotorua (30 beds)
- Te Au rere a te Tonga, Palmerston North (30 beds)
- Te Puna Wai o Tuhinapo, Christchurch (30 beds).³⁹⁰

United States

Florida’s decision to adopt a trauma-based youth justice policy was motivated by a desire to reduce the use of physical restraints. The Florida Department of Juvenile Justice reviewed other programs which had successfully reduced the use of physical restraints and identified what the approaches had in common.³⁹¹ These were:

³⁸⁶ Ibid. p. 261.

³⁸⁷ Ministry of Justice (NZ), *Youth crime action plan 2013-2023: report*, Ministry of Justice (NZ), 2013. p. 4.

³⁸⁸ Ibid., p. 5.

³⁸⁹ YouthLaw, *Submission*, no. 12. p. 24.

³⁹⁰ Ibid. p. 24.

³⁹¹ Associate Professor Margarita Frederico, *Submission*, no. 32. pp. 10-11.

- Leadership committing to a reduction in physical restraints
- Selecting staff based on positive attitudes
- Creative and effective alternate strategies are acknowledged
- Incentives including a degree of tolerance for relatively minor misbehaviour
- Continual program improvement.³⁹²

Florida considers trauma-informed care to be based on the principle that young offenders' physical aggression is often a manifestation of adverse childhood experiences, such as physical, sexual and emotional abuse. Managing those behaviours must be done in a manner that does not cause further trauma. Therefore, effective behaviour management models are designed with young offenders in mind.³⁹³

6.3 Inconsistent message

*I think if you do not have good, clear, consistent models of working with children and young people, for starters you lose the capacity to work effectively with those young people and you lose the capacity to run effective dynamics, and that is really important in terms of the incidents and the instability we see.*³⁹⁴

Youth justice is not an either/or situation, it a balance between accountability and rehabilitation (services addressing trauma and disadvantage). There has been some inconsistency in the public narrative around youth justice in Victoria recently, driven by disturbances and escapes at youth justice facilities. Some stakeholders in this Inquiry have noticed a shift towards a more punitive approach where responses to specific incidents are having a negative impact on the overall youth justice policy. This has the potential to limit rehabilitation, thereby increasing the likelihood of reoffending.

The Royal Australian and New Zealand College of Psychiatrists believes that a shift towards a punitive approach to youth justice (as discussed in Chapter 1) can be seen in attitudes within and outside of the system itself. It writes:

In recent years, the youth justice system has been moving away from a supportive and rehabilitative model to one more punitive/restrictive. This can be seen in shifts in the staff culture as well as the government's responses to recent events, including the housing of young offenders in high-security prisons, the increased arming of guards and the transfer of responsibility for youth justice centres to Corrections Victoria.³⁹⁵

The Committee is concerned that this move towards a punitive response can be self-defeating. The Royal Australian and New Zealand College of Psychiatrists adds:

³⁹² Ibid. pp. 10-11.

³⁹³ Ibid. pp. 10-11.

³⁹⁴ Liana Buchanan, Commissioner for Children and Young People, Commission for Children and Young People, *Transcript of evidence*, 17 March 2017. p. 15.

³⁹⁵ Royal Australian and New Zealand College of Psychiatrists, *Submission*, no. 16. p. 1.

Punitive approaches to the management of youth justice services, however, are unlikely to resolve the behavioural issues of detainees; instead, they serve to reinforce the sense of mistrust experienced by many children and young people in custody. Without a trauma-informed approach to the management of youth justice centres, at-risk children and young people will continue to face significant obstacles in their paths to recovery and rehabilitation, and staff in youth detention centres will continue to face significant difficulties in managing children and young people in their care.³⁹⁶

Despite this recent shift towards a more punitive response to young offending, therapeutic values remain evident in Victoria. For example, in 2007 changes to the *Children, Youth and Families Act 2005* established therapeutic treatment orders and a therapeutic treatment board. The therapeutic treatment board assesses young people aged 9 to 15 years with problematic sexual behaviour, to either place them on a treatment order or refer them to court. While young people are under a therapeutic treatment order, their related criminal matters may be stood down and dismissed when they successfully complete the program. If the young person fails to complete the treatment order, the order can be revoked and the charge(s) returned for hearing.³⁹⁷

Ms Trish McClusky, Director of Strategic Initiatives at Berry Street, told the Committee that referring young people to treatment orders led to a dramatic reduction in the rate of reoffending for sexual offences. She believed that expanding the model to other types of offending would see similar rates of success.³⁹⁸

More recently, in 2013 Victoria trialled intensive therapeutic care units with the intention to apply the framework across the system. The therapeutic care units were based on Berry Street's 'Take Two' service.³⁹⁹ The Commissioner for Children and Young People, Ms Liana Buchanan, elaborated on these in her evidence to the Committee, saying:

As I understand it, senior management involved in the running of the youth justice centres reached a point of understanding that there would be value in rolling out, embedding, a different approach, a more consistent approach among staff. It is an approach that really takes on board what much of the evidence suggests, which is the most effective way to work with children and young people, particularly children and young people with the kinds of backgrounds and of the kinds of demographics that we find in youth justice centres.⁴⁰⁰

However, this program was put on hold following the November 2016 disturbances.⁴⁰¹

³⁹⁶ Ibid. p. 4.

³⁹⁷ Department of Health and Human Services, *Children in need of therapeutic treatment: Therapeutic treatment orders*, Department of Health and Human Services, Melbourne, 2007.

³⁹⁸ Trish McCluskey, Director, Strategic Initiatives, Berry Street, *Transcript of evidence*, 19 April 2017. p. 24.

³⁹⁹ Berry Street, 'Take Two', viewed 10 July 2017.

⁴⁰⁰ Liana Buchanan, Commissioner for Children and Young People, Commission for Children and Young People, *Transcript of evidence*, 17 March 2017. p. 16.

⁴⁰¹ Ibid. p. 15; YouthLaw, *Submission*, no. 12. pp. 25-6.

Finally, DJR Secretary Mr Greg Wilson informed the Committee that training of the youth justice workforce will include “...a focus on preventing occupational violence, use of restraints, adolescent development and trauma-informed care.”⁴⁰²

FINDING 8: Successful youth justice systems acknowledge all criminogenic factors in youth offending. They focus on rehabilitation as much as holding young offenders to account for their crimes.

6.4 Services provided in youth justice centres

The main support services provided in youth detention are around mental health, education, and alcohol and other drug treatment. The aim of providing such services is to ensure that young people are ready to reintegrate into the community upon release, but this clearly is not happening for some young offenders.

6.4.1 Mental health

The term ‘mental health’ is a broad one. As such, exact figures on mental health problems for young offenders are hard to determine.

For example, the Australian Psychological Society told the Committee that ‘...the majority (87 per cent) of young people in custody have at least one psychological disorder, and three in four...have two or more mental health disorders.’⁴⁰³ The Youth Parole Board’s 2016–17 *Annual Report* states that 40 per cent of young people in youth detention were admitted with mental health problems (up from 30 per cent the previous year) and 22 per cent had a history of self-harm and suicidal thoughts (up from 18 per cent the previous year).⁴⁰⁴ Regardless, it is widely accepted that many young offenders require mental health treatment while detained.

It is important for youth justice staff to assess young offenders’ mental health before making decisions on physical security practices such as isolation and lockdowns,⁴⁰⁵ both of which are linked to exacerbating or creating mental health problems in detainees.⁴⁰⁶ Assessment is discussed further in Section 6.4.6. Mental health is also a key determinant of a young offender’s chances of rehabilitation. Professor Ogloff described mental health services as ‘humane, helpful and necessary’. He told the Committee that even though mental health problems cannot be said to be a cause of offending, without treatment rehabilitation is unlikely. Professor Ogloff said:

⁴⁰² Greg Wilson, Secretary, Department of Justice and Regulation, *Transcript of evidence*, 27 June 2017. p. 2.

⁴⁰³ Australian Psychological Society, *Submission*, no. 34. p. 22.

⁴⁰⁴ Youth Parole Board, *Annual Report*, Youth Parole Board, Melbourne, 2016. p. 18.

⁴⁰⁵ Discussed in more depth in Chapter 6.

⁴⁰⁶ Associate Professor Margarita Frederico, *Submission*, no. 32. p. 12; Jesuit Social Services, *Submission*, no. 37. pp. 28-9; Wayne Muir, Chief Executive Officer, Victorian Aboriginal Legal Service, *Transcript of evidence*, 19 April 2017. p. 35.

On that, I think it is important to note that I am not saying that mental illness is what causes young people to offend. Rather, we know that if you look at the contributing factors to offending, they are actually pretty much the same between people with mental illness and people who do not have mental illness. The complication is, of course, the mental illness makes it very, very difficult to manage young people and of course for them to benefit from any sorts of interventions.⁴⁰⁷

The Victorian Aboriginal Legal Service and the Aboriginal Children's Commissioner noted evidence showing the increased likelihood of negative mental health outcomes for Aboriginal young people compared to non-Aboriginal young people, including self-harm and suicide attempts.⁴⁰⁸

Koori young offenders are discussed in Chapter 11.

6.4.2 Level of mental health services

Professor Ogloff added that in his opinion the level of mental health services provided within youth justice facilities is inadequate to deal with the problems young offenders present with. However, he did state that services such as Orygen and Forensicare (Victorian Institute of Forensic Mental Health) offer the system an opportunity to improve.⁴⁰⁹

Evidence to the Committee advocated for the creation of a residential forensic mental health facility for young people in Victoria, similar to those available for adult offenders.⁴¹⁰ In 2009, the Victorian Parliament's Drugs and Crime Prevention Committee recommended the creation of such a facility. Despite the then Victorian Government noting the recommendation no such facility has yet been created in Victoria.⁴¹¹

The Victorian Law Reform Commission has also recommended establishing a youth forensic unit, stating:

The Commission is of the view that there is a need for a youth forensic unit in Victoria. It is unacceptable that young people with a mental illness, intellectual disability or other cognitive impairment are being detained in custodial facilities that are not appropriate to meeting the needs of this vulnerable group of young people.⁴¹²

⁴⁰⁷ Professor James Ogloff, *Transcript of evidence*, 27 June 2017. p. 19.

⁴⁰⁸ Andrew Jackomos, Aboriginal Children's Commissioner, Commission for Aboriginal Children and Young People, *Transcript of evidence*, 27 June 2017; Wayne Muir, Chief Executive Officer, Victorian Aboriginal Legal Service, *Transcript of evidence*, 19 April 2017; Nerita Waight, Lawyer and Policy Officer, Victorian Aboriginal Legal Service, *Transcript of evidence*, 19 April 2017; Patrick Warner, Principal Legal Officer, Civil Section, Victorian Aboriginal Legal Service, *Transcript of evidence*, 19 April 2017.

⁴⁰⁹ Professor James Ogloff, *Transcript of evidence*, 27 June 2017. p. 19.

⁴¹⁰ Orygen, *Submission*, no. 14. p. 4; Royal Australian and New Zealand College of Psychiatrists, *Submission*, no. 16. pp. 2, 9; Professor James Ogloff, *Transcript of evidence*, 27 June 2017. p. 25.

⁴¹¹ *Government Response to the Parliament of Victoria Drugs and Crime Prevention Committee's final report on its Inquiry into Strategies to Prevent High Volume Offending and Recidivism by Young People*, Melbourne, 2009. p. 28.

⁴¹² Quoted in: Magistrate Jennifer Bowles, *Residential therapeutic treatment options for young people suffering substance abuse/mental illness*, The Winston Churchill Memorial Trust of Australia, Melbourne, 2014. p. 18.

The Committee acknowledges the existing Youth Justice Mental Health Initiative established in 2010 and run by Forensicare. This provides six clinical mental health professionals who service the community and custodial youth justice population, including providing direct services to the Parkville Youth Justice Precinct.⁴¹³ The Committee also acknowledges the services provided by DHHS through the Youth Justice Community Support Service and through partnerships with community-based service providers.⁴¹⁴ However, demand is currently outstripping supply in this important area. The situation is made worse when, as discussed in Chapter 9, staff shortages prevent young offenders from accessing services.

The Youth Parole Board identified recent extra services announced by the Victorian Government. It states:

The Youth Parole Board is pleased that the 2017–18 Victorian State Budget will expand the forensic mental health services available to young people involved with youth justice. A dedicated secure two-bed forensic mental health unit will be established for young people detained in youth justice centres who require inpatient treatment. A specialist mental health in-reach service will also provide an increased level of support and treatment for young people in youth justice centres who experience mental health issues. For young people in the community an early intervention problem behaviour program targeting young people with mental illness and violence will also be established.⁴¹⁵

Armytage and Ogloff recommended establishing a youth forensic mental health precinct within the master planning of the Thomas Embling Hospital, a 116-bed secure adult forensic mental health hospital operated by Forensicare. The Committee supports this recommendation.⁴¹⁶

FINDING 9: Identifying and treating young offenders' mental health problems increases their chances of rehabilitation.

FINDING 10: Young offenders must be immediately assessed on arrival at youth justice centres to determine the services that will be most effective in addressing their offending.

FINDING 11: The current level of mental health services provided for young offenders is not enough to meet their needs.

RECOMMENDATION 15: That the Victorian Government consider establishing a youth forensic mental health precinct.

RECOMMENDATION 16: That the Department of Justice and Regulation periodically evaluate mental health services in the youth justice system to ensure services meet ongoing needs.

⁴¹³ Forensicare, 'Youth Justice Mental Health Program', viewed 18 August 2017.

⁴¹⁴ Youth Parole Board, *Annual Report*, Youth Parole Board, Melbourne, 2016. p. 22.

⁴¹⁵ *Ibid.* p. 18.

⁴¹⁶ See also submissions from Capital City Learning and Employment (Submission 11) and Professor Terry Laidler (Submission 7 plus Professor Laidler's *Transcript of evidence*, 17 March 2017).

6.4.3 Education

*No matter how difficult the circumstances we must continue to provide school-age children with educational opportunities.*⁴¹⁷

Young people with a history of disengagement from education are over-represented in the youth justice system. The Youth Parole Board's 2015–16 *Annual Report* estimates that 62 per cent of young people in youth justice centres have been suspended or expelled from school.⁴¹⁸ The Victorian Ombudsman's 2015 *Investigation into the rehabilitation and integration of prisoners in Victoria* report states that only 5–7 per cent of adult prisoners in Victoria have completed Year 12. Poor literacy and numeracy are the most common problems.⁴¹⁹

This is why Parkville College is such an important component of the youth justice system in Victoria. Parkville College was established in 2012, in response to recommendations in the Victorian Ombudsman's *Investigation into conditions at the Melbourne Youth Justice Precinct* report.⁴²⁰ Parkville College has 190 staff and operates across seven youth justice-linked campuses in Victoria, all year round. It offers a flexible curriculum, including VCE and VCAL subjects, to provide education to young offenders at all levels. Parkville College also enables its students to continue attending after they have left detention, guaranteeing consistency in young offenders' education.⁴²¹

Mr Brendan Murray, a former Principal of Parkville College, explained to the Committee the rationale behind establishing the College. He said:

The idea of the school was to enhance education and rehabilitation and to recognise that children within youth justice had been out of the education system for a long time, and it was believed that providing them with more education and top-quality education would be in their best interests and in the best interests of the State.⁴²²

In 2016, Parkville College students completed 436 VCAL units and 291 VET units⁴²³ and demonstrated large improvements in literacy and numeracy.⁴²⁴ Around 80 per cent of children and young people described their experience with the College as positive in their exit plans.⁴²⁵ The College performed very well in the 2015–16 Attitudes to School Survey, with current Principal Mr Matthew Hyde

⁴¹⁷ Gill Callister, Secretary, Department of Education and Training, *Transcript of evidence*, 27 June 2017. p. 29.

⁴¹⁸ Youth Parole Board, *Annual Report*, Youth Parole Board, Melbourne, 2016. p. 14. Both parole and bail orders can require a young offender to undertake specific behaviours, including attending school. See: *ibid.* p. 10; *Bail Act 1977 s5(2A)(f)*.

⁴¹⁹ Victorian Ombudsman, *Investigation into the rehabilitation and reintegration of prisoners in Victoria*, Victorian Ombudsman, Melbourne, 2015. p. 63.

⁴²⁰ Victorian Ombudsman, *Whistleblowers Protection Act 2001 Investigation into conditions at the Melbourne Youth Justice Precinct*, Victorian Ombudsman, Melbourne, 2010; Brendan Murray, *Transcript of evidence*, 30 May 2017. p. 25; Parkville College, 'School history', viewed 13 February 2018.

⁴²¹ Victorian Council of Social Services, *Submission*, no. 20. pp. 13-4; Matthew Hyde, Principal of Schools, Parkville College, *Transcript of evidence*, 27 June 2017. pp. 30-1, 36-7.

⁴²² Brendan Murray, *Transcript of evidence*, 30 May 2017. p. 25.

⁴²³ Gill Callister, Secretary, Department of Education and Training, *Transcript of evidence*, 27 June 2017. p. 29; Matthew Hyde, Principal of Schools, Parkville College, *Transcript of evidence*, 27 June 2017. pp. 30-1.

⁴²⁴ *Ibid.* pp. 30-1.

⁴²⁵ Brendan Murray, *Transcript of evidence*, 30 May 2017. pp. 25-6; Matthew Hyde, Principal of Schools, Parkville College, *Transcript of evidence*, 27 June 2017. pp. 30-1.

advising the Committee that the results of the survey “...[put] us in one of the top tiers in the State in terms of response to [student] connectedness and how they feel.”⁴²⁶

Evidence provided to the Committee by young offenders supports these results:

School on the inside is good I personally like it better than school on the outside.⁴²⁷

School on the inside is great, my first time in three years, I finally get an education, I can't wait to continue school on the outside.⁴²⁸

School on the inside helps quite a lot to get back to school on the outside.⁴²⁹

Mr Hyde highlighted Parkville College's flexibility in providing both classroom-based and vocational trade education. He said:

I think the mixture between classroom-based practice and the vocational trades has been really effective for all kids that come through the doors. There was an early perception about the idea of taking away the hands-on, tool-based programs for children, and that is the last thing I think the school wanted to do. It is a really healthy mixture between the idea of kids being able to read and write proficiently to be able to enter trades and different vocational education programs post custody but at the same time having the exposure to the elements to give them that trade tester experience to figure out whether or not they want to be a carpenter or a plumber or to work in a gym and do fitness. Of late we also deliver a number of VCE subjects internally.⁴³⁰

Of these VCE subjects, Mr Hyde particularly noted the value of offering philosophy classes to students:

Philosophy has been a massive — I would say positive — sort of implementation across the school. Kids moving through their VCE units 1 and 2 of philosophy allows them to discuss the finer details of society and talk about really meaningful spaces and predicaments and social justice issues that encourage them to think a little bit deeper about themselves and their impact on society.⁴³¹

Mr Hyde added that the College continually focuses on helping young offenders identify and achieve their educational goals in a way that supports them post-release. He said:

The school is definitely not perfect, so in terms of harnessing our approach in how we support all children in the classroom has always been a goal that we have set. I think we do it really well now, but to increase that so that kids have a really clear understanding of where they are at educationally, what they want to do post custody and how they can do that successfully is always at the forefront.⁴³²

426 Matthew Hyde, Principal of Schools, Parkville College, *Transcript of evidence*, 27 June 2017. p. 31.

427 Parkville College, *Submission*, no. 44. p. 1.

428 *Ibid.* p. 2.

429 *Ibid.* p. 5.

430 Matthew Hyde, Principal of Schools, Parkville College, *Transcript of evidence*, 27 June 2017. pp. 35-7.

431 *Ibid.* p. 36.

432 *Ibid.* p. 35.

Another important education program is the Department of Education and Training's Education Justice Initiative. The Education Justice Initiative works with the Children's Court and the Children's Koori Court to reconnect students who have been suspended, expelled or otherwise disengaged back into the education system. The Education Justice Initiative has had a 75 per cent success rate in reconnecting young people with education since 2014. It has improved enrolment rates from 51 to 75 per cent and attendance rates from nine per cent to 54 per cent.⁴³³

The Committee received overwhelmingly positive evidence regarding both Parkville College and the Education Justice Initiative.⁴³⁴ The Committee commends all those involved in improving the education outcomes of young offenders in Victoria.

FINDING 12: Many young offenders in detention have low education levels. It is vital that education continues when young offenders are in youth justice centres as improving their education reduces the risk of reoffending.

RECOMMENDATION 17: That the Department of Education and Training's Early Childhood and School Education Group consider whether the successful methods at Parkville College, including teacher training and lesson structures, can be adapted to provide further assistance to at-risk students in mainstream schools.

6.4.4 Alcohol and other drug services

It has been estimated that around two-thirds of young people in contact with the youth justice system have misused alcohol and other drugs (AOD).⁴³⁵ Children's Court Magistrate Jennifer Bowles described the number as 'incredibly high', adding: "Whether it is to the level that their lives are pretty much chaotic and out of control, not necessarily, but it is not uncommon; it is frequent. That is what we are seeing."⁴³⁶

As with many other services, AOD services should continue to be available to young offenders following their release from detention. This is because AOD treatment may require more time to be effective than the sentences that young offenders receive.

The Committee acknowledges the good work done by the Youth Health and Rehabilitation Service, a consortium of YSAS, St Vincent's Hospital and Caraniche. The service provides rehabilitation programs in Parkville, Malmsbury and for young people on community-based sentences. It has recently expanded

⁴³³ Victorian Council of Social Services, *Submission*, no. 20. pp. 25-6; Matthew Hyde, Principal of Schools, Parkville College, *Transcript of evidence*, 27 June 2017. pp. 36-7.

⁴³⁴ YouthLaw, *Submission*, no. 12. pp. 26-7; Victorian Council of Social Services, *Submission*, no. 20. pp. 13, 25-6.

⁴³⁵ Victorian Council of Social Services, *Submission*, no. 20. p. 32; Law Institute of Victoria, *Submission*, no. 31. p. 8; Magistrate Jennifer Bowles, *Residential therapeutic treatment options for young people suffering substance abuse/mental illness*, The Winston Churchill Memorial Trust of Australia, Melbourne, 2014. Cites 89 per cent in 2013-14. p. 14; Judge Amanda Chambers, President, Children's Court of Victoria, *Transcript of evidence*, 27 June 2017. p. 42.

⁴³⁶ Jennifer Bowles, *Transcript of evidence*, 14 June 2017. p. 75.

its range of psychoeducational group-based programs for young people on remand, including an alcohol and other drug harm-minimisation program to the Malmsbury Youth Justice Precinct.⁴³⁷ However, these programs are voluntary and on their own are unable to provide the amount of support that is needed across the youth justice system.

Children’s Court Magistrate Jennifer Bowles provided evidence to the Committee on her 2014 Churchill Fellowship, which investigated court-mandated AOD treatment programs (see below). Magistrate Bowles found that the current voluntary treatment system “is not working for many young people” and her research confirmed that mandated treatment can work as effectively as voluntary treatment.⁴³⁸

RECOMMENDATION 18: That the Victorian Government provide a continuation of alcohol and other drug services for young offenders in need of treatment following their release from detention.

6.4.5 Mandated treatment

Magistrate Jennifer Bowles spoke with the Committee about her Churchill Fellowship project investigating residential therapeutic treatment options for young people suffering from substance misuse and mental illness.⁴³⁹

Until recently, compulsory treatment was able to be ordered for young people who met the criteria of the *Disability Act 2006*, *Mental Health Act 2014*, or *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*.⁴⁴⁰ However, it was more common for young offenders to be offered optional counselling or treatment sessions. The recently enacted *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017* states that when making a youth control order the Children’s Court can require young offenders to attend ‘a counselling or treatment service of any kind’.⁴⁴¹

The Children’s Court may also encourage young people to enter a detox program or other residential program, but these facilities are voluntary. The result is that young people often stay for a short time and leave before the treatment has been effective. This can be because the detox is too difficult or because of pressure from peers or family.⁴⁴²

Magistrate Bowles, who spoke with the Committee before the *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017* was enacted, explained to the Committee why she believes the approach to date has not been sufficient. She said:

⁴³⁷ Youth Parole Board, *Annual Report*, Youth Parole Board, Melbourne, 2016. p. 19.

⁴³⁸ Jennifer Bowles, *Transcript of evidence*, 14 June 2017. p. 68.

⁴³⁹ Magistrate Jennifer Bowles, *Residential therapeutic treatment options for young people suffering substance abuse/mental illness*, The Winston Churchill Memorial Trust of Australia, Melbourne, 2014.

⁴⁴⁰ *Ibid.* p. 18.

⁴⁴¹ *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017* 409F(2)(b).

⁴⁴² Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. p. 44.

Often I get reports from youth justice that ‘Yes, Johnny went to the first assessment, but he has not been back’. And when I say to the young person, ‘Well, you need to go to these counselling appointments’, they will not say that it is because there is a delay; what they will say is, ‘Oh yeah, I know’. I have got kids every day who have seen their parents commit suicide. They have seen horrible family violence matters. If you are self-medicating, it is very hard for me to say, ‘Go and confront all of that. You have to do it’. Effectively you might say that that is what you are asking them to do in this model, but I am asking them to do it in a therapeutic, safe environment, not in an environment where they go for one hour a week and then go back to their normal chaotic lifestyles.⁴⁴³

Magistrate Bowles added that there is a lack of residential beds in Victoria for detox, which limits Magistrates’ options at sentencing. She added that there are times when young offenders who request detox have to wait before a bed becomes available.⁴⁴⁴

Magistrate Bowles therefore believes the Children’s Court should have the power to order mandatory treatment in a secure therapeutic residential facility for young people with drug and alcohol or mental health issues. She believes that mandated treatment is as effective as voluntary treatment and for some young people is actually necessary.⁴⁴⁵ The *Severe Substance Dependence Treatment Act 2010* allows for a period of up to 14 days of detention and compulsory treatment of people aged over 18 years if it is considered necessary to save their lives or prevent them from harming themselves.

Magistrate Bowles’s proposed mandatory treatment model, Youth Therapeutic Orders, is based on her experience and research of overseas models. It involves:

1. A young person appears before the Children’s Court with substance misuse/ mental health issues.
2. The Children’s Court receives an assessment report confirming that the young person requires intensive support to address these issues.
3. The Children’s Court determines that a Youth Therapeutic Order should be made.
4. The Youth Therapeutic Order places the young person in a secure therapeutic community facility in order to detox, if necessary, and to engage in treatment with appropriately qualified and committed staff. There would be intensive individual and group counselling.
5. There would be judicial oversight regarding the progress in treatment of the young person.
6. The young person would attend a school on site, providing access to education and training.

⁴⁴³ Jennifer Bowles, *Transcript of evidence*, 14 June 2017. pp. 74-5.

⁴⁴⁴ *Ibid.* p. 68.

⁴⁴⁵ Magistrate Jennifer Bowles, *Residential therapeutic treatment options for young people suffering substance abuse/mental illness*, The Winston Churchill Memorial Trust of Australia, Melbourne, 2014. pp. 34-8.

7. There would be a transition to an open therapeutic community residence, which would ideally be on the same site as the closed facility. The clinicians would work with the young people at both residences, to ensure continuity.
8. There would be a well-resourced transition plan for the young person to return to the community. This could include:
 - Outreach from a residential facility
 - A clinician with whom the young person has established a rapport, prior to entering the facility and who continued that rapport whilst the young person was in the facility
 - A house, off-site, with some support, with the aim that the young person would fully engage in the community.
9. The Court would have regard to the progress of the young person, when determining an appropriate sentence or child protection order.⁴⁴⁶

Magistrate Bowles added that young offenders granted Youth Therapeutic Orders would still need to return to court to be sentenced for their actions. She said:

Ms BOWLES — They could have pleaded or they could have been on bail or remanded in custody, so it is a rehabilitative order. That is the focus I want to emphasise and that then, if they have done well in a program, that can be recognised in terms of the ultimate sentence. Whether they still go to custody or are placed in detention because the offending is so serious, it might be that it is a shorter period of time in detention because of the fact that I can tick off the rehabilitative prospects as much greater than had they not attended the facility.

Ms PATTEN — So this process happens and then they still would be coming before the courts after that.

Ms BOWLES — They have to come back, so there has got to be a consequence at the end.⁴⁴⁷

Magistrate Bowles has established the ‘What Can Be Done’ Steering Committee, comprising members of not-for-profit organisations, the Children’s Court Clinic, psychiatrists, and other specialists such as lawyers, teachers and advocacy groups. The Steering Group’s submission to the inquiry expands on Magistrate Bowles’s proposal, including providing costings (\$1,420 per young person per day, which is slightly cheaper than the current cost of detaining a young person).⁴⁴⁸

FINDING 13: There are insufficient detox services available for young offenders in Victoria and other barriers to access. This limits the number of options available to Magistrates when sentencing young offenders with drug misuse problems.

RECOMMENDATION 19: That the Victorian Government establish a trial program of Youth Therapeutic Orders based on the ‘What Can Be Done’ model.

⁴⁴⁶ Ibid. pp. 40-1.

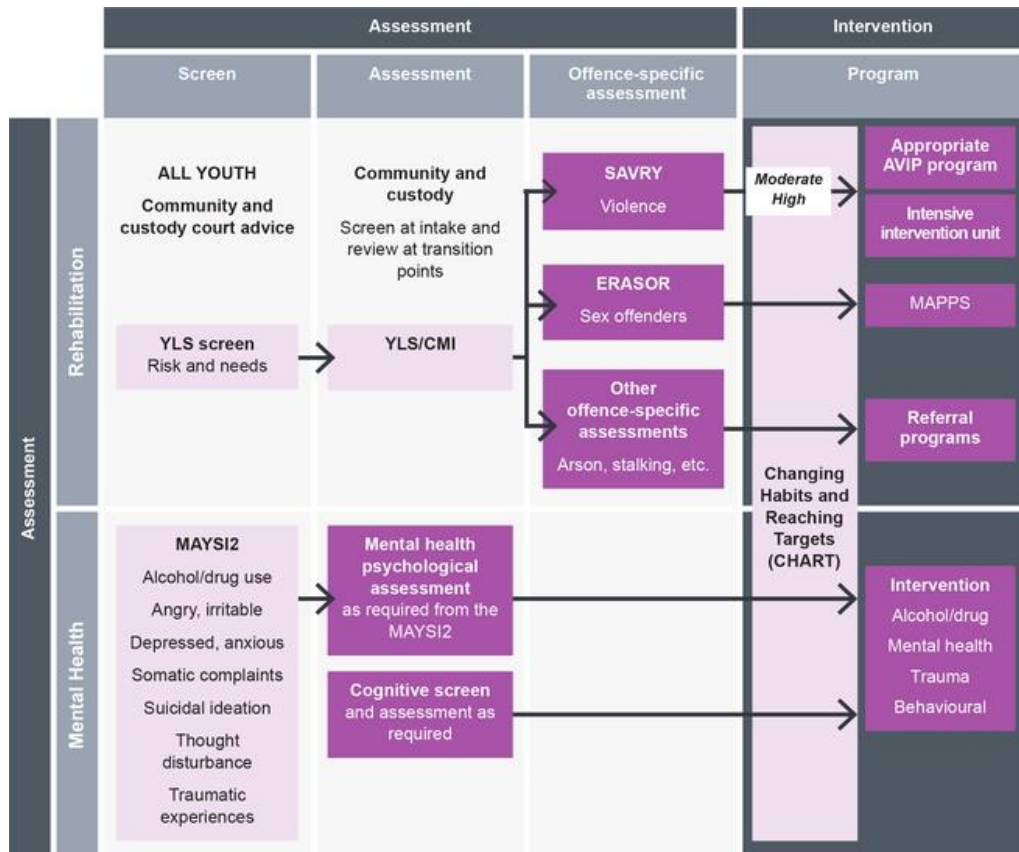
⁴⁴⁷ Jennifer Bowles, *Transcript of evidence*, 14 June 2017. p. 73.

⁴⁴⁸ What Can Be Done, *Submission*, no. 47. p. 3.

6.4.6 Assessment

Young offenders’ needs and the causes of their criminal behaviour are assessed at several points throughout the youth justice system. This is important because as Professor Ogloff told the Committee: “We often do not understand the drivers in an individual case for why the young person is behaving the way they are.”⁴⁴⁹

Figure 6.2 Assessments and interventions



Source: Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. p. 28.

The results of the initial assessment by youth justice community staff, for example by the Central After Hours Assessment and Bail Placement Service, determine whether a young person is diverted, placed on bail or remanded. However, Armytage and Ogloff report that youth justice workers frequently make assessments ‘...under pressure, within very short timeframes and without the benefit of all of the relevant information.’⁴⁵⁰ The result is that young offenders who need intervention to prevent them from reoffending are not distinguished from those who enjoy strong protective factors and therefore require limited intervention. (Both Germany and New York City have a 28-day assessment period prior to sentencing young offenders.⁴⁵¹)

449 Professor James Ogloff, *Transcript of evidence*, 27 June 2017. p. 20.

450 *Ibid.*, pp. 32-33.

451 Jesuit Social Services, *#JusticeSolutions Tour: Expanding the conversation*, Jesuit Social Services, Melbourne, 2017. p. 17.

Young offenders sentenced to detention must be assessed within 24 hours for evidence of self-harm, injury, alcohol/drugs and illness. Assessment upon admission to youth justice centres allows custodial staff to:

- Identify the immediate needs of the young person
- Create an individualised intervention and rehabilitation plan
- Incorporate support service needs into ongoing post-release planning
- Track, anticipate and respond to changing support service demand.⁴⁵²

Assessment should screen for a range of possible needs, including:

- Physical and mental health
- Education levels
- Cognitive difficulties, including language and communication difficulties
- Substance misuse
- Immediate risks to self, such as self-harm or suicidal thoughts
- Potential risk to and from others.⁴⁵³

How young offenders are currently assessed generally in Victoria has been identified as inadequate and inconsistent.⁴⁵⁴ The Commissioner for Children and Young People, Ms Liana Buchanan, believed improving assessment methods would also improve the delivery of services while young offenders are detained. She said:

...there is scope to look at whether within the system there is a need for a more sophisticated assessment generally of children and young people when they come in that is then carried through in a more consistent way into what kind of treatment and interventions they are then provided with when they are in the system, as well as how they are managed and where they are managed and with whom they mix et cetera.⁴⁵⁵

Armytage and Ogloff were particularly critical of assessment practices in youth justice centres, calling the initial health assessment 'ad hoc',⁴⁵⁶ and the system more widely (see their Sections 6.2.2 and 6.2.3). Rehabilitation depends on high-quality assessment that matches people with programs. However, Armytage and Ogloff found that assessment currently '...suffers from inadequate information and understanding of the criminogenic factors, family dynamics and school or employment engagement in order to inform an appropriate level of intervention required to respond to the offending risks of the young person.'⁴⁵⁷

⁴⁵² YouthLaw, *Submission*, no. 12. pp. 24-5; Victorian Council of Social Services, *Submission*, no. 20. p. 13; Australian Psychological Society, *Submission*, no. 34. p. 19.

⁴⁵³ YouthLaw, *Submission*, no. 12. pp. 24-5; Royal Australian and New Zealand College of Psychiatrists, *Submission*, no. 16. p. 10; Australian Psychological Society, *Submission*, no. 34. pp. 3, 19.

⁴⁵⁴ YouthLaw, *Submission*, no. 12. p. 24; Victorian Council of Social Services, *Submission*, no. 20. p. 13; Associate Professor Margarita Frederico, *Submission*, no. 32. p. 9.

⁴⁵⁵ Deborah Glass, Ombudsman, Victorian Ombudsman, *Transcript of evidence*, 17 March 2017. p. 23.

⁴⁵⁶ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 1*, Victorian Government, Melbourne, 2017, p. 80.

⁴⁵⁷ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. p. 15.

Some of the problems they report on include:

- Not identifying or distinguishing those who are likely to continue offending
- No differentiation of service delivery or use of structured assessments
- Screening and risk assessment tools not being validated
- Inconsistent use of VONIY, plus the fact that VONIY focuses on prior offending which is not suitable for violent first time offenders.⁴⁵⁸

RECOMMENDATION 20: That screening and assessment procedures for all young people who come into contact with the youth justice system be strengthened in areas including (but not limited to): physical and mental health; cognitive impairment; education; substance misuse; risk to and from others. This assessment should be carried out immediately by appropriate professionals to determine what services are provided while incarcerated and, if needed, post-release.

6.4.7

Grevillea

Several stakeholders in this Inquiry expressed concern about the provision of support services at the Grevillea Unit. For example, Mr Brendan Murray told the Committee that Grevillea's design prevented adequate education being provided to young people held there because of the nature of the physical facilities. He said:

...there is just a hall with cells that open onto it. So no, it is not the optimum space for education...Any manner of things would occur there — legal appointments, medical appointments. There was a lot of traffic coming through that area.⁴⁵⁹

The Committee members who visited Grevillea reached the same conclusion as Mr Murray.

However, DHHS Secretary Ms Kym Peake told the Committee that the Department determined Grevillea's ability to provide treatment assessments and adequate services was sufficient and part of the reason Grevillea was chosen to house the young offenders unable to be held in Parkville. She said:

We did look at other facilities in our control, including the disability forensic assessment treatment centre...we consulted with the Department of Justice and Regulation about what might be options in the Corrections Victoria facilities that would meet those obligations of ensuring that there was available space for visitor rooms and for access to professionals, that there was a separate space away from adult prisoners, both to enter and during the duration of custody, and that there was going to be the capacity for there to be other services delivered. On that basis the advice back from the Department of Justice and Regulation, through my operational staff to me, was that the Grevillea unit was the only facility that met that criteria to meet the obligations under the Act and the Charter and that they would work with us to do urgent works to make it available to us.⁴⁶⁰

⁴⁵⁸ Ibid. pp. 17-20.

⁴⁵⁹ Brendan Murray, *Transcript of evidence*, 30 May 2017. pp. 25-6.

⁴⁶⁰ Kym Peake, Secretary, Department of Health and Human Services, *Transcript of evidence*, 14 June 2017. p. 8.

6.5 Staff

Youth justice staff must be well trained in delivering services for therapeutic youth justice models to be effective.⁴⁶¹ YouthLaw argues that the best chance for rehabilitation and therapeutic interactions between staff and young offenders is ‘...within an organisation with a clear therapeutic philosophy, as well as a united vision which all staff are committed to.’⁴⁶²

It was put to the Committee that the youth justice system in Victoria currently lacks appropriately qualified and supported staff trained in areas such as conflict de-escalation and trauma-informed practice.⁴⁶³ This deficiency has been linked to staff increasingly relying on physical force to manage detainees, which in turn exacerbates behavioural problems in young offenders.⁴⁶⁴ Mr Vincent Schiraldi of the Justice Policy Institute (USA) described his experience of the youth justice system in New York, including the direct relationship between inadequate staff training and violence within the system. It was his opinion that therapeutic models of rehabilitation cannot be implemented unless staff feel confident and safe. Mr Schiraldi said:

I thought the staff were going to be hateful, loathsome people because I knew about the things that had been done — they had been issued an Inspector-General report, just like the stuff you guys are seeing and reading — and they really were not. They were afraid.

...in that environment you cannot do therapy. You cannot be worried about ‘I’m going to run a group on dignity and respect today’ if you are afraid somebody is going to punch you in the back of the head. So it took an enormous amount of work to change that culture, but we had to make the staff feel safe first, because absent that, they are going to absolutely do what they need to do to survive. Some of that is violent, and some of that is just withdrawing. Some of that is just, ‘I’m not touching this. I’m going to back off’. I bet some of that happened when you had those riots. It is really hard to get that many kids up on a roof if staff are engaged the way they are supposed to be engaged.⁴⁶⁵

Mr Wilson told the Committee that his initial impression of the youth justice workforce has been positive, saying:

...youth justice workers work with complex young people in a very challenging environment and it is vital to provide consistency and stability to the workforce, and training is central to the achievement of this...

461 Australian Psychological Society, *Submission*, no. 34. pp. 18, 27-8; Royal Australian and New Zealand College of Psychiatrists, *Submission*, no. 16. p. 22; Association of Child and Family Development, *Submission*, no. 52. p. 2; Jesuit Social Services, *Submission*, no. 37. p. 29; Melbourne City Mission, *Submission*, no. 50. pp. 11-2; Cohealth p. 31; John Burch pp. 8-9.

462 YouthLaw, *Submission*, no. 12. pp. 16-7.

463 Dr Jessie Mitchell, Policy Manager, Youth Affairs Council Victoria, *Transcript of evidence*, 19 April 2017. p. 3.

464 Royal Australian and New Zealand College of Psychiatrists, *Submission*, no. 16. p. 22-3; Jesuit Social Services, *Submission*, no. 37. p. 29. A full consideration of staff training concerns can be found in Chapter 9. The link between staff training, staffing levels and the increased use of physical security measures is also discussed in more detail in Chapter 6.

465 Vincent Schiraldi, Justice Policy Institute (USA), *Transcript of evidence*, 22 March 2017. pp. 19-20.

I should say at this point the feedback that I have received from the general managers that have taken over the facilities regarding the youth justice staff is that they have all being very impressed with their dedication and commitment, so I thought it was important to acknowledge that.⁴⁶⁶

Mr Wilson said that within 12 months of the machinery of government change all youth justice workers will have received ‘tactical training’ on containing incidents, limiting escalation and minimising the involvement of other young offenders.⁴⁶⁷

6.5.1 Culture within facilities

Staff play a major role in the culture of an organisation. In his submission to this Inquiry, Mr John Burch, a former Assistant Superintendent at Malmsbury who worked in the youth justice system from the late 1970s through to the early 1990s, defined operational culture in a youth justice facility as:

...the behaviours of staff within the facility, and the belief systems that shape those behaviours...Operating at its best, a positive rehabilitative culture creates relationships of respect and trust that minimise conflict and allow a facility to operate in the best interests of young people.⁴⁶⁸

Mr Burch states that a positive workplace culture previously existed within youth justice centres, evidence of which could be seen throughout the wider hierarchy. For instance, a CEO at Malmsbury had a sign on his desk that read, ‘I operate a salvage business not a junk yard.’⁴⁶⁹ However, relationships between staff and young people within youth justice facilities in Victoria have suffered over recent years as attitudes have become more punitive. This has been to the detriment of the system.⁴⁷⁰ For example, the Royal Australian and New Zealand College of Psychiatrists states that this punitive approach ‘...has led detainees to identify staff as enemies, rather than potential sources of care, support and guidance. In this situation, children and young people respond to threats of punishment in foreseeable ways, and escalating threats will likely aggravate the behaviour.’⁴⁷¹

Former staff from Malmsbury who gave evidence to the Committee described a downturn in workplace culture since 2010. Negative changes included management culture and expectations and a decrease in the support provided to staff. They also highlighted how large staff losses and use of agency staff has created an ‘us and them’ culture between staff and young people, and between permanent and agency staff.

⁴⁶⁶ Greg Wilson, Secretary, Department of Justice and Regulation, *Transcript of evidence*, 27 June 2017. p. 3.

⁴⁶⁷ *Ibid.* p. 3.

⁴⁶⁸ John Burch, *Submission*, no. 54. pp. 5-6.

⁴⁶⁹ *Ibid.* pp. 5-6.

⁴⁷⁰ Royal Australian and New Zealand College of Psychiatrists, *Submission*, no. 16. pp. 16-7; John Burch, *Submission*, no. 54. p. 6.

⁴⁷¹ Royal Australian and New Zealand College of Psychiatrists, *Submission*, no. 16. pp. 16-7.

According to Mr Burch, by 2016 youth justice centres had fallen victim to a ‘deteriorating command and control culture’⁴⁷² similar to the culture exhibited at the Don Dale centre which sparked the Royal Commission into the Protection and Detention of Children in the Northern Territory.⁴⁷³

A lack of support from management can erode culture within youth justice facilities. Mr Schiraldi spoke to the Committee about a youth justice worker in the United States of America who had assaulted a young person in custody. However, it became impossible to charge that worker due to a lack of evidence from his peers, who had witnessed the assault but viewed the worker as their protector in an unsafe environment. Mr Schiraldi said:

...a half-dozen people testified to the good character of this guy, who was essentially a facility enforcer. He was the kind of goon squad that used to come to your rescue because the system never did, so the people viewed him as their saviour because it was such a chaotic environment. I do not know exactly what is happening in your facilities, but I bet some level of dysfunction like this is happening in your places.⁴⁷⁴

The Committee notes evidence from DJR’s Ms Julia Griffith that the Department has made it a priority to “...ensure a safe and stable custodial environment [needed] to provide effective rehabilitation.”⁴⁷⁵

Staffing issues are discussed in more detail in Chapter 9.

FINDING 14: Youth justice staff must be well trained, feel safe and have the support of management if they are to implement therapeutic models of rehabilitation.

FINDING 15: Positive professional relationships between young offenders and youth justice workers aid rehabilitation.

6.6 Physical security measures

Youth justice centres are subject to the *Victorian Charter of Human Rights and Responsibilities Act 2006*⁴⁷⁶ as well as the Convention on the Rights of the Child, which requires states to (among other things):

- Protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has care of the child

⁴⁷² “Command and control culture” here refers to a punitive or “us vs. them” mentality within a facility, as compared to a collaborative, therapeutic-based approach.

⁴⁷³ John Burch, *Submission*, no. 54. pp. 5-6.

⁴⁷⁴ Vincent Schiraldi, Justice Policy Institute (USA), *Transcript of evidence*, 22 March 2017. p. 20.

⁴⁷⁵ Julia Griffith, Deputy Secretary - Youth Justice, Department of Justice and Regulation, *Transcript of evidence*, 27 June 2017. p. 6.

⁴⁷⁶ *Victorian Charter of Human Rights and Responsibilities Act 2006* (Victoria), 43; Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, Commission for Children and Young People, Melbourne, 2017. p. 43

- Ensure that no child is subjected to torture or other cruel, inhuman or degrading treatment or punishment
- Ensure every child deprived of liberty is treated with humanity and respect.⁴⁷⁷

The Beijing and Havana Rules expand on these provisions by prohibiting ‘...all disciplinary measures constituting cruel, inhuman or degrading treatment including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned.’⁴⁷⁸

Victoria has recently experienced an increased use of lockdowns, isolation and separation in its youth justice system that contravenes Victoria’s obligations to young offenders. The increasing prevalence of such security approaches is a strong indication of a failing youth justice system that cannot maintain order without reverting to extreme physical security measures.

6.6.1 Lockdowns

*It is predictable that a regime of lockdowns for young people will create unrest and equally predictable that more lockdowns will follow any unrest.*⁴⁷⁹

Lockdowns occur when young people are confined to their rooms at times when they would be expected to move freely around a facility. Lockdowns can be across a whole location or only specific units or parts of a unit at a time. They have the same effect as isolation and separation because most rooms house one person only.⁴⁸⁰

Lockdowns have occurred frequently in all youth justice facilities in Victoria up to as recently as January 2017.⁴⁸¹ The Commission for Children and Young People noted 488 lockdowns at Parkville and 32 in Malmsbury between February 2015 and July 2016.⁴⁸² These lockdowns lasted for varying periods, ranging from:

- One hour to 11 hours (48 instances in Parkville)
- 13–20 hours (88 instances in Parkville)
- 50 instances in Parkville of more than 36 hours of continuous lockdown.⁴⁸³

⁴⁷⁷ United Nations (1990), *Convention on the Rights of the Child*, United Nations.

⁴⁷⁸ United Nations (1985), *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (“The Beijing Rules”) United Nations; United Nations (1990), *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (Havana Rules), United Nations.

⁴⁷⁹ Deborah Glass, Ombudsman, Victorian Ombudsman, *Transcript of evidence*, 17 March 2017. p. 28.

⁴⁸⁰ Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, Commission for Children and Young People, Melbourne, 2017. p. 21.

⁴⁸¹ Liana Buchanan, Commissioner for Children and Young People, Commission for Children and Young People, *Transcript of evidence*, 17 March 2017. p. 15; Deborah Glass, Ombudsman, Victorian Ombudsman, *Transcript of evidence*, 17 March 2017. p. 4; Victoria Legal Aid, *Submission*, no. 35. p. 14p

⁴⁸² Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, Commission for Children and Young People, Melbourne, 2017. p. 77.

⁴⁸³ *Ibid.* p. 78.

The United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) defines ‘solitary confinement’ as confinement for 22 or more hours per day and strictly prohibits young people from being confined in this way.⁴⁸⁴

Ms Buchanan informed the Committee that excessive use of lockdowns creates an unstable environment where young people do not know if they will be allowed out of their rooms or able to access services or receive visitors on any given day.⁴⁸⁵ Increased use of lockdowns has been linked to recent unrest in facilities,⁴⁸⁶ which can create an ongoing cycle.

The Committee received evidence that the incidence of lockdowns may be even higher than documented figures show. This is due to practices such as staff not waking young people up in the morning because of staff shortages, which would not be recorded in lockdown figures.⁴⁸⁷ This is discussed further in Chapter 9.

6.6.2 Isolation

*The use of isolation in detention can significantly harm children and young people and undermine efforts to create a safe environment for staff and those in custody.*⁴⁸⁸

The *Children, Youth and Families Act 2005* defines ‘isolation’ (sometimes referred to as solitary confinement) as: ‘the placing of the person in a locked room separate from others and from the normal routine of the centre’.⁴⁸⁹ It requires a register of isolations be kept, recording:

- The name of the person isolated
- The time and date isolation commenced
- The reason why the person was isolated
- The authorising officer’s name and position

⁴⁸⁴ Human Rights Law Centre, *Submission*, no. 38. p. 14; United Nations (2015), *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, United Nations. Rule 45.

⁴⁸⁵ Liana Buchanan, Commissioner for Children and Young People, Commission for Children and Young People, *Transcript of evidence*, 17 March 2017. p. 16; Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, Commission for Children and Young People, Melbourne, 2017. p. 83.

⁴⁸⁶ Deborah Glass, Ombudsman, Victorian Ombudsman, *Transcript of evidence*, 17 March 2017. pp. 2, 8; Hugh de Krester, Executive Director, Human Rights Law Centre, *Transcript of evidence*, 14 June 2017. p. 32; Victorian Ombudsman, *Investigation into conditions at the Melbourne Youth Justice Precinct*, Victorian Ombudsman, Melbourne, 2010. p. 37; Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, Commission for Children and Young People, Melbourne, 2017. p. 85; Julie Edwards, Chief Executive Officer, Jesuit Social Services, *Transcript of evidence*, 19 April 2017. p. 3; Youth Affairs Council of Victoria, *Submission*, no. 10. p. 28; Victoria Legal Aid, *Submission*, no. 35. p. 14; Human Rights Law Centre, *Submission*, no. 38. p. 9; Parkville College, *Submission*, no. 44. p. 23; Victorian Ombudsman, *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmesbury and Parkville*, Victorian Ombudsman, Melbourne, 2017. p. 37.

⁴⁸⁷ Vince Colman, *Transcript of evidence*, 30 May 2017. p. 51.

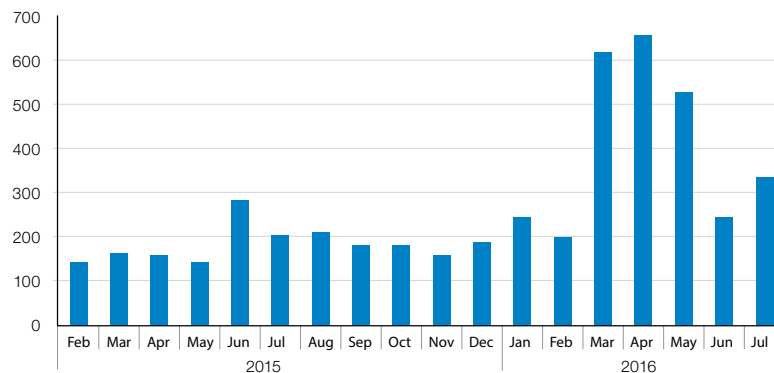
⁴⁸⁸ Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, Commission for Children and Young People, Melbourne, 2017. p. 41.

⁴⁸⁹ *Children, Youth and Families Act 2005* (Victoria), 96/2005. s488.

- The frequency and nature of staff supervision and observation
- The time and date of release from isolation.⁴⁹⁰

The Commission for Children and Young People's *The Same Four Walls* report identified 4,829 episodes of isolation between February 2015 and July 2016, with 28 per cent of young people experiencing 25 or more episodes of isolation during this period.⁴⁹¹ Further, Figure 3 (below) reproduced from the report, shows that the rate of the use of isolation increased dramatically in 2016.

Figure 6.3 Isolations in Victorian youth justice facilities, February 2015-July 2016, by month



Source: Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, Commission for Children and Young People, Melbourne, 2017. p. 46.

A sample of data taken in December 2016 shows that the number of incidents of isolation had increased from an average of 8.8 per day to 42.4 per day.⁴⁹² These figures may well underrepresent the rate of isolations as DHHS policy did not require incidents of time spent 'in a locked room, away from others and separate from the routine of the centre' to be recorded as isolations,⁴⁹³ despite this meeting the definition in the Act.

RECOMMENDATION 21: That the Department of Justice and Regulation include all instances where young offenders are locked in a room separate from others and from the normal routine of the centre as isolation as per the Act.

The Act prohibits the use of isolation for the purpose of punishment (it defines the circumstances under which a young person can be placed in isolation and their treatment while isolated in s488). However, evidence to the Committee and in the public domain indicates that isolation is being used as punishment within youth justice facilities.⁴⁹⁴ The Committee finds this particularly concerning due

⁴⁹⁰ *Children, Youth and Families Regulations 2007* (Victoria), S.R No. 21/2007. 31.

⁴⁹¹ Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, Commission for Children and Young People, Melbourne, 2017. p. 46

⁴⁹² *Ibid.* p. 47.

⁴⁹³ *Ibid.* p. 46.

⁴⁹⁴ Youth Affairs Council of Victoria, *Submission*, no. 10. pp. 28-9; Human Rights Law Centre, *Submission*, no. 38. p. 12.

to evidence linking isolation with the potential to create or exacerbate trauma, including increasing the risk of self-harm. It is also counterproductive as a way of improving behaviour.⁴⁹⁵

The Commission identified the most common reasons for use of isolation in both Parkville and Malmsbury. It found that ‘aggressive behaviour altercation’ made up 44.66 per cent of isolation incidents in Malmsbury and 30.57 per cent in Parkville. Other reasons included:

- Escape or attempted escape
- Verbal abuse
- Physical assault (client to client or client to staff)
- Threatened assault to staff.⁴⁹⁶

The Commission found that DHHS failed to comply with legislation and policy in several ways:

- Lack of clarity about the reasons that children and young people were placed in isolation
- Lack of consistent process in determining when children and young people would be released from isolation
- Lack of clarity about responsibilities to intervene in situations of self-harm.⁴⁹⁷

Isolation documents viewed by the Committee as part of this Inquiry did not include a reason for isolation nor information on staff supervision.

The Same Four Walls report also raised concerns about the standard of isolation facilities in both Parkville and Malmsbury, noting that some lacked toilets, hand basins, benches or beds.⁴⁹⁸

In response to the Commission’s report, DHHS stated that the most extreme examples recorded in the isolation register (in particular, one offender being kept in isolation for 31 days) was in fact ‘...due mostly to data entry and system error’. The Department added: ‘...the length of most periods of isolation does appear to be recorded correctly and are less than three hours in duration.’ DHHS committed to introducing audits of its isolation register to improve the system prior to the machinery of government change.⁴⁹⁹ Records should be accurate for all periods of isolation, not merely most.

⁴⁹⁵ Liana Buchanan, Commissioner for Children and Young People, Commission for Children and Young People, *Transcript of evidence*, 17 March 2017. p. 15; Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, Commission for Children and Young People, Melbourne, 2017. p. 39; Bronwyn Nalor, et al., *Submission*, no. 59. p. 10; Victoria Legal Aid, *Submission*, no. 35. P. 14; Jesuit Social Services, *Submission*, no. 37. p. 28.

⁴⁹⁶ Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, Commission for Children and Young People, Melbourne, 2017. p. 49.

⁴⁹⁷ *Ibid.* p. 50.

⁴⁹⁸ *Ibid.* p. 34.

⁴⁹⁹ *Ibid.*, p.48.

A 2016 review of the use of isolation at Parkville and Malmsbury by Merlo Consulting did not observe any use of excessive force in incidents of isolation. However, it did find two main problems with how isolation had been used:

- The use of bedrooms for isolation of young offenders instead of isolation rooms
- Poor document keeping, including case notes not recording the location of incidents or the date and time of the incident.

The report made 11 recommendations, all of which were accepted by the Government and are being implemented by DJR.⁵⁰⁰ Recommendation 3 stated:

The department [then DHHS] conduct ongoing isolation reviews to ensure compliance with the Act and relevant procedures, policies and guidelines, and to assess the effectiveness changes made to manuals, processes, policies and technology have had on compliance figures.

Regarding this, the Victorian Government advised the Committee:

More stringent requirements for recording isolations have been introduced including recording the reason for isolation. Reporting has been strengthened by the requirements for reporting isolations as part of the *Youth Justice Reform Act 2017*, which commenced on 30 November 2017. In accordance with these reporting requirements isolations are audited and reported on a daily basis as part of the daily reporting process. The daily report includes isolations for Aboriginal and non-Aboriginal young people and will be able to be analysed to identify trends.⁵⁰¹

As part of this Inquiry, the Committee asked to view youth justice isolation records. These were provided by DHHS in hard copy form only as, the Committee was informed, the electronic files could not be provided due to the way the information is collected and stored. The format of the print outs and the fact that they could not be searched electronically made it extremely difficult for the Committee to verify whether the correct processes had been followed or identify trends in isolation.

Ms Jodi Henderson, DJR's Executive Director of Youth Justice Services, advised the Committee of the steps the Department is taking to improve isolation practices, particularly the new behaviour management model (discussed in Chapter 9). She said:

Further to our behaviour system promoting positive behaviour, there is a natural flow-on effect that does see a reduction in young people's behaviours requiring isolation. If young people are settled, engaged in structured activities and are feeling like they have got control and responsibility for what they are doing, then they are much less likely to behave in a way that threatens themselves or others, so the implementation of a structured behaviour management system certainly helps in relation to effectively reducing the likelihood of isolation.

⁵⁰⁰ Merlo Consulting, *Isolation Review Secure Services - DHHS*, Merlo Consulting, Melbourne, 2016.

⁵⁰¹ Jenny Mikakos - Minister for Families and Children, Correspondence to Legal and Social Issues Standing Committee, *Letter*, 6 February 2018.

We are also looking at other mechanisms in relation to young people, through their secure care plan, taking responsibility early for their behaviour and then, if requiring isolation, that it is the shortest, sharpest process, and importantly following up post the isolation about understanding why the young person was put in there in the first place.⁵⁰²

FINDING 16: Youth justice centres are required to follow policies when placing young people in isolation. The Department of Health and Human Services' record keeping regarding the use of isolation in youth justice facilities was highly deficient.

RECOMMENDATION 22: That the Department of Justice and Regulation continue audits of isolation registers begun by the Department of Health and Human Services. The registers should accurately record the use of isolation to ensure that any increased use of isolation is easily identified.

RECOMMENDATION 23: That the Department of Justice and Regulation develop a program that responds to identified trends in the improper implementation of isolation at youth justice centres, such as incorrect locations and poor document keeping.

6.6.3 Separation

Separation refers to practices where young people are removed from their peers. It differs from isolation in that young people still have access to the broader precinct and services.⁵⁰³

Under DHHS, young people could be separated from their peers on a Separation Safety Management Plan for up to 72 hours without review. Separation plans allowed continued access to education, programs and visits and were not to involve confinement in a locked room. However, *The Same Four Walls* report identified numerous problems with this approach in practice. This included some young offenders being locked in their room for 20 or more hours per day and 30 per cent of plans reviewed showing restricted access to education or family visits.⁵⁰⁴ This shows that separation was more akin to isolation in practice, even if it was not recorded or managed as such by DHHS.⁵⁰⁵

502 Jodi Henderson, Executive Director, Youth Justice Operations, Department of Justice and Regulation, *Transcript of evidence*, 19 April 2017. p. 19.

503 Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, Commission for Children and Young People, Melbourne, 2017. p. 21.

504 Ibid. p. 15.

505 Ibid. p. 76.

7 Structure and oversight

*It would appear there has been a failure and a lack of accountability by the Department of Health and Human Services over a number of years.*⁵⁰⁶

7.1 Introduction

While the reasons for the problems in the youth justice system are multi-faceted, a decisive factor has been a failure of leadership and strategic oversight. Ms Julie Edwards, CEO of Jesuit Social Services, observed a breakdown in a pre-existing ‘informal compact’ between all stakeholders in the youth justice system.

Ogloff and Armytage were critical of the lack of leadership in youth justice, stating:

The organisational structure and governance of Victoria’s youth justice system under DHHS has led to a lack of system leadership and rigour...The system appears devoid of any formal structures and relationships that are focused on identifying and understanding current and emerging trends in youth offending at a systemic level.⁵⁰⁷

7.2 Departmental concerns

7.2.1 Experienced staff

The Committee heard about a loss of youth justice ‘institutional experience’ in DHHS over the past several years. This had a detrimental impact on facilities and the delivery of youth justice services.⁵⁰⁸

Mr John Burch, a former Assistant Superintendent at Malmsbury, argued that in the recent past Victoria’s youth justice system was staffed by experienced youth justice workers operating under a well-developed organisational structure. Key elements of the system included:

- Centralised control of decisions regarding the classification of young people to individual facilities and oversight of services delivered within facilities
- A training program for future institutional managers
- A purpose-designed and operated program for the screening, training and development of facility staff.

⁵⁰⁶ YouthLaw, *Submission*, no. 12. p. 15.

⁵⁰⁷ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. pp 131-3.

⁵⁰⁸ Geelong Inter Church Social Justice Network, *Submission*, no. 25. p. 4; Anglicare, *Submission*, no. 36. p. 5.

However, according to Mr Burch this structure dismantled over time leading to ‘...the loss of a clear guiding philosophy and coherence within the system.’⁵⁰⁹

In its submission, Anglicare looks wider to highlight a loss of experienced policy advisors within the public service. According to Anglicare:

It is worth contrasting [the current system] to the Victorian youth justice system of only a decade or so ago – which was considered exemplary within Australia. It is also no coincidence that, during this previous period, the DHHS Juvenile Justice Program had a full complement of highly experienced and qualified policy advisors who helped steer the system towards being the country’s best. Unfortunately, however, significant public service staffing cuts several years ago reduced the availability of such expertise to the Government.⁵¹⁰

7.2.2 Department and managerial accountability

*I was amazed when I saw 15 clients literally walk out of the supposedly most secure unit in Victoria for juvenile justice. And yet no-one was held accountable — no manager, no CEO, no director.*⁵¹¹

A lack of accountability among management at youth justice centres has had a deleterious effect on staffing culture within the facilities. Former staff member Mr Rob Gray spoke with the Committee about occasions when management failed to respond to information provided by staff concerned about the possibility of serious incidents occurring. Mr Gray said:

We know many examples of where information has been emailed or passed forward to upper management in relation to a number of fairly serious situations...if management were held accountable and acted upon some of these things, then some of the riotous situations and escapes potentially would not have happened.⁵¹²

The CPSU observed a ‘marked change in approach’, for the worse, in management following the appointment of the former Head of Secure Services in 2011. This appointment, in the view of the union, was the main cause of the loss of experienced staff.⁵¹³

The Committee asked the DHHS Secretary, Ms Kym Peake, why the former Head of Secure Services was no longer in his role. She explained that it was the view of the Department that the role needed a ‘fresh set of eyes’. Ms Peake said that:

...obviously as we faced really significant challenges, from my perspective it was going to be important that we really looked at how we could provide a fresh set of eyes on what could be some new solutions to dealing with all of those challenges that I have outlined while still having the benefit of [his] expertise in the development of the business case for the new facility and in supporting the expert review into secure

⁵⁰⁹ John Burch, *Submission*, no. 54. pp. 2-3.

⁵¹⁰ Anglicare, *Submission*, no. 36. p. 5.

⁵¹¹ Vince Colman, *Transcript of evidence*, 30 May 2017. p. 48.

⁵¹² Rob Gray, *Transcript of evidence*, 30 May 2017. p. 53.

⁵¹³ Julian Kennelly, Media and Communications Manager, Community and Public Sector Union, *Transcript of evidence*, 30 May 2017. p. 2.

services that was being conducted by Professor Ogloff and Ms Armytage. So we had a conversation about him coming offline to provide that expert input into those two processes — in the first instance while he was on leave, and then beyond his leave period an experienced manager from the Department of Justice coming in to provide a new set of eyes on what some solutions might be.⁵¹⁴

Staffing issues are discussed in more detail in Chapter 9.

7.2.3 Workplace culture

*Members have reported to CPSU that aside from safety issues, lack of support from upper management is a main reason why people don't turn up to work or choose to leave the job permanently.*⁵¹⁵

Workplace culture refers to the behaviour of staff and the belief systems and expectations that shape that behaviour. The Australian Psychological Society states: 'Workplace culture can be more influential than formal, written organisational guidelines.'⁵¹⁶

Just as staff need to be properly selected and trained, so must management support staff to create a positive culture. If staff do not feel empowered to use their skills and experience within the workplace, or if they do not feel supported by management in the event of problems arising, the culture will deteriorate and the system will not achieve its aims.

It is clear that the culture within youth justice centres in Victoria has deteriorated over recent years. (Ms Buchanan stated in her evidence that negative workplace culture dated back to before the 2010 Ombudsman's report discussed in Chapter 1.⁵¹⁷) Some staff have felt let down by DHHS management. They thought they would not have been supported if assaulted nor provided with the necessary resources to deal with the evolving challenges in the workplace (the increase in remandee numbers and those with complex mental health issues, the impact of drugs etc).⁵¹⁸

For example, it was DHHS policy for staff not to intervene in violent incidents where there were not enough staff on the floor to do so safely. However, staff members told the CPSU that this policy put clients' lives in danger because of frequent understaffing. The policy was therefore ignored at times as staff intervened in order to protect clients.⁵¹⁹

Other staff were reluctant to intervene because they believed management would punish them unfairly for any mistakes made when resolving violent incidents. As a result, some staff would not intervene for fear of losing their job. The CPSU

⁵¹⁴ Kym Peake, Secretary, Department of Health and Human Services, *Transcript of evidence*, 14 June 2017. p. 7.

⁵¹⁵ CPSU, *Submission*, no. 65. p. 16.

⁵¹⁶ Australian Psychological Society, *Submission*, no. 34. pp. 25-7.

⁵¹⁷ Liana Buchanan, Commissioner for Children and Young People, Commission for Children and Young People, *Transcript of evidence*, 17 March 2017. p. 20.

⁵¹⁸ CPSU, *Submission*, no. 65. pp. 18, 28, 30-1, 33-4; Wayne Gatt, Secretary, The Police Association Victoria, *Transcript of evidence*, 30 May 2017. p. 18.

⁵¹⁹ CPSU, *Submission*, no. 65. p. 14.

writes: ‘Thus aggressive client behaviour often escalated to dangerous levels, instead of being stopped in the first instance. This has played a huge role in building an environment for the riots to occur.’⁵²⁰ The Committee understands that assaults on staff are not the only example of violence in youth justice facilities. However, it focuses on such assaults in this section as it forms an important component of workplace culture.

A staff member referred to in evidence provided by the CPSU stated: ‘Knowing the consequences for what had been a normal incident response for the last ten years, everyone felt vulnerable. You’re very hesitant to commit to take down the client.’⁵²¹

Other examples of unsupportive management practices within Victoria’s youth justice centres provided to the Committee include:

- Occupational violence ignored or trivialised and staff told to ‘toughen up’
- Changes to practices made without staff consultation making staff feel not in control of their work environment
- Staff feeling unappreciated by managers, including lack of positive feedback or acknowledgement from management
- Staff believing that their ideas and concerns about their workplace were not considered.⁵²²

Concern was expressed to the Committee that assaulted staff have not been supported by management.⁵²³ Evidence included references to sexual, violent, abusive or gang-related behaviour not being reported to the police or adequately followed-up through internal channels.⁵²⁴

Mr Colman discussed his experience of a workplace assault to the Committee after which the only support he received was from his colleagues. He said:

The only support I have been getting is from these guys here, my friends at site and a few others. No managers were around me...nothing. The general manager — nothing. How are you supposed to give something to people who do not care?⁵²⁵

Some current and former staff gave evidence suggesting a lack of follow-up or support from management encourages further assaults.⁵²⁶

The Secretary of the Police Association, Mr Wayne Gatt, informed the Committee that police had received complaints from staff unwilling to make official reports due to possible repercussions. Mr Gatt said:

⁵²⁰ Ibid. p. 11.

⁵²¹ Ibid. p. 11.

⁵²² Ibid. pp. 4, 9, 11, 15, 30; Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, Commission for Children and Young People, Melbourne, 2017. p. 80; Youth Affairs Council of Victoria, *Submission*, no. 10. p. 26.

⁵²³ CPSU, *Submission*, no. 65. p. 15; Liana Buchanan, Commissioner for Children and Young People, Commission for Children and Young People, *Transcript of evidence*, 17 March 2017. p. 16.

⁵²⁴ CPSU, *Submission*, no. 65. p. 30.

⁵²⁵ Rob Gray, *Transcript of evidence*, 30 May 2017. p. 46; Vince Colman, *Transcript of evidence*, 30 May 2017. p. 46.

⁵²⁶ Nancy Uzuner, *Submission*, no. 2. p. 1.

So it perpetuates a level of inactivity by staff, contract staff and staff that are working in the facilities to actually make a report to the police because they do not think the system is going to protect them...That is the caseworkers telling our members that... ‘We want to tell you what’s going on, but we don’t want you to do anything about it because I need to go back to work in that yard tomorrow, and I’ll be surrounded by those same people without support, without security, without an emergency response capability’.⁵²⁷

Mr Rob Gray added that some staff had been scared of speaking out for fear of reprisals from management. Speaking at a public hearing with three other ex-staff members he said:

Even for us to do what we are doing today, there is an element of where I think at the back of our minds we are mindful that for ourselves and for some of the people we are representing that there could be a level of vindictiveness and payback for, I suppose, us speaking out of turn...I am incredibly reluctant to give too many examples, because I think if they join the dots then the people in the examples I am using could sort of suffer ramifications of job losses — targeting.⁵²⁸

When asked if staff would feel comfortable providing confidential evidence to the Committee, Mr Vince Colman answered that they would not. Mr Colman said: “If the Department can pinpoint who they were who talked, they would not have a job. They have got bills to pay. They have got mortgages. They have got kids. They have got to put food on the table. They cannot afford to come forward.”⁵²⁹

Staff and the CPSU referred to the period between 2011 and 2017 as an ‘us versus them’ situation. This included:

- Disrespectful interactions between management and floor staff (such as referring to floor staff as “dead wood” or “dinosaurs”⁵³⁰)
- Assaults on management being treated more seriously than if floor staff were assaulted
- Managers not supporting decisions made by floor staff, leading to young people manipulating staff and management and becoming more disrespectful towards floor staff.⁵³¹

Armytage and Ogloff reported similar findings about low staff morale in Victoria’s youth detention centres.⁵³²

The Committee raised the issue of management support for staff who have been assaulted with Mr Greg Wilson, Secretary of DJR. He told the Committee that DJR will ensure staff are supported to report all assaults in the future. Mr Wilson said:

⁵²⁷ Wayne Gatt, Secretary, The Police Association Victoria, *Transcript of evidence*, 30 May 2017. p. 18.

⁵²⁸ Rob Gray, *Transcript of evidence*, 30 May 2017. p. 47; Eddy Poorter, *Transcript of evidence*, 30 May 2017. p. 47.

⁵²⁹ Eddy Poorter, *Transcript of evidence*, 30 May 2017. p. 61; Vince Colman, *Transcript of evidence*, 30 May 2017. p. 61; Rob Gray, *Transcript of evidence*, 30 May 2017. p. 61.

⁵³⁰ Vince Colman, *Transcript of evidence*, 30 May 2017. p. 46; CPSU, *Submission*, no. 65. pp. 13.

⁵³¹ CPSU, *Submission*, no. 65. pp. 12-5.

⁵³² Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017.

“It is really that my focus is on making sure that they can do their job confidently and they have got the support around them so that they do report incidents without those sorts of anxieties.”⁵³³

In response to questions relating to inadequate support for staff who have been assaulted, Ms Jodi Henderson, DJR’s Executive Director of Youth Justice Operations, informed the Committee that all criminal acts are reported to the police. She said:

For any act of violence — whether it is physical, psychological or verbal — that constitutes a criminal act. The threshold is that — if it constitutes an act that is criminal, then all those matters are referred to police in relation to police investigation.

In relation to internally what consequences or what we would do to manage that, we would look at the young person as an individual, what status he is in terms of behaviour management and what course of action we need to take to prevent that young person from displaying those behaviours. That could look like demoting him — we could move him to another place — and we could withdraw things that he may have gained through a process of behaviour management. If it is criminal, it gets referred to police; if it is internal, we would look at a range of consequences that help that young person to account for his behaviours.⁵³⁴

There is, then, a clear discrepancy between the views of management and the views of some staff at Victoria’s youth justice centres.

The Committee acquired the following information on the notifications to Victoria Police regarding criminal behaviour in the youth justice system up to June 2017:

- Parkville: 278 notifications to Victoria Police with regard to incidents of alleged criminal behaviour perpetrated by clients since 1 January 2015
- Malmsbury: 398 notifications to Victoria Police with regard to incidents of alleged criminal behaviour perpetrated by clients since 1 January 2015
- Greenvale: 20 notifications to Victoria Police with regard to incidents of alleged criminal behaviour perpetrated by clients since Greenvale opened in late November 2016.⁵³⁵

Table 7.1 shows the increase in offences recorded at Parkville and Malmsbury between July 2013 and March 2017.

⁵³³ Greg Wilson, Secretary, Department of Justice and Regulation, *Transcript of evidence*, 27 June 2017. p. 16.

⁵³⁴ Jodi Henderson, Executive Director, Youth Justice Operations, Department of Justice and Regulation, *Transcript of evidence*, 19 April 2017. p. 17.

⁵³⁵ Jodi Henderson, *Supplementary evidence*. pp. 3-4.

Table 7.1 Offences recorded at Youth Justice Centres by investigation status, July 2013 to March 2017

Location	Status	July 2013 – June 2014	July 2014 – June 2015	July 2015 – June 2016	July 2016 – March 2017
Parkville	Arrest / summons	14	61	58	153
	Total	28	76	101	200
Malmsbury	Arrest / summons	53	91	108	178
	Total	106	122	161	319

Source: Andrew Crisp, Deputy Commissioner, Victoria Police, *Transcript of evidence*, 19 April 2017, Questions on Notice, p.3.

FINDING 17: There was a breakdown in the relationship between staff and management in Victoria’s youth justice centres.

7.2.4 Incident categorisation and safety systems

The Committee heard that in 2011 DHHS restructured its incident reporting categories.⁵³⁶ This is of concern because how incidents are recorded affects the ability of staff to prevent violence from escalating within facilities.

Prior to 2011, there were three levels of incident: category 1 being the highest/most serious and category 3 the lowest/least serious. Category three incidents included minor complaints and property damage and injuries that did not require medical attention. The 2008 ‘Incident reporting guide’ states:

Category three incidents may provide an early warning of a more significant event to come, or point over time to issues with a particular client or a particular work location. Staff in both departmental direct services and community service organisations are encouraged to maintain a register of category three incidents and to regularly review the register for trends...An incident report for every category three incident must be forwarded to the Placement and Support Manager and the regional Program and Service Advisor.⁵³⁷

In 2011, category 3 incidents were replaced by Significant Event Case Notes. Neither the CPSU nor custodial staff were consulted about the change. CPSU expressed its concern to DHHS in 2013 about how the removal of category 3 incidents could downplay incidents, delay responses to occupational violence and increase the risk of assault.⁵³⁸

The CPSU’s submission to this Inquiry adds:

Further, eliminating category 3 was an easy way the Department could reduce their figures on occupational violence, because certain “lower-grade” incidents would only be found in confidential client case notes. There is also evidence of management

⁵³⁶ Julian Kennelly, Media and Communications Manager, Community and Public Sector Union, *Transcript of evidence*, 30 May 2017. p. 2; Liana Buchanan, Commissioner for Children and Young People, Commission for Children and Young People, *Transcript of evidence*, 17 March 2017. pp. 17-8; CPSU, *Submission*, no. 65. p. 4.

⁵³⁷ Department of Human Services, *Incident reporting guide*, Department of Human Services, Melbourne, 2008.

⁵³⁸ CPSU, *Submission*, no. 65. p. 29; CPSU, *Responses to Questions on Notice*.

trying to cover up incidents of assault, asking a member who had been physically assaulted to downgrade their category 2 incident report to a Significant Event Cast Note because he wasn't attended by an ambulance or hospital staff.⁵³⁹

It is possible that category 3 incidents were 'merged' with category 2 incidents. For example, the 2011 'Critical incident management guide' classifies as a category 2 incident assaults that result in medical attention as well as an assault that threatens health, safety or wellbeing. Such an assault may not require medical attention but would still have to be reported as a category 2 incident.⁵⁴⁰ The Committee requested further information on this from DJR but that information had not been provided at the time of writing this Final Report.

WorkSafe has issued 21 improvement notices to DHHS on contraventions of safety laws from 2010 to 2017. Between 2010 and the end of February 2017, WorkSafe received 395 claims for compensation and made payments of over \$10 million to DHHS employees who worked at Malmsbury and Parkville. At the time of writing this Final Report, WorkSafe was investigating an incident at Malmsbury and had not ruled out prosecuting DHHS.⁵⁴¹

Regarding Category 1 incidents, since March 2016, the Commissioner for Children and Young People, Ms Liana Buchanan, has received all reports of category 1 incidents.⁵⁴² Ms Buchanan advised the Committee that she does not receive notification or reports on all violent incidents, as incidents involving clients assaulting staff may not meet the definition of category 1 incidents. Between 4 April 2016 and 30 June 2017, Ms Buchanan reviewed 143 category 1 incidents.⁵⁴³

Mr Wilson revealed that the DJR is currently reviewing the categorising of incidents in youth justice centres to align practices with those used by Corrections Victoria. This includes establishing a new Memorandum of Understanding between the Department and the Commission for Children and Young People. Mr Wilson said:

That system will be designed to ensure that the Department's obligations are met and will allow for continuing reporting and oversight of incidents impacting young people in the Department's care. A new MOU between the Commission for Children and Young People and the Department will be developed, reflecting the continued reporting of all adverse events involving a child or young person detained in a youth justice facility or in a youth residential centre to the Commission.

Corrections has things like a threshold of incidents that are to be reported within 30 minutes, for example, compared to – I think category 1 are a day in youth justice and category 2, two days. I guess for us it is comprehensively going through the definitions that are necessary and the various categories and working with the

⁵³⁹ CPSU, *Submission*, no. 65. p. 29.

⁵⁴⁰ Department of Human Services, *Critical client incident management summary guide and categorisation table: 2011*, Department of Human Services, Melbourne, 2011.

⁵⁴¹ Marnie Williams, Executive Director, Health and Safety, WorkSafe, *Transcript of evidence*, 22 March 2017. pp. 3, 4, 9; See Chapter 6 for a comparison of claim categories between youth and adult justice centres.

⁵⁴² Liana Buchanan, Commissioner for Children and Young People, Commission for Children and Young People, *Transcript of evidence*, 17 March 2017. pp. 17-8.

⁵⁴³ *Ibid.* pp. 18-20 and Questions on Notice.

Commission to make sure that the systems and processes of getting those incidents, of capturing the details, and reporting them through the Commission happens as seamlessly as possible.⁵⁴⁴

RECOMMENDATION 24: That the Department of Justice and Regulation continue to publish quarterly isolation, separation and lockdown reports.

7.3 Machinery of government changes

The Victorian Government transferred responsibility for youth justice to DJR from DHHS in April 2017. Some stakeholders expressed concerns about the machinery of government change with the main areas of concern being:⁵⁴⁵

- Youth justice is a different speciality compared to the adult corrections system
- Losing the ability to link health services to individual young offenders
- The risk of favouring punitive responses over a therapeutic model
- Corrections Victoria has some of the same problems in adult facilities, including high remand rates
- Other jurisdictions in Australia no longer give adult corrections responsibility for youth justice
- Lack of consultation with key stakeholders regarding the change.

The submission to this Inquiry from Dr Kate Fitz-Gibbon and Ms Wendy O'Brien sums up the general concerns heard by the Committee. They write:

The policy expertise relevant to youth justice is held within the DHHS, and it is inappropriate that children be subject to decisions made by the Department of Justice and Regulation, which is accustomed to responding to adult prisoners. There is great merit in closer alignment of welfare and youth justice responses.⁵⁴⁶

Berry Street's Mr Julian Pocock was worried about the effect the change may have on the guardianship role played by the DHHS Secretary. He said:

There is the issue about the Secretary of the Department of Health and Human Services being the guardian for children in child protection. Previously, while it sat within that portfolio when someone was on a youth justice order, I think it was probably a more seamless system in terms of one secretary of one department

⁵⁴⁴ Greg Wilson, Secretary, Department of Justice and Regulation, *Transcript of evidence*, 27 June 2017. p. 5.

⁵⁴⁵ Capital City Local Learning and Employment Network, *Submission*, no. 11. p. 4; Jodie O'Leary, *Submission*, no. 24. p. 4; YouthLaw, *Submission*, no. 12. pp. 15-6; Geelong Inter Church Social Justice Network, *Submission*, no. 25. p. 2; Australian Association of Social Workers, *Submission*, no. 27. p. 8; Dr Kate Fitz-Gibbon and Wendy O'Brien, *Submission*, no. 28. p. 8; The Salvation Army, *Submission*, no. 30. p. 19; Amnesty International, *Submission*, no. 49. p. 3; Center for Multicultural Youth, *Submission*, no. 51. pp. 1-2; Jesuit Social Services, *Submission*, no. 37. p. 34; Trish McCluskey, Director, Strategic Initiatives, Berry Street, *Transcript of evidence*, 19 April 2017. pp. 25-6; Julian Pocock, Director, Public Policy and Practice Development, Berry Street, *Transcript of evidence*, 19 April 2017. pp. 25-6.

⁵⁴⁶ Dr Kate Fitz-Gibbon and Wendy O'Brien, *Submission*, no. 28. p. 8.

holding all the responsibility for the care, custody, development and guardianship of children and young people. So it will be important to watch how having that responsibility split between two departments rolls out.⁵⁴⁷

Ms Edwards acknowledged that the ongoing problems in youth justice may have necessitated the machinery of government change. However, she stressed that youth justice should remain its own separate entity within DJR, saying:

We also believe that the situation had got so run down — it had been neglected for so many years — that it led to the crisis that we actually have. While we would like it to stay in DHHS, we accept now that it is in the Department of Justice and Regulation. Our view is — and I am glad to see that this is the way it is going to go — that it remains a separate department with its own deputy secretary...⁵⁴⁸

The Committee spoke with Ms Peake about how support services and programs will be allocated under the new departmental arrangements, including the role DHHS will play in rehabilitating young offenders. Ms Peake explained that DHHS will continue to assist young offenders' reintegration into the community.⁵⁴⁹ (Post-release services are discussed in Chapter 10 of this Final Report.)

FINDING 18: The Department of Health and Human Services and the Department of Justice must work closely together to ensure continuity of care for young people who experience both the child protection and youth justice systems.

RECOMMENDATION 25: That the Department of Health and Human Services and the Department of Justice and Regulation develop an appropriate information-sharing system that ensures continuity of care for young people in their care.

The Committee also spoke with Mr Wilson about how youth justice will be structured within the Department. Mr Wilson explained that a dedicated youth justice division has been established (see Figure 7.1). This includes two new executive directors, one to oversee the youth justice operations and another responsible for youth justice policy, strategy and business services.⁵⁵⁰ (For many years, no executive staff member at DHHS focused solely on youth justice.) The Committee agrees with YouthLaw, which notes that youth justice being a distinct unit within the Department ringfences youth justice priorities, strategy and policy from the adult justice system.⁵⁵¹

The Committee put the concerns mentioned above to Mr Wilson, in particular the potential for a shift to a more punitive system. Mr Wilson replied that youth justice will continue to operate under the Act and the change will see "...better resourced youth justice facilities rather than in any way converting them into a prison environment."⁵⁵²

⁵⁴⁷ Trish McCluskey, Director, Strategic Initiatives, Berry Street, *Transcript of evidence*, 19 April 2017. pp. 25-6; Julian Pocock, Director, Public Policy and Practice Development, Berry Street, *Transcript of evidence*, 19 April 2017. pp. 25-6.

⁵⁴⁸ Julie Edwards, Chief Executive Officer, Jesuit Social Services, *Transcript of evidence*, 19 April 2017. p. 6.

⁵⁴⁹ Kym Peake, Secretary, Department of Health and Human Services, *Transcript of evidence*, 14 June 2017. pp. 12-3.

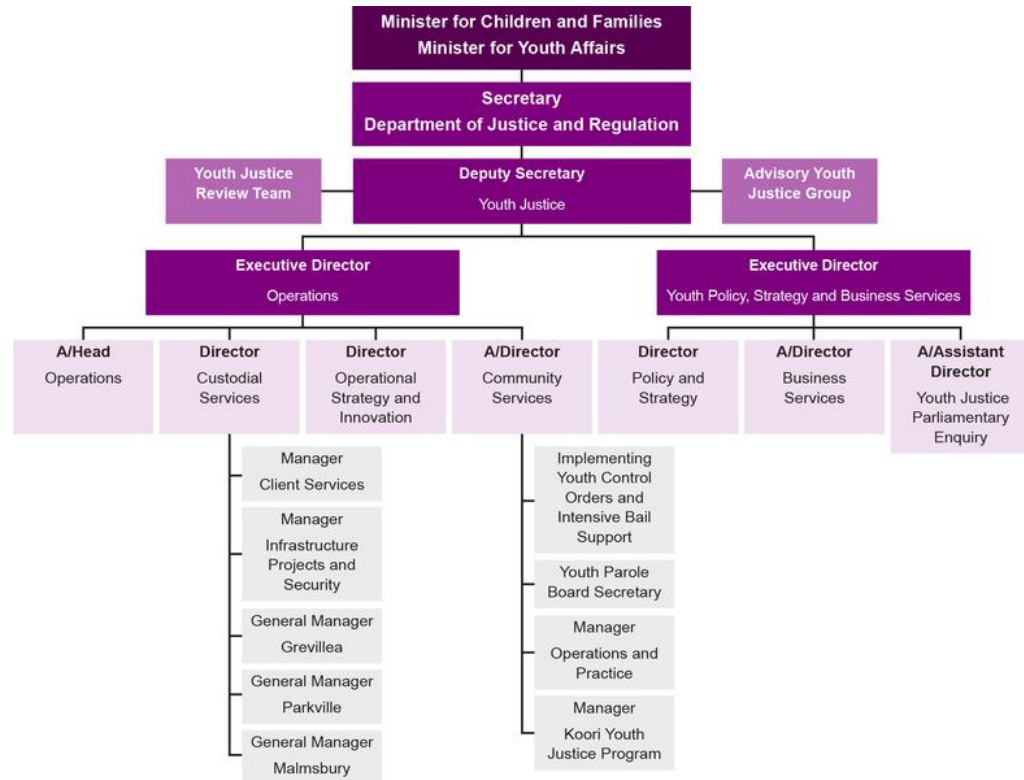
⁵⁵⁰ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 1*, Victorian Government, Melbourne, 2017. p. 92.

⁵⁵¹ YouthLaw, *Submission*, no. 12. pp. 15-6.

⁵⁵² Greg Wilson, Secretary, Department of Justice and Regulation, *Transcript of evidence*, 27 June 2017. p. 7.

Ms Julia Griffith, who leads the new youth justice division, added that she does see some similarities between youth and adult justice systems, for example regarding safety in the custodial environment. However, Ms Griffith also acknowledged the distinct differences between youth and adult offenders, as discussed throughout this Final Report.⁵⁵³

Figure 7.1 DJR youth justice organisational structure



Source: Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 1*, Victorian Government, Melbourne, 2017. p. 94.

The CPSU informed the Committee that it has advocated in the past for a change in departmental responsibility. This was in the hope it would lead to a new management approach and an opportunity to reassess lines of responsibility.⁵⁵⁴

Legal Aid’s Ms Helen Fatouros stated that the machinery of government change presents an opportunity for a fresh start. She told the Committee:

...I see an opportunity with concentrated effort around the machinery of government change actually enabling us to get more targeted solutions and perhaps work on what are some historical problems within government over many, many years. It remains to be seen...I am looking at it in a positive sense in terms of how we can get really concentrated, targeted problem-solving around youth crime.⁵⁵⁵

553 Julia Griffith, Deputy Secretary - Youth Justice, Department of Justice and Regulation, *Transcript of evidence*, 27 June 2017. p. 7.

554 Julian Kennelly, Media and Communications Manager, Community and Public Sector Union, *Transcript of evidence*, 30 May 2017. p. 3.

555 Helen Fatouros, Executive Director of Criminal Law Services, Victoria Legal Aid, *Transcript of evidence*, 30 May 2017. p. 39.

Mr Pocock applauded actions taken by the Secretary of DJR so far with regard to youth justice, saying:

...we are certainly encouraged that the Secretary of the Department of Justice and Regulation has made very clear that the Department wants to work with agencies and others to develop the practice within youth justice centres and within the youth justice service generally. So I think there is probably some opportunity there to build good practice within the system, and the Department is clearly open to wanting to do that.⁵⁵⁶

7.4 Oversight agencies

Youth justice in Victoria is overseen by a number of agencies with sometimes overlapping roles and responsibilities:⁵⁵⁷

- The Commission for Children and Young People is the principal frontline overseer of youth justice facilities
- The Victorian Ombudsman has jurisdiction over youth justice facilities, as well as over statutory agencies such as the Commissioner for Children and Young People and the Victorian Equal Opportunity and Human Rights Commission
- The Victorian Equal Opportunity and Human Rights Commission reports annually to the Victorian Government about the operation of the Charter. Recent reports have included reference to youth justice issues, such as the increase of young people on remand, access to education in youth justice, and a 2013 review of youth justice practices and their compatibility with human rights.

In addition, the Commission for Children and Young People conducts an Independent Visitor program in which volunteers visit youth justice centres monthly to:

- Provide information and assistance to young people
- Monitor the safety and wellbeing of young people within facilities
- Promote the rights and interests of young people in facilities.⁵⁵⁸

⁵⁵⁶ Trish McCluskey, Director, Strategic Initiatives, Berry Street, *Transcript of evidence*, 19 April 2017. pp. 25-6; Julian Pocock, Director, Public Policy and Practice Development, Berry Street, *Transcript of evidence*, 19 April 2017. pp. 25-6.

⁵⁵⁷ Victorian Ombudsman, *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville*, Victorian Ombudsman, Melbourne, 2017. pp. 10-11; Victorian Equal Opportunity and Human Rights Commission, *2015 report on the operation of the Charter of Human Rights and Responsibilities*, Victorian Equal Opportunity and Human Rights Commission, Carlton, Victoria, 2015; Victorian Equal Opportunity and Human Rights Commission, *2014 report on the operation of the Charter of Human Rights and Responsibilities*, Victorian Equal Opportunity and Human Rights Commission, Carlton, Victoria, 2014; Victorian Equal Opportunity and Human Rights Commission, *2013 Report on the operation of the Charter of Human Rights and Responsibilities*, Victorian Equal Opportunity and Human Rights Commission, Carlton, Victoria, 2013; Commission for Children and Young People, 'Who we are', viewed 28 June 2017; Deborah Glass, Ombudsman, Victorian Ombudsman, *Transcript of evidence*, 17 March 2017. p. 2; Liana Buchanan, Commissioner for Children and Young People, Commission for Children and Young People, *Transcript of evidence*, 17 March 2017. pp. 14-6.

⁵⁵⁸ Commission for Children and Young People, 'Independent Visitor Program', viewed 13 July 2017.

Independent visitors are empowered to enter centres and talk to any young person in custody, observe the general routines of centres and talk to staff. After each visit, they meet with the General Manager to discuss their observations. They then provide a report to the Commissioner within seven days.⁵⁵⁹

In her evidence to the Committee, Ms Buchanan expressed concern that youth justice facilities have become ‘unaccustomed’ to being held accountable by a strong oversight system. This became apparent through the procedures and practices observed by Ms Buchanan and her colleague Mr Andrew Jackomos, the Commissioner for Aboriginal Children and Young People. Ms Buchanan said:

One of the things that really struck me when I came into this role was that there were some signs that the youth justice centres were unaccustomed to a very rigorous level of external scrutiny. That was part of the reason, and that was based simply on initial visits and initial advice about, for example, the level of compliance with the requirements to record when children are placed in isolation — so early indicators for me that some of the procedures that I would expect would be taken very seriously had not been in the past, and it made me form the view, in consultation with Andrew Jackomos, my colleague Commissioner, and the rest of the staff, that it was appropriate that we increase oversight.⁵⁶⁰

However, Ms Buchanan provided positive feedback on the fact that there is now a legislative requirement for category 1 incidents to be reported to her organisation, saying:

...we have visibility of serious incidents that are occurring in youth justice, which we simply would not have had unless a young person or child raised some concern with an independent visitor or a commission staff member. So it has absolutely enhanced our capacity to monitor the services in youth justice in a very different way and in my mind a very appropriate way.⁵⁶¹

The Victorian Ombudsman, Ms Deborah Glass, discussed her agency’s inability to interview witnesses under the age of 16 (as introduced in the *Protected Disclosure Act 2012*). This restriction means that the Ombudsman can receive complaints from young people in youth justice facilities but is unable to investigate them further.⁵⁶² Ms Glass said that she did not understand the rationale behind this restriction. She told the Committee:

I have no idea why that amendment came into effect. It is not helpful. It is one of a number of amendments that I have said need to change. In the context of this Inquiry I may be so bold as to suggest that you recommend it be abolished. I would be quite happy to see that, because although we take complaints from young people, it does prevent us from being more actively involved in a formal investigation.⁵⁶³

⁵⁵⁹ Ibid.

⁵⁶⁰ Liana Buchanan, Commissioner for Children and Young People, Commission for Children and Young People, *Transcript of evidence*, 17 March 2017. p. 17. Plus Questions on Notice.

⁵⁶¹ Ibid. p. 21.

⁵⁶² Deborah Glass, Ombudsman, Victorian Ombudsman, *Transcript of evidence*, 17 March 2017. p. 7; Victorian Ombudsman, *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville*, Victorian Ombudsman, Melbourne, 2017. p. 11; *Protected Disclosure Act 2012* (Victoria), 85/2012; *Ombudsman Act 1973* (Victoria), 8414/1973.

⁵⁶³ Deborah Glass, Ombudsman, Victorian Ombudsman, *Transcript of evidence*, 17 March 2017. p. 7.

RECOMMENDATION 26: That the Victorian Government consider amending the *Protected Disclosure Act 2012* to allow the Victorian Ombudsman to interview witnesses of any age during investigations relating to the youth justice system.

7.4.1 Optional Protocol to the Convention against Torture (OPCAT)

In December 2017, the Australian Government lodged documents ratifying the Optional Protocol to the Convention against Torture (OPCAT), an international agreement aimed at preventing torture and cruel, inhuman or degrading treatment or punishment. Under OPCAT, Australia agrees that all Australian prisons (including youth justice facilities) and detention facilities will be monitored by a network of independent Australian inspectorates (a national preventative mechanism) and visited periodically by the United Nations Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁵⁶⁴

The announcement was well received by many participants in this Inquiry, who believe that the increased oversight of youth justice facilities required under OPCAT should create safer conditions for young people and staff. Ideally, it would also help identify emerging issues in youth justice facilities before they become entrenched problems.⁵⁶⁵

Amnesty International believes that Victoria's current oversight and inspection regime for youth justice facilities would not fully meet OPCAT requirements. It believes a fully independent inspector with oversight and inspection powers over all places of detention would be required.⁵⁶⁶

Ms Alina Leikin of the Human Rights Law Centre informed the Committee that the inspector would need to have powers not currently available to existing oversight bodies. She suggested that the Commissioner for Children and Young People's powers could be expanded to encompass this role when OPCAT is ratified.⁵⁶⁷

Ms Buchanan supported the ratification of OPCAT and discussed with the Committee how her role would need to evolve in order to meet the new oversight requirements. Ms Buchanan said that she would likely need the power to conduct unannounced inspections and to require access to a broader range of information even when not conducting an inquiry.⁵⁶⁸

⁵⁶⁴ Victorian Equal Opportunity and Human Rights Commission, *2013 Report on the operation of the Charter of Human Rights and Responsibilities*, Victorian Equal Opportunity and Human Rights Commission, Carlton, Victoria, 2013; Fiona McGaughey, 'New deal on torture a step in the right direction for Australia's human rights law', viewed 29 June 2017; Amnesty International Australia, 'OPCAT: 5 things you need to know', viewed 29 June 2017; Australian Human Rights Commission, *Children's Rights Report 2016*, Australian Human Rights Commission, Sydney, 2016. pp. 78-9; Wayne Muir, Chief Executive Officer, Victorian Aboriginal Legal Service, *Transcript of evidence*, 19 April 2017. p. 40.

⁵⁶⁵ Amnesty International, *Submission*, no. 49. p. 6; YouthLaw, *Submission*, no. 12. p. 15; People with Disability Australia, *Submission*, no. 57. p. 2; Jesuit Social Services, *Submission*, no. 37. p. 35; Wayne Muir, Chief Executive Officer, Victorian Aboriginal Legal Service, *Transcript of evidence*, 19 April 2017. p. 40.

⁵⁶⁶ Amnesty International, *Submission*, no. 49. p. 6.

⁵⁶⁷ Alina Leikin, Lawyer - Indigenous Rights Unit, Human Rights Law Centre, *Transcript of evidence*, 14 June 2017. p. 33.

⁵⁶⁸ Liana Buchanan, Commissioner for Children and Young People, Commission for Children and Young People, *Transcript of evidence*, 17 March 2017. p. 22.

FINDING 19: Independent oversight agencies provide important feedback on how well youth justice systems function, including giving a voice to detained young offenders.

RECOMMENDATION 27: That the Commission for Children and Young People provide an annual report on the youth justice system to the Department of Justice and Regulation. The report should detail how well the youth justice system is adhering to the Act and relevant agreements.

RECOMMENDATION 28: That the Victorian Government consider how best to give effect to the Optional Protocol to the Convention against Torture.

8 Youth justice facilities

Location, size, architecture and design of corrections facilities all impact on prisoners' emotional and psychological reactions to incarceration. The same factors may significantly influence their prospects of rehabilitation and reintegration into society on release.⁵⁶⁹

8.1 Introduction

Youth justice facilities are intended to help youth justice systems achieve two outcomes:

- Enable rehabilitation
- Keep clients, staff and the community safe.

Armytage and Ogloff write: 'A robust security framework is at the heart of a successful custodial environment. The provision of effective rehabilitation is contingent on the delivery environment being, and feeling, safe for staff and young people.'⁵⁷⁰

Youth justice facilities differ from adult facilities. For example, the Committee learnt from speaking informally with staff at Parkville, Malmsbury and the Grevillea Unit that young people are more impetuous than adults. The fact that young offenders' behaviour is more difficult to predict must be kept in mind when designing youth justice centres. Facilities also tend to be less harsh than adult facilities, in recognition of the different needs of young people.

It is important to acknowledge that the concepts of security and stability are not interchangeable; that is, simply making a facility secure will not automatically make it stable. Youth justice facilities must be designed so as to facilitate the delivery of rehabilitative services as discussed in Chapter 6. In other words, safe and secure facilities are one part of a stable youth justice system.

⁵⁶⁹ Professor Yvonne Jewkes, *Submission*, no. 5. p. 1.

⁵⁷⁰ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. p. 233.

8.2 Current problems arising from the physical state of youth justice facilities

The physical state of Victoria's youth justice facilities featured strongly throughout this Inquiry. The Committee heard that Victoria's facilities are ageing, dangerous and no longer suitable to serve the profile of young offenders they currently house.⁵⁷¹

Armytage and Ogloff were particularly concerned that these problems, which have contributed to unsettling detainees, have been getting worse despite having been identified in several reviews over the past eight years. They discuss facilities in Chapter 8 of their Review and make several recommendations. The Committee will use this chapter to add to Armytage and Ogloff's findings.⁵⁷²

8.2.1 Not fit for purpose

The Ombudsman's 2013 *Investigation into children transferred from the youth justice system to the adult prison system* report noted a change over time in the profile of young offenders, from those who had committed property-based offences to those who had committed violent offences.⁵⁷³ The Committee received informal evidence from experienced staff at youth justice centres that some young offenders are physically stronger than past groups of offenders. Facilities now need to be designed to accommodate the increased use of the drug ice in the community and its related aggression, which the Committee learnt differs from problems in the past when young people were more likely to present with the effects of drugs such as heroin.

At a public hearing, Judge Amanda Chambers, President of the Children's Court, also referred to the increased influence of ice, stating: "...if I can give a common trajectory into our system, it is cannabis at 13 moving on to ice use pretty quickly."⁵⁷⁴

The Committee heard evidence that youth justice facilities, particularly Parkville, were not 'fit for purpose' for keeping the number and type of young offenders detained there secure and safe, including the high number of young people currently on remand.⁵⁷⁵ Mr Comrie found that Parkville was not 'adequate for its

⁵⁷¹ The current Victorian Government has announced it intends to build a new, high security youth justice centre in Victoria to deal with the identified problems; See: Daniel Andrews, *Building A Stronger And More Secure Youth Justice System*, media release, Melbourne, 6 February 2017; Department of Justice and Regulation, 'New youth justice centre', viewed 23 June 2017; Jill Hennessy, *Youth Justice Precinct Redevelopment Project*, media release, Victorian Government, Melbourne, 17 March 2017; Jenny Mikakos, *New Site For Youth Justice Facility*, media release, Victorian Government, Melbourne, 15 March 2017; Jodi Henderson, Executive Director, Youth Justice Operations, Department of Justice and Regulation, *Transcript of evidence*, 19 April 2017. p. 13.

⁵⁷² Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. Chapter 8.

⁵⁷³ Victorian Ombudsman, *Investigation into children transferred from the youth justice system to the adult prison system*, Victorian Ombudsman, Melbourne, 2013. p. 3.

⁵⁷⁴ Judge Amanda Chambers, President, Children's Court of Victoria, *Transcript of evidence*, 27 June 2017. p. 42.

⁵⁷⁵ Victorian Council of Social Services, *Submission*, no. 20. p. 16; Deborah Glass, Ombudsman, Victorian Ombudsman, *Transcript of evidence*, 17 March 2017. p. 4; Marnie Williams, Executive Director, Health and Safety, WorkSafe, *Transcript of evidence*, 22 March 2017. p. 8.

intended purpose’ and that there were inherent safety and security issues arising from the its design.⁵⁷⁶ He further noted that there were ‘fundamental design and construction weaknesses’ at Parkville, stemming from the fact that it was originally designed for residential detention rather than its current use.⁵⁷⁷

These problems were in fact identified as far back as a 2010 Ombudsman’s report on Parkville that noted among other concerns: hanging points; poor ventilation; and unsafe grounds. The Ombudsman also recommended construction of a new facility.⁵⁷⁸ In that same year, the CPSU claimed that the infrastructure was not fit for purpose for the increasing number of violent young offenders. Ms Glass stated that, while significant resources⁵⁷⁹ were provided to improve Parkville in the wake of the 2010 Ombudsman’s report, the main infrastructure remains problematic and unsuitable.⁵⁸⁰

The age of Victoria’s youth justice infrastructure is an ongoing concern, especially Parkville, which is approaching 25 years old.⁵⁸¹ WorkSafe’s Ms Marnie Williams confirmed to the Committee that many recent occupational health and safety incidents at Parkville were related to the age of the infrastructure.⁵⁸²

In his Stage 2 *Review of the Parkville Youth Justice Precinct*, Mr Neil Comrie reported that Victoria’s youth justice facilities were ‘designed and built for a different era’ and have failed in the face of contemporary challenges. As such, Mr Comrie concludes: ‘All other interventions and programs that are critical to the rehabilitation of young offenders are compromised in an environment that is not safe and secure.’⁵⁸³

The Victorian Ombudsman made similar findings recently, stating that, although improvements have been made, government inaction over the long-term has resulted in ageing infrastructure unsuited to the needs of the youth justice system.⁵⁸⁴

Ms Williams informed the Committee that WorkSafe has issued 21 improvement notices over seven years in relation to Victoria’s youth justice facilities (see Table 8.1). WorkSafe concluded that Parkville was not fit for purpose as a safe

576 Neil Comrie, *Review of the Parkville Youth Justice Precinct (Stage One): Executive Summary*, Department of Health and Human Services, Melbourne, 2017. p. 4.

577 Ibid. p. 1.

578 Victorian Ombudsman, *Investigation into conditions at the Melbourne Youth Justice Precinct*, Victorian Ombudsman, Melbourne, 2010. pp. 24-35.

579 \$6.225 million allocated to refurbishing Melbourne Youth Justice Centre in 2011/12 Budget *Victorian Budget 2011-12 - State Capital Program: Budget Paper No. 4*, Department of Treasury and Finance, Melbourne, 2012. p. 34; \$54.453 million allocated over 3 years for improving capacity and infrastructure of youth justice centres state-wide in 2012/13 Budget *Victorian Budget 2012-13: State Capital Program - Budget Paper No. 4*, Department of Treasury and Finance, Melbourne, 2013. p. 35; \$58 million allocated to strengthening metropolitan youth justice precincts in 2017/18 Budget. *Victorian Budget 17/18 State Capital Program: Budget Paper No. 4*, Department of Treasury and Finance, Melbourne, 2017. p.60.

580 Deborah Glass, Ombudsman, Victorian Ombudsman, *Transcript of evidence*, 17 March 2017. p. 4.

581 Malmsbury’s ‘open’ facilities are over 50 years old but its secure youth justice centre was opened in 2015.

582 Marnie Williams, Executive Director, Health and Safety, WorkSafe, *Transcript of evidence*, 22 March 2017. p. 10.

583 Neil Comrie, *Review of the Parkville Youth Justice Precinct (Stage Two)*, Department of Justice, Melbourne, 2017. p. 2.

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

workplace for clients or staff and had begun working with DHHS to improve the precinct prior to the machinery of government change.⁵⁸⁵ The Committee heard that DJR will continue infrastructure works on the accommodation at Parkville in 2018.⁵⁸⁶

Table 8.1 Breakdown of number of WorkSafe visits and claims to youth justice centres, including claim costs, between 2010 and March 2017

Year	Number of WorkSafe visits	Number of improvement notices served	Number of voluntary compliance notices served	Number of WorkSafe claims	Cost of claims \$
2010	17	7	3	50	2,600,000
2011	9	1	-	53	1,900,000
2012	15	1	-	51	1,000,000
2013	12	1	-	65	2,100,000
2014	7	-	-	62	1,500,000
2015	2	-	-	37	368,000
2016	27	3	1	64	751,000
2017 (year to March 2017)	18	8	-	13	

Source: Marnie Williams, Executive Director, Health and Safety, WorkSafe, *Transcript of evidence*, 22 March 2017. pp. 4-5.

Ms Williams informed the Committee that the cost of claims does not strictly correspond to claims made in that calendar year, as some claimants may receive benefits across multiple years. This is then included in the total cost of claims for each year. This means that if a claim made in, for example, 2016 continues to pay over several years, the final figure will end up being greater than the current amount of \$751,000.

Infrastructure problems with youth justice facilities are not limited to internal and external construction. They also extend to the adequacy of furnishings and fixtures within the facilities, which should create a safe, rehabilitative environment.⁵⁸⁷ Of particular note is the maintenance of key elements of secure infrastructure, such as the fortification of doors. Both WorkSafe and Ms Jodi Henderson, DJR's Executive Director of Youth Justice Operations, acknowledged that doors at Parkville and Malmsbury had repeatedly malfunctioned.⁵⁸⁸

⁵⁸⁵ Marnie Williams, Executive Director, Health and Safety, WorkSafe, *Transcript of evidence*, 22 March 2017. p. 8.

⁵⁸⁶ Greg Wilson, Secretary, Department of Justice and Regulation, *Transcript of evidence*, 27 June 2017. pp. 14-5.

⁵⁸⁷ CPSU, *Submission*, no. 65. p. 27.

⁵⁸⁸ Marnie Williams, Executive Director, Health and Safety, WorkSafe, *Transcript of evidence*, 22 March 2017. p. 8; Jodi Henderson, Executive Director, Youth Justice Operations, Department of Justice and Regulation, *Transcript of evidence*, 19 April 2017. p. 17.

8.2.2 Security breaches and riots

The Committee visited the facilities at Parkville, Malmsbury and Grevillea as part of this Inquiry and observed first-hand that much of the physical infrastructure, particularly Parkville, is indeed outdated. It is clear that the infrastructure contributed to the recent escapes and riots that placed young people, staff and the community at risk.⁵⁸⁹ The Committee's site visit at Parkville was restricted for safety reasons. As such, it cannot comment on the full extent of the damage to facilities from the riots.

Mr Comrie found that the incidents at Parkville between 12 and 14 November 2016 '...were a consequence of long-standing infrastructure and systemic failures...' and that these weaknesses should be addressed '...as a matter of high priority'.⁵⁹⁰ He noted that young offenders had been able to gain access to the roof via roof cavities. Once there, they devised makeshift weapons to threaten staff with and were able to break into nearby units and allow other young offenders to escape.⁵⁹¹

Mr Comrie further noted: 'Over time, the infrastructure weaknesses, particularly at PYJP have been identified and exploited by young offenders to the point that this conduct has become commonplace rather than the exception.'⁵⁹²

Infrastructure weaknesses were also identified by the Ombudsman in her recent *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville*. These weaknesses include low rooflines, which allowed detainees to repeatedly climb onto the roof during disturbances, and poorly placed stairwells that created blind spots.⁵⁹³

Consultant Peter Muir also reviewed two incidents that occurred at Parkville in October 2015 and March 2016. Muir notes in his report on the October 2015 incident that outdated and unsuitable infrastructure was the most significant consideration. He identified infrastructure problems in the kitchens, stairs, windows, and in the lack of anti-climb barriers in the facility. Infrastructure was again identified in Muir's report of the March 2016 events, with tool storage areas in workshops failing to be secured adequately.⁵⁹⁴ However, some infrastructure improvements recommended in his 31 October 2015 report had been undertaken prior to the March 2016 incident, including window strengthening and securing of tools in other priority areas. Muir states that these improvements prevented the events of March 2016 from being worse than they were.⁵⁹⁵

⁵⁸⁹ JacksonRyan Partners, *Submission*, no. 17. pp. 7, 13; The Salvation Army, *Submission*, no. 30. p. 5; CPSU, *Submission*, no. 65. p. 26.

⁵⁹⁰ Neil Comrie, *Review of the Parkville Youth Justice Precinct (Stage Two)*, Department of Justice, Melbourne, 2017. pp. 2-3.

⁵⁹¹ *Ibid.* p. 1.

⁵⁹² *Ibid.* p. 2.

⁵⁹³ Victorian Ombudsman, *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville*, Victorian Ombudsman, Melbourne, 2017. p. 2.

⁵⁹⁴ Peter Muir, *Review of Parkville Youth Justice Precinct Incident on 31 October 2015*, 2015; Peter Muir, *Security Review of critical incidents at Parkville Youth Justice Precinct on 6 & 7 March 2016*, 2016.

⁵⁹⁵ Peter Muir, *Review of Parkville Youth Justice Precinct Incident on 31 October 2015*, 2015; Peter Muir, *Security Review of critical incidents at Parkville Youth Justice Precinct on 6 & 7 March 2016*, 2016.

Of particular note is that, while some action had been taken on all of Muir's recommendations from the 31 October 2015 report, key elements such as the installation of anti-climb barriers were not completed by March 2016. The Committee notes that Mr Comrie's review of the events of November 2016 shows young offenders gained access to the roof spaces in Parkville. This was six months after Muir commented that progress that had been made on fortifying this area and almost 12 months after the initial recommendation for 'immediate' improvement be made.

FINDING 20: Reviews of the youth justice system since 2010 have identified weaknesses in infrastructure at youth justice centres that were not adequately addressed. The weaknesses were exposed by inappropriate young offender behaviour in recent years.

8.2.3 Damaged facilities

Parkville suffered extensive damage during the November 2016 unrest. The Ombudsman estimated the damage to total \$2 million.⁵⁹⁶ As a result, all of the residential units at the Centre were uninhabitable.⁵⁹⁷ According to the CPSU, damage included smashed ceiling tiles and air conditioning units and broken CCTV equipment (see Figures 8.1 and 8.2).⁵⁹⁸

Figure 8.1 Ceiling damage and new steel vent covers at Parkville Youth Justice Precinct.



Source: Neil Comrie, *Review of the Parkville Youth Justice Precinct (Stage One): Executive Summary*, Department of Health and Human Services, Melbourne, 2017. p. 2

⁵⁹⁶ Victorian Ombudsman, *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville*, Victorian Ombudsman, Melbourne, 2017. p. 14.

⁵⁹⁷ Neil Comrie, *Review of the Parkville Youth Justice Precinct (Stage One): Executive Summary*, Department of Health and Human Services, Melbourne, 2017. p. 1.

⁵⁹⁸ Community and Public Sector Union, 'Youth justice special report', *Public Perspective*, vol. 29, no. 1, 2017. p. 32.

Figure 8.2 Damage to a residential unit at Parkville Youth Justice Precinct



Source: Neil Comrie, *Review of the Parkville Youth Justice Precinct (Stage One): Executive Summary*, Department of Health and Human Services, Melbourne, 2017. p. 2

Damage to facilities has significant and immediate effects on the safety and comfort of young people and staff within the facilities. The Ombudsman's *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville* quotes the Commissioner for Children and Young People, Ms Liana Buchanan, as stating that young people have had to sleep in rooms other than bedrooms, without toilets and sometimes without mattresses or bedding. As well, there were complaints about not receiving toilet paper or clean clothes.⁵⁹⁹

The Ombudsman found the flow-on effects after unrest at Malmsbury as being:

- Inappropriate sleeping arrangements – one young person was housed in an isolation cell
- The temporary closure of the visitor centre
- The education hub was damaged and unusable
- Confusion among young people about their placement
- Delay in the administration of medication.⁶⁰⁰

At Parkville, young people '...have been required to sleep in isolation and holding cells, and continue to do so in January 2017.'⁶⁰¹

⁵⁹⁹ Victorian Ombudsman, *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville*, Victorian Ombudsman, Melbourne, 2017. p. 37.

⁶⁰⁰ Ibid. p. 38.

⁶⁰¹ Ibid. p. 39.

8.3 Other jurisdictions

The Committee received evidence on how other jurisdictions operate their youth justice facilities. This section briefly discusses two locations identified as leading the way in youth justice centre design: Spain; and Missouri, USA.

8.3.1 Spain

The facilities in Spain's juvenile justice system, La Diagrama, comprise several small centres housing between 40–110 young people each. Each serves a radius of 45 kilometres, placing the young people as close to their families as possible.⁶⁰² The main facility in the system, La Zarza, houses around 60 young people and reports few violent incidents, no escapes and little use of physical restraints (including no batons or handcuffs). The system is based on a high ratio of staff to young people, including educators and psychologists, with some security guards.⁶⁰³

Key elements of the La Zarza model include:

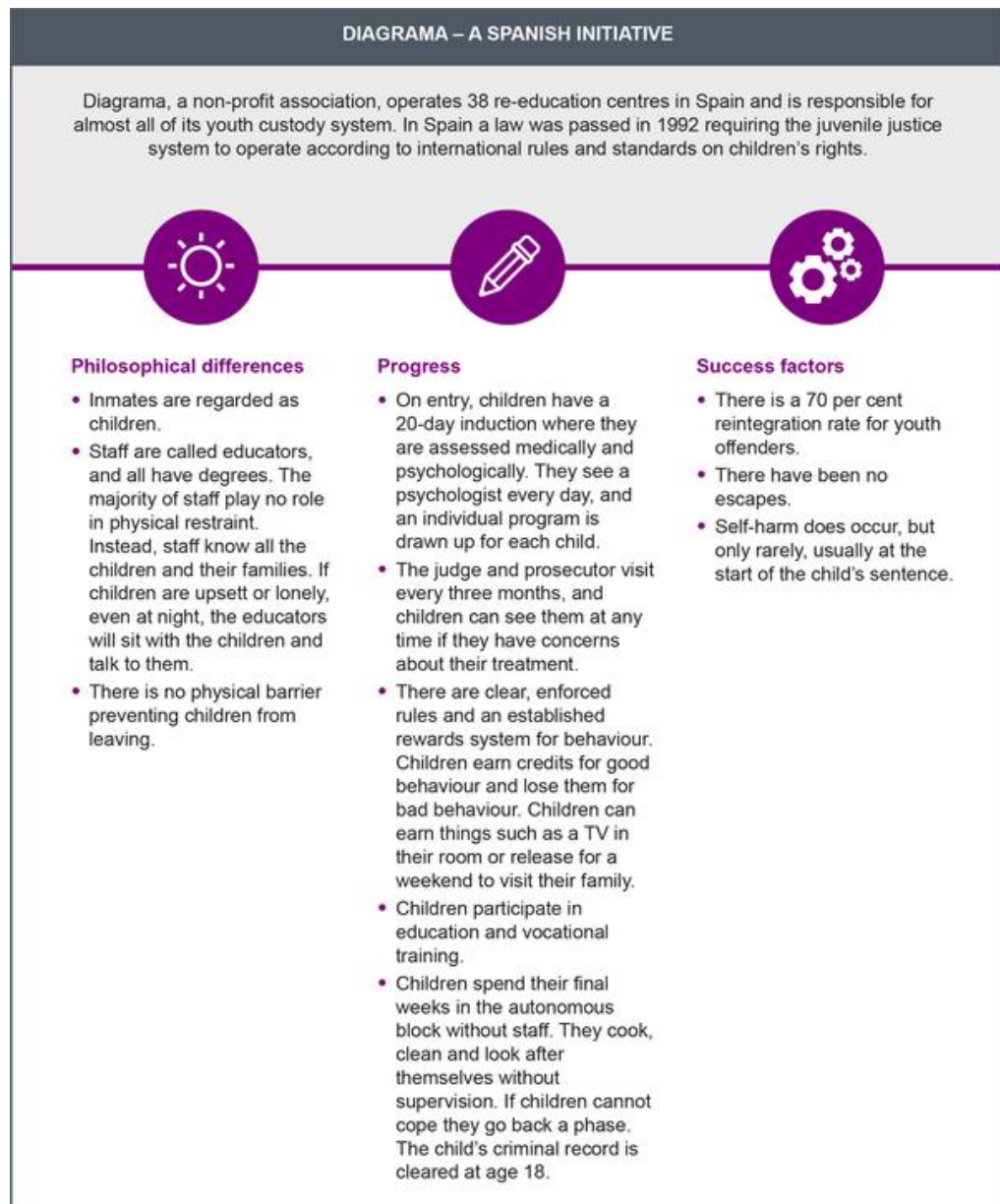
- A 60-bed facility that employs 80 educators and seven security guards (solely security and good order)
- Staff interacting with young people are educators and are not guards (educators have no role in physical restraint) and their role is to be with their assigned children during their whole shift: eating with them, joining in their classroom activities, playing football with them, maintaining the building and grounds together, watching TV together etc.
- An initial 20-day induction of all young people which includes a full medical and psychological assessment
- Managers and directors are psychologists and each young person is seen by a psychologist daily
- Every young person has an individual plan that is consistently monitored
- Facilities include autonomous sections that enable young people to prepare for leaving detention
- Judges visit the centres every three months although young offenders can see them at any time if they have concerns about their treatment. If they are making exceptional progress, staff can ask the judge to reconsider the sentence.⁶⁰⁴

⁶⁰² Save the Children, *Submission*, no. 60. p. 11; Jesuit Social Services, *Submission*, no. 37. p. 32.

⁶⁰³ YouthLaw, *Submission*, no. 12. pp. 23-4; Jesuit Social Services, *Submission*, no. 37. p. 32; Save the Children, *Submission*, no. 60. p. 11.

⁶⁰⁴ YouthLaw, *Submission*, no. 12. pp. 23-4; Jesuit Social Services, *Submission*, no. 37. p. 32; Save the Children, *Submission*, no. 60. p. 11.

Figure 8.3 La Diagrama, Spain



Source: Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. p. 230.

8.3.2 Missouri, United States of America

Missouri's youth justice system has been based on multi-systemic therapy (see Chapter 2) since the 1980s. It tailors programs and facilities to individual young people's needs. The facilities are small (maximum of 50 young people), secure, and located close to communities and young people's families. Missouri's youth recidivism rate is quite low, 12.3 per cent after 12 months and 30 per cent after three years.⁶⁰⁵ Its system also costs significantly less compared to other American states.⁶⁰⁶

Key elements of Missouri's youth justice facilities include:

- Decentralised residential facilities
- Small-group, peer-led services
- Restorative rehabilitation-centred treatment
- A shift from providing services under the court and correctional systems to using the Department of Social Services as the primary service provider
- A broad range of non-residential programmes (e.g. day treatment programmes).⁶⁰⁷

Missouri offers a continuum of residential facilities with varying levels of security. The levels of security are:

- **Secure care:** In accommodation housing about 30, young people who have committed the most serious offences receive education, vocational guidance and counselling in treatment groups of 10–12. Accommodation is generally open dorms and the facilities are locked within a perimeter fence.
- **Moderate care:** For young people who have committed less serious crimes and do not pose a threat to the community, facilities are staffed by full-time teachers and operate with no perimeter fence. Some moderate care facilities are located within state parks.
- **Group homes:** These 10–12-bed facilities are staffed around the clock, but young people access a programme of treatment, education and community interaction within and outside the facility. Situated in residential neighbourhoods, integration into society is supported through jobs and community projects.⁶⁰⁸

⁶⁰⁵ Jesuit Social Services, *#JusticeSolutions Tour: Expanding the conversation*, Jesuit Social Services, Melbourne, 2017. p. 20.

⁶⁰⁶ In comparison Victoria's youth reoffending rates are 40 per cent reoffending within two years, and 60 per cent reoffending within six years; Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria: Fact Sheet*, Melbourne, 2016. Reoffending rates and recidivism are discussed in more detail in Chapter 10 of this report.

⁶⁰⁷ Jodie O'Leary, *Submission*, no. 24. p. 3.

⁶⁰⁸ Jesuit Social Services, *Submission*, no. 37. p. 32.

8.4 How change created the problems at Parkville and Malmsbury

The infrastructure in and of itself has conflated and contributed to some of the challenges that have been observed in the centres.⁶⁰⁹

The context in which Victoria's youth justice facilities were built partly explains the problems the system is experiencing.

The Melbourne Youth Justice Centre was designed in the late 1980s as a replacement for the Turana centre and opened in 1993. The precinct, which housed 15–16-year-olds, was secure but laid out openly inside. Parkville was designed to house sentenced, not remand populations.⁶¹⁰

However, the number of remandees began to grow and the Parkville population was further affected by an increase in the age of the Children's Court jurisdiction from 17 to 18 years of age in 2005.⁶¹¹

Mr John Burch, a former Assistant Superintendent at Malmsbury, describes the 'problematic' impact these changes had on Parkville in his submission to the Committee. He writes:

...the facilities had not been specifically designed for this cohort. An older and potentially more sophisticated group of young offenders came into Parkville. Less obviously it created an undesirable mix of young people within an enclosed space... and facilities can't offer a range of options matched to the range of age, experience, social and psychological maturity and community risk of the young offenders they house.⁶¹²

Mr Comrie found that although the perimeter security at the facility was strengthened in 2011, problems within soon developed due to limited accommodation options. He states:

The severe limitations of accommodation options within the current youth justice infrastructure often results in an undesirable mix of young offenders in units which can lead to disturbances and incidents of violence and are a significant barrier to the positive progress of individual case management plans.⁶¹³

A youth justice centre was established at Malmsbury in 1965. It was renamed the Malmsbury Senior Youth Justice Centre in 1993 for dual track clients aged between 18–21 years. The young offenders completed their sentence in an open facility with high levels of community engagement, including leave programs. As a minimum security facility with a targeted, specified cohort, Malmsbury was

⁶⁰⁹ Marnie Williams, Executive Director, Health and Safety, WorkSafe, *Transcript of evidence*, 22 March 2017. pp. 7-8.

⁶¹⁰ John Burch, *Submission*, no. 54. pp. 4-5.

⁶¹¹ Reserve Magistrate Peter Power, *Research Materials: Chapter 7 Criminal Division - General*, Children's Court of Victoria, Melbourne, 2016.

⁶¹² John Burch, *Submission*, no. 54. p. 5.

⁶¹³ Neil Comrie, *Review of the Parkville Youth Justice Precinct (Stage Two)*, Department of Justice, Melbourne, 2017. p. 2.

an unfenced site and internally the buildings were domestic in appearance.⁶¹⁴ In 2015, the Malmsbury Secure Youth Justice Centre was opened. It exists as a separate secure facility adjacent to the ‘open’ site.⁶¹⁵

At a public hearing, Mr Comrie revealed that staff at Malmsbury felt unprepared to work with the new group of young offenders.⁶¹⁶ Malmsbury residents have also expressed concern about the changes at the facility. Philip and Therese Watts told the Committee:

We have always understood that the centre was about giving young offenders a chance to improve their education, and to give them the best chance to re-enter their families and communities with better prospects for the future. However, of recent times the events at the centre have affected locals negatively. There are constant calls on the local fire brigade and we know that staff have been regularly threatened and injured while working there. Locals know a lot about what goes on there because it is right in our town.⁶¹⁷

Similarly, Ms Evelyn Mullengar explained how some local residents do not feel as safe as they did in the past, when low-risk offenders worked in the community. Her submission states: ‘Previously youth from the Centre were seen mowing under supervision at the cemetery etc. Staff were local. The secure lock-up with high security caused residents to fear for the safety of themselves and their children.’⁶¹⁸

The fact that both Parkville and Malmsbury house types of young offenders they were not designed to house, in particular, mixing sentenced and remand populations, contributes to unrest. Young offenders with different security risks mix, while those on remand are uncertain as to how long they will be detained.⁶¹⁹ These problems are exacerbated by overcrowding.⁶²⁰

Judge Michael Bourke from the Youth Parole Board described the changes experienced by the system as “particularly important” in understanding the challenges it now faces. Speaking about the rise in remand numbers, Judge Bourke said:

When you had a settled environment you could place the right sort of young people in the right sort of unit, related to how old they really were, how developed they really were, cultural et cetera. That became impossible. So the problem thereby became more serious and I think there developed a knock-on effect.⁶²¹

⁶¹⁴ John Burch, *Submission*, no. 54. pp. 3-4; Judge Michael Bourke, Chair, Youth Parole Board, *Transcript of evidence*, 17 March 2017. p. 44.

⁶¹⁵ John Burch, *Submission*, no. 54. pp. 3-4.

⁶¹⁶ Neil Comrie, *Transcript of evidence*, 14 June 2017. p. 25.

⁶¹⁷ Phillip and Therese Watts, *Submission*, no. 53.

⁶¹⁸ Evelyn Mullengar, *Submission*, no. 63. p. 1.

⁶¹⁹ Victorian Council of Social Services, *Submission*, no. 20. p. 40; Victorian Ombudsman, *Investigation into conditions at the Melbourne Youth Justice Precinct*, Victorian Ombudsman, Melbourne, 2010. pp. 8, 21.

⁶²⁰ CPSU, *Submission*, no. 65. p. 27.

⁶²¹ Judge Michael Bourke, Chair, Youth Parole Board, *Transcript of evidence*, 17 March 2017. pp. 47-8.

FINDING 21: Youth justice facilities in Victoria have not provided secure rehabilitation for young offenders. They are ageing, do not meet the changing demands of young offenders, and have contributed to and been damaged by recent riots and escapes.

8.5 Grevillea Unit

The Grevillea Unit was still in use when the Committee began this Inquiry and, as such, attracted a considerable amount of evidence, mostly negative. Although young people are no longer being held in the Grevillea Unit, a brief consideration of the use of the unit is relevant to this Inquiry.

After riots damaged Parkville in November 2016, around 40 young people were transferred to the Grevillea Unit. At the time, the Minister for Families and Children said: “The Andrews Labor Government is sending a very clear message that this disgraceful behaviour won’t be tolerated.”⁶²² However, the Committee learnt that only some of the young offenders moved to Grevillea had been involved in the riots.⁶²³

Following challenges from the Human Rights Law Centre as to the legality of housing young offenders in the Grevillea Unit, it was gazetted as a youth justice facility.⁶²⁴ However, this move was successfully challenged in the Supreme Court on the basis that the Victorian Government had failed to give proper consideration to the offenders’ human rights.⁶²⁵ Grevillea was closed as a youth justice centre and the young people were moved to Parkville and Malmsbury in May 2017.⁶²⁶

The Human Rights Law Centre explained its action in a submission to this Inquiry:

We have done this because Barwon is manifestly unfit for children. Grevillea Unit is effectively a maximum security prison within an adult prison. It is a harsh, desolate environment with high concrete walls, covered in razor wire. Sending children to Barwon Prison creates unacceptable risks to the children and also to staff. The incredibly harsh conditions and treatment combined with the inability to deliver proper education and programs undermine community safety by damaging the rehabilitation prospects of the children held there.⁶²⁷

⁶²² Hon. Jenny Mikakos MP - Minister for Families and Children and Hon. Gayle Tierney MP - Minister for Corrections, *Young offenders to be put in adult prison*, media release, Melbourne, 17 November 2016.

⁶²³ Kym Peake, Secretary, Department of Health and Human Services, *Transcript of evidence*, 14 June 2017. pp. 5-6.

⁶²⁴ Hon. Jenny Mikakos MP - Minister for Families and Children, *Government gazettes Grevillea Unit of Barwon Prison*, media release, Melbourne, 29 December 2016.

⁶²⁵ Cohealth, *Submission*, no. 19. pp. 24-6.

⁶²⁶ Emma Younger, ‘Barwon Prison: Teens moved after court rules children should not be held in adult jail’, *ABC News*, 11 May 2017; Human Rights Law Centre, *Legal challenge in Supreme Court against Victorian Government’s decision to detain children in maximum security adult prison*, media release, Human Rights Law Centre, Melbourne, March 31 2017; Human Rights Law Centre, *Supreme Court finds Government acted unlawfully in transferring children to Barwon jail*, media release, Human Rights Law Centre, Melbourne, 21 December 2016; Victorian Ombudsman, *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville*, Victorian Ombudsman, Melbourne, 2017. pp. 13-4.

⁶²⁷ Human Rights Law Centre, *Submission*, no. 38. pp. 10-12.

Several stakeholders viewed the use of the Grevillea Unit as a contravention of the United Nations Convention on the Rights of the Child, which expressly provides that all children must be detained separately from adults.⁶²⁸ Ms Buchanan stated that “...it is hard to imagine Grevillea would ever be safe for children.”⁶²⁹

The Victorian Ombudsman’s 2017 *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville* identified numerous problems with Grevillea, including concerns regarding:

- Access to health services
- Access to families, personal visits, legal counsel and the Children’s Court (including a lack of videolink capability)
- Lack of staff qualifications, including Working With Children checks
- Lack of clarity about the role of Security and Emergency Services Group of Corrections Victoria (SESG, the adult prison response team)
- Staff shortages
- Lack of clarity for young people on the process, including why they were moved
- The adequacy of separation and safety management plans
- Access to education.⁶³⁰

Evidence to the Supreme Court against the use of Grevillea documented instances of:

- Long periods of solitary confinement
- The use of the SESG inside the unit including German Shepherd dogs
- Little or no time outdoors for several days
- Young offenders were asked to sign a form on arrival that said ‘if you attempt to escape or escape you will be apprehended by SESG using dogs, OC spray, tear gas and firearms’
- Young offenders being handcuffed to access the exercise yard
- Increased risks of self-harm.⁶³¹

The Committee notes that the Grevillea Unit is a separate, self-contained unit within Barwon Prison and, as such, young offenders were not in contact with adult offenders. Further, it acknowledges the problems posed by the damage caused to Parkville by rioting young offenders, as outlined to the Committee by the Secretary of DHHS, Ms Kym Peake.⁶³² However, it holds concerns about the

⁶²⁸ Save the Children, *Submission*, no. 60. p. 4; Dr Kate Fitz-Gibbon and Wendy O’Brien, *Submission*, no. 28. p. 4; YouthLaw, *Submission*, no. 12. p. 14; United Nations (1990), *Convention on the Rights of the Child*, United Nations.

⁶²⁹ Liana Buchanan, Commissioner for Children and Young People, Commission for Children and Young People, *Transcript of evidence*, 17 March 2017. p. 24.

⁶³⁰ Victorian Ombudsman, *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville*, Victorian Ombudsman, Melbourne, 2017. pp. 16-36.

⁶³¹ Human Rights Law Centre, *Submission*, no. 38. pp. 10-12; Liberty Victoria, *Submission*, no. 29. pp. 3-4.

⁶³² Kym Peake, Secretary, Department of Health and Human Services, *Transcript of evidence*, 14 June 2017.

rapid way in which young people were transferred to Grevillea and the language used to describe the young offenders moved there, not all of whom had been involved in riots.

Speaking with the Committee when young people were detained in Grevillea, Ms Henderson assured the Committee that:

...there has been no change in our commitment to safeguard the young people who are housed at Grevillea. They are still administered under the *Children, Youth and Families Act*, and all of our operational procedures are the same. There has been no process where the adult system has interfaced with the youth justice system due to the fact of a machinery of government. They are treated as two separate divisions in our department.⁶³³

In fact, the adult system did become involved in Grevillea, in the form of the Emergency Response Group (as discussed in Chapter 9).

FINDING 22: The Supreme Court found that the Victorian Government had breached the Victorian *Charter of Human Rights and Responsibilities Act 2006* in sending young offenders to the Grevillea Unit.

8.6 Proposed facility at Cherry Creek

*Victoria could be doing more to establish world-leading standards and international best practice in prison design and planning with a view to breaking the cycle of reoffending, providing more hopeful futures for those incarcerated at a young age, and ensuring greater long-term safety for society as a whole.*⁶³⁴

On 6 February 2017, the Victorian Government announced a new \$228 million, 224-bed youth justice centre to be built in Werribee South.⁶³⁵ The facility, whose design was based on recommendations from the first Comrie Report, is intended to house both remand and sentenced clients. It will also include a 12-bed mental health unit and an intensive supervision unit. However, due to community concern, the Government announced that the facility will be built in Cherry Creek, Wyndham.⁶³⁶

⁶³³ Jodi Henderson, Executive Director, Youth Justice Operations, Department of Justice and Regulation, *Transcript of evidence*, 19 April 2017, p. 15.

⁶³⁴ Professor Yvonne Jewkes, *Submission*, no. 5, p. 1.

⁶³⁵ Daniel Andrews, *Building A Stronger And More Secure Youth Justice System*, media release, Melbourne, 6 February 2017; Department of Justice and Regulation, 'New youth justice centre', viewed 23 June 2017; Neil Comrie, *Review of the Parkville Youth Justice Precinct (Stage One): Executive Summary*, Department of Health and Human Services, Melbourne, 2017, p. 4.

⁶³⁶ Jill Hennessy, *Youth Justice Precinct Redevelopment Project*, media release, Victorian Government, Melbourne, 17 March 2017; Jenny Mikakos, *New Site For Youth Justice Facility*, media release, Victorian Government, Melbourne, 15 March 2017.

The Committee learnt that DJR has established a community advisory group to liaise between the local community at Cherry Creek and the Department. The group comprises members of the local community, Victoria Police, local councillors and Departmental staff.⁶³⁷

At the time of writing this Final Report, it was proposed that Parkville would be closed once the new site had been built. This would leave no youth justice precinct in the inner-metropolitan area of Melbourne. The Armytage and Ogloff review ‘strongly advocates’ for retaining Parkville as part of the youth justice system (see Figure 4), albeit acknowledging it would require ‘...significant investment to ensure the infrastructure is appropriate in support of this purpose.’⁶³⁸

There has been a mixed response to the announcement of the new facility. Some see it as an opportunity to ‘start over’ with the possibility of restoring a positive culture within the youth justice system and improving outcomes for young offenders.⁶³⁹ The Victorian Ombudsman Deborah Glass states: ‘... the only practical way to address the conditions at [Parkville] in the long term is to develop a new facility at another site.’⁶⁴⁰

WorkSafe lauded the decision as a “a great outcome” as the facilities at Parkville were not maintained at an acceptable safe standard.⁶⁴¹

The announcement was also met with some caution. Despite general support for the construction of a new facility, Ms Glass stressed that new infrastructure is only one part of the solution to the current problems, stating:

You need appropriate infrastructure, and of course that needs to be safe — there is no doubt about that — and there have been numerous reports about the safety of the Parkville facility that I do not need to elaborate on. But what is critical is what goes on inside the facility and that it is informed by behavioural science.⁶⁴²

Mr Comrie also warned against treating a new facility as the only solution required, stating that ‘...these works can only be an interim response to a situation that requires a more extensive and holistic long-term solution.’⁶⁴³

Figure 8.4, below, from Armytage and Ogloff outlines how they believe Victoria’s youth justice custodial facilities should function.

⁶³⁷ Greg Wilson, Secretary, Department of Justice and Regulation, *Transcript of evidence*, 27 June 2017. p. 3.

⁶³⁸ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. p. 156.

⁶³⁹ *Designing Out Crime, Submission*, no. 46. p. 6; Professor Yvonne Jewkes, *Submission*, no. 5. p. 1.

⁶⁴⁰ Victorian Ombudsman, *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville*, Victorian Ombudsman, Melbourne, 2017. p. 12.

⁶⁴¹ Marnie Williams, Executive Director, Health and Safety, WorkSafe, *Transcript of evidence*, 22 March 2017. p. 8.

⁶⁴² Deborah Glass, Ombudsman, Victorian Ombudsman, *Transcript of evidence*, 17 March 2017. p. 8.

⁶⁴³ Neil Comrie, *Review of the Parkville Youth Justice Precinct (Stage One): Executive Summary*, Department of Health and Human Services, Melbourne, 2017. p. 1.

Figure 8.4 Proposed future state of Victoria’s youth justice centres

	PARKVILLE	MALMSBURY	WYNDHAM
OVERVIEW	<p>Redevelopment of the Parkville site as a purpose-built facility to support the assessment of all young offenders and accommodation of small or vulnerable cohorts.</p> <p>Additional function as ‘step-down’ accommodation to support the transition of young offenders back into the community.</p>	<p>Return use of Malmsbury Open Site to its original intention as a vocational training centre for dual track clients.</p> <p>Accommodation of sentenced young people who are settled in custody within Malmsbury Secure.</p>	<p>Design the Wyndham site to accommodate high-risk young men, with a focus on those on remand and those who are not settled in their custodial sentence.</p>
FUNCTION	<p>1 Assessment of young offenders on reception to custody</p> <p>2 Purpose-built intensive intervention unit (IIU) for high-risk violent males</p> <p>3 Accommodation of young women</p> <p>4 Purpose-built, low-security space to transition young men and women from custody to community</p>	<p>1 Secure Site – accommodation for sentenced young men aged 10–17 years who are settled in the custodial environment</p> <p>2 Open Site – accommodation for dual track, sentenced, young men, with a focus on vocational training</p>	<p>1 Accommodation for young men on remand, if remand placement is extended and assessment has been completed</p> <p>2 Higher security accommodation for sentenced young men aged 10–17 years who are not settled in the custodial environment</p>
COHORT	<p>YES Young man</p> <p>YES Young woman</p> <p>YES Sentenced</p> <p>YES On remand</p>	<p>YES Young man</p> <p>NO Young woman</p> <p>YES Sentenced</p> <p>NO On remand</p>	<p>YES Young man</p> <p>NO Young woman</p> <p>YES Sentenced</p> <p>YES On remand</p>
RATIONALE	<ul style="list-style-type: none"> Standardised assessment function to support appropriate classification of young offenders on their entrance to custody Proximity to services will enable specialist access to the site to support vulnerable cohorts Proximity to services and CBD will enable appropriately supported transition to the community Purpose-built accommodation for young women, recognising their specific vulnerabilities and the need to tailor services accordingly 	<ul style="list-style-type: none"> Support rehabilitation and successful transition of dual track clients back into the community by the provision of tailored vocational training Young men aged 10–17 years who are sentenced and settled in their placement are not disadvantaged by the volatility of the remand cohort Rationale for the centre is based on the assumption that dual track clients who are not settled, or not suitable for the Open Site, are transferred to an adult correctional facility 	<ul style="list-style-type: none"> Acknowledges the volatility of the remand cohort by accommodating them in purpose-built higher security units Provides higher security accommodation for young men who are sentenced but are not settled in their custodial placement Consolidation of system risk to one location Supports the creation of an incentive for young people to settle in their custodial placement, with the potential for transfer to the lower security Malmsbury site
<p>No straight release from ‘behind the wall’ – use of the Parkville transition centre to support young people in making a successful transition into the community.</p>			

Source: Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. p. 155.

The Committee also took evidence regarding whether a metropolitan location or regional location is preferable for the new facility. Family access has long been acknowledged as vital for young people’s wellbeing while detained in a youth justice centre. At a public hearing, the Committee heard from Akolda,

a former young offender. He explained to the Committee that his mother had found it difficult to visit him while he was at Malmsbury, which in turn made his experience there much harder. Akolda said:

Also, it was difficult for my mum to come visit me at Malmsbury because I live in the city and for her to travel that far was pretty difficult for her. I do not see the point of having youth organisations in the middle of nowhere, where parents cannot even reach us. It makes it hard. I told my mum sometimes not to come visit me every week because I knew how difficult it was for her to travel back and forth. She came and visited me monthly, so that was a bit difficult as well only seeing her once a month and seeing the rest of my family as well once a month.⁶⁴⁴

In a state such as Victoria with a widespread population, a metropolitan location, or one very close to Melbourne, is generally considered preferable (in lieu of building separate facilities throughout the state). This is not to ignore how difficult it is for family members to travel from regional areas to Melbourne, nor the problems faced by young offenders removed from their communities. However, a location in Melbourne provides the easiest access to the largest number of people and offers young offenders better links with rehabilitation services.

8.6.1 Security

Victoria Legal Aid noted in its submission that the level of security across youth justice centres should vary ‘...depending on the security risks that different young people present.’⁶⁴⁵ Practically, this means that youth justice centres should include a number of different security levels, from high down to low, that allows young offenders a graduated exit plan.

Further, information provided to the Committee argues that smaller settings designed to look and feel ‘like home’ are more effective at rehabilitating young offenders and reducing reoffending.⁶⁴⁶

Although, as noted above, young offenders are generally more impetuous than adults, placing too much emphasis on perimeter security or the security of internal facilities risks losing sight of what youth justice systems are meant to achieve, increasing community safety by rehabilitating young offenders and reducing the level of youth crime.⁶⁴⁷

The Committee learnt that the Thomas Embling Hospital, a mental health facility in Melbourne that provides adult forensic mental health services, is a good example of a facility that combines secure areas for dangerous patients and more open areas where low-risk patients can move about more freely.⁶⁴⁸

⁶⁴⁴ Akolda, Youth Affairs Council Victoria, *Transcript of evidence*, 19 April 2017. pp. 3-4.

⁶⁴⁵ Victoria Legal Aid, *Submission*, no. 35. p. 15.

⁶⁴⁶ The Salvation Army, *Submission*, no. 30. p. 17; Law Institute of Victoria, *Submission*, no. 31. p. 5.

⁶⁴⁷ Professor Yvonne Jewkes, *Submission*, no. 5. p. 2.

⁶⁴⁸ Professor Terry Laidler, *Transcript of evidence*, 17 March 2017. p. 65.

8.6.2 Large vs. small facilities

Professor Yvonne Jewkes, a specialist in prison design and planning, told the Committee that although Victoria is well regarded for its progressive policies regarding youth justice, it lags other developed jurisdictions in the planning, design and construction of youth justice facilities.⁶⁴⁹ She was one of many stakeholders concerned that the new Cherry Creek centre would be built as one large facility.⁶⁵⁰

While Victoria does need a new high-security youth detention facility, the Victorian Government should resist the urge to build the whole of the Cherry Creek facility at a high-security level. As referred to above, the new facility should contain a small high-security area built as a distinct part of the larger facility. This serves several aims:

- It facilitates the provision of intensive and highly skilled services to the small number of very violent young offenders in the system
- It separates high-risk young offenders from low-risk offenders thus negating the ‘school of crime’ factor and helping to maintain good order⁶⁵¹
- It allows young offenders to ‘step down’ through security levels to prepare for release from the least restrictive accommodation possible (currently very difficult because of the lack of suitable facilities)
- It allows units to be shut down in case of a disturbance to prevent trouble from spreading.

Judge Bourke confirmed to the Committee that building multiple, smaller facilities within one large facility or precinct was possible and had been proven to work in the past.⁶⁵²

The Committee has included a DJR update on the new facility, including the principles guiding its design, in Appendix 4.

FINDING 23: The new youth justice centre at Cherry Creek should be based on the premise that successful youth justice systems combine safe and secure facilities with the delivery of effective rehabilitation services.

⁶⁴⁹ Professor Yvonne Jewkes, *Submission*, no. 5. p. 1.

⁶⁵⁰ *Ibid.* p. 1; Association of Child and Family Development, *Submission*, no. 52. p. 1; Victoria Legal Aid, *Submission*, no. 35. p. 15; Green, et al., *Submission*, no. 41. pp. 7, 18; YouthLaw, *Submission*, no. 12. p. 23; Victorian Council of Social Services, *Submission*, no. 20. p. 16; Professor Yvonne Jewkes, *Submission*, no. 5. p. 1; Vincent Schiraldi, Justice Policy Institute (USA), *Transcript of evidence*, 22 March 2017. pp. 18-9.

⁶⁵¹ Armytage and Ogloff found that only 2–5 per cent of detained young offenders are disruptive but recently this small number has been able to influence other detainees to create the disturbances; Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. P. 104.

⁶⁵² Judge Michael Bourke, Chair, Youth Parole Board, *Transcript of evidence*, 17 March 2017. p. 56.

9 Youth justice custodial staff

*There are clearly some fairly longstanding problems with retention, recruitment and absenteeism. My view is that the current instability in the system is not going to be able to be addressed unless those staffing issues are resolved.*⁶⁵³

9.1 Introduction

Custodial staff⁶⁵⁴ play the dominant role in ensuring that youth justice facilities are safe, stable and supportive environments.⁶⁵⁵ This is a difficult role requiring skill and dedication. In her report *The Same Four Walls*, the Commissioner for Children and Young People writes positively about youth justice staff, reporting: ‘The majority of staff we met showed a genuine commitment to helping children and young people and cared greatly for their welfare.’⁶⁵⁶ The Committee heard similar positive evidence about the dedication of staff throughout this Inquiry.

In order to perform their roles effectively, staff need to be chosen well, trained well, initially and ongoing, and supported by management. Evidence presented to the Committee suggests this has not routinely occurred for several years in Victoria.

Custodial staff are divided into two classifications: youth justice custodial workers; and Safety and Emergency Response Team (SERT) staff. There are five levels of youth justice custodial workers:

- Youth Justice Level 1 (YJ1s) – floor staff
- Youth Justice Level 2 (YJ2s) – unit supervisors
- Youth Justice Level 3 (YJ3s) – unit coordinators
- Youth Justice Level 4 (YJ4s) – unit managers
- Youth Justice Level 5 (YJ5s) – operations managers.

There are two levels of SERT staff members:

- SERT Level 1 – floor staff
- SERT Level 2 – SERT supervisors.⁶⁵⁷

⁶⁵³ Liana Buchanan, Commissioner for Children and Young People, Commission for Children and Young People, *Transcript of evidence*, 17 March 2017. p. 15.

⁶⁵⁴ This Inquiry does not cover community youth justice staff.

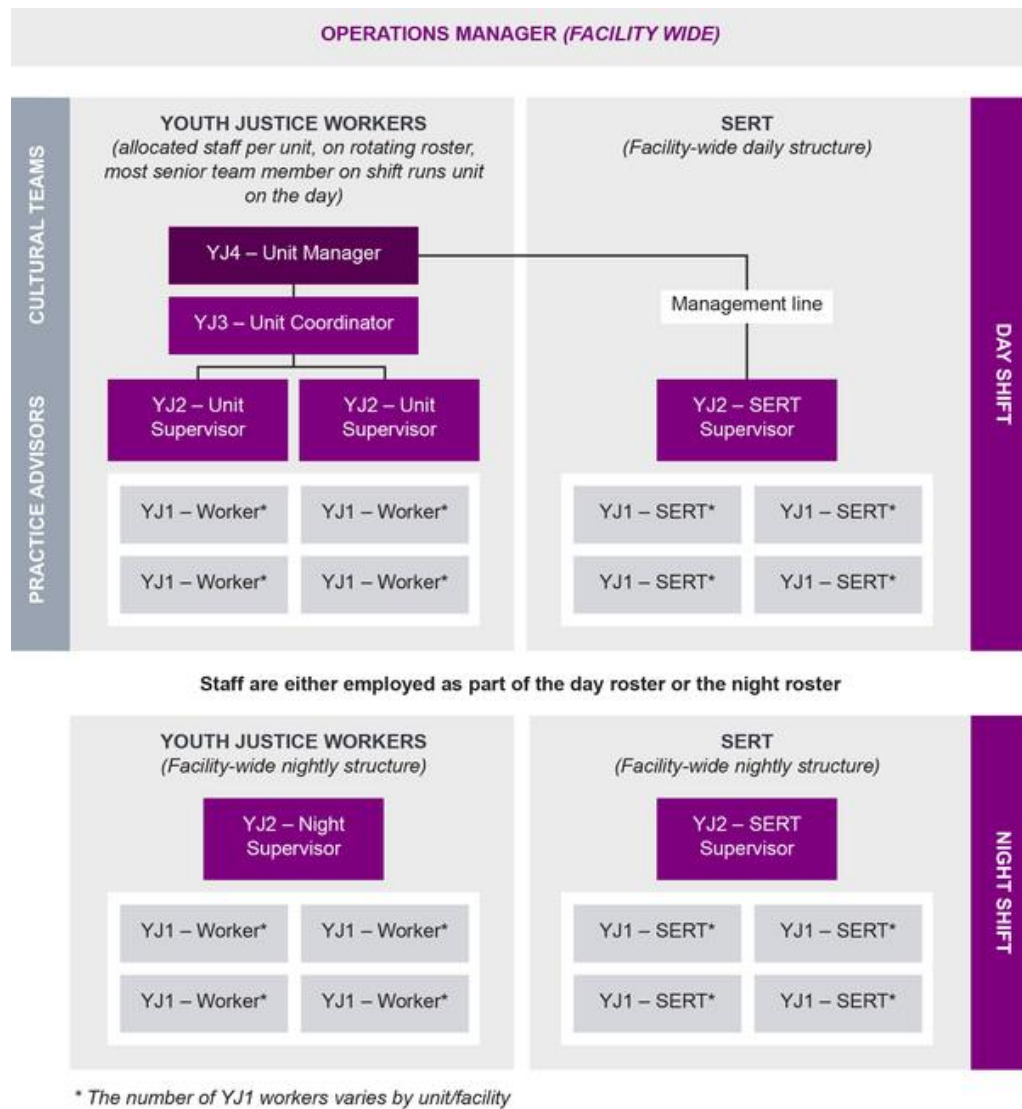
⁶⁵⁵ Jodi Henderson, Executive Director, Youth Justice Operations, Department of Justice and Regulation, *Transcript of evidence*, Opening statement. p. 3; The Salvation Army, *Submission*, no. 30. p. 16.

⁶⁵⁶ Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, Commission for Children and Young People, Melbourne, 2017. p. 54.

⁶⁵⁷ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. p. 265.

Figure 9.1 outlines the structure of youth justice custodial staff in Victoria.

Figure 9.1 Structure of youth justice custodial staff



Source: Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. p. 267.

Armytage and Ogloff include details on staff numbers in their report (see Table 9.1). These are the most recent staffing numbers the Committee acquired.

Table 9.1 Retention and staff turnover, custodial youth justice role, 2015–16 to 2016–17

Year	Number of staff	FTE	Turnover
2015–16	431	400.7	7.4%
2016–17	507	468.0	15.1%

Source: Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 1*, Victorian Government, Melbourne, 2017. p. 113.

The Committee stresses that staffing numbers alone will not predict how well a youth justice system is functioning. For example, a high number of inexperienced staff will not necessarily be effective.

9.2 Why relationships between staff and young people are important

Research suggests that staff–prisoner (or, in this case, staff–young offender) relationships are the single most important element in the creation of a healthy facility.⁶⁵⁸

Having positive professional relationships between young people and staff within youth justice facilities is an important factor in keeping facilities safe and stable. Evidence to the Committee suggested that relationships between staff and young offenders had deteriorated over time in Victoria, due in part to changing practices within facilities and high rates of staff turnover. This made relationship-based approaches to rehabilitation difficult to implement.

The DHHS ‘How we work with young people in custody’ policy emphasises the importance of staff building trusting relationships with young offenders.⁶⁵⁹ The Royal Commission into Institutional Responses to Child Sexual Abuse also found that strong relationships between young offenders and staff help a young person feel safe. Key factors needed in custodial environments highlighted by the Royal Commission relevant to youth justice in Victoria include:

- Adequate staff numbers
- Trustworthy staff
- Staff initiating conversations about safety/wellbeing issues rather than leaving it to the young person to seek out support
- Staff keeping young people informed about what is being done to address their concerns.⁶⁶⁰

Former staff members from Malmsbury spoke about spending time one-on-one with young offenders when they arrived at a facility, often when the young people were scared or angry. This time would allow relationships to develop that would then continue on the floor.⁶⁶¹

However, staff cannot develop relationships with young people if they do not work in the role long enough to allow these relationships to form.⁶⁶² The Youth Affairs Council argues that a high turnover of staff makes it ‘almost impossible’ to create the type of relationships between staff and young people that encourage

⁶⁵⁸ Professor Yvonne Jewkes, *Submission*, no. 5. p. 2.

⁶⁵⁹ Quoted in: Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, Commission for Children and Young People, Melbourne, 2017. p. 53.

⁶⁶⁰ Youth Affairs Council of Victoria, *Submission*, no. 10. p. 68.

⁶⁶¹ Michelle Rogers, *Submission*, no. 4. p. 2; Vince Colman, *Transcript of evidence*, 30 May 2017. p. 51.

⁶⁶² CPSU, *Submission*, no. 65. p. 19.

safe and rehabilitative environments.⁶⁶³ This includes non-floor staff such as kitchen and health workers, who also have an important role in creating a safe environment.⁶⁶⁴

Akolda, a former young offender who gave evidence to the Committee, highlighted how a rapid turnover of staff can prevent relationships from forming. He said: ‘...the clients at the youth centres do not really engage much with the workers because they are always constantly changing staff shifts and they are not full-time workers there.’⁶⁶⁵

The Committee received evidence that a change in work practices, such as how meals are eaten and how leave programs function, also impeded staff’s ability to form relationships with the young people in their care. For example, a previous practice of staff and young people eating one meal a day together provided an opportunity for staff to bond with young offenders. Crucially, it also provided staff with the chance to pick up intelligence regarding potential disturbances, known as ‘relational security’ (see Section 9.4.3 below).

Mr Vince Colman said:

...we used to go down to the kitchens and have meals with the clients. The meals were provided. We would sit down with the clients and it was like having Sunday roast with your family. You would sit down and you would have a chat. Some clients did not want to know you. They would move. Other clients would come in and sit down and we would talk. During that talk you would find out what was going on in the unit.⁶⁶⁶

It was suggested that the removal of a daily meal between all staff and the young offenders has contributed to a divide between the two groups.⁶⁶⁷

Former staff also referred to the previous leave program at Malmsbury, day trips, for example, which helped young people transition to leaving detention and gave staff an extra opportunity to develop positive, rehabilitative relationships with young people. These relationships sometimes continued after the young person had left youth detention.⁶⁶⁸

Many young offenders have experienced traumatic and complicated lives prior to their involvement with the youth justice system. The Youth Affairs Council submitted that developing stable, trusting and respectful relationships with adults aids rehabilitation and behavioural change, including reducing recidivism.⁶⁶⁹

⁶⁶³ Youth Affairs Council of Victoria, *Submission*, no. 10. p. 32.

⁶⁶⁴ CPSU, *Submission*, no. 65. pp. 13-4.

⁶⁶⁵ Akolda, Youth Affairs Council Victoria, *Transcript of evidence*, 19 April 2017. p. 3.

⁶⁶⁶ Vince Colman, *Transcript of evidence*, 30 May 2017. p. 55.

⁶⁶⁷ CPSU, *Submission*, no. 65. pp. 13-4.

⁶⁶⁸ Eddy Poorter, *Transcript of evidence*, 30 May 2017. pp. 54-5.

⁶⁶⁹ Youth Affairs Council of Victoria, *Submission*, no. 10. pp. 5, 32; The Salvation Army, *Submission*, no. 30. p. 17; Green, et al., *Submission*, no. 41. p. 10; Dr Jessie Mitchell, Policy Manager, Youth Affairs Council Victoria, *Transcript of evidence*, 19 April 2017. p. 3.

FINDING 24: Stable ongoing relationships between staff and young offenders reduce the chance of unrest within facilities. This improves security and safety and creates an environment in which rehabilitation has the greatest chance of succeeding.

9.2.1 Ideal staff profile

Ideally, staff in youth justice settings will have skills beyond academic qualifications or experience working with young people in other, more settled environments. Evidence to this Inquiry stressed the importance of personality and sufficient ‘life experience’ to manage the stressful and at times confrontational environments in youth justice facilities.⁶⁷⁰

Mr Neil Comrie gave evidence that his experience in correctional facilities had taught him the importance of ‘life skills’ with the Committee. He said:

I have spent quite a lot of time in prisons and in youth justice facilities, and I have to say I have nothing but admiration for the people that work there because it is an incredibly challenging environment. When you have got people abusing you, spitting at you, trying to assault you on a day to day basis, to remain cool, calm and collected and professional and deal with those challenges on a day to day basis requires a very special individual.⁶⁷¹

Mr Comrie added that he believed the ability to balance security and rehabilitation is one of the most difficult skills a youth justice worker can develop. However, he was hopeful that this can be achieved in Victoria in following the machinery of government change. Mr Comrie said:

Youth work and custodial work are two different cultures, so trying to blend those is somewhat of a challenge, but you need people who are prepared to accept that. Otherwise I do not think they are suited. On one side you do not want hard nosed custodial people who have no capacity to work with young people; on the other end you do not want youth workers who have no interest in security. So it is a challenge but I think now, with the involvement of the Department of Justice and Corrections Victoria, that blending, if you like, of skills and cultures is underway. It will need some time to bed down, but I think that is really important.⁶⁷²

Examples of skills and personality traits of successful youth justice staff include:

- High levels of emotional intelligence
- Ability to de-escalate conflict
- Knowledge of restraint techniques and alternatives and legislation covering their use
- Demonstrated ability to engage effectively with young people and quickly form strong, positive relationships
- Capacity to understand and work within a trauma-informed environment

⁶⁷⁰ CPSU, *Submission*, no. 65. p. 17; Rob Gray, *Transcript of evidence*, 30 May 2017. p. 55; Vince Colman, *Transcript of evidence*, 30 May 2017. p. 55; Eddy Poorter, *Transcript of evidence*, 30 May 2017. p. 55.

⁶⁷¹ Neil Comrie, *Transcript of evidence*, 14 June 2017. p. 26.

⁶⁷² *Ibid.* p. 21.

- Ability to demonstrate cultural awareness.⁶⁷³

Ideally, a youth justice centre will be staffed by a diverse range of workers possessing these traits. Diversity in staff provides young offenders with a range of role models to learn from and enhances the likelihood of staff being able to make positive connections with young people.⁶⁷⁴

Former staff member Ms Michelle Rogers explained that the diversity among her colleagues had matched the diversity of the young offenders they were looking after. This made relationships easier to form, which in turn made the staff feel safe: ‘The group of people I was lucky enough to work with in Remand were chosen...for their diversity. We had a musician, an Indian lady etc. but no matter who got off the van a staff member made a connection which kept us safe.’⁶⁷⁵

The Community and Public Sector Union (CPSU) also discussed diversity in terms of staff ‘connecting’ with young offenders. Its submission states:

Units in Youth Justice centres run best when there is diversity amongst employees. As one CPSU delegate explained, the units should aim to have a father-figure, a mother-figure, a brother-figure and a sister-figure. This provides role models of all types to clients, and greater opportunities for staff to connect with a client depending on what he or she is dealing with at any given time. Further, clients can benefit from having staff that are from different cultural backgrounds that mirror their own. However, there is currently a lack of diversity in age, gender, culture and experience.⁶⁷⁶

FINDING 25: Staff in youth justice centres should comprise individuals of different ages, genders, cultural backgrounds, life experiences and perspectives.

RECOMMENDATION 29: That the Department of Justice and Regulation commit to employing an appropriately qualified and diverse workforce in youth justice centres.

RECOMMENDATION 30: That youth justice staff receive regular training in cultural competence topics, tailored wherever possible to meet the needs of young people in their care.

9.2.2 The views of young people

Young offenders at Parkville College provided a joint submission to this Inquiry (Submission 44). The following comments support the evidence provided above and reveal how staffing instability affects young people in detention:

If I could design a perfect youth justice system; I would change more staff so they’re more organised for getting up on the right time.

⁶⁷³ Capital City Local Learning and Employment Network, *Submission*, no. 11. p. 1; Australian Psychological Society, *Submission*, no. 34. p. 4.

⁶⁷⁴ Michelle Rogers, *Submission*, no. 4. p. 2; CPSU, *Submission*, no. 65. p. 3.

⁶⁷⁵ Michelle Rogers, *Submission*, no. 4. p. 2.

⁶⁷⁶ CPSU, *Submission*, no. 65. p. 17.

More staffing so we are not locked in our cells all the time. No staff = no school. Staff all communicated to one another about the rules so when one shift leaves and the other is on, they are telling us the right things and the same things the other shift tells us.

The safety and security of staff and young people at Parkville and Malmsbury can be maintained if they come to agreement where you both agree on rules so you know where each other are at and how they can be maintained on a daily basis.

Another reason code happen is when a unit is short staffed we go on one hour rotations and makes clients very unhappy and clients refuse to go back to their cells which can potentially lead from a code black (assault or staff assault) to a code white (riot). What can be done to avoid this is hire more staff. Rotations has been happening more and more often recently.

The hardest things about being locked up are not being able to see your family and also being locked because DHHS are short staffed.

Most mornings we wake up late which make us miss our classes and breakfast in your room which is ugly. We wake up 8 and wait until 10 + to get out of our rooms.

I feel as though the number of experienced staff has receded in the past few years. Being a client that has spent some year in the precinct I have noticed.⁶⁷⁷

9.2.3 Staffing in other jurisdictions

The Committee received evidence on staffing in youth justice facilities in other jurisdictions, some of which is briefly detailed below.

Washington DC, United States of America

Mr Vincent Schiraldi explained to the Committee how Washington DC ‘completely retrained the staff and really redefined their jobs’ to overcome entrenched workplace culture and staffing problems within youth justice centres.⁶⁷⁸ Mr Schiraldi said:

We made the staff’s job not be guards. Of course they had to have a correctional officer component to what they did, but the job of everybody who worked for me... was to help turn the kids’ lives around...They all came in as guards. They came in as correctional officers. I actually changed the name to youth development officers. We took them offline. I took one unit offline a month for ten months, so I was pulling one unit out, and I sent them to full-time training for a month just on how to do group therapy with the kids, how to de-escalate so that they did not resort to isolation and shackling right away, and how to work as a team.⁶⁷⁹

Mr Schiraldi explained that, prior to this change Washington DC was experiencing staffing problems similar to Victoria’s: difficulty establishing teams; and a lack of trust between staff members and between staff and young offenders.⁶⁸⁰

⁶⁷⁷ Parkville College, *Submission*, no. 44.

⁶⁷⁸ Vincent Schiraldi, Justice Policy Institute (USA), *Transcript of evidence*, 22 March 2017. p. 19.

⁶⁷⁹ *Ibid.* p. 19.

⁶⁸⁰ *Ibid.* p. 19.

Missouri, United States of America

In Missouri, 84 per cent of youth justice workers have a bachelor's degree and two years' experience in the local youth justice system. New employees must complete 300 hours' training in their first two years of employment and 40 hours' training each year thereafter to reinforce and enhance their skills. There is an emphasis on staff continuity and contract staff are rarely used.⁶⁸¹

Spain

In Spain, staff roles are clearly delineated so that education and program staff are not involved in physical security or restraint practices. Specific security employees focus solely on maintaining security and order within facilities. All staff have degree-level qualifications and managers and directors of facilities have a background in psychology.⁶⁸²

9.3 The main staffing problems

The Committee received evidence on a variety of staffing issues in youth justice facilities, including:

- Low number of permanent staff
- High staff turnover and excessive reliance on casual staff
- Inadequate training
- Low pay
- Unsafe work practices.

Armytage and Ogloff address similar concerns and found:

- Sick leave days per FTE are higher for youth justice custodial staff than all staff in the child youth and families classification
- Turnover for youth justice custodial staff increased in 2016–17
- In comparison, youth justice community-based staff have low turnover and reasonably low sick leave.⁶⁸³

Other issues of note include:

- Negative work environment and culture with staff not feeling supported
- Allegations of bullying
- Removal of experienced staff
- Misleading advertising of staff roles.

⁶⁸¹ Youth Affairs Council of Victoria, *Submission*, no. 10. p. 59.

⁶⁸² *Ibid.* p. 60.

⁶⁸³ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 1*, Victorian Government, Melbourne, 2017. p. 112. See also their Section 8.2.7.

9.3.1 High staff turnover

*I think there is a lot of confusion for staff that have worked on the floors. Are they a youth worker or are they a prison guard?*⁶⁸⁴

Youth justice work is complex and demanding. It takes place in an intense environment housing young people who may have experienced trauma and often exhibit challenging behaviour. However, the Committee received evidence that recent recruitment efforts in Victoria did not take this important fact into consideration. As noted above, some staff have been recruited without being told the full nature of youth justice work; that is, they arrived as general youth workers rather than as staff working with young people in a custodial environment.⁶⁸⁵ This contributed to a high turnover of staff.⁶⁸⁶

High turnover rates (generally considered to be above 10 per cent) are both costly and disruptive. This is particularly the case in sensitive environments such as youth justice facilities.

The Committee heard that DHHS struggled to recover from the loss of so many experienced staff, especially at Malmsbury. Ms Kym Peake, the Department's Secretary, told the Committee:

There have also been challenges in maintaining stable staffing at Parkville and Malmsbury. We encountered particular challenges in attracting and retaining sufficient numbers of qualified staff to ensure stable staffing for each shift at Malmsbury following the opening of the secure site in July 2015.⁶⁸⁷

The turnover of staff has at times been high. The Committee received evidence that at one stage only eight out of 50 new staff hired stayed longer than one year in the job, while at another time 30 out of a recruitment pool of 50 left prior to completing their induction training.⁶⁸⁸ It also heard that recent local recruitment campaigns in Malmsbury struggled because of the centre's reputation among Malmsbury residents as a bad place to work.⁶⁸⁹

The CPSU highlights the issue of inexperienced staff in its submission. It states that at the time of writing its submission as many as 70 per cent of employees had been working at the centres for less than six months.⁶⁹⁰

⁶⁸⁴ Brendan Murray, *Transcript of evidence*, 30 May 2017. p. 36.

⁶⁸⁵ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. p. 4.

⁶⁸⁶ CPSU, *Submission*, no. 65. p. 20. Armytage and Ogloff reached the same conclusion.

⁶⁸⁷ Kym Peake, Secretary, Department of Health and Human Services, *Transcript of evidence*, 14 June 2017. p. 3.

⁶⁸⁸ YouthLaw, *Submission*, no. 12. p. 11; CPSU, *Submission*, no. 65. pp. 17-8.

⁶⁸⁹ Rob Gray, *Transcript of evidence*, 30 May 2017. p. 49.

⁶⁹⁰ CPSU, *Submission*, no. 65. p. 20.

9.3.2 Staff losses

*The system was stripped of decades' worth of culminated experience...and it has not recovered since.*⁶⁹¹

The Committee heard that there was a noticeable shift in staffing practices between 2011 until early 2017. During this period, many youth justice workers were fired or resigned,⁶⁹² a great deal of them highly experienced.⁶⁹³

Current and ex-staff and other stakeholders who gave evidence to this Inquiry were unsure as to whether there had been a DHHS directive to overhaul staffing at the centres. Regardless, the youth justice system, and those working within it, are the responsibility of the Victorian Government. If the system was being harmed by a loss of experienced staff over a number of years, then successive governments are culpable.

As noted in Chapter 7, the Committee heard evidence from a number of witnesses that experienced staff members were referred to as 'dead wood' and 'dinosaurs'. The implication was that these workers no longer had anything to offer and were to be removed and replaced with new staff.⁶⁹⁴ While some staff were removed, very few were permanently replaced.

The CPSU's submission to this Inquiry states:

The Head of Secure Services' response to employee incidents was draconian. Performance issues were almost always treated as misconduct, rather than managed in an attempt to reform behaviours and the culture of Youth Justice. Many employees were terminated on the basis of minor infractions...Thus, the system lost experienced workers over small matters that should not have resulted in termination.⁶⁹⁵

Mr Eddy Poorter, a former Malmsbury staff member, described the circumstances under which his employment was terminated for a seemingly minor infraction. He said: '...they finally did get me swearing in a prison, and they told me, after 20 years of service, that I was an inappropriate role model and that I either resign or I was to be sacked.'⁶⁹⁶

Evidence to the Committee shows that DHHS had been informed of the potential for these staffing issues to create problems within the system.⁶⁹⁷ Those concerns went unheeded.

⁶⁹¹ Ibid. p. 10.

⁶⁹² Number of staff terminated during this period submitted to the inquiry vary from 60-70 to over 100, or 'sixty per cent' of the existing workforce; Vince Colman, *Transcript of evidence*, 30 May 2017. p. 50; Andrew Capp, Team Leader - Membership Development, Community and Public Sector Union, *Transcript of evidence*, 30 May 2017. p. 3; CPSU, *Submission*, no. 65. p. 13; Eddy Poorter, *Transcript of evidence*, 30 May 2017. p. 47; CPSU, *Submission*, no. 65. p. 8.

⁶⁹³ CPSU, *Submission*, no. 65. pp. 3, 10.

⁶⁹⁴ CPSU, *Submission*, no. 65. p. 10; Nancy Uzuner, *Submission*, no. 2. p. 1; Michelle Rogers, *Submission*, no. 4. p. 3; Eddy Poorter, *Transcript of evidence*, 30 May 2017. p. 52.

⁶⁹⁵ CPSU, *Submission*, no. 65. p. 11.

⁶⁹⁶ Eddy Poorter, *Transcript of evidence*, 30 May 2017. p. 45.

⁶⁹⁷ Michelle Rogers, *Submission*, no. 4. p. 4; CPSU, *Submission*, no. 65. pp. 13, 20; Julian Kennelly, Media and Communications Manager, Community and Public Sector Union, *Transcript of evidence*, 30 May 2017. p. 2.

9.3.3 Absenteeism

*When you know there's not enough staff due to absenteeism you get nervous. It's a daily occurrence. You get anxious when you know there's not enough staff.*⁶⁹⁸

Increased workplace pressure in youth justice centres has also contributed to a high rate of staff absenteeism. This in turn contributes to further understaffing and related problems within facilities.⁶⁹⁹ The CPSU claims that DHHS had been aware of this problem as far back as 2011 without responding appropriately.⁷⁰⁰ *The Same Four Walls* shows that for the three-month period of August to October 2016, sick leave increased across all youth justice locations. This was particularly the case at Malmsbury's secure site.⁷⁰¹ The CPSU submission refers to times when units were understaffed and dangerous.⁷⁰²

Former Malmsbury staff members Mr Colman and Mr Rob Gray discussed safety concerns when provided evidence to the Committee:

Mr COLMAN — On more than one occasion I would say in my time...I would walk into the unit — I was the unit supervisor — at 7.30 or 8.00 and I would have no morning staff, and the night staff would be staying back out of concern.

The CHAIR — How many should be on a shift?

Mr COLMAN — There should be six on a shift. It was usually two in the morning, and you would walk in and there would be no-one there. It would then be trying to get onto the roster system to try to fill the shift, and at the same time you would be talking to staff and to get them in you would literally try to offer them what they wanted.

The CHAIR — What would that be?

Mr COLMAN — Some staff would not come in for a 6-hour shift. It is just not worth it for them, coming from Bendigo. So you would say, 'Okay, I'll give you the 10-hour shift'. I would just need staff on the floor, because it is safe. Safe for me.⁷⁰³

Long-term absenteeism creates a self-perpetuating cycle; that is, staff are less willing to work if they believe there are not going to be enough colleagues attending the shift for the workplace to be safe.⁷⁰⁴

High rates of absenteeism mean some staff have to work large amounts of overtime. This can increase fatigue and create a variety of unwanted results, ranging from misconduct proceedings to WorkCover claims for injuries and

⁶⁹⁸ CPSU, *Submission*, no. 65. p. 21.

⁶⁹⁹ Ibid. pp. 16, 21-2; Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, Commission for Children and Young People, Melbourne, 2017. p. 80.

⁷⁰⁰ CPSU, *Submission*, no. 65. p. 22; CPSU, *Supplementary evidence*. Item 11.

⁷⁰¹ Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, Commission for Children and Young People, Melbourne, 2017. p. 80.

⁷⁰² CPSU, *Submission*, no. 65. pp. 21-2.

⁷⁰³ Vince Colman, *Transcript of evidence*, 30 May 2017. p. 51; Rob Gray, *Transcript of evidence*, 30 May 2017. p. 51.

⁷⁰⁴ CPSU, *Submission*, no. 65. p. 21.

stress.⁷⁰⁵ WorkSafe provided the Committee with a comparison of claim categories between youth and adult justice centres between 2010 and 2017, detailed in Table 9.2. When reading the numbers it is important to consider that the adult prison system represented under the DJR column is almost eight times the size of the youth justice system and therefore cannot be directly compared.⁷⁰⁶

Table 9.2 Comparison of claim categories between youth justice centres (when run by DHHS) and adult prisons from 1 January 2010 to 28 February 2017

Claim category (mechanism of injury)	DJR	DHHS
Falls, slips and trips	161	50
Hitting object	27	15
Being hit by a moving object	148	121
Sound and pressure	11	1
Body stressing	323	118
Heat, radiation and electricity	3	0
Chemicals and substances	2	0
Biological	6	2
Mental stress factors	247	78
Other ^(a)	9	10
Total claims	937	395
Total remuneration, 2010-2017	\$1,755,000,000	\$265,000,000

(a) WorkSafe noted that 'other' includes mechanisms of injury such as: a vehicle incident, rollover or unspecified mechanisms.

Source: WorkSafe, *Supplementary evidence*. p. 2.

9.3.4 Casualisation of workforce

If we ask DHHS workers for stuff they say no – that gets in our head and then we ask agency staff and they do it for us.⁷⁰⁷

Evidence to the Committee stated that while the system will always rely on casual employees to cover absences or other short-term gaps in employee numbers,⁷⁰⁸ over recent years DHHS increasingly hired casual employees to work in youth justice facilities in place of permanent staff. However, DHHS did not vet agency staff before they began work, leaving this to the two agency providers.⁷⁰⁹

⁷⁰⁵ Ibid. pp. 21-2.

⁷⁰⁶ WorkSafe, *Supplementary evidence*. p. 2.

⁷⁰⁷ Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, Commission for Children and Young People, Melbourne, 2017. p. 92.

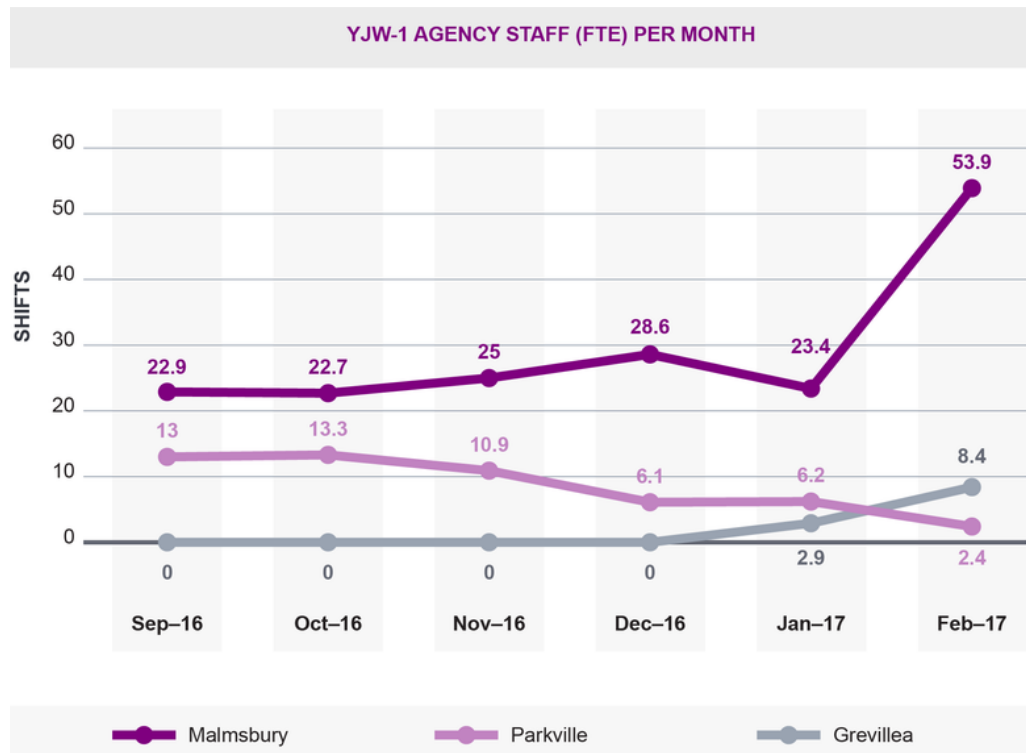
⁷⁰⁸ CPSU, *Submission*, no. 65. p. 18; Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. pp. 273-4.

⁷⁰⁹ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 1*, Victorian Government, Melbourne, 2017. p. 118; Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. pp. 273-4.

Ms Peake informed the Committee that for the period she was responsible for youth justice facilities the highest figures for agency staff were 40 per cent at Malmesbury and eight per cent at Parkville.⁷¹⁰ However, Armytage and Ogloff found this number to be higher in February 2017.

Figure 9.2 shows the use of agency staff at youth justice centres from September 2016 to February 2017.

Figure 9.2 Use of agency staff, September 2016 to February 2017



Source: Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 1*, Victorian Government, Melbourne, 2017. p. 106.

Casualisation creates several problems for youth justice centres. Foremost of these is that staff do not work together with young offenders long enough to create a bond. This makes it harder to implement rehabilitation programs and more difficult to identify and de-escalate disturbances before they occur.⁷¹¹

Additionally, *The Same Four Walls* report identifies a lack of experienced staff currently working in the system and the safety risks this creates. It states:

Staff felt there was insufficient experience among their colleagues, and that created risk. One staff member said they were ‘sad we don’t have the depth in the workforce we used to have – the knowledge and understanding isn’t there anymore’.⁷¹²

710 Kym Peake, Secretary, Department of Health and Human Services, *Transcript of evidence*, 14 June 2017. pp. 4-5.
 711 CPSU, *Submission*, no. 65. pp. 13-4. The Armytage and Ogloff Review observed an incident where staff watched young detainees kicking and scratching the perspex walls around offices without taking any action (although they did not state that these were agency staff).
 712 Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, Commission for Children and Young People, Melbourne, 2017. p. 80.

Ms Rogers explains how this problem plays out in practice in her submission, writing: ‘Casual staff replaced full-timers, straight out of school, great intentions of making a difference. Then the first time a client goes off and you need to diffuse the situation the connection isn’t there and gets out of control very quickly.’⁷¹³

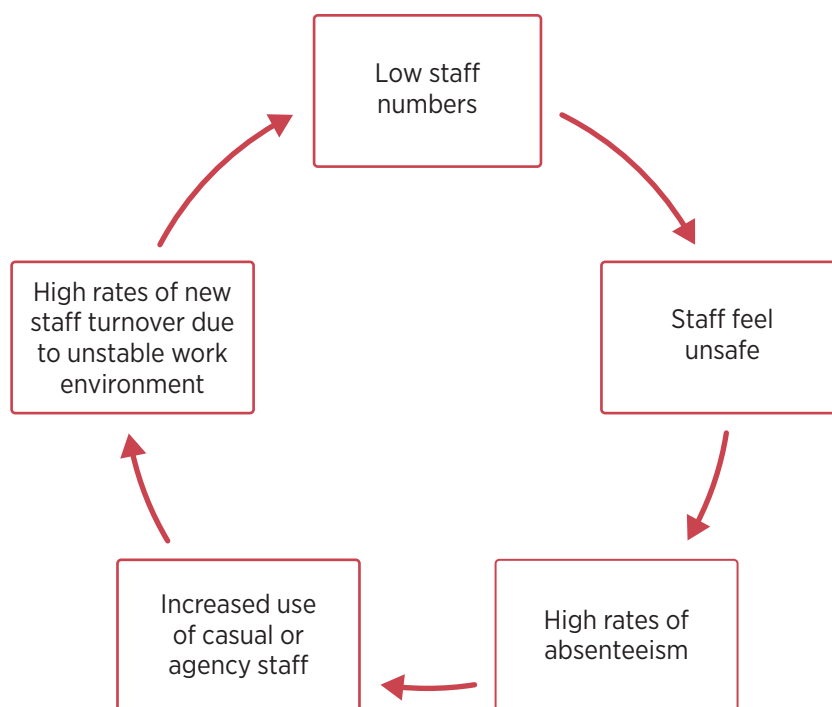
This lack of control is partly due to a lack of on-the-job experience and training. The CPSU writes:

Regular staff have lamented that due to low staff numbers, there is little time to properly welcome and train new casual staff. Consequently, this leaves units with many staff who lack the requisite experience to respond appropriately and safely to an incident.⁷¹⁴

9.3.5 Negative cycle of staffing

Staffing issues at youth justice centres, then, created an entrenched, negative and escalating cycle of problems (see Figure 9.3) that have not been rectified for many years.

Figure 9.3 The negative cycle of staffing in youth justice in Victoria



This situation will not be rectified without long-term systemic changes to how youth justice staff are recruited, trained and supported in their roles.⁷¹⁵

713 Michelle Rogers, *Submission*, no. 4. p. 3.

714 CPSU, *Submission*, no. 65. p. 18.

715 *Ibid.* p. 31; CPSU, *Supplementary evidence*. Item 5.

The Secretary of DJR, Mr Greg Wilson, told the Committee that the Department has begun a ‘mass campaign’ to restore a stable workforce in youth justice, including using Corrections Victoria staff in the interim. Mr Wilson said:

The strategy has been informed by the outcomes of relevant reviews and includes a focus on emphasising the safety and security responsibilities of youth justice workers. The strategy will involve more of a volume recruitment or what we might call a mass campaign, similar to the way that we recruit corrections staff and sheriffs, with a particular focus on recruits from the Malmsbury area... We have got 19 currently being inducted and we still have extra staff in Corrections Victoria deployed across the custodial sites to help us with the strengthening of security and to support staff to manage young people’s behaviour and just respond to any incidents that do occur.⁷¹⁶

FINDING 26: Victoria’s youth justice system suffers when it relies too heavily on agency or casual staff. This impedes its ability for staff to develop professional relationships with young offenders, deliver services and maintain order in youth justice centres.

RECOMMENDATION 31: That the Department of Justice and Regulation ensure a sufficient number of experienced, permanent youth justice staff is employed at facilities at all times. There must be a minimal reliance on agency or casual staff.

RECOMMENDATION 32: That the Department of Justice and Regulation standardise staff rosters across youth justice facilities. This should be done in such a way as to increase stability for staff members and young offenders in the facilities.

9.4 Flow-on effects of staffing problems

The staffing problems at youth justice centres contributed to other problems within the centres, including:

- Excessive use of lockdowns
- Disruption of normal service provision and routines such as:
 - Regular access to outside space
 - Access to support services such as education, health care and counselling
 - Routine provision of medication.
- Deteriorating communication between staff and staff and management.⁷¹⁷

⁷¹⁶ Greg Wilson, Secretary, Department of Justice and Regulation, *Transcript of evidence*, 27 June 2017. p. 3.

⁷¹⁷ CPSU, *Submission*, no. 65. pp. 31-3; Youth Affairs Council of Victoria, *Submission*, no. 10. p. 27; Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, Commission for Children and Young People, Melbourne, 2017. p. 79; Victoria Legal Aid, *Submission*, no. 35. p. 14; Green, et al., *Submission*, no. 41. p. 11.

9.4.1 Lockdowns

Staff shortages and staffing issues are the predominant reason for lockdowns. These are extensive, they are frequent and they are having a very significant impact on the system.⁷¹⁸

There is strong evidence linking staffing issues (low numbers, poor training and lack of staff confidence in managing incidents) with a high use of lockdowns in the youth justice system.⁷¹⁹ Lockdowns create or exacerbate tensions within youth justice centres, especially when used excessively and unfairly.

The Victorian Ombudsman, Ms Deborah Glass, considered the link between low staff numbers and increased use of lockdowns as an ‘obvious’ area to investigate when assessing problems in youth justice centres.⁷²⁰ This link between staff shortages, lockdowns and unrest is highlighted in a submission received from a student at Parkville College, which states: ‘The safety and security of staff and young people can be maintained by...having enough staff members to get clients up everyday because most riots happen because of lockdown.’⁷²¹

Former staff member Mr Vince Colman provided evidence to the Committee of a practice at Malmsbury where staff would not wake the young people in the morning if the units were understaffed. He confirmed that these incidents would not be recorded as lockdowns.⁷²²

The Same Four Walls report states that the majority of lockdowns in Parkville and Malmsbury since at least 2013 have been due to staff shortages.⁷²³ This was confirmed by Mr Rob Gray, another former staff member:

The CHAIR — We have heard through other hearings that there is a lot of absenteeism, that people phone in sick or similar, then that creates flow-on effects with coverage and then lockdown because of staff shortages. I just want to test that with you. Is that your observation or experience?

Mr GRAY — Yes.⁷²⁴

⁷¹⁸ Liana Buchanan, Commissioner for Children and Young People, Commission for Children and Young People, *Transcript of evidence*, 17 March 2017. p. 15.

⁷¹⁹ Youth Affairs Council of Victoria, *Submission*, no. 10. pp. 4, 17, 28; YouthLaw, *Submission*, no. 12. p. 13; Anglicare, *Submission*, no. 36. p. 14; Deborah Glass, Ombudsman, Victorian Ombudsman, *Transcript of evidence*, 17 March 2017. pp. 2-3, 12; Dr Jessie Mitchell, Policy Manager, Youth Affairs Council Victoria, *Transcript of evidence*, 19 April 2017. p. 3; Hugh de Krester, Executive Director, Human Rights Law Centre, *Transcript of evidence*, 14 June 2017. p. 32; Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, Commission for Children and Young People, Melbourne, 2017. p. 84; Julie Edwards, Chief Executive Officer, Jesuit Social Services, *Transcript of evidence*, 19 April 2017. p. 3; Vince Colman, *Transcript of evidence*, 30 May 2017. pp. 50-1; Rob Gray, *Transcript of evidence*, 30 May 2017. pp. 50-1; Eddy Poorter, *Transcript of evidence*, 30 May 2017. p. 51.

⁷²⁰ Deborah Glass, Ombudsman, Victorian Ombudsman, *Transcript of evidence*, 17 March 2017. pp. 3, 5, 8.

⁷²¹ Parkville College, *Submission*, no. 44. p. 23.

⁷²² Vince Colman, *Transcript of evidence*, 30 May 2017. pp. 50-1; Rob Gray, *Transcript of evidence*, 30 May 2017. pp. 50-1; Eddy Poorter, *Transcript of evidence*, 30 May 2017. p. 51.

⁷²³ Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, Commission for Children and Young People, Melbourne, 2017. pp. 78-9.

⁷²⁴ Rob Gray, *Transcript of evidence*, 30 May 2017. p. 51.

In her evidence to the Committee, Ms Peake said: “I am aware that where there were staff shortages there have been occasions when it has been necessary for the safety of young people and for staff for there to be lockdowns at both Malmsbury and Parkville.”⁷²⁵

The DHHS Unit Lockdowns policy allowed staff to lock down facilities due to staff shortages or because of safety concerns related to the behaviour of clients within the unit.⁷²⁶ However, the Committee believes that if ongoing staff shortages had been addressed this would have greatly limited the use of lockdowns in the youth justice system.

The Commissioner for Children and Young People states: ‘Lockdowns due to staff absences, insufficient staff, daily meetings and lunch lockdowns represent poor workforce management, create significant risks and impact negatively on the operations and culture of the centres.’⁷²⁷

Youth justice centres are required to follow policies when implementing lockdowns or placing a young person in solitary confinement. For example, s488(5) of the *Children, Youth and Families Act 2005* states that ‘a person placed in isolation must be closely supervised and observed at intervals of not longer than 15 minutes’.

FINDING 27: Staff absences led to increased use of lockdowns in youth justice facilities.

FINDING 28: Excessive use of lockdowns increases tension and instability in youth justice facilities. This in turn increases the likelihood of lockdowns being used.

Lockdowns are also discussed in Chapter 6.

9.4.2 Provision of services

Low staff numbers impedes the provision of services in youth justice facilities. Representatives from the Victorian Aboriginal Legal Service told the Committee that while, for example, mental health practitioners may be available to young offenders in theory, this may not be the case in practice. On occasion, young offenders have been prevented from attending counselling sessions or other services, even with on-site practitioners available, because of a lack of staff to escort them to their appointment.⁷²⁸

⁷²⁵ Kym Peake, Secretary, Department of Health and Human Services, *Transcript of evidence*, 14 June 2017. p. 5.

⁷²⁶ Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, Commission for Children and Young People, Melbourne, 2017. p. 79.

⁷²⁷ *Ibid.* p. 81.

⁷²⁸ Nerita Waight, Lawyer and Policy Officer, Victorian Aboriginal Legal Service, *Transcript of evidence*, 19 April 2017. p. 36.

Mr Patrick Warner, Principal Legal Officer at the Civil Section of the Victorian Aboriginal Legal Service, told the Committee:

There are very strict regimes about how many staff have to be on in any unit at a given time, so if they have to pull one out of that pool to get a kid to their psychiatrist appointment and they cannot do it, it can just paralyse all the other good intentions.⁷²⁹

The Service's CEO, Mr Wayne Muir, informed the Committee that one of his clients reported: 'We haven't seen a psych for three weeks because there is not enough staff.'⁷³⁰

Problems accessing services due to staff shortages and related lockdowns were also acknowledged in *The Same Four Walls*.⁷³¹

9.4.3 Staff communication

*Staff need quick and easy access to essential information. Information about an individual's trauma history and vulnerabilities can inform responses and reduce episodes of isolation. This can help prevent incidents and contribute to the safety of staff, children and young people.*⁷³²

The Committee received evidence that communication in youth justice centres, both between staff members and between staff and management, needs to be improved. Sharing information on how young offenders are behaving ('intelligence') is vital for staff to perform their duties safely and keep youth justice centres functioning properly.⁷³³ Without good intelligence, the system will remain reactive rather than proactive.⁷³⁴

As a specific example, former staff member Ms Nancy Uzuner advised the Committee of an incident whereby management had not informed her that a young offender she was supervising was at risk of absconding. When he did escape, Ms Uzuner lost her job.⁷³⁵

729 Patrick Warner, Principal Legal Officer, Civil Section, Victorian Aboriginal Legal Service, *Transcript of evidence*, 19 April 2017. p. 37.

730 Ibid. p. 37; Nerita Waight, Lawyer and Policy Officer, Victorian Aboriginal Legal Service, *Transcript of evidence*, 19 April 2017. p. 37; Wayne Muir, Chief Executive Officer, Victorian Aboriginal Legal Service, *Transcript of evidence*, 19 April 2017. p. 37.

731 Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, Commission for Children and Young People, Melbourne, 2017. p. 83.

732 Ibid. p. 96.

733 CPSU, *Submission*, no. 65. p. 8.

734 Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. p. 234.

735 Nancy Uzuner, *Submission*, no. 2. p. 1.

More broadly, the Youth Affairs Council states in its submission that ‘...some staff are given very limited information about the young people they are working with, making it hard to know how to respond to behaviours of concern.’⁷³⁶ Similar concerns were expressed by the CPSU,⁷³⁷ WorkSafe⁷³⁸ and the Commissioner for Children and Young People.⁷³⁹

FINDING 29: Reliable intelligence is a preventative measure that reduces the likelihood of disturbances occurring at youth justice centres.

RECOMMENDATION 33: That the Department of Justice and Regulation formalise the staff handover process for shift changes at youth justice centres to ensure information about clients in the centres is communicated among staff.

9.5 Other factors to consider

The Committee addressed other areas of concern regarding staffing in youth justice centres, including:

- Training
- Remuneration
- Selection of staff, including qualifications
- Workplace culture.

9.5.1 Staff training

The skills, knowledge and professional judgment of youth justice workers determine how well youth justice centres function. They are critical factors in staff helping young offenders learn constructive responses to the feelings of anger, rejection and depression many carry within them. They also determine how staff respond to disruption and violence within centres.

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty emphasise the importance of staff training. They state that training should be comprehensive, cover specific topics relevant to the work, and be ongoing and improved throughout the career of a youth justice worker.⁷⁴⁰

⁷³⁶ Youth Affairs Council of Victoria, *Submission*, no. 10. p. 32.

⁷³⁷ CPSU, *Submission*, no. 65. p. 4.

⁷³⁸ Marnie Williams, Executive Director, Health and Safety, WorkSafe, *Transcript of evidence*, 22 March 2017. p. 3.

⁷³⁹ Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, Commission for Children and Young People, Melbourne, 2017. p. 96.

⁷⁴⁰ United Nations (1990), *United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules)*, United Nations; Anglicare, *Submission*, no. 36. p. 40; YouthLaw, *Submission*, no. 12. p. 10.

The current level of staff training in Victoria was identified as inadequate by many participants in this Inquiry, with some referring to it as ‘minimal’⁷⁴¹ and ‘inconsistent’.⁷⁴² Armytage and Ogloff found the level of training to be insufficient for all staff, particularly the lack of use-of-force training.⁷⁴³ Mr Comrie described training as “completely inadequate”, a situation made worse by the increased use of agency staff.⁷⁴⁴

Staff have also expressed concern to the Commissioner for Children and Young People that induction training had been reduced from five to three weeks (15 days) in 2016,⁷⁴⁵ an amount of time Ms Fleur Ward told the Committee was ‘grossly inadequate’.⁷⁴⁶ This has recently been extended to 21 days.⁷⁴⁷

Youth justice training included 50 hours of youth justice-specific training and approximately 21 hours of DHHS training (prior to the machinery of government change). Secure services staff undergo a 16-day compulsory induction upon commencement and have the option of completing a Diploma in Secure Services. The training program was very recently revised prior to the completion of this Final Report.⁷⁴⁸

Victoria Legal Aid believes that specialist staff training for youth justice workers should include how to address the specific therapeutic needs of young offenders.⁷⁴⁹ A similar view was expressed by Ms Glass, who told the Committee that understanding adolescent behaviour helps staff de-escalate tension rather than increase it.⁷⁵⁰ Acknowledging this fact, youth justice workers in Victoria are offered a further 15-day program as part of their professional development, which includes mental health first aid.⁷⁵¹

Striking the right balance between therapeutic rehabilitation and security-based responses, that is, knowing when to apply which method, is difficult. The CPSU notes in its submission:

741 Rod Andrew, *Submission*, no. 45. p. 1; John Burch, *Submission*, no. 54. p. 7; CPSU, *Submission*, no. 65. p. 34; Neil Comrie, *Transcript of evidence*, 14 June 2017. p. 21; Fleur Ward, *Transcript of evidence*, 14 June 2017. p. 53.

742 YouthLaw, *Submission*, no. 12. pp. 12-3; CPSU, *Submission*, no. 65. p. 26.

743 Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. p 275. Recommendation 8.25.

744 Neil Comrie, *Transcript of evidence*, 14 June 2017. p. 21.

745 Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, Commission for Children and Young People, Melbourne, 2017. pp. 54-5; CPSU, *Submission*, no. 65. p. 27; Greg Wilson, Secretary, Department of Justice and Regulation, *Transcript of evidence*, 27 June 2017. p. 4.

746 Fleur Ward, *Transcript of evidence*, 14 June 2017. p. 53.

747 Greg Wilson, Secretary, Department of Justice and Regulation, *Transcript of evidence*, 27 June 2017. p. 4.

748 Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 1*, Victorian Government, Melbourne, 2017. pp. 114-7.

749 Victoria Legal Aid, *Submission*, no. 35. pp. 21-2.

750 Deborah Glass, Ombudsman, Victorian Ombudsman, *Transcript of evidence*, 17 March 2017. p. 9.

751 Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 1*, Victorian Government, Melbourne, 2017. pp. 115

An Induction Program from January 2017 demonstrates that a large chunk of training was dedicated to trauma-informed processes, and little focus on security or preventing occupational violence. However, the problem with the model was that in some instances the situation had gone far beyond the point where therapeutic actions could de-escalate the violent behaviour.⁷⁵²

Armytage and Ogloff refer to a ‘culture of appeasement and caution’ and a ‘high degree of tolerance towards bad behaviour’,⁷⁵³ despite the existence of programs such as the Adolescent Violent Intervention Program.⁷⁵⁴ Similar evidence was provided by the Secretary of the Police Association, Mr Wayne Gatt. He told the Committee:

One thing local police are saying as part of the investigative process is that they are noticing that staff in these facilities are saying to the police, ‘We’re inadequately trained to deal with this conflict that now erupts in these security centres.’⁷⁵⁵

Mr Gatt added that his experience suggests SERT teams are both undertrained and under-resourced to adequately perform their role. Mr Gatt said:

I probably cannot do this any more justice than to just perhaps retell it the way that a member told me last week. He said, ‘Giving six people Rosebank stackhats and sending them in to watch an offender wreak havoc in a cell is not an effective emergency response’. Those people need to be properly trained. They need to have the appropriate equipment.⁷⁵⁶

Armytage and Ogloff identified an ‘over-reliance’ by staff on Victoria Police to respond to incidents at the centres, which they attributed to the absence of a graduated approach to incident management and unclear response protocols. (All criminal acts in youth justice centres, including assault, must be reported to Victoria Police.) However, they also saw potential for change through learning from the knowledge and practices of Corrections Victoria.⁷⁵⁷

The Committee acknowledges the extremely difficult environment in which youth justice workers operate. The Committee watched a video of an incident at Parkville in which a young offender’s leg was fractured by an inappropriate restraint method used by a staff member. The rapid speed with which the incident occurred emphasised to the Committee how critical staff training is in preparing youth justice workers to respond to outbreaks of violence as they occur in youth justice settings.

⁷⁵² CPSU, *Submission*, no. 65. p. 26.

⁷⁵³ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. P. 129; See also Section 8.2.8 (‘Behaviour management’) of their Review.

⁷⁵⁴ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Executive Summary*, Victorian Government, Melbourne, 2017. p. 18.

⁷⁵⁵ Wayne Gatt, Secretary, The Police Association Victoria, *Transcript of evidence*, 30 May 2017. p. 18.

⁷⁵⁶ *Ibid.* p. 19; Mr Comrie also provided evidence of inadequate security training for staff, including inadequate provision of equipment; See: Neil Comrie, *Transcript of evidence*, 14 June 2017. p. 21.

⁷⁵⁷ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. p. 294.

The Committee also viewed a report from the Commission for Children and Young People on the incident. The report concluded:

This inquiry has highlighted the importance of staff having sufficient information and training to managed children and young people presenting with complex behaviours, without putting them at risk of harm.

There was a lack of information sharing...both within units (in DSAs) and also as part of unit-to-unit transfers...

The inquiry also highlighted departures from the Practice Manual, which guides staff behaviour and decision-making in managing complex behaviours of children and young people. The incidents reflected conduct that was inconsistent with mandatory occupational violence training all relevant staff had received...

In addition, this inquiry revealed gaps in infrastructure and processes for managing children and young people with physical limitations and injuries.⁷⁵⁸

The Committee has been advised that since this report was received use of force procedures related to young people with injuries have been updated. As well, daily operational briefings have been established summarising safety alerts, movements of young people across a facility, incidents and behaviour management plans.

A new section 488AA on reporting on the use of force and isolation has also been inserted into the Children, Youth and Families Act as part of the *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017*.⁷⁵⁹

Additionally, staff should engage in values-based leadership training and mentoring. This would encourage staff to view youth justice work as a career and ensure that leaders within facilities are trained in the complexities and dilemmas that a leadership role in youth justice entails.⁷⁶⁰ Mr John Burch informed the Committee that a management development training program used to exist in Victoria, as did a 'purpose designed and operated program for screening, training and development of facility staff'. However, Mr Burch said that that these have been reduced over recent years.⁷⁶¹

FINDING 30: Youth justice workers need specific training to do their work well. The training should start on appointment and be ongoing and improved throughout the career of a youth justice worker. It must ensure that youth justice workers are confident in therapeutic models of care as well as de-escalating violent incidents.

⁷⁵⁸ Commission for Children and Young People, *Inquiry Concerning Services Provided to a Young Person in Youth Justice*, Commission for Children and Young People, Melbourne 2016.

⁷⁵⁹ Correspondence, Jenny Mikakos, Minister for Families and Children, 6 February 2018.

⁷⁶⁰ Australian Psychological Society, *Submission*, no. 34. p. 4.

⁷⁶¹ John Burch, *Submission*, no. 54. p. 3.

9.5.2 Remuneration and career progression

Evidence presented to this Inquiry suggests that current remuneration for youth justice staff does not reflect the expertise required for the role.⁷⁶² For example, the Commissioner for Children and Young People argues that youth justice roles are poorly paid in comparison with comparable roles considering the risks associated with their environment.⁷⁶³

Youth justice workers currently have six pay grades. The standard worker at the grade 1 level⁷⁶⁴ earns \$48,489–\$62,267 plus superannuation, with a casual hourly rate of \$24.45 plus 25% casual loading and applicable penalties.⁷⁶⁵ This is the same rate received by casual emergency teachers.⁷⁶⁶

As well, there is a lack of a clear career pathway and development opportunities for youth justice staff. The CPSU told the Committee it has worked with DHHS in the past to improve categorisation of youth justice staff roles, so as to facilitate career progression (for example, adjusting the progression steps among youth justice worker grades). The aim was to make a career in youth justice more attractive and therefore easier to recruit staff.⁷⁶⁷

RECOMMENDATION 34: That the Department of Justice and Regulation review custodial youth justice workers' staffing structures to ensure that career development is encouraged.

9.5.3 Qualifications

The Committee received mixed evidence on the subject of qualifications for custodial youth justice workers. Custodial youth justice workers are employed under the Victorian Public Service Enterprise Agreement of 2016 and classified under the Youth Justice Worker stream.⁷⁶⁸ For community-based youth justice staff, it is stipulated that the minimum qualification is a Bachelor of Social Work or Diploma of Community Services Work. There are no minimum qualifications for custodial youth justice staff, however those with diplomas in youth justice, youth work and other related fields (e.g. psychology, criminal justice) are encouraged to apply.⁷⁶⁹

⁷⁶² Youth Affairs Council of Victoria, *Submission*, no. 10. pp. 26, 33; Professor Terry Laidler, *Transcript of evidence*, 17 March 2017. p. 66; Youth Affairs Council of Victoria, *Submission*, no. 10. p. 72.

⁷⁶³ Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, Commission for Children and Young People, Melbourne, 2017. p. 80.

⁷⁶⁴ Grade 2 workers “may coordinate shift activities or programs”, grade 3 – unit or program coordinator, grade 4 – program or unit manager, grade 5 – project or policy manager, grade 6 – manager of the facility; FairWork Commission (2016), *Victorian Public Service Enterprise Agreement 2016*, FairWork Commission. pp. 139-40.

⁷⁶⁵ *Ibid.* pp. 139-40; YouthLaw, *Submission*, no. 12. p. 11.

⁷⁶⁶ YouthLaw, *Submission*, no. 12. p. 11.

⁷⁶⁷ CPSU, *Supplementary evidence*. Item 10.

⁷⁶⁸ Fleur Ward, *Transcript of evidence*, 14 June 2017. p. 110.

⁷⁶⁹ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 1*, Victorian Government, Melbourne, 2017. P. 114.

This United Nations Rules for the Protection of Juveniles Deprived of their Liberty state that youth justice personnel ‘...should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists.’⁷⁷⁰

Some stakeholders in this Inquiry did not believe that formal qualifications are the best indicator of ability and that previous attempts to hire qualified new staff did not prepare those staff for the nature of youth justice work.⁷⁷¹ Other evidence argues requiring minimum qualifications would acknowledge the high level of skills required to provide appropriate therapeutic services to young people with complex needs in youth justice centres.⁷⁷²

The Youth Affairs Council of Victoria informed the Committee that, as of April 2016, youth custodial employees were expected to enrol in and complete a Diploma of Youth Justice. However, it questioned whether a Diploma-level qualification was sufficient for the role, noting that ‘...internationally, there appears to be a shift towards increasing the professionalisation levels of youth justice staff; in Nordic countries, for example, at least 50% have tertiary qualifications.’⁷⁷³

In Norway, the training undertaken by correctional staff is currently a minimum of two years and plans are in place to extend this to a three-year Bachelor degree in the very near future. In New York, staff are expected to have at least a Bachelor degree and two years’ experience or a Master’s degree and six months’ experience.⁷⁷⁴

The Committee agrees with evidence it received that it is preferable for youth justice centres to have a range of staff fulfilling different functions. For example:

- Rehabilitative programs provided by qualified specialists
- Physical security or SERT teams provided by Corrections Victoria staff
- Daily interaction with young offenders delivered by youth case workers.⁷⁷⁵

Mr Comrie suggested as much to the Committee, saying:

The actual programs that are of a rehabilitative nature may well be delivered by someone else, so I do not think someone who comes in to manage the day-to-day security and safety necessarily needs to be the same person that delivers rehabilitative programs. So it is a broad range of skills and it needs specialisation to be able to deal with that across the board.⁷⁷⁶

⁷⁷⁰ Youth Affairs Council of Victoria, *Submission*, No. 10 p. 40; YouthLaw, *Submission*, no. 12. p. 10.

⁷⁷¹ Eddy Poorter, *Transcript of evidence*, 30 May 2017. p. 52.

⁷⁷² Youth Affairs Council of Victoria, *Submission*, no. 10. pp. 33, 61; Fleur Ward, *Transcript of evidence*, 14 June 2017. pp. 52, 56-7.

⁷⁷³ Youth Affairs Council of Victoria, *Submission*, no. 10. p. 33.

⁷⁷⁴ Jesuit Social Services, *#JusticeSolutions Tour: Expanding the conversation*, Jesuit Social Services, Melbourne, 2017. pp. 23-24.

⁷⁷⁵ Neil Comrie, *Transcript of evidence*, 14 June 2017. p. 26; Brendan Murray, *Transcript of evidence*, 30 May 2017. p. 36.

⁷⁷⁶ Neil Comrie, *Transcript of evidence*, 14 June 2017. p. 26.

FINDING 31: Youth justice staff should be a mixture of professionals with specific skills that target specific needs.

9.6 Recent changes

The Victorian Government made a number of changes to the youth justice system throughout this Inquiry, including the review undertaken by Armytage and Ogloff⁷⁷⁷ and the machinery of government changes. Other changes of note include:

- Current recruitment efforts
- Increased staff training
- A new behaviour management model implemented in facilities.

Further, the recently enacted *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017* states that ‘...an officer is not personally liable for injury or damage caused by the use of reasonable force.’⁷⁷⁸ The Act also increases penalties for offences in remand centres, youth residential centres and youth justice centres.⁷⁷⁹

9.6.1 Current recruitment efforts

*It is vital that we continue to improve our recruitment and retention processes to increase our permanent staff, as this allows for a more settled and respectful environment and reduces the number of lockdowns associated with staff shortages.*⁷⁸⁰

The Committee was pleased to hear that DJR understands the magnitude of staffing problems within the youth justice system and associated problems discussed above. The Committee supports the urgent commitment to rectify this problem, in particular the need to ensure experienced permanent staff are on the floor in the numbers needed to keep facilities running well.

Ms Henderson informed the Committee that new recruitment processes intend to bring in 85–100 new staff and to ‘get as many ongoing, fully established, permanent staff as we can’.⁷⁸¹ Ultimately, DJR aims to minimise the use of agency staff in line with the recommendations in Mr Comrie’s *Stage Two* report.⁷⁸² Regarding agency staff, which the Committee accepts will always be required

⁷⁷⁷ Armytage and Ogloff recommend the development of a workforce plan for Youth Justice – Recommendation 6.55.

⁷⁷⁸ *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017* 487A.

⁷⁷⁹ *Children, Youth and Families Act 2005* (Victoria), 96/2005. Part 8.

⁷⁸⁰ Jodi Henderson, Executive Director, Youth Justice Operations, Department of Justice and Regulation, *Transcript of evidence*, Opening statement. p. 4.

⁷⁸¹ Jodi Henderson, Executive Director, Youth Justice Operations, Department of Justice and Regulation, *Transcript of evidence*, 19 April 2017. p. 19.

⁷⁸² Jodi Henderson, Executive Director, Youth Justice Operations, Department of Justice and Regulation, *Transcript of evidence*, Opening statement. p. 3; Neil Comrie, *Review of the Parkville Youth Justice Precinct (Stage Two)*, Department of Justice, Melbourne, 2017. p. 4.

to a certain extent, Ms Henderson said: ‘We would hope that month by month you would see a decrease in the reliance on agency staff and an increase in, importantly, ongoing permanent youth justice staff and the need to maintain a casual workforce as well.’⁷⁸³

Ms Henderson also provided evidence that the Department hopes to stabilise workplace teams so that young offenders in detention know who will be overseeing them from day to day. She added that through improving staff numbers and providing consistent teams DJR hopes to break the current negative staffing cycle ‘...and then young people do not have to be locked up because of staff shortages.’⁷⁸⁴

The Committee agrees with the Commission for Children and Young People’s recommendation that DJR engage with and learn from staff in youth justice facilities, including floor staff, on how to better recruit staff suited to work in youth justice.⁷⁸⁵

Use of Corrections Victoria staff

The Committee was concerned about the use of Corrections Victoria staff in youth justice facilities, particularly the Grevillea Unit. The Committee heard evidence of a crossover of adult corrections staff in youth justice settings, namely that Emergency Response Group staff in Grevillea were Corrections Victoria staff operating and acting under the Act.⁷⁸⁶

Ms Buchanan spoke about this issue, pointing out that ‘...there are differences when working with children and young people and I would want all staff operating in the youth justice environment to be appraised of those.’⁷⁸⁷

The Youth Affairs Council of Victoria argues similarly in its submission to this Inquiry that relying on or repurposing staff from the adult system is not the correct approach to rectifying staffing issues in the youth justice system. Corrections Victoria staff are highly skilled in working with adult offenders. They are unlikely to have training specific to young people and may not be suitable for providing day-to-day care to young people, particularly those with histories of complex trauma, intellectual disability or mental illness.⁷⁸⁸

783 Jodi Henderson, Executive Director, Youth Justice Operations, Department of Justice and Regulation, *Transcript of evidence*, 19 April 2017. p. 14.

784 *Ibid.* p. 19.

785 Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, Commission for Children and Young People, Melbourne, 2017. p. 81.

786 Jodi Henderson, Executive Director, Youth Justice Operations, Department of Justice and Regulation, *Transcript of evidence*, 19 April 2017. p. 15.

787 Liana Buchanan, Commissioner for Children and Young People, Commission for Children and Young People, *Transcript of evidence*, 17 March 2017. p. 25.

788 Youth Affairs Council of Victoria, *Submission*, no. 10. p. 37.

9.6.2 Improved training

The Committee heard that DJR has committed to improving staff training, including:

- Potentially extending initial staff training from three to eight weeks, including increasing the focus on:
 - adolescent development and trauma-informed care
 - preventing violence
 - restraint practices
- Training staff in the new behaviour management model.⁷⁸⁹

The Committee understands that these changes are too new to see results yet. It intends to monitor these changes over time in the hope of seeing improvement in the problems identified above.

9.6.3 Behaviour management model

A new behaviour management model developed in conjunction with senior staff, the Office of the Chief Practitioner and the CPSU has recently been introduced into youth justice centres. The model, which was piloted in the Grevillea Unit, uses a bronze/silver/gold system that rewards positive behaviour through extra entitlements (snacks or extra phone calls, for example) and removes entitlements when young offenders misbehave. Weekly behaviour evaluation reinforces the idea of immediate consequences for both good and bad behaviour.⁷⁹⁰

Ms Julia Griffith from DJR explained to the Committee that the aim of the model is to help young people

...regulate their own behaviour and reflect on their behaviour. All of that is given in the context of a behavioural plan where they have the opportunity to work through what they need to do to get back on track. It is those sorts of things — not dissimilar to your home environment probably.⁷⁹¹

Ms Henderson stated that the new model establishes clear and immediate consequences for young people in detention, which in turn contributes to creating settled environments within the centres. Ms Henderson said:

There is a very clear structured day, there are consequences when they step out of that, they know what those consequences are and ultimately they make choices — just like children in the community and our own children — about what that looks like for them, so there are no surprises for them.⁷⁹²

⁷⁸⁹ Greg Wilson, Secretary, Department of Justice and Regulation, *Transcript of evidence*, 27 June 2017, p. 2.

⁷⁹⁰ Julia Griffith, Deputy Secretary - Youth Justice, Department of Justice and Regulation, *Transcript of evidence*, 27 June 2017, p. 11.

⁷⁹¹ *Ibid.* p. 11.

⁷⁹² Jodi Henderson, Executive Director, Youth Justice Operations, Department of Justice and Regulation, *Transcript of evidence*, 19 April 2017, p. 12.

Ms Henderson added that staff must also adhere to the new model, saying:

If we have got a behaviour management system that is very clear and very structured and both the young people and the staff have a good understanding of that, then there is less interpretation or less differences between staff. That helps go to having a very settled environment when young people and staff know what the boundaries are, what the consequences are and then what the opportunities are for when they make good choices.⁷⁹³

The behaviour management model was being finalised by DHHS prior to the machinery of government change. However, DJR has committed to implementing the model, with Mr Wilson telling the Committee that all staff would be trained in the model by August 2017.⁷⁹⁴

Overall, Ms Henderson informed the Committee that:

We are improving our infrastructure, our training and recruitment of staff, and our management approaches within the custodial facilities. These changes will deliver a system that is both fit for purpose, and makes young people feel safe. A safe and settled environment is an essential precondition to the delivery of interventions that address offending behaviours.⁷⁹⁵

The Committee agrees with Armytage and Ogloff that a behaviour management model, respected by young offenders and consistently enforced by staff, will minimise disruption at Victoria's youth justice centres and enhance rehabilitation.⁷⁹⁶

793 Ibid. pp.15-6.

794 Greg Wilson, Secretary, Department of Justice and Regulation, *Transcript of evidence*, 27 June 2017. p. 2.

795 Jodi Henderson, Executive Director, Youth Justice Operations, Department of Justice and Regulation, *Transcript of evidence*, Opening statement. p. 5.

796 Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. p. 129.

10 Post-release services and recidivism

Our objective should be that when young people leave youth justice centres they are properly prepared to return to the community with an appropriate place to live, ongoing support for any issues they might have...and a meaningful pathway back into education and work.⁷⁹⁷

10.1 Introduction

The vast majority of young offenders held in youth justice centres are released into the community either on parole or having served their sentence, with a small number being transferred to adult facilities. Knowing this, planning for release should commence when a young person enters a youth justice facility. This includes working with young offenders to determine what they need, collaborating with their families and communities, and ensuring continuity of services and rehabilitation upon release.⁷⁹⁸

Exit planning and post-release supports ensure that rehabilitation is maintained and supported in the community. Essentially, the final component of a successful youth justice system is ensuring that young people leave youth justice facilities on a positive life trajectory linked with employment, training or education, and a reduced likelihood of reoffending.

Exit planning is conducted by case managers and custodial unit coordinators prior to a young offender's release from custody. Those identified as requiring post-release support are referred to the Youth Justice Community Support Service as part of either their exit case planning or parole planning processes. The referral can be made either by the custodial unit coordinator or the young offender's allocated community-based youth justice worker (if applicable).⁷⁹⁹

Not all cases are assessed as appropriate for referral to the Youth Justice Community Support Service. In instances where the Service is not used, the young person's youth justice worker may make direct referrals to other support services.⁸⁰⁰ Oversight of the Youth Justice Community Support Service is coordinated by the Youth Justice and Disability Forensic Unit, Statutory and Forensic Services, Service Design and Implementation Group in DJR.

⁷⁹⁷ Dr Jessie Mitchell, Policy Manager, Youth Affairs Council Victoria, *Transcript of evidence*, 19 April 2017. p. 2.

⁷⁹⁸ Victoria Legal Aid, *Submission*, no. 35. p. 17; Victorian Council of Social Services, *Submission*, no. 20. p. 17; Melbourne City Mission, *Submission*, no. 50. p. 12; Jodi Henderson, Executive Director, Youth Justice Operations, Department of Justice and Regulation, *Transcript of evidence*, 19 April 2017. p. 12.

⁷⁹⁹ Department of Human Services, *Youth Justice Community Support Service (YJCSS)*, Department of Human Services, Melbourne, 2013.

⁸⁰⁰ *Ibid.*

10.2 Youth reoffending in Victoria

The most significant, yet least visible costs to the community are in the long-term, when young people emerge from periods of incarceration only to reoffend and return in cycles. [This] has significantly high economic and social costs to victims, families and the community.⁸⁰¹

According to the Sentencing Advisory Council, youth reoffending rates in Victoria have remained steady since 2004, despite a reduction in overall youth offending.⁸⁰² Research carried out by the Sentencing Advisory Council of a cohort of young offenders sentenced in 2008–09 found that between 2008 and 2015:⁸⁰³

- 40 per cent reoffend within two years
- 61 per cent reoffended within six years of their release
- 44 per cent reoffended more than once within six years
- 15 per cent reoffended five or more times
- 52 per cent went on to have contact with the adult justice system.

Figure 10.1 below shows the nature of reoffending according to sentence type in this cohort.

This data suggests that either: rehabilitation while young offenders are detained is not working; or post-release follow-up services are not working; or a combination of the two. Armytage and Ogloff conclude that the ‘limited step-down support following periods of supervision’ is but one gap in the current youth justice system.⁸⁰⁴

Reoffending data such as this is sometimes used as ‘evidence’ of the criminogenic nature of incarceration. However, as referred to in Chapter 3, it is in fact the nature of offences resulting in a custodial sentence, and the likelihood of such young offenders coming from a disadvantaged background, that must be considered. Ms Lisa Ward from the Sentencing Advisory Council told the Committee:

The important thing with this cohort of course is that the factors that lead them to get a custodial sentence in the first place — the seriousness of the offence and their number of priors — means that already they are more likely to reoffend...you are already talking about a cohort that is at the very pointy end of the system by virtue of their behaviour.⁸⁰⁵

⁸⁰¹ Law Institute of Victoria, *Submission*, no. 31. p. 8.

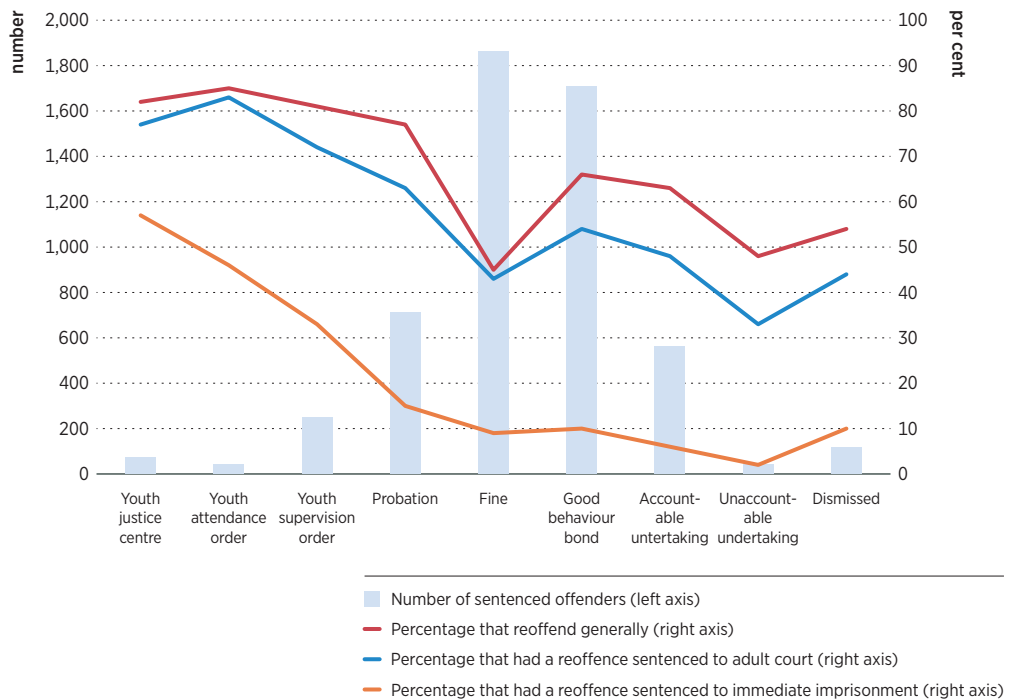
⁸⁰² Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria*, Sentencing Advisory Council, Melbourne, 2016. p. 9; Lisa Ward, Sentencing Advisory Council, *Transcript of evidence*, 17 March 2017. p. 38.

⁸⁰³ Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria: Fact Sheet*, Melbourne, 2016.; Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria*, Sentencing Advisory Council, Melbourne, 2016. pp. 8-9, 42-3, 47; Lisa Ward, Sentencing Advisory Council, *Transcript of evidence*, 17 March 2017. p. 38.

⁸⁰⁴ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 1*, Victorian Government, Melbourne, 2017. p. 132.

⁸⁰⁵ Lisa Ward, Sentencing Advisory Council, *Transcript of evidence*, 17 March 2017. p. 38.

Figure 10.1 Percentage of offenders in the study group according to whether they (1) reoffended generally, (2) reoffended and were sentenced in the adult criminal jurisdiction, and (3) reoffended and were sentenced to immediate imprisonment (a term of imprisonment)



Source: Adapted from Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria*, Sentencing Advisory Council, Melbourne, 2016. p. 42.

Measuring the success of post-release services is difficult. Armytage and Ogloff identified that Victoria’s youth justice system fails to measure outcomes for young offenders after they have left the system. Without knowing the outcomes for young people the youth justice system is unable to identify the long-term effectiveness of its interventions. Further, it becomes more difficult to hold the system to account.⁸⁰⁶

Armytage and Ogloff were unable to find any role within DJR with this responsibility.⁸⁰⁷ The Committee believes that the Department should monitor the efficacy of services provided to young offenders on release and link the services with a reoffending target.

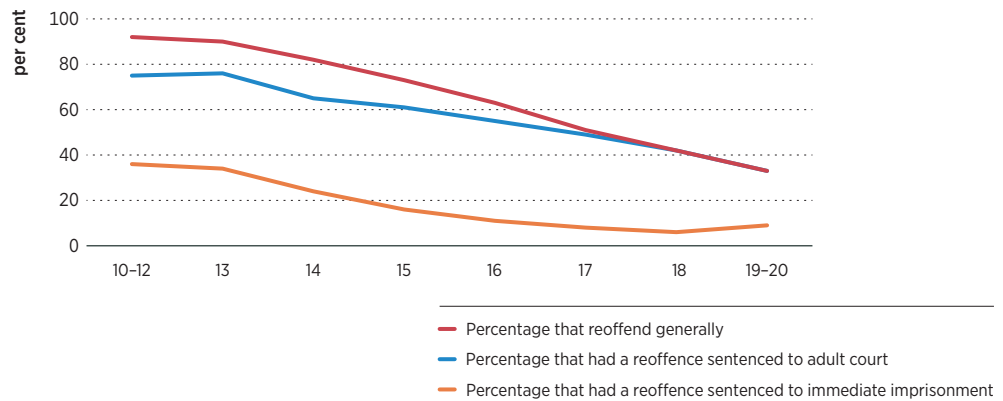
Another significant indicator of likely reoffending is the age of first contact with the youth justice system. Children aged between 10 and 13 at the time of their first offence are more likely to reoffend consistently into the future, more likely to reoffend violently, and more likely to go on to have contact with the adult

⁸⁰⁶ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. pp. 135-6.

⁸⁰⁷ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 1*, Victorian Government, Melbourne, 2017. p. 136.

justice system.⁸⁰⁸ The Sentencing Advisory Council’s data shows that reoffending rates lower proportionately as the age of first offence increases by approximately 18 per cent per year (see Figure 10.2).⁸⁰⁹

Figure 10.2 Percentage of offenders in the study group who were at least 21 years old by 2014–15



Source: Adapted from: Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria*, Sentencing Advisory Council, Melbourne, 2016. p. 55.

Judge Amanda Chambers, President of the Children’s Court, told the Committee that this data shows the need for early intervention to prevent recidivism. She said:

...for those that enter the system very young, even with low-level offending at that age, their trajectory into adult offending is significant and concerning. The rates of reoffending are significant and concerning. Their lives are often marked by significant antisocial behaviour. Their lives are marked by multiple adverse influences, and you have heard much about that, including family dysfunction. So rightly, I think everyone recognises that earlier evidence-based intervention for those young people is critical. If I could just observe, often by the time they come into the Children’s Court at the age of 12, 13, their problems are incredibly entrenched and often seemingly intractable.⁸¹⁰

High rates of reoffending may also suggest that young offenders are not spending enough time in the system accessing available services. The Youth Parole Board’s Judge Michael Bourke told the Committee:

I think people have got to be realistic. If you accept the proposition that maybe 50 per cent of the young people who end up getting locked up, bearing in mind it is a diversion system, they are in a tonne of trouble if they are locked up at 14 or 15. I think you have got to be realistic. I do not think you lock them up for 12 months and then

⁸⁰⁸ Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria: Fact Sheet*, Melbourne, 2016.

⁸⁰⁹ Ibid.; Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria*, Sentencing Advisory Council, Melbourne, 2016. p. 10; Lisa Ward, Sentencing Advisory Council, *Transcript of evidence*, 17 March 2017. p. 39.

⁸¹⁰ Judge Amanda Chambers, President, Children’s Court of Victoria, *Transcript of evidence*, 27 June 2017. p. 42.

parole them for six months and get terribly shocked if they fall over again, because they have arrived in pretty shabby nick. I think any system like that has to have some realistic patience about how it goes.⁸¹¹

Other factors identified by the Sentencing Advisory Council that indicate a high probability of reoffending in young people include:

- Being male
- Sentenced offence type and previous offence types
- Prior offending history, including the number of previous offences
- Having low intelligence, hyperactivity, difficulty concentrating or other cognitive problems
- Low family support or unstable family environments
- Truancy, low academic performance and school disengagement
- Associating with antisocial peer groups
- Living in a disadvantaged geographic area.⁸¹²

FINDING 32: There is currently inadequate evaluation of how effectively post-release services reduce reoffending.

RECOMMENDATION 35: That the Department of Justice and Regulation assess the effectiveness of post-release services provided to young offenders and publish the findings in the Department's Annual Report.

RECOMMENDATION 36: That relevant Victorian Government agencies consider a research project to establish why former young offenders stop offending. The project should measure the comparative influence of youth justice programs compared to individual traits.

⁸¹¹ Judge Michael Bourke, Chair, Youth Parole Board, *Transcript of evidence*, 17 March 2017, p. 51.

⁸¹² Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria*, Sentencing Advisory Council, Melbourne, 2016. Pp. 20-1, 49; Lisa Ward, Sentencing Advisory Council, *Transcript of evidence*, 17 March 2017, p. 39.

10.3 Transition support – why it is important

Supporting young people to successfully transition from custody to community can help prevent reoffending and set their lives on a positive trajectory.⁸¹³

Young offenders can find the transition back into the community difficult. The submission from Jesuit Social Services to this Inquiry states:

Many report feeling ‘institutionalised’ at a young age upon release, struggle to manage day-to-day living tasks such as being out in public, experience constant feelings of hypervigilance and, at times, have created spaces to sleep in that are the same size as a prison cell.⁸¹⁴

Day-to-day living tasks include things like setting up bank accounts or Myki cards, yet Cohealth quotes a youth worker as saying that young offenders ‘...have no tools for survival and don’t feel safe...’ when released. A custodial environment thus becomes a familiar environment providing certainty as opposed to the uncertainty of the ‘outside world’.⁸¹⁵

While some stakeholders in this Inquiry provided evidence that young offenders leave youth justice facilities under-supported,⁸¹⁶ this may be more do with how the services are provided rather than the level of services available. For example, Mr Daniel Clements, General Manager of Justice Programs at Jesuit Social Services, argued that services exist, but more must be done to coordinate service provision between facilities and the community. He said:

...there are some really good elements in our youth justice system, but they are not as well coordinated as they could be. So, for example, when a young person comes into custody there are a range of assessments that take place, including health assessments and looking at the immediate needs of the young person, but they are not actually coordinated with what is happening on the outside or planning in a way that actually brings together all the different elements so that we can support that young person to make a successful transition back into the community.⁸¹⁷

Akolda, a former young offender, informed the Committee that he had been provided with enough support services on release:

They definitely do, yes, because when they get out of detention they cannot just get out and roam the streets. They have to have a day program to get on parole or whatever; they cannot just get out. They have to have stable housing as well and all that sort of stuff sorted. They would not just let a young person out into the community if they are not going to do anything to engage them.⁸¹⁸

⁸¹³ Victorian Council of Social Services, *Submission*, no. 20. p. 17.

⁸¹⁴ Jesuit Social Services, *Submission*, no. 37. p. 27.

⁸¹⁵ Cohealth, *Submission*, no. 19. p. 22.

⁸¹⁶ Andrew Jackomos, Aboriginal Children’s Commissioner, Commission for Aboriginal Children and Young People, *Transcript of evidence*, 27 June 2017. p. 54; Wayne Muir, Chief Executive Officer, Victorian Aboriginal Legal Service, *Transcript of evidence*, 19 April 2017. p. 31; Jesuit Social Services, *Submission*, no. 37. p. 28; Cohealth, *Submission*, no. 19. p. 22; YouthLaw, *Submission*, no. 12. p. 33; Victoria Legal Aid, *Submission*, no. 35. p. 18.

⁸¹⁷ Daniel Clements, General Manager, Justice Programs, Jesuit Social Services, *Transcript of evidence*, 19 April 2017. pp. 8-9.

⁸¹⁸ Akolda, Youth Affairs Council Victoria, *Transcript of evidence*, 19 April 2017. p. 6.

However, echoing the above evidence from Mr Clements, Akolda did state that the lack of coordination of services made it difficult to meet his parole requirements. He said:

...it was kind of overwhelming. I was trying to concentrate on going to study as well, plus I had to go and see all these other extra workers on top of it. It kind of felt like, can I just have one worker that I can just work with? Just sending me from one organisation to another and another puts a lot of pressure on me.⁸¹⁹

The Committee received evidence regarding effective post-release programs providing education and employment options to young people, including:

- Mission Australia's WorkOut program working in Malmsbury and Parkville has helped 60 per cent of young people referred to it acquire training or employment post-release⁸²⁰
- Parkville College's flexible learning centre enables young people to continue attending the College post-release and complete qualifications begun while in custody⁸²¹
- The Committee also commends efforts being made at Malmsbury in providing employment training and qualifications in areas such as hospitality and grounds maintenance in conjunction with Bendigo TAFE.⁸²²

YouthLaw's submission offers a solution in the form of support service options that could be introduced while the young person is still in custody to help ease this transition, such as:⁸²³

- Taking a young person to school and or employment during the day and return to custody at the end of the day
- Bringing employers in to the custodial facility to engage with young people and set up post-release interviews and opportunities.⁸²⁴

Mr Wayne Muir, CEO of the Victorian Aboriginal Legal Service, suggested that post-release support services may need to last up to two years to be effective (and provide value for taxpayers' money). He said:

It may seem like a long period, but it is our view that this investment is better placed in terms of reducing recidivism than it is paying for continued incarceration but also the broader social impact on the community in terms of community safety and people feeling under fear or threat. If we have the investments right in terms of that stuff, we should see a reduction in recidivism, which is surely what we all at the end of the day want.⁸²⁵

⁸¹⁹ Ibid. p. 9.

⁸²⁰ Youth Parole Board, *Annual Report*, Youth Parole Board, Melbourne, 2016. p. 21.

⁸²¹ Matthew Hyde, Principal of Schools, Parkville College, *Transcript of evidence*, 27 June 2017. p. 35.

⁸²² Professor Terry Laidler, *Transcript of evidence*, 17 March 2017. pp. 6-7.

⁸²³ YouthLaw, *Submission*, no. 12. p. 33.

⁸²⁴ The Committee heard evidence that this program used to be offered by White Lion. Ibid. p. 33; See also Mission Australia's WorkOut program.

⁸²⁵ Wayne Muir, Chief Executive Officer, Victorian Aboriginal Legal Service, *Transcript of evidence*, 19 April 2017. p. 31.

Other evidence to the Committee supported the argument for longer, more intensive post-release services, particularly for those young people with complex needs.⁸²⁶ This includes ongoing diversion programs.⁸²⁷ Importantly though, Akolda reminded the Committee that individuals themselves must be prepared to take responsibility for their actions, saying:

...I am guessing it is just the individual themselves, I guess. I cannot really speak for anybody else, so I am not sure. Maybe when I was in there I told people, 'I never want to come back into this place', and all this sort of stuff, and other people say the same thing, but I guess it is up to them when they get out if they want to continue to do crime or not, you know?⁸²⁸

Armytage and Ogloff discuss this in terms of the '...intrinsic factors for which young people are able to personally take responsibility and begin the process of change.'⁸²⁹

Continuing to provide services that address offending behaviour post-release, including support from family and connections with community, are important protective factors that limit reoffending.⁸³⁰ Professor Ogloff emphasised the importance of providing service continuity if reoffending is to be prevented. However, he told the Committee that there is a 'disconnect' between what is available to young offenders when detained and when they are released.⁸³¹

RECOMMENDATION 37: That relevant Victorian Government agencies assess young offenders' support networks prior to their release to provide support services that help prevent reoffending.

10.3.1 Housing

Section 5.3.3 of this Final Report discusses how a lack of adequate housing options contributes to the high number of young people placed on remand. A similar problem can exist for young offenders once they have been released, as an unstable housing environment (or homelessness) increases the likelihood of a young person reoffending.⁸³²

⁸²⁶ Melbourne City Mission, *Submission*, no. 50. p. 13; Victoria Legal Aid, *Submission*, no. 35. p. 8.

⁸²⁷ Victoria Legal Aid, *Submission*, no. 35. p. 17.

⁸²⁸ Akolda, Youth Affairs Council Victoria, *Transcript of evidence*, 19 April 2017. p. 6.

⁸²⁹ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Executive Summary*, Victorian Government, Melbourne, 2017. p. 12.

⁸³⁰ Victorian Council of Social Services, *Submission*, no. 20. p. 17.

⁸³¹ Professor James Ogloff, *Transcript of evidence*, 27 June 2017. p. 20.

⁸³² Victoria Legal Aid, *Submission*, no. 35. p. 18; Youth Parole Board, *Annual Report*, Youth Parole Board, Melbourne, 2016. p. 25.

Professor Ogloff explained how residential care environments can be detrimental to post-release rehabilitation. He told the Committee:

For young people in our youth justice centres, even if they are attending programs, say, treatment programs where they are trying to change behaviour, they go back into a regular living unit where the antisocial values are really what is going to keep them safe — being stronger than the other boys, not being taken advantage of.⁸³³

Accommodation services do exist for young offenders on release. For example, the Youth Justice Housing Pathways Initiative offered by the Youth Justice Community Support Service provides 55 transitional housing properties and connections to homelessness services for young people with a history of homelessness on release from detention. Another service is the Youth Justice Homelessness Assistance Service (VincentCare). This includes the Youth Justice Housing Brokerage program that extends the range of housing options available to young people post-release. However, the Youth Parole Board states in its 2016–17 *Annual Report* that demand currently exceeds supply, which can lead to deferral of parole or young people being released into insecure accommodation.⁸³⁴

Other general housing programs for at-risk young people include:⁸³⁵

- Dillon House (Jesuit Social Services), a three-bed 24-hour supported accommodation service
- Youth foyers, which provide student-style supported accommodation services in conjunction with education and training providers for two to three years. Youth foyers are available for young people aged 16–24 and require them to be engaged in education or employment for the duration of their stay.

Armytage and Ogloff state that recent reforms to social housing in Victoria, such as the Homes for Victorians program, will see benefits in the youth justice system as a result of improved social conditions. The Committee agrees, in line with its argument in Chapter 3 of this Final Report that programs that address disadvantage contribute to a decrease in youth offending. However, the high rates of recidivism for young offenders in Victoria suggests there are problems across the whole youth justice spectrum, which may include accommodation options for young offenders once they are released. The Committee believes that the Victorian Government should review these options to determine if they are meeting the needs of young offenders.

RECOMMENDATION 38: That the Victorian Government improve access to appropriate housing options for young offenders leaving youth justice centres.

⁸³³ Professor James Ogloff, *Transcript of evidence*, 27 June 2017, p. 23.

⁸³⁴ Youth Parole Board, *Annual Report*, Youth Parole Board, Melbourne, 2016, p. 26.

⁸³⁵ Department of Human Services, *Youth Justice Community Support Service (YJCSS)*, Department of Human Services, Melbourne, 2013.

10.4 Other jurisdictions

10.4.1 Missouri, United States of America

The approach to post-release services in Missouri involves a step-down process through a continuum of small residential facilities consisting of:

- Secure care (30 young people housed in open dorms with a secure fence)
- Moderate care (facilities without a perimeter fence located within state parks)
- Group homes (10–12-bed staffed units located in residential neighbourhoods offering both community connection through jobs and education and internal support services).⁸³⁶

Recidivism rates in Missouri are comparatively low with 16.4 per cent reoffending after one year and 32.9 per cent reoffending after three years.⁸³⁷

⁸³⁶ Jesuit Social Services, *Submission*, no. 37. p. 32.

⁸³⁷ *Ibid.* p. 32; Youth Affairs Council of Victoria, *Submission*, no. 10. p. 60.

11

Aboriginal and Torres Strait Islander young people

I have seen children as young as ten put into custody because the court does not have a place to safely bail them. I see young people who know that they need a drug and alcohol program, but there is no place available to them. I see these children and young people removed from their community and their culture at a time when they most need to be connected.⁸³⁸

11.1 Introduction

The Committee is concerned about the over-representation of Aboriginal and Torres Strait Islander young people in youth justice in Victoria. During this Inquiry, the Committee discussed this issue with the Victorian Aboriginal Legal Service, who also provided a submission, and Mr Andrew Jackomos, the recently retired Aboriginal Children's Commissioner.

The evidence the Committee received covered current limitations in services and the way this has contributed to the increasing over-representation of Koori⁸³⁹ young people in youth justice. Tables 11.1 and 11.2 contain data on Aboriginal and Torres Strait Islander young people in detention and subject to community-based supervision in Victoria compared with non-Indigenous young people.

Table 11.1 Daily average number of Aboriginal and Torres Strait Islander young people aged 10–17 years in detention

	2011-12	2012-13	2013-14	2014-15	2015-16
Aboriginal and Torres Strait Islander	14	9	10	13	17
Non-Indigenous	63	54	51	69	86

Source: Productivity Commission, *Report on Government Services 2018 - Chapter 17: Youth justice services*, Productivity Commission, Canberra. Table 17A.5.

⁸³⁸ Andrew Jackomos, Aboriginal Children's Commissioner, Commission for Aboriginal Children and Young People, *Transcript of evidence*, 27 June 2017. p. 51.

⁸³⁹ The Committee uses the term 'Koori' throughout this Final Report in relation to Victoria and Aboriginal and Torres Strait Islander people in relation to Australia more widely.

Table 11.2 Daily average number of Aboriginal and Torres Strait Islander young people aged 10–17 years subject to community-based supervision

	2011-12	2012-13	2013-14	2014-15	2015-16
Aboriginal and Torres Strait Islander	132	125	112	105	117
Non-Indigenous	790	675	577	594	536

Source: Productivity Commission, *Report on Government Services 2018 - Chapter 17: Youth justice services*, Productivity Commission, Canberra. Table 17A.6.

11.2 Existing framework and government initiatives

Koori youth justice in Victoria operates within a framework of previous reviews and initiatives from State and Federal Governments. The Review highlights the following:

- The Royal Commission into Aboriginal Deaths in Custody (1991): Federal and State Governments have implemented a range of policies in response to issues identified in the Commission’s report.
- Closing the Gap: In 2007, the Council of Australian Government committed to ‘closing the gap’ in life expectancy between Aboriginal and Torres Strait Islanders and non-Indigenous Australia. The Federal Government reports annually against targets in: health; access to and achievement in early childhood and school education; Year 12 attainment; and employment. The progress report released in February 2018 found that Australia is not on track to meet targets in four out of seven areas.
- Victorian Aboriginal Affairs Framework 2013–2018. Part of the Victorian Premier’s Closing the Gap commitments. One of the six strategic action areas for the framework includes a focus on ‘safe families and communities and equitable justice outcomes’.
- Victorian Government self-determination agenda (2016): This would see Kooris assume decision-making capacity, influence and decision-making power on key policies and the ability to make decisions for their own community.
- Aboriginal Justice Forum and Aboriginal Justice Agreements: An initiative between the Victorian Government and the Koori community to improve Koori justice outcomes, initiated in response to the Royal Commission into Aboriginal Deaths in Custody.⁸⁴⁰

The Committee further notes Victoria’s ‘Taskforce 1000’. This joint effort between the Department of Health and Human Services (DHHS) and the Commission for Children and Young People aims to identify and address issues related to Koori over-representation in out-of-home care.⁸⁴¹

⁸⁴⁰ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017, pp. 90–92.

⁸⁴¹ Department of Human Services, ‘Taskforce 1000’, viewed 5 September 2017.

There is a significant focus from government initiatives on:

- Identifying and reducing factors contributing to Aboriginal and Torres Strait Islander (ATSI) overrepresentation in youth justice
- Co-designed developmental interventions and capacity building
- Prosocial diversion programs to strengthen connection to family, community and country
- Reducing issues of exclusion from the non-Aboriginal community.

Despite these programs, the problem remains. This may mean that the programs are ineffective or lack focus. Conversely, it may mean that the problem would be much worse without the impact these programs have. If the latter is true, this implies that there are greater forces at play yet to be identified.

11.3 Koori youth justice programs and services

11.3.1 Community-based Koori Youth Justice Program

The community-based Koori youth Justice Program is operated primarily by Koori community-controlled organisations (one program is provided by Anglicare). The Program focuses on early intervention and aims to prevent offending and recidivism by maintaining connections between young people, their family and their community.⁸⁴² The Review found that the program is not available throughout the whole State. As a result, many Koori young people do not receive a culturally appropriate youth justice support service.⁸⁴³

11.3.2 Koori Intensive Support Program

This program aims to reduce the number of Koori young people who are remanded or detained by providing outreach support and helping young people to comply with bail conditions. It also helps Koori young people reintegrate into their communities by providing support before and after their release. The Program is provided by DHHS staff based in Goulburn, the north-east Metropolitan area, Inner Gippsland, Southern Melbourne and Barwon. Armytage and Ogloff note that the Program is not available statewide and in particular does not capture areas of high Koori population, such as the Loddon Mallee area.⁸⁴⁴

⁸⁴² Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 1*, Victorian Government, Melbourne, 2017. pp. 96; 179.

⁸⁴³ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. p. 179

⁸⁴⁴ *Ibid.*, p. 76.

Koori young people face a higher likelihood of bail refusal and spend more time on remand than non-Indigenous young people.⁸⁴⁵ Elements contributing to this include:⁸⁴⁶

- Lack of appropriate accommodation services
- Low amount of culturally appropriate support programs.

11.3.3 The Children’s Koori Court

The Children’s Koori Court (Criminal Division) is a specialist court for Koori young people aged 10–18 years at time of offending. It was established under the Act and is available at 11 locations around Victoria.⁸⁴⁷

Figure 11.1 Map of Koori Court locations in Victoria



845 Law Institute of Victoria, *Submission*, no. 31. p. 17; Cohealth, *Submission*, no. 19. p. 19; Koorie Youth Council, *Submission*, no. 22. pp. 7, 16; Caitlin Grover, *Youth Justice in Victoria: Research Paper No. 2, April 2017*, Parliamentary Library and Information Service, Melbourne, 2017. p. 52; Dr Matthew Ericson and Professor Tony Vinson, *Young people on remand in Victoria: Balancing individual and community interests*, Jesuit Social Services, Melbourne, 2011. pp. 11, 24-5; Drugs and Crime Prevention Committee, *Inquiry into Strategies to Prevent High Volume Offending and Recidivism by Young People*, The Committee, Melbourne, 2009. p. 218; Jesuit Social Services, *Thinking Outside: Alternatives to remand for children (Research Report)*, Jesuit Social Services, Richmond, 2013. pp. 51, 74.

846 Law Institute of Victoria, *Submission*, no. 31. p. 17; Andrew Jackomos, Aboriginal Children’s Commissioner, Commission for Aboriginal Children and Young People, *Transcript of evidence*, 27 June 2017. p. 51; Amnesty International, *Submission*, no. 49. p. 6; Dr Matthew Ericson and Professor Tony Vinson, *Young people on remand in Victoria: Balancing individual and community interests*, Jesuit Social Services, Melbourne, 2011. p. 36; House of Representatives Committee on Aboriginal and Torres Strait Islander Affairs, *Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system*, House of Representatives Committee on Aboriginal and Torres Strait Islander Affairs, Canberra, 2011. Chapter 7 paragraph 110.

847 Magistrates Court of Victoria, ‘Koori Court’, viewed 6 September 2017.

Kooris can have their case heard in the Koori Court if they:

- Have pleaded guilty to or have been found guilty of an offence
- Are not being charged with a sex offence.⁸⁴⁸

The Children's Koori Court is less formal than traditional court proceedings. The Magistrate sits at a large table with other participants in the case rather than at the bench. The defendant also sits at the table with their family and significant community members, rather than in the dock. Participants speak in 'plain English' rather than legal jargon.⁸⁴⁹ The Court may consider oral statements made by a Koori elder or respected person when sentencing a Koori young person.⁸⁵⁰ According to an evaluation of outcomes in 2008, the Children's Koori Court has shown a lower rate of recidivism compared with those for Koori young people in the Children's Court.

The Review highlights other 'unexpected' outcomes of the Children's Koori Court, including:

- Reinforcing the role of elders within the community
- Improved court attendance rate
- Creating greater respect for the judiciary among offenders
- Developing skills and confidence of elders involved in the courts through training and development programs.⁸⁵¹

However, the Review also found limitations of the Children's Koori Court, particularly regarding availability and access.⁸⁵² Further, it discusses a lack of tailored sentencing options, stating:

Legal advice provided as part of the Review highlighted there are no legislated sentencing dispositions tailored to Aboriginal children...Comparisons were drawn to New South Wales, where legislated circle sentencing programs⁸⁵³ are available to Aboriginal offenders. Advice indicates that consideration should be given to whether a circle sentencing program, or other program tailored to Aboriginal offenders, should be legislated for in the [*Children, Youth and Families Act 2005*].⁸⁵⁴

FINDING 33: Low recidivism rates is a measure of success for all young offenders, regardless of their culture. The Children's Koori Court is a successful element of Victoria's youth justice system and can inform the rest of the system in the way in which it has developed new approaches that match the needs of the cohorts appearing before it.

⁸⁴⁸ Children's Court of Victoria, *Children's Koori Court*, Melbourne, 2012.

⁸⁴⁹ Magistrates Court of Victoria, 'Koori Court', viewed 6 September 2017.

⁸⁵⁰ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 1*, Victorian Government, Melbourne, 2017. p. 23.

⁸⁵¹ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. p. 95.

⁸⁵² *Ibid.*, p. 95.

⁸⁵³ Yarning circles are an Aboriginal and Torres Strait Islander approach to dialogue which facilitates group learning and the passing on of cultural knowledge.

⁸⁵⁴ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. p. 95.

RECOMMENDATION 39: That the Department of Justice and Regulation engage the Children’s Koori Court to determine if its successful practices can be adapted more widely across court processes.

11.3.4 Koori adult programs

The Committee heard evidence of examples of Koori-led programs working in the adult justice system in Victoria, including:⁸⁵⁵

- Wiimpatja Healing Centre (for Koori men on remand)
- Wulgunggo Ngalu Learning Place (for Koori men serving community-based orders)
- Baroona Healing Centre (drug and alcohol services alongside TAFE training for young people)
- Bunjilwarra (pre-sentence diversion and AOD treatment service).

Both Mr Andrew Jackomos (Aboriginal Children’s Commissioner) and Mr Wayne Muir (CEO of the Victorian Aboriginal Legal Service) argued that these programs could be adapted or expanded to support Koori young offenders, including those on remand.⁸⁵⁶

11.3.5 Victorian Aboriginal Legal Service

The Victorian Aboriginal Legal Service is an Aboriginal community-controlled organisation established in 1972. It works with the other five peak Aboriginal Community Controlled Organisations in Victoria in supporting clients. It operates in the areas of criminal, civil and family law (including child protection and family violence).⁸⁵⁷

⁸⁵⁵ Andrew Jackomos, Aboriginal Children’s Commissioner, Commission for Aboriginal Children and Young People, *Transcript of evidence*, 27 June 2017. pp. 50-2, 54-5; Wayne Muir, Chief Executive Officer, Victorian Aboriginal Legal Service, *Transcript of evidence*, 19 April 2017. p. 32; Victorian Aboriginal Legal Service, *Submission*, no. 15. pp. 13-4; Bunjilwarra, ‘Bunjilwarra: Koori Youth Alcohol and Drug Healing Service’, viewed 5 September 2017.

⁸⁵⁶ Andrew Jackomos, Aboriginal Children’s Commissioner, Commission for Aboriginal Children and Young People, *Transcript of evidence*, 27 June 2017. pp. 50-2, 54-5; Wayne Muir, Chief Executive Officer, Victorian Aboriginal Legal Service, *Transcript of evidence*, 19 April 2017. p. 32.

⁸⁵⁷ See: Victorian Aboriginal Legal Service, *Submission*, No. 15 and Wayne Muir, Chief Executive Officer, Victorian Aboriginal Legal Service, *Transcript of evidence*, 19 April 2017.

11.4 Key issues identified by the Armytage and Ogloff Review

11.4.1 Over-representation

*Overincarceration is not just a disaster for children, and a disaster for the Aboriginal community, but it is a danger to the Victorian community because it fails to address trauma and breeds and entrenches criminal behaviour.*⁸⁵⁸

The Review's key findings regarding Koori over-representation in the youth justice system include:

- Koori young people are more than 16 times more likely to be on a youth justice order
- In 2015–16, 16 per cent of all young people who received a community or custody youth justice order identified as Koori
- Between 2006–07 and 2015–16, Koori over-representation in Victoria rose from 9.7 to 13.2 times the rate of non-Koori young people in youth justice.⁸⁵⁹

According to the Review, Victoria compared to other jurisdictions as follows:

- The rate of over-representation across all supervision types is equivalent to those in New South Wales and the Northern Territory; much higher than Tasmania; and much lower than Western Australia and South Australia
- Detention rates are higher than Tasmania; slightly lower than Queensland, New South Wales and the ACT; and much lower than Western Australia and South Australia
- Community supervision rates are equivalent to New South Wales; slightly lower than Queensland, South Australia and the ACT; and much lower than Western Australia.⁸⁶⁰

When this rate of over-representation is considered by rate of population, Armytage and Ogloff conclude that Victoria is 'not performing well'.⁸⁶¹

The Review concedes that Indigenous over-representation continues to be a concern for policymakers and the community across Australia. Further, it acknowledges that Indigenous people are over-represented in the justice systems of many post-colonial countries.⁸⁶²

⁸⁵⁸ Victorian Aboriginal Legal Service, *Submission*, no. 15. p. 4.

⁸⁵⁹ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 1*, Victorian Government, Melbourne, 2017. pp. 172; 133. See also: Youth Parole Board, *Annual Report*, Youth Parole Board, Melbourne, 2016. pp. 20-21.

⁸⁶⁰ *Ibid.*, p. 92.

⁸⁶¹ *Ibid.*, p. 92.

⁸⁶² *Ibid.*, p. 172.

11.4.2 Lack of culturally appropriate youth justice services

*Connection to culture and family are essential elements to Aboriginal children and young people's sense of identity. Connection to culture, land and spirituality is foundational to building resilience for our children. Damaging these connections and relationships risks undermining norms of appropriate social and cultural behaviour for Aboriginal children.*⁸⁶³

Despite the examples listed above, the Review found a shortage of culturally appropriate youth justice services for Koori young offenders (as well as other culturally and linguistically diverse groups) when detained.⁸⁶⁴ This finding was supported by evidence provided to the Committee for this inquiry.⁸⁶⁵

For example, Mr Jackomos informed the Committee that although Parkville College provides appropriate cultural programs for Koori young offenders, access is restricted outside of school hours. He said: 'What happens is if school is not sitting, kids do not have access. Culturally rich programs, which I believe are the greatest resource for our children, should be delivered 24/7, should be part of the system.'⁸⁶⁶

Mr Muir explained to the Committee that many Koori young offenders do not have viable pathways out of youth justice due to a lack of housing, mental health, cultural and other specific support services they require.⁸⁶⁷ He suggested an 'elders in residence' program, bringing elders into youth justice facilities and programs, to improve opportunities for cultural, community and kinship connectedness for young Kooris.⁸⁶⁸

Mr Muir described the proposed program to the Committee:

They [the elders] are there to spend significant time with individuals getting to understand some of their challenges, their disconnect, and helping to give them some cultural guidance and mentoring and some knowledge — but also...acting in my mind as the interpreter between two different systems, being able to provide a linkage to those young people but also back to the system, if you like, and to family or loved ones.⁸⁶⁹

⁸⁶³ Andrew Jackomos, Aboriginal Children's Commissioner, Commission for Aboriginal Children and Young People, *Transcript of evidence*, 27 June 2017. pp. 50-2.

⁸⁶⁴ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. p. 205. Providing culturally appropriate programs is in accordance with provisions in relevant human rights charters, including: Victorian Charter of Human Rights and Responsibilities – Cultural Rights (s19 & 23) and United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) (Articles 37 & 38).

⁸⁶⁵ National Aboriginal & Torres Strait Islander Legal Service, *Submission*, no. 42. pp. 2-4; Victorian Aboriginal Legal Service, *Submission*, no. 15. pp. 14-5, 17, 21-2; Change the Record, *Submission*, no. 61. p. 5.

⁸⁶⁶ Andrew Jackomos, Aboriginal Children's Commissioner, Commission for Aboriginal Children and Young People, *Transcript of evidence*, 27 June 2017. p. 55; *Victorian Charter of Human Rights and Responsibilities Act 2006* (Victoria), 43.

⁸⁶⁷ Wayne Muir, Chief Executive Officer, Victorian Aboriginal Legal Service, *Transcript of evidence*, 19 April 2017. p. 32.

⁸⁶⁸ *Ibid.* pp. 32, 38-9.

⁸⁶⁹ *Ibid.* pp. 38-9.

In addition, the Review found that there were a very low number of Koori employees in DHHS's youth justice workforce. Less than one per cent of the Department's staff were of Koori heritage, which is under the targeted two per cent. Armytage and Ogloff consider this a missed opportunity to '...ensure the cultural needs of Koori young people are met and community and custodial supervision practices are culturally effective.'⁸⁷⁰

The Review also found that the DHHS representative at the Aboriginal Justice Forum⁸⁷¹ was not at the appropriate level of seniority. It states:

It is the view of this Review that the membership should be held by an appropriately senior executive staff member who has a whole-of-system view across community and custodial youth justice and should be at Executive Director or Deputy Secretary level. Given the level of over-representation and the poor performance by youth justice in reducing over-representation of Aboriginal young people in Victoria, stronger senior leadership and engagement is required.⁸⁷²

11.5 Justice reinvestment

The concept of justice reinvestment is based on addressing the needs of offenders while also attending to the needs of victims and communities. In practice, justice reinvestment diverts a portion of funding allocated to prisons towards communities with a high concentration of offenders. The money that would have been spent on detention is reinvested into services that address social factors linked with crime.⁸⁷³ Similar to diversion programs (as mentioned in Chapter 3 of this Final Report), police commitment is vital to the success of a justice reinvestment approach in a community.⁸⁷⁴

There is evidence that justice reinvestment is a viable approach for ATSI young offenders.⁸⁷⁵ The approach allows local communities to respond appropriately to drivers of offending behaviour in their local area (local solutions for local

⁸⁷⁰ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 1*, Victorian Government, Melbourne, 2017. p. 105; Andrew Jackomos, Aboriginal Children's Commissioner, Commission for Aboriginal Children and Young People, *Transcript of evidence*, 27 June 2017. p. 54.

⁸⁷¹ Victorian Government, *Understanding the Victorian Aboriginal Justice Agreement: A partnership between the Victorian Government and Koori Community*, Melbourne, 2013.

⁸⁷² Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017. p. 91.

⁸⁷³ Change the Record, *Submission*, no. 61. p. 4.

⁸⁷⁴ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time - Time For Doing: Indigenous youth in the criminal justice system*, The Senate, Canberra, 2011. pp. 196-203; Geoff Thompson and Lisa McGregor, *Backing Bourke*, Television, Four Corners, ABC, September 19 2016.

⁸⁷⁵ Legal and Constitutional Affairs References Committee, *Value of a justice reinvestment approach to criminal justice in Australia*, The Australian Senate, Canberra, 2013. pp. 69-70; Geoff Thompson and Lisa McGregor, *Backing Bourke*, Television, Four Corners, ABC, September 19 2016; Amnesty International, *A brighter tomorrow: Keeping Indigenous kids in the community and out of detention in Australia*, Amnesty International, Broadway, NSW, 2015. Chapter 8; National Aboriginal & Torres Strait Islander Legal Service, *Submission*, no. 42. pp. 2-4; House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time - Time For Doing: Indigenous youth in the criminal justice system*, The Senate, Canberra, 2011. p. 321.

problems).⁸⁷⁶ The model has been said to be particularly effective in improving social inclusion and justice outcomes for ATSI young people because of the way it strengthens links to community and country.⁸⁷⁷

Governments in Western Australia and New South Wales are experimenting with justice reinvestment approaches. These efforts have shown promise in diverting ATSI young people away from the youth justice system.⁸⁷⁸ The justice reinvestment approach has also been successful in the United States of America, helping states such as New York and Texas reduce their youth offending and incarceration rates.⁸⁷⁹

Key components of successful justice reinvestment programs aimed at ATSI young people include:⁸⁸⁰

- Identifying and addressing community-specific problems leading to youth offending
- Assisting young people develop alternative ways of coping with stress
- Involving young people’s families to reduce reoffending
- Engaging ATSI youth workers wherever possible, including consulting where direct access to workers is not possible
- Communicating with ATSI young people in ways in which they are comfortable, for example through sport.

Due to the tailored, place-based focus of justice reinvestment approaches, programs vary depending on the community.⁸⁸¹ Existing programs that have been identified as successful include:

- Mentoring programs creating positive relationships between ATSI young people and adults in their community, either one-on-one or in groups. Successful examples include:

876 Senate Select Committee on Regional and Indigenous Communities, *Indigenous Australians, Incarceration and the Criminal Justice System: Discussion paper prepared by the committee secretariat*, The Australian Senate, Canberra, 2010.

877 National Aboriginal & Torres Strait Islander Legal Service, *Submission*, no. 42. pp. 2-4; House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time - Time For Doing: Indigenous youth in the criminal justice system*, The Senate, Canberra, 2011. p. 321.

878 Geoff Thompson and Lisa McGregor, *Backing Bourke*, Television, Four Corners, ABC, September 19 2016; Amnesty International, *A brighter tomorrow: Keeping Indigenous kids in the community and out of detention in Australia*, Amnesty International, Broadway, NSW, 2015. Chapter 8.

879 Legal and Constitutional Affairs References Committee, *Value of a justice reinvestment approach to criminal justice in Australia*, The Australian Senate, Canberra, 2013. pp. 51-3. (See also: Chapter 5 of the Legal and Constitutional Affairs Committee’s report for more information on justice reinvestment in other jurisdictions); Amnesty International, *A brighter tomorrow: Keeping Indigenous kids in the community and out of detention in Australia*, Amnesty International, Broadway, NSW, 2015. p. 6; Geoff Thompson and Lisa McGregor, *Backing Bourke*, Television, Four Corners, ABC, September 19 2016.

880 Change the Record, *Blueprint for Change*, Change the Record, 2015; Susan Baidawi Chris Trotter and Phillipa Evans, ‘Good Practice in Community-based Supervision of Aboriginal Youth Offenders’, *Australian Social Work*, vol. 68, 2015; Robert E Fitzgerald and Marilyn Green, ‘Breaking the Cycle: Addressing Risk Factors Contributing to the Over-representation of Aboriginal Youth in the Criminal Justice System’, Paper presented at the *Reducing Criminality: Partnerships and Best Practice*, WA Ministry of Justice Australian Institute of Criminology, et al. (eds), Perth, 2000. pp. 4-5.

881 Legal and Constitutional Affairs References Committee, *Value of a justice reinvestment approach to criminal justice in Australia*, The Australian Senate, Canberra, 2013. p. 68.

- The Men’s Group in Bourke, New South Wales
- Tribal Warrior in Redfern, New South Wales
- the Australian Indigenous Mentoring Experience nationally
- Healing or yarning circles
- ATSI-led and run education programs
- Education programs (preventing disengagement).⁸⁸²

11.6 Recent announcements

In October 2016, the Commission for Children and Young People released *Always Was, Always Will Be Koori Children*, a report examining around 1,000 Aboriginal children and young people in Victoria’s out-of-home care system.⁸⁸³ The report’s recommendations that related to DHHS were accepted in full, in principle or in part by the Victorian Government.

On 30 August 2017, the Victorian Government announced funding aimed at reducing the over-representation of Koori young people in the youth justice system and out-of-home care.⁸⁸⁴ Additionally, the Victorian Government accepted all Armytage and Ogloff recommendations.

⁸⁸² House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time - Time For Doing: Indigenous youth in the criminal justice system*, The Senate, Canberra, 2011. pp. 61-4, 171-5; See also: Chapter 7 of the *Doing Time* report; Change the Record, *Blueprint for Change*, Change the Record, 2015.

⁸⁸³ Commission for Children and Young People, *Always was, always will be Koori children’: Systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria* Commissioner for Children and Young People, Melbourne, 2016.

⁸⁸⁴ Minister for Families and Children Jenny Mikakos, *Connecting Aboriginal Kinship To Community*, media release, Victorian Government, Melbourne, 30 August 2017.

Appendix 1

Submissions

Submission no.	Name
1	Dick Stratford
2	Nancy Uzuner
3	Confidential
4	Michelle Rogers
5	Professor Yvonne Jewkes
6	Confidential
7	Professor Terry Laidler
8	Office of the Public Advocate
9	Claire Seppings
10	Youth Affairs Council Victoria
11	Capital City Learning and Employment
12	YouthLaw Smart Justice for Young People
13	Confidential
14	Orygen
15	Victorian Aboriginal Legal Service
16	Royal Australian and New Zealand College of Psychiatrists
17	JacksonRyan Partners
18	Emmy Elbaum
19	cohealth
20	Victorian Council of Social Service
21	Kyneton Branch ALP
22	Koorie Youth Council
23	Dough and Jan McIver
24	Jodie O'Leary
25	Geelong Inter Church Social Justice Network
26	Berry Street
27	Australian Association of Social Workers
28	Dr Kate Fitz-Gibbon and Dr Wendy O'Brien
29	Liberty Victoria
30	The Salvation Army
31	Law Institute of Victoria
32	Associate Professor Margarita Frederico
33	Victorian Inter-Church Criminal Justice Taskforce
34	Australian Psychological Society
35	Victoria Legal Aid
36	Anglicare
37	Jesuit Social Services
38	Human Rights Law Centre

Submission no.	Name
39	Victoria Alcohol and Drug Association
40	Name withheld
41	Green, Olijnk, Owen, Williams
42	National Aboriginal & Torres Strait Islander Legal Service
43	Centre for Excellence in Child and Family Welfare
44	Parkville College
45	Rod Andrew
46	Designing Out Crime
47	What Can Be Done
48	Confidential
49	Amnesty International
50	Melbourne City Mission
51	Centre for Multicultural Youth
52	Association of Child and Family Development
53	Phillip and Therese Watts
54	John Burch
55	Cath Lyons
56	School Music Action Group
57	People with Disability Australia
58	Victoria Police Association
59	Bronwyn Nalor, Elizabeth Grant, Rohan Lulham
60	Save the Children
61	Change the Record
62	Brotherhood of St Laurence
63	Evelyn Mullengar
64	Abolitionist and Transformative Justice Centre
65	CPSU Victoria

Appendix 2

Public hearings

Friday 17 March 2017 — Meeting Room G.6, 55 St Andrews Place, East Melbourne

Name	Title	Organisation
Ms Deborah Glass	Victorian Ombudsman	Victorian Ombudsman
Ms Liana Buchanan	Commissioner for Children and Young People	Commission for Children and Young People
Ms Claire Seppings		
Ms Lisa Ward	Deputy Chair	Sentencing Advisory Council
Judge Michael Bourke	Chair	Youth Parole Board
Dr Bernie Geary	Board Member	
Professor Terry Laidler		

Wednesday 22 March 2017 — Legislative Council Committee Room, Parliament House, Spring Street, Melbourne

Name	Title	Organisation
Ms Marnie Williams	Executive Director of Health and Safety	WorkSafe
Mr Vincent Schiraldi		Justice Policy Institute (USA)

Wednesday 19 April 2017 — Legislative Council Committee Room, Parliament House, Spring Street, Melbourne

Name	Title	Organisation
Ms Julie Edwards	Chief Executive Officer	Jesuit Social Services
Mr Daniel Clements	General Manager – Justice Programs	
Ms Jodi Henderson	Executive Director – Youth Justice Operations	Department of Justice and Regulation
Ms Georgie Ferrari	Chief Executive Officer	Youth Affairs Council Victoria
Dr Jessie Mitchell	Policy Manager	
Akolda		
Ms Trish McCluskey	Director Strategie Initiatives	Berry Street
Mr Julian Pocock	Director Public Policy and Practice Development	
Mr Wayne Muir	Chief Executive Officer	Victorian Aboriginal Legal Service
Ms Nerita Waight	Lawyer and Policy Officer	
Mr Patrick Warner	Principal Legal Officer – Civil Section	
Deputy Commissioner Andrew Crisp		Victoria Police
Assistant Commissioner Stephen Leane		

Tuesday 30 May 2017 — Meeting Room G.6, 55 St Andrews Place, East Melbourne

Name	Title	Organisation
Mr Julian Kennelly	Media and Communications Manager	Community and Public Sector Union
Mr Andrew Capp	Team Leader – Membership Development	
Mr Wayne Gatt	Secretary	The Police Association Victoria
Mr Brendan Murray		
Ms Helen Fatouros	Executive Director of Criminal Law Services	Victoria Legal Aid
Mr Rob Gray		
Mr Vince Coleman		
Mr Eddy Poorter		

**Wednesday 14 June 2017 – Legislative Council Committee Room,
Parliament House, Spring Street, Melbourne**

Name	Title	Organisation
Ms Kym Peake	Secretary	Department of Health and Human Services
Mr Neil Comrie	Former Chief Commissioner – Victoria Police	
Mr Hugh de Kretser	Executive Director	
Ms Shahleena Musk	Senior Policy Advocate	Human Rights Law Centre
Ms Aline Leikin	Lawyer – Indigenous Rights Unit	
Mr Warren Eames	Acting Director	
Ms Soon-Lien Quek	Manager Knowledge and Advocacy/Acting CEO	YSAS
Ms Sarah Nicholson	Manager Sector and Community Partnerships	Centre for Multicultural Youth
Mr Gatluak Puoch		
Ms Fleur Ward		
Ms Fiona Dowsley	Chief Statistician	Crime Statistics Agency
Ms Jennifer Bowles	Churchill Fellowship	

**Tuesday 27 June 2017 – Legislative Council Committee Room,
Parliament House, Spring Street, Melbourne**

Name	Title	Organisation
Mr Greg Wilson	Secretary	Department of Justice and Regulation
Ms Julia Griffith	Deputy Secretary – Youth Justice	
Professor James Ogloff		
Ms Gill Callister	Secretary	Department of Education and Training
Mr Matthew Hyde	Principal of Schools	Parkville College
Judge Amanda Chambers	President	Children’s Court of Victoria
Mr Andrew Jackomos	Aboriginal Children’s Commissioner	Commission for Aboriginal Children and Young People
Professor John Tobin		

Appendix 3

Relevant Human Rights Charter provisions

<i>Charter of Human Rights and Responsibilities Act 2006</i> (Vic)	Relevant sections: 10, 14, 17, 19, 21, 22, 23, 24, 25
United Nations Convention on the Rights of the Child	Relevant sections: 2, 3.1, 5, 12, 14, 19, 23, 24, 28, 29, 30, 31, 37, 39, 40
United Nations Rules for the Protection of Juveniles Deprived of their Liberty (“Havana Rules”)	Relevant rules: 12, 13, 17, 18, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 42, 47, 48, 49, 51, 53, 54, 63, 64, 65, 67, 81, 82, 83, 84, 85, 87
United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“Beijing Rules”)	Relevant articles: 5.1, 11, 13, 16, 18, 19.1, 20, 22, 26, 30
The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)	Relevant rules: 1, 3, 4, 23, 43, 44, 45, 49, 59, 75, 76, 78, 82
International Covenant on Civil and Political Rights	Relevant articles: 7, 9, 10

Appendix 4

Cherry Creek facility update

A4

Parliamentary Inquiry into Youth Justice Centres in Victoria – new Cherry Creek facility

The new facility will have 224 beds for remand and sentenced young people, a 12 bed mental health unit and an intensive supervision unit of at least 8 beds, with scope for further expansion within the government owned site.

Project Budget and Timelines

The facility is scheduled to commence taking young people in early 2021.

Key milestone dates and activities include:

- April 2017 to December 2017 –
 - site survey and documentation preparation for land acquisition and appropriate zoning and planning permit changes
 - environmental and biodiversity, along with cultural heritage surveys conducted for assessment and referral documents for State and Commonwealth environmental agencies and the Registered Aboriginal Party
 - engagement of principle consultant (architect), tendering process for the managing contractor due for completion in April 2018
- Early 2018 – Youth Justice Facility Plan made available to public before being submitted to the Minister for Planning
- 2018 – commencement of early works, commencement of construction
- 2020 – completion of construction
- 2021 – operational commissioning and intake of young people

Principal Consultant and Managing Contractor

- In May 2017, DJR released a Request for Tender to find a suitably qualified principal consultancy team to provide strategic planning and design services for the construction of the new purpose-built secure youth justice facility that will keep young people, staff and the community safe while addressing the offending behaviour of young people.
- After a rigorous tender and selection process, in July 2017, the design team of HDR, CGL and Aurecon was awarded the commission to design the new Youth Justice facility. The team from HDR has extensive international experience in designing state-of-the-art youth justice and correctional facilities. Their designs have a strong focus on both security and rehabilitation.
- With the principal consultant on board work began on Pre-design and Master Planning for the new facility.
- The Department has released a tender to appoint a managing contractor to work with the principal consultant during the design and construction phases. The managing contractor is expected to be announced in mid-2018.

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Economic Impacts

- Significant employment opportunities will be created by the project including between 2,000 to 3,000 direct and indirect construction jobs. Further the facility will create up to 450 ongoing jobs for the area and deliver an estimated economic benefit of \$420 million.

Environmental and Cultural Heritage Assessments

- The department is conducting an ecological and biodiversity assessment and an aboriginal cultural heritage survey for inclusion as part of the planning process for the new site.

Ecological and Biodiversity

- Experienced ecological consultants have been engaged to undertake environmental assessments to assist the Department in requesting the necessary Commonwealth and State environmental approvals prior to construction commencing.
- The engagements include preparation of an ecological report summarising ecological values of the study area, and on-site surveys to determine if any threatened species are present.

Cultural Heritage

- As part of the due diligence assessment of Cherry Creek it was identified that the area has potential to contain both surface and subsurface manifestations of Aboriginal places.
- Prior to construction of the new facility a Cultural Heritage Management Plan will be developed for inclusion within planning applications for the site.
- Consultants experienced in cultural heritage have been engaged to undertake field assessments and prepare a draft Cultural Heritage Management Plan to the standard required by Aboriginal Victoria's Guidelines.
- Activities for the Cultural Heritage Management Plan include: a review of previous studies conducted in the area; a site inspection for identification of surface artefacts and where appropriate the digging of test excavations to test for subsurface artefacts; an assessment of the cultural heritage significance of the findings and impacts from the project on cultural heritage, and recommendations for mitigation where required, (in accordance with current conservation practice and the conservation principles contained within the Australia International Council on Monuments and Sites the Burra Charter).
- The Cultural Heritage Management Plan has been lodged for evaluation with the Wathaurung Aboriginal Corporation as the Registered Aboriginal Party.

Community Engagement

- Following the announcement of the location for the new youth justice facility in Cherry Creek the engage.vic.gov/youthjusticecentre website has been used to receive community feedback and disseminate information. There have been over 6,900 visits to the engage.vic.gov.au/youthjusticecentre page.

- In June 2017, the department established a Community Advisory Group to help guide the development of the new youth justice centre and ensure the local community is informed and engaged as the project progresses.
- Following an open call for expressions of interest from Wyndham community members in April 2017, four Wyndham community representatives, including Little River have been appointed to the Community Advisory Group, as well as three Wyndham City Councillors and one council officer.
- The Community Advisory Group also includes an Independent Chair (Justin Giddings, CEO of Avalon Airport) and representatives from the Aboriginal community, the Department of Justice and Regulation and Victoria Police.
- To date the Community Advisory Group has met on a monthly basis, site viewings have been offered to the community and six community information sessions have been run. There have been seven Community Advisory Group meetings during (2017). To ensure the community continues to be engaged on the building of the new centre and have an opportunity to ask questions, seek more information and speak to the project team, two community information sessions were held in December. One information session was held at Werribee on the 6th of December and one was at Little River on the 11th of December.
- A summary of consultation statistics in relation to development of the new youth justice facility in Cherry Creek is provided in Figure 1 below.

Figure 1: Consultation statistics

3200	letters sent to local households
112	attendance by community members at the six community information sessions
6954	visits to the project website
76	subscribers to the project email updates

Community information session details

- **Session 1 and 2- Wyndham (Werribee) Community information session**
 - Held at the Jamieson Way Community Centre Point Cook Friday 7 April 4pm to 7pm and Saturday 8 April from 9am to 12pm.
 - Attended by representatives from the Department of Justice and Regulation, VicRoads, Public Transport Victoria, Department of Education and Training and the Department of Environment, Land, Water and Planning.
 - Artists' impressions and a range of information was available.
 - 43 community members attended.

- **Session 3- Wyndham (Little River) community information session July 24 2017**
 - Held at the Little River Mechanics Institute Hall on Monday 24 July from 5.30pm to 7.30pm.
 - Attended by Community Advisory Group members and representatives from the Department of Justice and Regulation.
 - Artists' impressions and a range of information on the project available.
 - 25 community members attended.
- **Session 4- Wyndham (Werribee) community information session September 11 2017**
 - Held at the Melbourne Water Discovery Centre in Werribee on September 11 2017 from 5.30pm to 7.30pm.
 - Attended by VicRoads, Public Transport Victoria and Community Advisory Group members.
 - Artists' impressions and drone footage of the site location available.
 - 12 community members attended.
- **Session 5- Wyndham (Werribee) community information session.**
 - Held at the Melbourne Water Discovery Centre in Werribee on Wednesday 6 December 2017 from 5.30pm to 7.30pm.
 - Attended by Community Advisory Group members.
 - Fact sheets, artists' impressions and drone footage of the site location available.
 - 2 community members attended.
- **Session 6- Wyndham (Little River) community information session**
 - Held at the Little River Mechanics Institute Hall on Monday 11 December from 5.30pm to 7.30pm.
 - Fact sheets, artists impressions and drone footage of the site location available for community.
 - Attended by Community Advisory Group members and representatives from the Department of Justice and Regulation.
 - 30 community members attended.

Design philosophy

Young people in custody are considered able to be rehabilitated but also are extremely impulsive and anxious, particularly while on remand or at the beginning of their sentence.

In providing effective rehabilitation, a Youth Justice custodial facility should ensure:

- The control and supervision of young people in the least restrictive level of security considered appropriate
- The personal safety of young people, staff, and visitors by providing an environment which aims to protect the physical and emotional wellbeing of individuals
- A humane system of detention by seeking to normalise the lives of young people consistent with community standards

The facility is being designed to ensure the developmental needs of young people are catered for including their medical, religious and cultural needs as well as maintaining contact with their families. Further the facility is to provide for all educational, welfare and recreational activities and other forms of assistance to meet the individual needs of young people. The design will contribute to young people being provided targeted interventions to address their offending behaviour, to reduce their risk of reoffending, as well as opportunities for success through participating in programs for self-improvement.

It is envisaged the facility will enable flexible accommodation options, for small groups of young people as required, so that young people are placed in accommodation appropriate to their assessed security rating and risk classification, and in accordance with legislative requirements.

The Youth Justice Custodial Classification and Placement Unit, which will be fully established in early 2018, will use an empirical risk assessment tool and other assessment processes for all young people on reception into custody. The service will assess factors such as risk of reoffending and identified needs; security risks; drug and alcohol use/treatment and transitional needs. This work of this Unit will contribute to the stability and rehabilitative function of the Youth Justice Centres.

Facility Design

- The project for the construction of Cherry Creek is still in the early stages and there is significant work to be done on the detailed design within the facility and operating models of the new youth justice centre.
- The design of the facility will take into consideration the recommendations from the *Review of the Parkville Youth Justice Precinct* conducted by Mr Neil Comrie, the outcomes and recommendations from the *Youth Justice Review and Strategy: Meeting needs and reducing reoffending* by Penny Armytage and Professor James Ogloff AM, and the Commission for Children and Young People *The Same Four Walls* Report.
- The design will also be informed by a wide range of youth justice experts and stakeholders.
- During the design stage a number of focus group sessions have been held with key stakeholders including staff and a wider group of key stakeholders delivering services and programs to youth justice. In October, five focus group sessions were held including for the:

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- design of the centre
- operating model
- rehabilitation and education of young people
- transition and reintegration of young people
- cultural responsiveness of the facility for Aboriginal young people
- A wide range of representatives from community, youth services providers, youth justice experts and experts across rehabilitation, training / education and design participated.
- Principal consultants from the design and architecture firm HDR were present and actively engaged in each focus group session.
- Youth justice staff across Malmsbury and Parkville are also being consulted on the development of the new youth justice centre.
- A number of face-to-face consultation sessions have already taken place. Further opportunities will be available, both online and face-to-face for staff.

Youth Justice Reference Group

A Youth Justice Reference Group has been established as the key advisory body for the Youth Justice service system. The scope of the Reference Group includes providing specialist advice on the design, physical configuration and proposed operating model of the new Youth Justice centre at Cherry Creek, and the group will remain engaged on the project as it progresses.

The Reference group includes the following stakeholders:

- Principal Commissioner for Children and Young People
- Commissioner for Aboriginal Children and Young People
- President of the Children's Court of Victoria
- Chairperson Youth Parole Board
- Professor James Ogloff, Independent consultant
- Penny Armytage, Independent Consultant
- Lisa Ward, Independent Consultant
- Koori Caucus representative
- Koori Youth Council
- CEO Youth Affairs Council of Victoria
- CEO Centre for Multicultural Youth
- Executive Director Orygen
- CEO, Jesuit Social Services
- CEO, Victorian Aboriginal Legal Service
- CEO, Victorian Aboriginal Child Care Agency

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- CEO, Youth Support Advocacy Service
- CEO, Victorian Aboriginal Children and Young People's Alliance
- CPSU
- Managing Director Victoria Legal Aid
- Victorian Aboriginal Community Controlled Health Organisation
- Victoria Police

The first meeting of the Reference group was held in December 2017.

Appendix 5

Department of Justice and Regulation response

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Department of Justice and Regulation

Youth Justice

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Mr Patrick O'Brien
Secretary
Legal and Social Issues Committee
Parliament House, Spring Street
EAST MELBOURNE VIC 3002

Dear Mr O'Brien

Parliamentary Inquiry into Youth Justice Centres in Victoria

I write in response to your correspondence of 16 September 2017 to Mr Greg Wilson, Secretary Department of Justice and Regulation (DJR), and 1 December 2017 and 8 February 2018 to Ms Rochelle Shaw, Principal Policy Officer, Youth Justice, requesting information in relation to programs delivering therapeutic care units, the isolation register, Significant Event Case Notes, lockdown data and screening/risk assessment.

Programs delivering therapeutic care units

In 2016, a trauma informed model of care for youth justice facilities was developed. The model in its entirety has not been implemented, however a number of elements of the model have been, including the establishment of a Practice Development Team made up of Senior Practice Leaders at each precinct and Practice Leaders. The Practice Development Team promotes best practice principles in trauma informed care, secondary consultation with staff, and live supervision (working side by side staff working with young people) through interactions with young people as well as specialist input into therapeutic plans.

Other initiatives, consistent with the model have been developed such as the Achieve, Challenge Encourage (ACE) behaviour management model, which is now fully implemented across both youth justice precincts (a copy of the ACE behaviour management model was provided to the Committee as part of responses to Greg Wilson's Questions on Notice).

In addition, reform work is underway in response to the Armytage Ogloff Review to establish a new integrated case management approach across community and custody, based on risk and needs assessment, to ensure all young people engage in the programs and services needed for their rehabilitation. Once implemented, all staff will be trained in the new approach to ensure they are supported in effectively identifying and managing young people's individual needs and risks and are connecting young people into the right services.

Isolation register

The isolation register has been updated to record the reason for isolation based on section 488 of the *Children, Youth and Families Act 2005* (CYFA). More stringent requirements for reporting



isolations have been introduced as part of the *Youth Justice Reform Act 2017*, which commenced on 30 November 2017. In accordance with these reporting requirements isolations are audited and reported on a daily basis as part of the daily reporting process. The daily report includes isolations for Aboriginal and non-Aboriginal young people and will be able to be analysed to identify trends.

Significant Event Case Notes

Significant Event Case Notes (SECNs) were introduced in 2011 and are used to communicate young people's behaviours of concern where that behaviour does not reach the threshold for an incident report, but is more significant than behaviours recorded in a standard case note. SECNs provide insight into lower level persistent behaviours and can show a pattern of behaviour overtime, including a pattern of escalation.

SECNs are attached to the young person's Client Relationship Information System (CRIS) case file in the same way that incident reports are. Staff are able to access both SECNs and incident reports from CRIS. A significant sample of all SECNs are audited on a monthly basis to check that the correct threshold is being applied. Based on the audit results some SECNs may be upgraded to a Category 2 incident report.

Any violence against staff is recorded as a Category One or Two Incident Report depending on the seriousness of the incident. All incidents of alleged criminal behaviour are reported to Victoria Police.

Lockdown data

Prior to April 2017 lockdowns were recorded on paper based registers by unit, rather than by individual young person. While the period of being locked in their room was recorded as an isolation on CRIS, the system did not differentiate between an isolation linked with a lockdown or an isolation in relation to behaviour. This has created issues for reporting on the number of individual episodes of lockdown experienced by young people prior to April 2017.

Since April 2017, lockdowns are recorded electronically in CRIS and are differentiated from behaviour based isolation. In addition, DJR is in the process of establishing quarterly reports of the number of individual episodes of lockdown experienced by young people to be provided to the Commission for Children and Young People.

Table 1 provides quarterly data on lockdowns for the period between May 2017 and December 2017 (inclusive).

This data represents any period of isolation experienced by a young person due to a lockdown. Lockdown can be due to the management of a major incident, threat within the unit or the precinct, or staffing issues.

If a unit of 15 young people is locked down for an hour this would equate to 15 episodes of lockdown. If the young people were rotated out of their rooms 4 times during the lockdown period, this would equate to 60 episodes of lockdown.

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Table 1. Lockdown episodes at Parkville and Malmsbury Youth Justice Precincts, by quarter

Facility	Q4 2016-17 (May and June only 2017)		Q1 2017-18 (Jul – Sep 17)		Q2 2017-18 (Oct – Dec 2017)	
	Lockdown episode	Unique young people	Lockdown episode	Unique young people	Lockdown episode	Unique young people
Parkville	360	112	2635	212	3295	211
Malmsbury	737	135	1221	117	1472	144
TOTAL	1097	238^	3856	307^	4767	326^

^Note, some young people move between facilities, as such the total unique young people may not equal the sum of unique young people at Parkville and Malmsbury.

Current Screening/risk assessment in youth justice facilities

The Youth Justice Custodial Manual outlines current procedures for admission and case management of all young people entering and within youth justice facilities (these procedures can be found in the Youth Justice Custodial Manual, previously provided to the Committee).

Prior to accepting a young person into custody, staff must undertake an immediate health risk assessment to determine if the young person is medically fit for admission, or whether staff should direct the transport service to a medical facility for the young person to be assessed.

Upon entering custody, admission staff must consider the young person's presentation including whether they appear to be substance affected or injured.

Where a young person has any health problems (either physical or mental), or alleges abuse or inappropriate treatment in police custody, an immediate health assessment must occur. In all other cases, a health assessment is required within 24 hours, or within 12 hours for Aboriginal young people.

All young people are closely monitored (for the first 24 hours) upon entering custody in order to ensure their safety, to continue to identify immediate risks and to help the young person to settle into custody.

Case management of young people in custody involves assessment followed by coordination of a range of resources and services. A Client Assessment and Plan – Victoria Offender Needs Indicator for Youth (CAP-VONIY) is developed. The CAP_VONIY includes an assessment of risk and needs and recommends the intensity of rehabilitation required based on that assessment.

The CAP-VONIY includes a range of planning and review steps throughout a young person's stay in custody including:

- A Client Service Plan is developed in collaboration with the young person and their significant others to address their offending behaviour and other needs.
- A Risk Assessment and Plan for temporary leave that identifies risky situations for the young person while on temporary leave and proposes strategies to deal with those risks.
- Custodial Progress Reports and Reviews detailing the young person's progress while in custody. Reports relate to such things as accommodation, education, recreation, positive peer interactions, health needs and family. Reviews also include a recommendation on whether the young person is appropriate for parole.
- Parole Plan and Update, containing plans and strategies for use with the young person during their initial time on parole. The update provides additional information requested from the Youth Parole Board or Youth Residential Board.
- Exit Plan, completed for young people deemed not appropriate for parole.

Implementation of recommendation 6.6 of the Armytage Ogloff Review

The Government has announced an initial investment of \$50 million over four years to respond to the priority recommendations of the Armytage Ogloff Review. This includes investing \$11.5 million to develop a new risk and needs assessment approach as part of the new integrated case management framework. Young people in custody and on community supervision will be assessed to determine their risk of reoffending. This assessment will also identify acquired brain injuries, intellectual disabilities, and other mental health concerns, as well as enabling pro-active information sharing about family violence.

A new case management framework informed by appropriate risk and needs assessment will strengthen decision making across the youth justice system and ensure young people are connected to the programs and services that directly target their offending. Detailed work is underway on the development of the framework and introduction of appropriate assessment services and tool.

Should you require any further information or clarification, please do not hesitate to contact me at

[REDACTED]

Yours sincerely

[REDACTED]

JULIA GRIFFITH
Deputy Secretary
Youth Justice

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Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017 (Vic)

Children, Youth and Families Regulations 2007 (Vic)

Ombudsman Act 1973 (Vic)

Protected Disclosure Act 2012 (Vic)

Sentencing Act 1991 (Vic)

Victorian Charter of Human Rights and Responsibilities Act 2006 (Vic)

Table of cases

R v Mills [1998] VICSC 7

Woods v DPP [2014] VSC 1

DPP v SL [2016] VSC 714

DPP v SE [2017] VSC 13

Table of treaties and charters

Convention on the Rights of the Child, GA Res 44/25, Treaty Series, vol. 1577 (adopted 20 November 1989).

United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), A/RES/45/113 (adopted 14 December 1990).

United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), A/RES/40/33 (adopted 29 November 1985).

United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), A/RES/70/175 (adopted 8 January 2016).

Minority reports

Minority Report on the Inquiry into Youth Justice Centres in Victoria

Youth Justice Review and Strategy

In mid-2016, the Victorian Government commissioned the first comprehensive independent review of Victoria's youth justice system in 17 years, undertaken by Prof James Ogloff and Penny Armytage. In August 2017, the Government released the more than 700 page report from the *Youth Justice Review and Strategy: Meeting needs and Reducing Offending* (Ogloff/Armytage Review) and accepted or accepted-in-principle, all 126 recommendations.

The Government took immediate action on many of the report's recommendations, committing \$50 million to respond to the most pressing recommendations. This included funding to support¹:

- A new custodial operating model to better manage young people in custody
- Greater workforce capability by providing better training and a targeted recruitment campaign
- 21 additional Safety and Emergency Response Team (SERT) staff
- A new risk and needs assessment system to reduce the risk of re-offending
- Addressing Aboriginal over-representation by employing an additional Aboriginal Liaison Officer
- The biggest ever expansion of rehabilitation programs.

When this Parliamentary Inquiry was established on 10 November 2016, the Ogloff/Armytage Review had been underway for months. It also had a scope that was significantly greater than this Committee's, which focused only on youth justice centres in Victoria as distinct from the youth justice system as a whole. The Ogloff/Armytage Review involved extensive stakeholder consultations, consideration of expert advice and international research and is a comprehensive and independent review. Since its publication it has been commended by the sector, referenced extensively and has been the basis of significant government funding.

¹ Daniel Andrews, Building A Modern Youth Justice System, media release, Melbourne, 5 August 2017.

We would make three points in relation to the scope of the current Inquiry and its relationship with the recent Ogloff/Armytage review.

First, there is considerable overlap between the current inquiry and the Ogloff/Armtage review. This is reflected in the fact that the bulk of this report's findings and recommendations are already wholly or partially acquitted by those proposed by the Ogloff/Armytage Review. Those recommendations were all accepted by the Government and are in various stages of being implemented. We support all of the recommendations that reflect the conclusions of the Ogloff/Armytage review.

Second, we note that the hearings for the current inquiry concluded some months ago and that DJR has implemented many changes since it has assumed responsibility for this policy area.

Finally, we would stress that the issues considered in this inquiry are complex and have evolved over the long-term. These changes have occurred over the life of multiple governments. It is critical that the long-term nature of the environment in which crime is occurring is reflected in any findings and recommendations.

Some elements of this report do consider the longer-term evolution of youth justice issues (eg much of the data is tracked over a ten year horizon). However, we would note that the evidence base of the current inquiry is narrower than that considered by the Ogloff/Armytage Review and that this has impacted on some of the findings.

The Complex Causes of Offending by Young People

The causes of youth offending are highly complex and evolve over time.

At an individual level, it is clear that there is a link between the social environment that a young person finds him or herself in and that person's propensity to be involved in unlawful activity. These linkages are complex and are still the subject of considerable empirical study both by academics and policy makers. We support policy development continuing to be informed by the findings of these studies.

In addition, a number of broader social trends have had an impact on both crime rates and the nature of crimes committed. These trends include changes in the:

- characteristics of social disadvantage across the state.
- geographic distribution of where young people live and how they interact with social services and each other.
- influences on young people's attitudes, including the growing role of social media networks.

In light of the above, we note the following overarching trends in offending by young people in Victoria (which are broadly reflected in the Inquiry report):

- The overall rate of youth crime has declined over recent years.
- The nature of offending has changed, with a small minority of offenders being involved in more serious crimes as their first interaction with unlawful activity.

The Goals of a Youth Justice System

We believe that a youth justice system should aim to:

- maximise the long-term rehabilitation prospects of young offenders;
- protect the community; and
- provide appropriate accountability for individuals who have committed crimes.

Given the complex underlying causes of crime noted above, we believe that a youth justice system will best achieve these outcomes if it:

- Is flexible enough to accommodate the individual circumstances of each young person.
- Reflects the complex interaction of the underlying causes of crime.
- Adopts a holistic approach in which policies are implemented that encompass the full spectrum of a young person's potential or actual involvement with crime, including:
 - preventative measures;
 - diversion from formal proceedings where appropriate; and
 - sentencing that reflects the particular needs of younger people and what will be most effective in achieving rehabilitative outcomes.

We support the government's commitment to a holistic approach to youth justice. This includes funding a wide range of diversion programs tailored to young people in different circumstances. It also includes an investment in education and other social services for young people and their families that can act as powerful preventative measures.

The Need for Upgraded Facilities

In response to the changing nature of crime patterns noted above and also to the poor standard of facilities available to the youth justice system, the Government has committed to investing significant resources in upgrading youth justice facilities.

The poor quality of youth justice facilities has been an issue for some time. The Inquiry found that youth justice infrastructure was not currently fit-for-purpose. In particular,

the Parkville precinct was constructed in the 1990s to residential accommodation standards and has proved to be inadequate to accommodate the cohort of young offenders presenting today².

The Victorian Ombudsman's October 2010 *Investigation into conditions at the Melbourne Youth Justice Precinct*, made the recommendation:

Review the suitability of the Precinct in light of my investigation with a view to replacing it with a new facility³.

The Ombudsman's report identified a number of wide ranging issues including design features not suitable for a juvenile custodial environment, potential human rights breaches and failures to respond to allegations of improper staff conduct.

....physical infrastructure was not assisting the rehabilitation of young people and the safety of the facility actually is a real consideration.... it is important to have a facility that is fit for purpose⁴.

Following the receipt of *The Security Review of critical incidents at Parkville Youth Justice Precinct on 6 & 7 March 2016* by Peter Muir, which recommended that the DHHS:

Undertake a master-planning exercise for the Parkville Youth Justice Precinct. This review should assess the long term viability of the facilities and re-development options both on and off-site. This should be done as a matter of some urgency⁵

the Government commenced work on preparing a business case for the fortification and rebuilding of the Parkville Youth Justice Precinct⁶. While a preliminary business case was finalised in October 2016, the DHHS accelerated this process following well documented incidents in November 2016⁷.

All the expert evidence supports the Victorian Government decision to build a new purpose-built \$288 million, 224-bed youth justice facility. The much needed new youth

² Jodi Henderson, Department of Justice and Regulation, Opening Statement, 19 April 2017

³ Victorian Ombudsman, *Investigation into conditions at the Melbourne Youth Justice Precinct*, October 2010 p. 40

⁴ Deborah Glass, Victorian Ombudsman, Transcript of evidence, 17 March 2017, p. 9.

⁵ Peter Muir Consulting Pty Ltd, *Review of Incidents at Parkville Youth Justice Precinct – March 2016*, p 21

⁶ Kym Peake, Department of Health and Human Services, Transcript of evidence, 14 June 2017 p. 3.

⁷ Kym Peake, Department of Health and Human Services, Transcript of evidence, 14 June 2017 p. 4.

justice centre will be built in Cherry Creek and will incorporate all the design and security imperatives outlined by the former Chief Commissioner for Police, Neil Comrie AO who gave evidence to the Committee.

We support the Government's commitment to invest in facilities that are fit-for-purpose and that will be able to better cope with the changing needs of the youth justice system.

Staffing and Governance

Prior to the MoG change in April 2017, youth justice was the responsibility of the DHHS. The Committee heard the department experienced significant staffing and governance stresses during the amalgamation of the then Department of Health and Department of Human Services in 2011.

The Community and Public Sector Union (CPSU) provided evidence that:

....there were 1000 staff removed from the Department of Human Services between 2011 and 2013, of which some proportion of those 1000 would have been working in the youth justice system⁸.

Cuts to the number of experienced staff and the lack of central oversight by the DHHS contributed greatly to staffing issues such as recruitment, training and rostering. As a result, these factors would have had a cascading effect to the ongoing stability of youth justice precincts and the safety of youth justice staff.

The DHHS stated:

There have also been challenges in maintaining stable staffing We encountered particular challenges in attracting and retaining sufficient numbers of qualified staff to ensure stable staffing for each shift at Malmsbury following the opening of the secure site in July 2015⁹.

To fill the staffing gap left by the previous government, the DHHS were reliant on high numbers of agency staff to fill rosters, particularly at Malmsbury¹⁰.

In December 2016, the Government announced an extra 41 new youth justice staff positions to improve safety¹¹. In addition the Committee heard evidence that two teams of 8¹² Corrections Victoria Security and Emergency Response Group staff are now stationed at Parkville and Malmsbury youth justice precincts to provide support and training to youth justice custodial staff¹³.

⁸ Andrew Capp, Community and Public Sector Union, Transcript of evidence, 30 May 2017 p. 8.

⁹ Kym Peake, Department of Health and Human Services, Transcript of evidence, 14 June 2017 p.3.

¹⁰ Kym Peake, Department of Health and Human Services, Transcript of evidence, 14 June 2017 p. 3.

¹¹ Daniel Andrews, More Staff To Crack Down On Violent Young Offenders, media release, Melbourne, 3 November 2016.

¹² Jodi Henderson, Department of Justice and Regulation, Transcript of evidence, 19 April 2017, p 19.

¹³ Jodi Henderson, Department of Justice and Regulation, Opening Statement, 19 April 2017.

On 3 April 2017, youth justice was moved to the DJR as part of a MoG change that includes a new leadership team with significant Corrections experience in operational leadership, both in custodial and community settings¹⁴.

Since the transition there has been significant investment in workforce capability:

...all safety and emergency response teams have been trained in tactical options, which includes containing incidents, limiting escalation and minimising involvement of other young people.

*Over the next 12 months we expect that all youth justice staff will be trained in tactical options. Training and exercising is occurring in updated emergency management procedures. Finally, you may be aware that there has been a new behavioural model introduced all staff will be trained in that by August 2017*¹⁵.

We understand that tactical response training is currently being rolled out to all youth justice staff. In addition, a new behaviour management model has been successfully introduced across all youth justice precincts and training provided to all staff to ensure that young people clearly understand the consequences of their behaviour.

The Government also passed legislation that will see increased sentences for offences committed in custody such as assaulting staff.¹⁶

Reporting and Transparency

From January 2016, the DHHS began reporting its most serious incidents, referred to as Category 1 incidents, on a quarterly basis on their website. We believe that this measure has significantly improved transparency and accountability. This practice has continued by the DJR following recent MoG changes. Prior to this, such incidents were reported only annually.

The DHHS also introduced changes to capture a wider range of incidents in their recording of Category 1 incidents as recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse¹⁷.

¹⁴ Greg Wilson, Department of Justice and Regulation, Transcript of evidence, 27 June 2017 p. 2.

¹⁵ Greg Wilson, Department of Justice and Regulation, Transcript of evidence, 27 June 2017 p. 2.

¹⁶ Children and Justice Legislation Amendment. (Youth Justice Reform) Act 2017

¹⁷ Youth justice reviews and reporting:

<www.justice.vic.gov.au/home/justice+system/youth+justice/youth+justice+custodial+quarterly+incident+reporting+1+january+31+marc h+2016>

Following the move of youth justice to the DJR, additional incidents such as self-harm have been captured in Category 1 data along with a concerted effort by staff to report and appropriately categorise all incidents that occur across Victorian youth justice centres¹⁸. We also heard evidence that:

For any act of violence — whether it is physical, psychological or verbal — that constitutes a criminal act then all those matters are referred to police in relation to police investigation¹⁹.

In addition, the Inquiry noted increased oversight by external bodies including the Commissioner for Children and Young People (CCYP). In her evidence to the Inquiry, the Commissioner referred to legislative changes made in 2016 that required the CCYP to receive reports of serious incidents²⁰:

....since March 2016 we have visibility of serious incidents occurring in youth justice in a timely way and a more complete visibility of those. Up until the amendments that were made to the commission's legislation last year, we did not receive those²¹.

Further legislative changes in 2017 have improved reporting relating to any use of physical force or isolation to be reported to the DJR Secretary as soon as possible²².

We consider these developments in reporting and transparency to be a significant and positive development in Victoria's youth justice system and that they will help the system to understand and address trends as they emerge.

Conclusion

We support the Inquiry's finding that:

- The causes of crime by young people are complex and ever changing.
- The nature of crime committed by young people has been changing over a long period of time (longer than the political cycle). This includes a falling overall rate of crime and a small but growing number of young people who are committing serious crimes.
- A holistic approach to dealing with youth justice is appropriate that suitably balances long-term rehabilitative goals with community protection and accountability.

¹⁸ Youth justice reviews and reporting:

<www.justice.vic.gov.au/home/justice+system/youth+justice/youth+justice+reviews+and+reporting>

¹⁹ Jodi Henderson, Department of Justice and Regulation, Transcript of evidence, 19 April 2017, p. 17

²⁰ Children Legislation Amendment Act 2016

²¹ Ms Liana Buchanan, Commission for Children and Young People, Transcript of evidence, 17 Mar 2017 p. 17.

²² Children and Justice Legislation Amendment. (Youth Justice Reform) Act 2017

The goals of a youth justice system will not be advanced by simplistic or sensational commentary.

We support the government's multi-pronged approach to youth justice that includes:

- Preventative measures.
- A range of diversion programs.
- Initiatives that acknowledge the unique characteristics of each young person.
- The need to invest in the youth justice system – in both its facilities and its people - to ensure that the goals of rehabilitation and community protection can be achieved.

We also support the Government having accepted in-principle all recommendations of the Ogloff/Armytage report and acknowledge that a considerable amount of progress has already been made in implementing changes arising from these recommendations. This includes considerable funding commitments to programs across the portfolio.

We support the recommendations in this report that wholly or partly align with recommendations contained in the Ogloff/Armytage report and – in relation to the other recommendations arising from this Inquiry – encourage the Government to consider these in its ongoing efforts to strengthen the youth justice system.

Jaclyn Symes

Daniel Mulino

Adem Somyurek

Inquiry into Youth Justice Centres in Victoria

Minority Report Nina Springle

Member for South-East Metropolitan Deputy Chair of Legal and Social Issues Committee

Since November 2016 when the committee began work on this inquiry, there have been substantial developments in the area of youth justice in Victoria. At that time, the youth justice system was in a state of turmoil, primarily due to neglect over many years, by successive governments. Not only had this disregard for the maintenance and evolution of the system failed children in custody, but also created unnecessary risks to the broader community, who at times felt the repercussions of a severely broken system in desperate need of attention.

The main body of this report outlines many of those developments and provides an exploration of some of the stand out themes from evidence that was presented during the course of the inquiry which resonated with the committee as a whole. It also takes into account several other substantive reviews undertaken by experts in the field of justice, forensic behavioural science, child rights etc. which occurred simultaneously.

However, I feel there are additional recommendations that should be given prime consideration when assessing necessary reform to Victoria's youth justice system and how its overall operational and strategic functioning impacts on youth detention centres across the state. These views are based on principles of human rights and rehabilitation through therapeutic care. They are based on international best practice; on what is widely regarded as most effective means of assisting young offenders to get their lives back on track to become positive citizens, and successfully reducing the numbers of young people incarcerated which ultimately keeps the community safer. Finally, they are based on the concept that rehabilitation is consistent with holding young people to account for their actions; that incarceration is a punishment in and of itself and should be used as an opportunity to address the complex needs of youth offenders rather than allowing it to be a pathway into the criminal justice system.

The following list is by no means exhaustive but rather recommendations that may not have been given priority in the majority report or were not given the weight I believe they deserve. I will let the submissions they come from speak for themselves as those submissions have been compiled by practitioners, academics and other experts, who spend much of their professional lives working on these matters in depth and on the front line.

Some of this is not reinventing the wheel. It wasn't so long ago that elements of Victoria's youth justice system were seen as the best in the country. We by and large already know the answers to the problem we are seeking to address. With mindful investment and evidence-based reform, Victoria could be a leader in this space again. It will however require

political will, listening to the expertise that exists about what will work and what wont, and leaving behind the use of sensationalised public narratives for political purposes.

Recommendations:

Human Rights

- Victoria's youth justice framework should be underpinned by key principles from international human rights instruments and the Charter, in addition to OPCAT. (Submission 12).
- A new youth justice framework should be developed that is consistent with this approach that includes treatment of young people held in youth justice centres. (Submission 19)
- The minimum age of criminal responsibility should be raised to 12 years old. (Submissions 10 & 20)
- Children should leave the youth justice system in a better life position than when they entered it (Submission 15)

Reinvestment and Integration with Child Protection

- Given the high proportions of children who have experienced both the child protection and the youth justice systems, the medium to long term goal should be to bring youth justice back under the administration of the Department of Health and Human Services in order to reconnect the youth justice system with child protection. (Submissions 10 & 15)
- More investment in children, youth and family series in areas that have high rates of young people in the youth justice system (Submission 10, 12, 15, 19 & 20)
- Investing in helping vulnerable young people stay engaged or re-engage in education and training (Submission 20)

Detention

- Detention should be used as absolute last resort. (Submissions 7 & 15)
- The dual-track system should be retained. (Submission 10 & 12)
- Custody and accommodation options for young people in the youth justice system need to be tailored according to assessed need and risk. (Submission 8)
- Rehabilitation and therapeutic care rather than security should underpin the design of youth justice centres. Youth justice centres should be designed based on evidence of what works best to rehabilitate young people. Centres should be small, located in close proximity to young people's home communities and built on principles of normality and humanisation. This means avoid future proofing and over design for the future orientated fears/*possible* risks (Submission 5)
- New youth justice centres should support rehabilitative and educational supports comprising of a mix of units to meet complexity and diversity of young people including complex needs/therapeutic unit (Submission 12)

- Behaviour management to incorporate appropriate 'step up, step down' incentive schemes with isolation/separation the absolutely last resort, after all reasonable therapeutic options have been attempted (Submission 5)

Remand and Bail

- Remand population must be reduced (Submission 15)
- Additional remand options should be explored e.g. Bail hostels or a remand farm (Submission 15)
- Breach of bail should not result in a new charge (Submission 12)
- Bail support services should be expanded (Submission 12)

Welfare

- Children should not be in adult prisons (Submission 15, 19 & 38)

Rehabilitation and Therapeutic Care

- Rehabilitation through therapeutically-informed, evidence-based interventions should underpin the entire youth justice system i.e. trauma informed approaches to out of home care, youth justice policy and courts (Submission 15 & 19)
- Models of care should also be therapeutic, and trauma informed (Submission 12 & 20)
- All youth people in the youth justice system need to have individual management plans at all times, developed predominantly by health/therapeutic staff with regular reviews

Aboriginal Young People

- Prioritise Aboriginal cultural rights by investing in culturally appropriate interventions developed and delivered in partnership with local communities (Submission 15 & 20)
- Establish a Koori youth cautioning program (Submission 20)
- Expansion of Koori Liaison Officers and Community Workers at all levels of youth justice (Submission 8)

