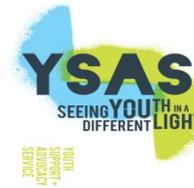


Youth Diversion makes sense

- ✓ Prevents a child from progressing through the criminal justice system
- ✓ Gives vulnerable children a second chance and provides effective & tough options that tackle the causes of crime
- ✓ Enhances community safety by reducing reoffending
- ✓ Uses resources efficiently & reduces public expenditure

Smart Justice for Young People, is a youth justice advocacy coalition, supported by peak bodies, community legal centres, youth services, and other community organisations, many of which directly support and work with children and young people in contact with the criminal justice system.



Youth diversion makes sense



Victoria has a strong track record and focus on diversion and the rehabilitation of children in its youth justice system. However there is room for improvement, with some inequities, inconsistencies and gaps in the system needing to be addressed.

Issues with the current system:

- Some children, especially in rural and regional areas do not have a diversion option available in their local area, so they end up with a criminal record.
- Current diversion programs are either limited in their eligibility, catchment or do not have ongoing Government funding.
- While most members of Victoria Police do a good job diverting young people via warnings, cautions and referrals to support programs, there is some reluctance by some members to caution or refer some children to diversion.

We can address these issues by:

- Legislating a pre plea diversion scheme in the Children's Court.
- Investing in diversion programs that are culturally appropriate and tailored to the individual child's needs and supports them to address the underlying causes of their offending, and
- Ensuring all police are aware of, apply and refer to all available youth diversion and community support options, appropriately, fairly and consistently.

What is diversion?

Diversion prevents a child from progressing through the criminal justice system.

A child's level of contact with the criminal justice system increases their risk of offending;ⁱ

By diverting them away from crime, prosecution and custody, linking them to appropriate support programs, and avoiding a criminal record, these children are encouraged to get on with their lives, address the issues underlying their behaviour, and grow into responsible and productive citizens.

The diversion continuum in Victoria

Victoria has a strong track record and focus on diversion and rehabilitation of children in its youth justice system, and we need to protect and build on these elements.

The youth justice system can be mapped as a continuum encompassing five stages, with diversion options available at each stage along the continuum:



An important stage of diversion is early intervention with the best outcomes being preventing children from coming into contact with police in the first instance.

We are focusing on the stages of **police contact** and **court appearance**. Many young people who come into contact with police are diverted away from Children's Court proceedings through police referrals to the Youth Support Service, either informal or formal police cautions, Victoria Police's ROPES program, fines, or other court based diversionary programs like Right Step at Moorabbin Court or restorative justice programs like Youth Justice Group Conferencing. (see description below)

Police contact

Pre-court diversion

Where offences do not go to court, such as a formal or informal police caution. Police often encounter young people whose anti-social behaviour or offending does not warrant formal charges, but there are obvious vulnerabilities which point to the likelihood of further offending.

- ✓ **Victoria Police Cautioning program**
 - Informal cautions and warning (not recorded)
 - Official cautions at police station - discretion and process guided by Victoria Police Manual.

✓ **Victoria Police referrals to other programs**

SupportLink (referral management framework for Victoria Police): Police identify young person or family who present with support issues and refer them to appropriate local support services via a single referral gateway.ⁱⁱ

Youth Support Service (YSS): A DHS funded program, offers diversion that address the underlying drivers of youth offending behaviours, and is currently available to police in the Melbourne metro and some regional areas via the 'Supportlink' referral website. Police directly refer young people aged between 10 and 17 years, at risk of becoming involved in or in the early stages of involvement with youth justice, to a youth worker for general casework support and links to relevant services and programs.

Youth Referral and Independent Person Program (YRIPP): Police are provided with a trained, Independent Person to attend the police station and sit in on an interview with a young person under 18 years. YRIPP refers young people to local health and welfare support services, aiming to reduce the risk factors and increase the protective factors associated with youth offending.

Court Appearance

Pre-plea diversion

Where offences go to court, but children are placed on a diversion plan before entering a formal plea of guilty. Upon successful completion of the plan the offences are struck out. There is no criminal record, since there is no formal finding of guilt;

✓ **Police informant refers young person to a diversion option (where available e.g. ROPES or locally based diversion programs such as Right Step in Moorabbin).**

Court adjourns the matter to allow young person to undertake the diversion program. If successfully completed the charges are struck out, avoiding a finding of guilt against the young person.

ROPES: is a court diversion program which is a joint venture between Victoria Police and the Children's Court of Victoria. Police officers are teamed up with young offenders (with no prior criminal history & having committed relatively minor offence) in the one day activity of climbing ropes. This is followed by education about the impact of a police record. If the course is successfully completed the young person is not required to appear at court and the charge is struck out.

Right Step: which operates out of Moorabbin Justice Centre, is a more intensive diversion program than ROPES directed at addressing the causes of offending by young people who are at risk of further offending. Once successfully referred to the program by police and endorsed by the Magistrate, the young person is required to engage in an intensive eight week program of case managed counselling and support. On completion of the eight weeks of the program, the Case Manager prepares a report for the Magistrate, reporting on the progress made and indicating whether or not it has been completed successfully. If the Magistrate is satisfied with the report, the young person is discharged.

Bail Support Diversion

Where offences lead to a young person being arrested and remanded in custody. Bail Support provides sufficient services to allow a young person to be safely managed in the community on bail, the risks associated with incarceration of children avoided and the rehabilitative prospects of the young person improved.

✓ **Referral to bail placement and supervision programs**

Victorian Central After Hours Assessment and Bail Placement Service (CAHABPS): Provides a single point of contact when police are considering refusing bail to a young person outside of business hours. During business hours, existing arrangements would continue to apply and police could contact the Youth Justice Court Officer or Community Youth Justice as required. Under police

standing orders in Victoria, police must notify CAHABPS when they are considering remand of a young person and allow the young person to be in contact with a CAHABPS worker.

Intensive Bail Supervision Program: This program is provided by Youth Justice and is currently operating in the North West and Southern Metropolitan regions of Melbourne. It is available to young people between the ages of 10 and 18 who are at high risk of remand and require a high level of support to stay in the community prior to sentencing.

Koori Intensive Bail Support Program: is provided by Youth Justice and is available to young Aboriginal people aged between 10 and 18 coming before the Criminal Division of the Children's Court in most regions.

Post-plea / Pre-sentence diversion

Where offences go to court and a plea of guilty is entered, but the magistrate is yet to finally determine the appropriate sentence. Sentencing is deferred for the young person to participate in diversion. The outcome may lead to a reduction in the sentence, such as avoiding a supervisory order or detention in appropriate circumstances.

✓ **Deferral of Sentence (Youth Justice)**

Sentencing of a young person can be deferred until a later date (not more than four months away), usually to allow for the defendant's rehabilitation and participation in certain programs. This participation is monitored and reported on by a Youth Justice worker.

✓ **Youth Justice Group Conferencing**

Youth Justice Group Conferencing is a state-wide, legislated program providing a community rehabilitation intervention in the Children's Court at the pre-sentence stage. The primary aim of a group conference is to help the young person avoid further or more serious offending. It brings together those involved in an offence including the young person, their family and the victims of the crime. At the conference the young person and the other participants discuss the circumstances surrounding the offending behaviour and will agree on what needs to be done to make amends for the harm caused by the offence and prevent re-offending. An outcome plan will be prepared at the end of the conference setting out the agreements that were made. The convenor then writes a report explaining what happened in the conference and this is presented to the Magistrate to consider when sentencing.

✓ **Children's Koori Court**

The Children's Koori Court is designed to reduce the number of young Koori people returning to Court. Aboriginal and/or Torres Strait Island young offenders may elect to go to the Koori Court rather than the mainstream Criminal Division of the Children's Court. Offenders must be either pleading guilty or found guilty of the offence and live in areas covered by the Children's Koori Courts. Young offender is comes before judge, a Koori Elder and family. The Court investigates what is going on in the young persons and what help and support they need to help them stay away from court.

Inequities, inconsistencies and gaps in the current diversion system

The Sentencing Advisory Council reports that over 70% of young offenders currently found guilty in the Children's Court received accountable undertakings, good behaviour bonds or fines. This means they are likely to experience the harmful effects of stigmatisation that accompany formal court, in particular acquiring a criminal record.ⁱⁱⁱ

Many of these young people were entitled to and would have benefited from diversion.

However these and other young people under 18 years are denied the opportunity to be diverted away from criminal justice system in Victoria either because:

- Some police members do not use their discretion to give the young person a caution or refer them to an appropriate diversion program.^{iv} Police decisions in relation to the cautioning of young offenders, have at times have been uneven and inconsistent between individual officers, between stations and regions
- Despite the dramatic increase in the use of community referrals by police members following the adoption of Supportlink, there is considerable anecdotal evidence of reluctance by some police informants to utilise Supportlink to refer a young person to diversion or refer them to court based diversion (like ROPES), even when young person appears eligible. This is more prevalent in regional areas and for Koori children and children of different culturally and linguistically diverse backgrounds
- There are no appropriate diversion programs available in their local area (especially in rural areas) or operating at appropriate hours (CAHABPS closes at 3am)
- They are not in the the adult system, where diversion is legislated and statewide.

Young people residing in rural, regional and remote areas are less likely to have access to the current diversionary programs. The very real concern is that young offenders living in certain remote rural and regional areas are not offered the same opportunities to offenders with identical circumstances because of the difference in available diversion opportunities throughout the state.



● Magistrates Courts/Children’s Courts where diversion is offered

ROPES is currently the only diversion option available to young people appearing in the Children’s Court for the first time. A lack of suitable alternatives means that not all young people who may benefit from diversion are currently receiving this option. For this reason, there is an opportunity to strengthen the availability of diversionary options for young offenders in general.

The Youth Support Service is not state-wide and the Intensive Bail Support program has limited availability. Right Step only operates in Moorabbin, and the ROPES program currently operates throughout metropolitan Melbourne and in several, but not all, rural regions i.e. not available in Ballarat, Warrnambool or Seymour.

Since 2009, adults at low risk of re-offending have had access to a legislated diversion scheme in the Magistrates’ Court of Victoria, which provides mainly first time offenders with the opportunity to avoid a criminal record by undertaking conditions that will benefit the offender, victim and the community as a whole. Counter-intuitively, children and young people under 18 years cannot access a similar legislated and state-wide diversion program in the Children’s Court jurisdiction.

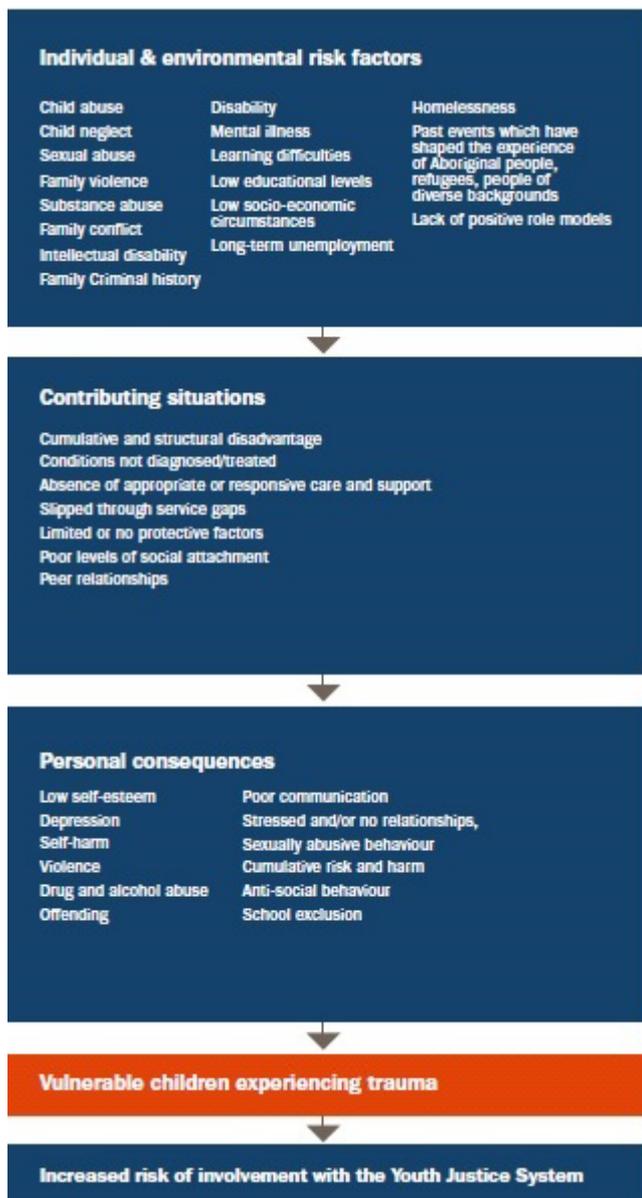
Diversion is tough on the causes of crime

Diversion responds to a young person's circumstances and reasons for offending.

Diversion recognises that a young person's criminal behaviour is largely a product of circumstances such as their age, maturity and background, and that young people have a 'unique capacity to be rehabilitated'. Diversion provides access to support services and programs tailored to the personal circumstances of the young person, to address issues underlying their offending and rehabilitate them.^v

Maturity and development

Statistics show that the majority of children who offend do so during adolescence and stop as they mature. Youth offending can be a by-product of a lack of maturity, propensity to take risks, and susceptibility to peer influence experienced during adolescence. Science tells us that the part of the brain that governs high level thinking, impulse control, and making longer term judgements is still developing during the late teenage years into the early twenties.^{vi}



Personal & social background

A small, but highly vulnerable group of children start offending early and commit the most crime:

- 46 % of all children alleged to have offended in 2010-11 were first processed by police at the age of 13 or younger.^{vii}
- 85% of young people who entered the youth justice system between the ages of 10 and 14 went on to have further involvement when they were 15–17.^{viii}

Research tells us which children are most likely to be part of this high risk group. A young person's likelihood of offending is influenced by their background, social context and risk factors associated with youth.

- 1 in 4 children with youth justice orders in 2010 came from less than 3% of Victoria's postcodes.^{ix}
- 66% of detainees have been suspended or expelled from school.^x
- Nearly 80% of all 10 to 12 year olds with youth justice orders in 2010 were know to child protection.

Rory's story

Rory* is 13 years old and lives with his mum Jackie and a younger sister in an outer suburb of Melbourne. Jackie's ex-partner Ryan, who has a criminal history, stays over from time to time. When Ryan is around, Rory makes himself scarce, as Ryan gets angry quickly and has been aggressive and violent towards both Jackie and Rory in the recent past, particularly when drunk. There's not much for Ryan to do locally, and as Jackie does not drive or own a vehicle, Rory takes to riding his BMX to the local dam and 'tagging' the storage shed with spray paint. Rory has been falling behind academically at school, and he's now playing alone down at the dam on school days.

One night, after the second police visit to their home in a week due to complaints about fighting between Rory and Ryan, a Victoria Police member offered the family a referral to the Youth Support Service (YSS) via the confidential and secure online 'Supportlink' website, and the family agreed. Jackie expressed her concerns about Rory's absconding from school and graffiti activities to the attending police officers, and they noted these disclosures in the YSS referral.

Three months later, after some family focussed and individual therapeutic case work with a YSAS early intervention youth worker, Rory is regularly attending school, now with a modified timetable and extra literacy support. There have been no more instances of violence within the home since devising a family safety plan, putting in place legal safeguards, and initiating a referral to a local family and relationships counselling service. Rory has benefited from the YSS youth worker taking him to a legal graffiti art workshop at the youth centre, and Rory has been invited to paint a mural for the council.

At a follow up two months after closing the case, both Rory and Jackie reported a much improved family relationship, and no further offending. Police have not needed to attend the home again.

**Some identifying details have been altered to protect the young person and their family's privacy.*

Through diversion young people take responsibility for their actions without the stigma of a criminal record

Diversion programs offer a second chance to young people. Successful completion of a court based diversion program like Right Step means the charge is dismissed with no criminal record and the young person can get on with their life.

As these stories highlight, diversion is not an easy option. It involves facing up to and working on personal issues negatively impacting on the young person's life, such as drug and alcohol issues, family breakdown, mental health issues, being kicked out of school etc.

Tim's story

Tim*, a 16 year old, was referred to Right Step after being charged with aggravated burglary.

During the first session with his Case Manager he disclosed drug and alcohol issues, poor literacy and numeracy skills, living in a fatherless household, leaving school at 14, and hanging out with older teens. He was not receiving Youth Allowance from Centrelink as he was unable to complete the forms. He resorted to asking his mother for money.

The Case Manager identified that Tim wanted to return to school and complete his education. Through Right Step he was supported to return to school, apply for Youth Allowance, and engage with a drug and alcohol worker. Tim says he would like to stop his drug use so he can concentrate on his education and eventually become a tradesman.

**not his real name*

However if a young person is not diverted and receives the stigma of a criminal record, this can negatively affect young person's job and training opportunities and getting a Working With Children Check and lower their chances of rehabilitation. A criminal record punishes teenage mistakes for life.

Hendrick's story

Hendrick*, 19 years old, grew up in state care and then became homeless. He had a number of shop-theft offences on his criminal record from when he was under 18, which he says were related to "trying to survive" i.e. he stole clothes, food, and sometimes items to sell.

When he turned 18, he finally got a job in sales and started supporting himself. He was well regarded by his employer. After 3 months, his boss required a criminal record check as part of his employment condition.

Hendrick's earlier offences were revealed and he was fired from his job.

Hendrick is now homeless again and has no income.

** not his real name*

Diversion reduces re-offending

Community based diversion options are more effective in reducing re-offending than the traditional justice system, especially detention:^{xi}

Ropes

- Over 88% of young people participating in ROPES did not reoffend. (KPMG Evaluation 2010)

Many young people indicated a strong reluctance to get into trouble again, and were clear about the implications of choices they made and the importance of 'stop, think, act.'

Right Step

- Over 75% did not reoffend within 6 months
- 66% of participants completed the program successfully and had not reoffended after 1 year.

They also learned to take responsibility for their actions and acknowledge the effects of their actions on themselves, family, friends and others.

Youth Support Service

- At the completion of service delivery, support goals (e.g. improved family relations, re-engagement with school and training) were achieved for **78%** of YSAS clients in the Melbourne metro and Latrobe Valley YSS youth diversion programs.

Youth Justice Group Conferencing

- Over 80% of young people involved have not reoffended two years later (KPMG Evaluation) compared to 57% of young people placed on Probation or a Youth Supervision Order.
- **All** offenders surveyed by KPMG agreed or strongly agreed that they were satisfied, overall, with the process and conduct of the group conference, as did **95%** of victims.

Conferencing represents a different form for juvenile justice, restorative justice, one where victims and families of offenders can be brought together with the offender in a social encounter that is more effective than the process that typically occurs in the Children's Court

Youth detention

- 43% of those young people who have been in youth detention did not re-offend. (Sentencing Advisory Council (2011))

Diversion reduces public expenditure

Very significant savings accrue from preventing young people from having prolonged contact with the justice system, in particularly corrections.

Community based diversion costs one tenth or less of the amount required to detain a young offender in a youth justice facility^{xii}

Investment in diversion programs such as Right Step, together with embedding such programs within the system, would reduce significantly the costs of managing young people in the justice and corrections systems.

Right Step

- The program cost per child is \$2,500 - \$3,500.

Group conferencing

- The program cost per child is \$5,022.
- Savings of over \$1.18million through diversion from supervisory orders and reduced recidivism over two years.(KPMG evaluation)

Community based supervision

- Approximately \$4775 for a child over 3 months.

Youth justice facility

- The average cost of keeping a young person in custody for 3 months is \$48,221 (*KPMG, Department of Human Services – Review of the Youth Justice Group Conferencing Program, 2010*)
- PLUS there are extra indirect social costs (e.g. costs associated with finding employment and housing and re-connecting with family and community) (i.e. estimated at \$16,972.50 for detaining a young person for 3 months (UK study^{xiii})).
- At approximately \$48,221 per stay this potentially equates to over \$1.4 million in avoided costs for the 30 young offenders that the **YMCA Bridge Project** supported to secure and maintain employment (and hence avoid re-offending) in 2012-13.
- Additional reductions in the costs associated with further crime being prevented (e.g. police and courts, victims' support, drug and alcohol services).

Strengthen Victoria's diversion framework, so we continue to be the national leaders in youth justice

An integrated whole-of-government and whole-of-community services system approach to diversion requires innovative approaches to funding, that recognise the interface between legal and welfare interventions and the savings that will be made from long- term and appropriate levels of resourcing in this area.

Strengthening diversion compliments Government work going on in areas of 'Services Connect', 'Sector Reform' and 'Victoria's Vulnerable Children: Our Shared Responsibility' Directions Paper.

SJFYP also welcomes the Government's work on its youth diversion proposal in response to the Discussion Paper "*Practical Lessons, Fair Consequences: Improving Diversion for Young People in Victoria*".

Initial reforms should focus on **pre-plea diversion** for children, as it is largely absent from our criminal justice system, while the Children's Court currently has a diversion options at the pre-sentence or sentencing stage. However, these are usually only activated after a young person has progressed into the criminal justice system. Emphasis should be given to providing diversion options at the earliest opportunity.

To address the gap and inconsistencies in our otherwise solid diversion system we need to:

Police contact (pre-court):

- ✓ ***Continue and strengthen investment in Youth Support Service, SupportLink and CAHABPS***
 - Ensure SupportLink is effectively promoted and local support services are appropriately resourced to be part of the referral base.

- ✓ ***Ensure all police are aware of, apply and refer to all available youth diversion and community support options, appropriately, fairly and consistently***
 - Training in Victoria Police Manual guidelines about consistent and fair use of warnings and cautions.
 - Training on all relevant support services & referral pathways, assisting police to provide well targeted warm referrals for a young person presenting with a particular offending related issues. Coordination with the Youth Referral Independent Person Program.
 - Explore introducing accountability mechanisms for decisions relating to police informant's discretion re: warnings, cautions, and referrals to other diversion options e.g. a '*Reasons for charge not diversion*' form based on the '*Failure to Caution form*'.

Court based diversion (pre-plea)

- ✓ ***Legislate to introduce a pre-plea diversion scheme in the Children's Court, similar to the adult system***
 - It is counterintuitive that children and young people cannot access a legislated and state-wide diversion program in the Children's Court jurisdiction.
 - Proposed legislation would provide a graduated hierarchy of diversion for young offenders including police warnings, formal cautions, and referral to an appropriate diversion support program.
 - Under the proposed legislation where police elect not to issue a warning, caution or referral, but rather proceed with charges and summons then, a Magistrate may caution or refer or refer a young person to one of the diversion options if on assessment a diversion from court would have been more appropriate.
 - A legislative framework would make clear that a successful completion of diversion program will result in the dismissal of matters and hence no criminal record. This is an important tangible incentive for some young people to take responsibility for their actions and to reveal their issues and commit to engaging in dealing with them at an early stage.

- ✓ ***Dedicate resources for assessment of young offenders' circumstances and risks and develop a flexible diversion plan tailored to the support needs of individual young person***
 - Children's Court consider the prospects of diversion for all eligible young offenders before them based on the child's circumstances of their offending and their vulnerabilities,
 - If diversion is approved by the Magistrate, the co-ordinators will assist the court and to identify the child's rehabilitation or developmental needs and identifying the local services available. A diversion plan would be developed, the Court would consider and approve the plan and adjourn the proceedings so the young person can undertake appropriate diversion activities.
 - This assessment/coordination may be done via the Youth Justice Court Advice Service undertaking this task given they already work closely with local services & are experienced in the youth justice system, and

✓ **Invest in a range of diversion programs that are culturally appropriate & tailored to the individual child's needs & supports them to address the underlying causes of their offending**

- Dedicated funding of a graduated range of diversion programs ranging from low level consequential activities to more intensive individualised case-managed interventions. This could involve :
 - Expansion of Youth Support Service to allow youth workers to support children and young people who are in contact with the criminal justice system.
 - Expansion of the Intensive Bail Support Program to regional areas.
 - Exploration of the applicability of the youth justice group conferencing model at the earlier pre-court and pre-plea stage.
 - Funding a number of locally based diversion programs like Right Step. Programs must be flexible, culturally safe & relevant and tailored to individual needs, circumstances of the child or young person within the context of their culture, family, community and peers. Culturally specific diversion programs need to be offered for particular cultural groups who are overrepresented in the youth justice system.

We view these reforms as positive steps towards a comprehensive youth diversion scheme where a child is assessed and directed to the most appropriate support program at any stage of the continuum, addressing their specific rehabilitative and developmental issues that lead to their offending, and allowing the child to avoid a criminal record.

ⁱ Kelly Richards (Australian Institute of Criminology), 'What makes juvenile offenders different from adult offenders?' *Trends and Issues in Criminal Justice* (no 409), (2011).

ⁱⁱ For more information, see <http://www.supportlink.com.au/>

ⁱⁱⁱ Sentencing Advisory Council, *Sentencing Children & Young People* (2012)

^{iv} Youthlaw Submission to the Department of Justice in response to *Practical Lessons, Fair Consequences: Improving Diversion for Young People in Victoria* Discussion Paper, 2012 <http://youthlaw.asn.au/wp-content/uploads/2012/05/Youthlaw-Submission-to-Diversion-Discussion-Paper-final.pdf>

^v Jesuit Social Services, above n 13.

^{vi} Williams, H, *Repairing Shattered Lives: Brain Injury and its Implications for Criminal Justice*, (2012).

^{vii} Jesuit Social Services, *Thinking Outside: Alternatives to remand for children*, 2013, p14

^{viii} Australian Institute of Health and Welfare, *Young people aged 10–14 in the youth justice system, July 2013*,

^{ix} Jesuit Social Services, *"Thinking Outside:" Alternatives to remand for children*, (2013).

^x Youth Parole Board, above n 12.

^{xi} Wilson & Hoge, above n 5..

^{xii} Current estimates are approximately \$528 per person per day in youth detention, compared to \$52-54 a day for community based alternatives. (Minister for Community Services *Strengthening Youth Justice and Helping Young People Avoid a Life of Crime*, media release, 3 May 2011).

^{xiii} New Economics Foundation, *Punishing Costs* (2010), p.5.