

# Youth justice: getting the early years right



*Victoria's approach to juvenile justice has resulted in the lowest rate of young people in detention in Australia and the second lowest rate of youth offenders. However, says former Children's Court Judge Paul Grant, it needs better court-based diversion, better bail support, and more Koori Children's Courts if it is deliver real justice to young people – many of whom are victims themselves.*

Victoria has a youth justice system that is well regarded throughout Australia. There is much to be proud of.

On the other hand, we know that many of the young people placed on supervision or in detention have common characteristics that arise from their difficult life circumstances. Babies and children who have suffered abuse and neglect are at increased risk in later life of involvement in offending and the consequent orders that flow out of that. Good youth justice outcomes require us to get the early years right. All the research shows that intervention in the early years will be the most effective way of preventing the sort of progression into the youth justice system that we see for many young people who have suffered trauma and abuse.

This article looks at the main focus areas of youth justice in Victoria, and how they should be strengthened to stop the cycle into adult prisons.

## DIVERSION

Any discussion about young people and the criminal justice system will commence by acknowledging the importance of diversion. The benefits to young people (and to the community) in diverting young people away from court is universally recognised within youth justice systems.

Diversion programs in Victoria operate as either pre-court diversion (police cautioning) or court programs. Both offer first time or minor offenders the opportunity to avoid a finding of guilt and a criminal record. In court diversion, the

young person will frequently engage with a program that addresses particular problems that lie behind his or her offending behaviour. This has benefits for the young person, their family and the wider community.

The police cautioning program is regarded as an effective first intervention for many young people involved in a breach of the law.

Victoria's court-based diversion, however, is *ad hoc*, poorly funded and geographically limited. The unavailability of diversion for some young Victorians is a significant access to justice issue. When you consider that the Magistrates' Court has a fully supported Criminal Justice Diversion Program for adults, the argument for establishing such a program in the Children's Court is unanswerable.

## DATA ON OFFENDING

There are about 550,000 young people in Victoria aged 10 to 17 inclusive.

The report of the Sentencing Advisory Council (April 2012) confirms that in 2009-10:

- 14,556 young people were processed by the police
- 5,957 young people were diverted or not proceeded against
- 7,064 cases were proved in the court.

Seventy per cent of the young people who had charges proved were sentenced to undertakings, good behaviour bonds or fines, indicating they committed minor offences or were regarded as good prospects for rehabilitation and did not require ongoing support and supervision in the community.

*Victoria's court-based diversion is ad hoc, poorly funded and geographically limited. The unavailability of diversion for some young Victorians is a significant access to justice issue.*

These facts confirm that:

- only a small percentage of young people actually come to the attention of law enforcement authorities and fewer still require formal intervention in their lives, and
- the vast majority of young people detected in criminal behaviour do not constitute a risk to the safety and welfare of our community.

In Victoria, a small group of young offenders do require formal intervention in their lives.

In 2009-10, 1,556 young people received supervisory orders, namely probation, youth supervision or youth attendance orders. The Youth Justice Division of the Department of Human Services administers these orders. The orders offer graduated supervision with young people engaged with appropriate supports and services to address the problems behind the offending behaviour.

In the same year, a small number of offenders (172) received detention orders.

The most recent report of the Youth Parole Board<sup>1</sup> provided a snapshot of those young people in youth detention:

- 38 per cent had previous child protection involvement
- 18 per cent had current child protection involvement
- 65 per cent were victims of abuse, trauma or neglect prior to incarceration
- 68 per cent had been suspended or expelled from school
- 40 per cent presented with mental health issues
- 22 per cent were registered with Disability Services
- 84 per cent of cases had alcohol or drugs related to the offending
- 10 per cent were parents.

The figures confirm that the majority of young people in detention come from backgrounds of abuse and disadvantage. In the words of the Chair of the Youth Parole Board, young offenders are 'very often the product of, and still suffer from, a damaged and unprotected childhood'.<sup>1</sup>

These young people need intensive therapeutic interventions to help them rebuild their fractured lives.

## JURISDICTION AND SENTENCING

All children and young people charged by police with criminal offences appear in the Children's Court Criminal Division.

To come within that jurisdiction a young person has to be aged 10 or over and under 18 when the offence is committed (providing the young person is charged before his or her 19th birthday).

The sentencing principles that apply in the Children's Court are different from those that apply in adult courts. When dealing with an adult, a judge or magistrate is required to balance principles of specific and general deterrence, punishment, denunciation, protection of the community and rehabilitation. Sentencing in the Children's Court, however, focuses on supporting the young person within the community wherever practicable and appropriate. The emphasis is on the rehabilitation of the young offender.

Section 362 of the *Children, Youth and Families Act 2005* states that in determining which sentence to impose on a child, the Court must, as far as practicable, have regard to:

- the need to strengthen and preserve family ties
- the desirability of allowing the child to live at home
- the desirability of allowing the young person's education, training or employment to continue without interruption or disturbance
- the need to minimise stigma
- the suitability of the sentence to the young person
- if appropriate, making a young person understand his/her responsibility for the offending behaviour, and
- if appropriate, protection of the community.

The focus on rehabilitation is consistent with well-established legal principle. For example, in a 2007 Supreme Court case, the Judge gave two reasons for describing youth as a mitigating consideration of the first importance.



1. Department of Human Services, *Youth Parole Board and Youth Residential Board Victoria Annual Report 2009-10*, Melbourne, 2010.

*The figures confirm that the majority of young people in detention come from backgrounds of abuse and disadvantage. These young people need intensive therapeutic interventions to help them rebuild their fractured lives.*

The first acknowledged that young people, while being criminally responsible, lack the degree of insight, judgment and self-control possessed by an adult. The second recognised that the community has a very strong interest in the rehabilitation of all offenders, but especially young offenders, which, in the case of the latter, is one of the great objectives of the criminal law.

The importance of the principle of rehabilitation often results in the Children's Court making orders that would be, in the words of a former Supreme Court Judge, entirely inappropriate in the case of older and presumably more mature individuals.

The Victorian approach, with its focus on the rehabilitation of the young offender, the emphasis on graduated and proportional responses and the use of detention as the sentence of last resort, is consistent with the principles enunciated in the *Convention on the Rights of the Child* and other associated human rights covenants. It has also resulted in the lowest rate of young people under supervision and the lowest rate of young people in detention in Australia.

Importantly, according to the Australian Bureau of Statistics, Victoria has the second lowest youth offender rate of all states and territories.

### YOUNG PEOPLE AND REMAND

In addition to those young people sentenced to detention, some young people spend time remanded in custody. These young people usually live in a chaotic world lacking structure and support and are involved in serious offending. In many cases bail will be refused because the young person presents as "an unacceptable risk to commit further offences if released on bail". Where a program of intensive support and supervision in the community is available, many of these young people can be released on bail with efforts made to address the problems behind the offending behaviour.

The Victorian Law Reform Commission, in its 2007 *Report on the Bail Act*, recommended the funding of an intensive bail support program in the Children's Court. The report noted that such a program is available for adults appearing in the Magistrates' Court but regrettably, not available for young people appearing in the Children's Court.

Intensive bail support is now available for those young people who live in metropolitan Melbourne. It needs to be available to young people in rural and regional Victoria.

### ABORIGINAL OVER-REPRESENTATION

A major challenge for the youth justice system is the significant rate of over-representation of young Aboriginal boys and girls.

Koori courts developed out of Aboriginal community demands for a justice process that was meaningful for the offender and for the community. Over the last 10 years, a number of Koori courts have been established. Currently, there are Children's Koori Courts at Melbourne, Mildura, Warrnambool, Latrobe Valley and Bairnsdale. There are adult Koori Courts at all those venues and, in addition, at Swan Hill and Shepparton. The Children's Court should be supported to establish Children's Koori courts at these two venues. The evidence of the success of Koori courts comes from positive evaluations of both the adult and Children's Courts and by the strong level of Aboriginal community support. Koori Courts are one part of a comprehensive strategy for addressing over-representation.

### CONCLUSION

It is important that our community understands that Victoria's approach to youth justice is highly regarded and produces good outcomes. However, there are areas for improvement. This article identifies some of them. It also reminds us that those children who come from circumstances of disadvantage are heavily over-represented in the system. If we want to tackle that issue we will need to tackle the causes of disadvantage. At the very least we need to:

- provide strong support to families in need to try and stop them becoming families in crisis
- maintain a child's engagement in education (or employment)
- provide appropriate support to at risk vulnerable children.

If we do that work really well, we will have fewer children in our criminal courts.

---

*Judge Paul Grant was President of the Children's Court of Victoria from 2006-2013.*

