

# Submission for the Inquiry into Victoria's Justice System

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**WEstjustice**

***Acknowledgements:***

We acknowledge the traditional custodians of the land on which we work, the Aboriginal people of the Kulin nation, and pay our respects to elders past present and emerging, noting that sovereignty was never ceded. We note our submissions and this inquiry have the potential to impact upon Aboriginal and Torres Strait Islander people and their experience of the criminal justice system, and therefore urge the Legislative Council to consider their voices in this inquiry.

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We consent to this submission being published on the relevant government newsletters and websites.

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## 1. INTRODUCTION

Westjustice<sup>1</sup> welcomes the opportunity to make this submission to the Legislative Council's Inquiry into Victoria's Justice System (**The Inquiry**).

We provide a range of legal services (referral information, advice, case-work, in court representation and community legal education) and broader systemic advocacy on behalf of communities in the western suburbs of Melbourne. Our offices are located in Footscray, Werribee and Sunshine, with a number of integrated services available in other locations including hospitals, youth hubs, community centres and schools.

In recent years, given the demand on our services, we have honed our focus to the following impact areas:

- young people;
- culturally and linguistically diverse (CALD) communities;
- people experiencing gender-based violence; and,
- people experiencing economic vulnerability.

Most of our services are delivered through multidisciplinary place-based partnerships, which has crystallised in us understanding that good legal outcomes are inextricably linked to good life outcomes. Therefore, much of our broader systemic impact work seeks to address the *causes of the causes*, rather than reactionary service delivery.

Our practice areas include employment, discrimination, family violence, VOCAT, tenancy, fines, consumer and debt. We also run a broad criminal law practice that prioritises children and young people (aged 10-25), clients from CALD communities, those newly arrived to Australia, and victims of family violence caught up in the criminal justice system. It is through this unique lens, as the largest western suburbs community legal service, and a provider of essential criminal law services, that we make these submissions.

## 2. OVERVIEW OF SUBMISSION

Our submission to your Inquiry has identified the following issues as underpinning the experience of children, young people and women in the criminal justice system in the inner west<sup>2</sup>:

- the direct impact of current bail laws on increasing prison and remand populations, particularly for children and young people, in particular young women, and the benefit of legislative reform;
- opportunities for prevention and early intervention, some at our immediate disposal and others which require upfront justice reinvestment, but both of which have the potential to reduce costs to government/s;
- unnecessary criminalisation of young people and women – for example, criminalising minor offending in school and in out of home care settings, prosecuting vulnerable people for infringement-based offences, and misidentifying victims of family violence; and
- key structural reforms that would reduce child and youth recidivism and the overrepresentation of particular cohorts.

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<sup>1</sup> Incorporated as Western Community Legal Centre

<sup>2</sup> Westjustice is a member of the Smart Justice 4 Young People Coalition and was a signatory to its submission to this inquiry as well as Smart Justice for Women's Submission.

## 2.1 KEY FACTS AND STATISTICS

### *Overrepresentation of particular child and youth cohorts in the justice system*

- Aboriginal children are overrepresented in the youth justice system, so too are African Australian, Maori and Pasifika Australian children and children living in out of home care.<sup>3</sup>
- Young adult offenders are over-represented in Victoria's criminal justice system.<sup>4</sup>
- Children from the west metro region are significantly over-represented in the youth justice system, in particular remand.<sup>5</sup>
- In 2020, more than a 1/3 of young people in custody were from CALD communities, with African-Australian youth making up a significant proportion of that number.<sup>6</sup>
- However, by way of contrast, only 8% of African Australians; 6% of Maori and Pasifika Australians in the 2019-20 financial year were placed on the Children's Court Youth Diversion program.<sup>7</sup>
- The concern regarding the overrepresentation of children and young people from Sudanese and South Sudanese backgrounds is particularly acute. During the 2019-20 financial year, only 5 percent of diversions were orders for young Sudanese and South Sudanese Australians, while they made up 22 percent of the youth justice custodial population. Of this 22 percent, 45 percent were held on remand only (and not subsequently sentenced to custodial orders).<sup>8</sup>

### *Family Violence/victimisation*

- 70-90 percent of women in prison are victim-survivors of family violence, sexual abuse or child abuse.<sup>9</sup>
- According to the Magistrates' Court of Victoria Annual Report 2018-2019, the Sunshine region had the second highest number of family violence and personal safety matters per region in the State. This was a percentage increase of 5%.
- Child and youth offenders are victim-survivors of crimes themselves and anecdotally are known to underreport.

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<sup>3</sup> See for example the following with evidences and responds to the overrepresentation of the identified cohorts Youth Justice Strategic Plan 2020-2030, Youth Parole Board Report's- Youth Parole Board Annual Report 2019-20 [https://files.justice.vic.gov.au/2021-06/YPB\\_Annual\\_Report\\_2020\\_0.pdf?SHqjA7ryiQQ2Wf6PFxLC05\\_cOvfXsh](https://files.justice.vic.gov.au/2021-06/YPB_Annual_Report_2020_0.pdf?SHqjA7ryiQQ2Wf6PFxLC05_cOvfXsh), Koorie Youth Council's Ngaga-Dji Report- <https://www.ngaga-djiproject.org.au/>; <https://www.sentencingcouncil.vic.gov.au/publications/crossover-kids-vulnerable-children-youth-justice-system-report-3>; Crossover kids report by the Sentencing Advisory Council; <https://www.sentencingcouncil.vic.gov.au/publications/crossover-kids-vulnerablechildren-youth-justice-system-report-3>; <https://providers.dffh.vic.gov.au/framework-reduce-criminalisation-young-people-residential-care>; Commission for Children and Young People, Our Youth, Our Way (9 June 2021) <https://ccyp.vic.gov.au/upholding-childrens-rights/systemicinquiries/our-youth-our-way/>.

<sup>4</sup> Sentencing Advisory Council, Inquiry into Victoria's criminal justice system- Submission 017, 16 April 2021.

<sup>5</sup> Data available on request

<sup>6</sup> <https://www.abc.net.au/radionational/programs/lifematters/how-understanding-one-statistic-became-stephane-shepherd%E2%80%99s-life/13158830>

<sup>7</sup> Children's Court Youth Diversion Annual Service Report, 1 July 2019-30, p13

<sup>8</sup> Ibid, p 14.

<sup>9</sup> Smart Justice for Women- Submission to the Inquiry into Victoria's Criminal Justice System, 1 September 2021, p7 citing H Johnson, Drugs and crime: A study of incarcerated female offenders, Research and public policy series, 2004; Justice Health & Forensic Mental Health Network, 2015 Network Patient Health Survey report, 2017; M Wilson et al, Violence in the Lives of Incarcerated Aboriginal Mothers in Western Australia, SAGE Open, January 2017.

## Poverty/Socio-economic and health factors

- Western metropolitan LGAs<sup>10</sup> have been among the most disadvantaged in Melbourne, characterised by low SEIFA index scores and higher unemployment rates than the Victorian average.<sup>11</sup>
- To September 2020, Wyndham, Maribyrnong, Melton and Brimbank had further COVID-19-related decreases in employment which significantly exceeded both the Greater Melbourne and state averages, even allowing for JobKeeper payments.<sup>12</sup>
- Tarneit suburbs postcode 3029 (Hoppers Crossing, Tarneit Truganina) and Derrimut suburbs postcode 3030 (Derrimut, Werribee, Point Cook) were in the top 12 postcodes in Australia for number of households in mortgage stress.<sup>13</sup>
- 3030 is also listed as one of the top post codes in Australia for rental stress with 44.80% in rental stress.
- Wyndham, Melton, Brimbank have had some of the highest total COVID 19 caseloads for Victoria.

## 2.2 SUMMARY OF OUR RECOMMENDATIONS

### **ONE**

Reform the Bail Act 1977 as a matter of priority including repeal of the reverse-onus provisions, particularly the ‘show compelling reason’ and ‘exceptional circumstances’ provisions (sections 4AA, 4A, 4C, 4D and Schedules 1 and 2) and replacement with single unacceptable risk test.

### **TWO**

Repeal the Category A and B uplift provisions.

### **THREE**

- (i) Raise the age of criminal responsibility to at least 14;
- (ii) Raise the jurisdiction of Youth Justice to 25 years old (both community and custodial supervision);
- (iii) Legislate to ensure that no child under 16 years can be imprisoned in youth justice detention; and,
- (iv) Rethink Victoria Police’s approach to youth policing.

### **FOUR**

Champion and advocate for the resourcing of crime prevention and early intervention programs in the West that have expert multi-agency support including Target 0 and YCPEIP.

### **FIVE**

Fund and equip schools to better manage and prevent offending behaviours in a school setting and fund the School Lawyer Program expansion.

### **SIX**

Settle the Action Plan to support implementation of the Framework to Reduce the Criminalisation of Children in Residential Care (“the Framework”) as a matter of priority.

<sup>10</sup> Brimbank, Melton, Wyndham, Maribyrnong and Hobson’s Bay.

<sup>11</sup> Brimbank has the third lowest SIEFA score for Victoria (the others being Greater Dandenong and Hume).

<sup>12</sup> Data obtained from .id community economic profiles for the Cities of Brimbank, Maribyrnong, Melton and Wyndham (including available Covid-19 economic impact measures for September quarter 2020 relative to September quarter 2019) at <https://economy.id.com.au/>. Accessed 28 January 2021.

<sup>13</sup> 3029- 39.13% in mortgage stress and 3030 – 35.62% in mortgage stress

**SEVEN**

End the misidentification of women and children who are victim-survivors of family violence as perpetrators.

**EIGHT**

End the Fine to prison pipeline.

**NINE**

Recruitment of Judicial Officers should include a valuing of expertise and knowledge in core competency areas including trauma, gender, cultural awareness and safety. There should be foundational and ongoing training to allow judicial officers to develop these competencies.

**TEN**

Establish a best practice therapeutic problem-solving court at the new Wyndham Justice Precinct supported by a comprehensive multidisciplinary youth and families community hub encompassing pre- and post-hearing support for people coming into contact with the court.

### 3. TOR 1 - AN ANALYSIS OF FACTORS INFLUENCING VICTORIA'S GROWING REMAND AND PRISON POPULATIONS

#### 3.1 Overview

Victoria's youth remand population more than doubled over the eight-year period to 2019.<sup>14</sup> Indeed, remanded children made up nearly half of all children in detention Victoria, compared to 22 percent in 2012. In 2019/20, 57% of the youth in detention were unsentenced.<sup>15</sup>

It is our submission the growing youth detention population over the past 8 years has been due to the cumulative impact of factors including:

- the introduction of strict bails laws in 2018 and 2013 before that;
- introduction of serious youth offender legislation and new category A and B offences in 2018;
- harsh criminogenic conditions in youth custody as opposed to rehabilitative, including rolling lockdowns due to staff shortages and COVID-19;
- a lack of awareness/consistency in police bail decision-making discretion at station level;
- non-adherence to the presumption in favour of summons; and,
- youth policing tactics including increased surveillance and offender management.

Aboriginal children, culturally and linguistically diverse children and children in out of home care have experienced these impacts most acutely, manifesting in their chronic and disproportionate representation in custody and without immediate action we are at risk of creating a permanent youth underclass.

The onset of the COVID-19 pandemic and impacts on the remand population has been revealing. Following a peak in March/April 2020 there has been a steady decrease in youth remand numbers which is not surprising considering the lockdowns, restriction of movement and increased parent/guardian supervision as a result of stay at home and work from home orders. Unfortunately, for the smaller group of children who were systemically overrepresented prior to lockdown<sup>16</sup>, it seems their disproportionate rate of

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<sup>14</sup> Sentencing Advisory Council Submission to Parliamentary Inquiry April 21, From 42 to 90

<sup>15</sup> <https://www.aihw.gov.au/reports/juv/134/youth-justice-in-australia-2019-20/contents/state-and-territory-fact-sheets/victoria>

<sup>16</sup> [https://files.justice.vic.gov.au/2021-06/Youth%20Justice%20Strategic%20Plan\\_0.pdf](https://files.justice.vic.gov.au/2021-06/Youth%20Justice%20Strategic%20Plan_0.pdf) at 40.

detention continued and a significant proportion are from the western metropolitan region of Melbourne.<sup>17</sup>

The 2019-20 Youth Parole Board Survey, conducted annually, coupled with the socio-economic disadvantage data for the west, gives us valuable insight as to why this may be the case:

- 71% of children in custody have history of trauma, abuse or neglect and
- 68% were suspended or expelled from school.
- 55% have a history of drug or alcohol abuse,
- 68% have mental health issues and
- 28% had history of self-harm or suicidal ideation and
- 38% had cognitive difficulties which affect their daily functioning
- 25% spoke English as a second language.<sup>18</sup>

### 3.2 Impacts of Changes to Bail Laws

The 2018 changes to Victorian bail laws prompted by the horrific crimes of James Gargasoulas and subsequent Coghlan Bail System Review have resulted in unjust outcomes for many children and young people. These strict new bail laws, originally intended to target violent men, have had profound unintended consequences, triggering an unacceptable and unsustainable increase in youth remand rates, particularly those in the west.<sup>19</sup>

The net effect of the 2018 bail changes has been to:

- propel children and young people into the ‘compelling reasons’ or ‘exceptional circumstances’ categories for bail, even where they do not pose a significant risk of serious offending;
- dramatically increase the number of short sentences served by children and young people through time on remand<sup>20</sup>;
- child and youth clients telling us that it is better and safer for them to stay on remand in custody than on bail and supervised because if they ‘muck up’ or can’t follow their bail conditions despite best efforts they will be back in there anyway; and
- from experience we also know that some children charged with serious youth offences and remanded end up with the charges resolving to lesser offences but, having already spent such lengthy times in remand, the damage is done.

The Sentencing Advisory Council’s seminal 2020 Report on Children Held on Remand confirmed what we have been seeing in practice, finding that:

*It is well-established that each contact with the justice system exacerbates the risk of further contact, trapping children in the revolving door of youth justice. This report provides further evidence of that fact. Nearly half of all children remanded in 2017–18 had already experienced remand in 2016–17 (40%). Four in five children were already subject to proceedings for other alleged criminal offences when they entered remand (81%). Nearly two in three children were charged with committing an indictable offence whilst on bail when they entered remand (62%), meaning that these children were not only awaiting finalisation of other criminal proceedings but they were also on bail rather than on summons. And two-thirds had been sentenced for prior*

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<sup>17</sup> Data available on request.

<sup>18</sup> See Table 6, p 29 Youth Parole Board Report 2019-20.

<sup>19</sup> McMahan, No bail, more jail? 1; K Derkley, Lawyers warn of bail crisis, Law Institute Journal website, 2018, accessed 17 February 2021.

<sup>20</sup> Note the 2018 bail changes compounded the impact of the 2013 changes made by the then Baillieu Government that criminalised breach of bail including for children and young adults that resulted in an increase in the remand population

*offending before they were remanded (66%). In total, just 6% of remanded children did not have a prior remand episode, prior sentence or other ongoing proceedings when they first entered remand.*<sup>21</sup>

There have been warnings along the way about the high youth remand population. The Youth Parole Board for example in its *2018/19 Annual Report* noted the high youth remand population, and expressed concerns about our ability to effectively manage and rehabilitate these children in custody.<sup>22</sup>

### **3.3 Failure to adhere to the presumption against summons and inconsistent police decision-making**

Section 345 of the *Children, Youth and Families Act 2005* sets out the presumption - one which Police must have regard to - in favour of a child being released on summons.<sup>23</sup> This presumption is intended to ward against unnecessary remand. However, from our experience, this presumption is not adhered to by police and the majority of youth matters are initiated by way of charge and bail. In addition, bailing a child, as opposed to summoning them, heightens their risk of remand as further offending enlivens charges for committing offences whilst on bail and propelling them into the higher bail test thresholds.

These factors, combined with increased COVID 19 pandemic related delays and lack of access to services, have left children and young people lingering on bail for extended periods of time and at greater risk of being remanded.

Westjustice therefore supports urgent amendments to the current bail laws as a tangible way to reduce youth remand and prison populations.<sup>24</sup> We welcome recent police efforts to increase transparency and accountability in regard to their charging practices and bail decisions for children and vulnerable adults. These efforts could be enhanced with the inclusion of a further requirement for police to always provide reasons when refusing to grant bail.

#### **Recommendation 1 Bail and Related Reform**

- 1. Repeal the reverse-onus provisions in the Bail Act 1977, particularly the ‘show compelling reason’ and ‘exceptional circumstances’ provisions (sections 4AA, 4A, 4C, 4D and Schedules 1 and 2).*
- 2. Create a presumption in favour of bail for all offences except where there is a specific and immediate risk to the physical safety of another person or the person posing a demonstrable flight risk. This should be accompanied by an explicit requirement in the Act that a person may not be remanded for an offence that is unlikely to result in a sentence of imprisonment.*
- 3. Repeal the offences of committing an indictable offence while on bail (section 30B), breaching bail conditions (section 30A) and failure to answer bail (section 30).*
- 4. Adopt a gendered and culturally appropriate approach to assessing and determining risk to community safety that takes into account the specific disadvantage and marginalisation experienced by women and young adults (aged 25 and under).*
- 5. Consider introduction of presumption in favour of summons for young adults (aged 25 years and under).*
- 6. Introduce a guiding principle into the Bail Act that acknowledges the unique systemic and background factors which lead to the overrepresentation of vulnerable cohorts of children and young adults in the*

<sup>21</sup> Sentencing Advisory Council report ‘Children Held in Remand in Victoria (2020) –

[https://www.sentencingcouncil.vic.gov.au/sites/default/files/2020-09/Children\\_Held\\_on\\_Remand\\_in\\_Victoria.pdf](https://www.sentencingcouncil.vic.gov.au/sites/default/files/2020-09/Children_Held_on_Remand_in_Victoria.pdf)

<sup>22</sup> See at p 3- [https://parliament.vic.gov.au/file\\_uploads/Web\\_-\\_YPB\\_Annual\\_Report\\_2019\\_WEB\\_wxCrv9MT.PDF](https://parliament.vic.gov.au/file_uploads/Web_-_YPB_Annual_Report_2019_WEB_wxCrv9MT.PDF)

<sup>23</sup> See here - [http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/consol\\_act/cyafa2005252/s345.html](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/consol_act/cyafa2005252/s345.html)

<sup>24</sup> These recommended amendments adopt the amendments proposed by the Smart Justice for Young People coalition in their submissions to the Inquiry at paragraph I)



*criminal justice system, and that remand should be a last resort. This includes Aboriginal children and young people, children and young people involved in the child protection system, especially in out of home care, as well as children from culturally and linguistically diverse backgrounds, especially refugee and newly settled ones.*

*7. Introduce a requirement for police to always provide reasons when refusing to grant bail at the station level and or proceed by way of summons for children.*

#### **Recommendation 2**

*Repeal the Category A and B mandatory uplift provisions in the CYFA for non-homicide related youth offences.*

## **4. TOR 2 - STRATEGIES TO REDUCE RATES OF CHILD AND YOUTH CRIMINAL RECIDIVISM**

### **4.1 Overview**

A 2018 Crime Statistics Agency report showed that young people aged 25 years and under (at time of first offence) made up the majority (54.2%) of all 'chronic offenders' in Victoria, being offenders with more than 10 alleged offender incidents.<sup>25</sup>

Interestingly, but perhaps not unsurprisingly given the impacts of the COVID 19 pandemic, the rate of alleged offender incidents for children and young people aged 10-25 in the 5 western metropolitan local government areas (LGA's) (**west metro**) increased over the 12 months to March 2021, in particular Melton, Brimbank and Wyndham. There was a significant increase in female offender incidents aged 18-25, and for that age bracket overall.<sup>26</sup>

This correlates with what our lawyers have been observing in their practice. We provide legal advice, information and case work support to children and young people under 25 years of age. We also deliver community legal education. Our clients are usually financially disadvantaged with complex social and/or mental health issues. In the last two years, we assisted close to 300 young people in the West aged 25 and under with criminal charges through our co-located Youth Law Clinics<sup>27</sup> and School Lawyer programs.<sup>28</sup> Crime was the most common legal issue we assisted young people with (39%). We also support 'at risk' young people who cannot afford a private lawyer or who are ineligible for legal aid and often have a number of vulnerabilities that make them a higher risk of recidivism (e.g. disengaged from school, drug and alcohol dependence, mental illness, homelessness and victims of family violence). Our underpinning strategy when assisting young people across our legal practice is to focus on 'life outcomes not just legal outcomes'. The empowerment model seeks to address the underlying issues contributing to offending and anti-social behaviours whilst achieving legal outcomes that support (rather than disrupt) rehabilitation and positive life outcomes.

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<sup>25</sup> 'Characteristics of chronic offenders in Victoria', Crime Statistics Agency report April 2018, p2 ([here](#))

<sup>26</sup> See Crime Statistics Agency, Table 1 and 2

<sup>27</sup> We have two co-located youth law clinics at the [Sunshine Visy Cares Hub](#) and [Hoppers Crossing Youth Resource Centre](#).

<sup>28</sup> Read more about our School Lawyer Program [here](#)

## 4.2 The need for structural youth justice reforms

There are four interrelated law reforms that we urge the committee to consider adopting as recommendations to reduce youth recidivism:

- raising the minimum age of criminal responsibility to 14;
- raising the minimum age of youth detention to 16;
- raising the jurisdiction of youth justice to 25 years old; and
- rethinking how we police children and young people.

### *The minimum age of criminal responsibility*

The evidence is that that children who have contact with the criminal justice system between the ages of 10 and 14 are far more likely to experience sentenced detention in their later years than children who are first supervised at an older age.<sup>29</sup> The evidence also shows the younger a child is when they have their first contact with the criminal justice system, the higher the chance of future offending and the more likely they are to have long term involvement in crime.<sup>30</sup> If we are serious about reducing youth recidivism then this is a smart and accessible reform at our disposal. We are also not talking about a large number of children in the Victorian system: 29 children aged 10-13 years were in Victorian detention during the year 2019-20.<sup>31</sup>

### *Raise the minimum age of youth detention to 16 years old*

We also support the recent call by the Commission for Children and Young People's<sup>32</sup> to prohibit the Children's Court and adult Courts from sentencing a child under the age of 16 to youth justice custody.<sup>33</sup>

### *Increase the jurisdiction of Youth Justice to 25*

Young adult offenders are over-represented in Victoria's criminal justice system. Young adults make up 15% of Victoria's adult population but constituted 22% of sentenced offenders in Victoria's courts in the five years to 30 June 2018. More than half (53%) of young adults under 25 return to prison within two years, which is more than 8% higher than the general population.<sup>34</sup> Offenders in this age group have relatively low compliance and completion rates on community sentencing orders, and they also reoffend at higher rates than older offenders.<sup>35</sup>

This high rate of recidivism suggests that the current criminal justice system is not adequately responding to the unique developmental needs of young adults, compared to older adults. It is well established that brain development continues until somebody is in their mid-20s, even up to 30. Young adults are greater risk takers, more likely to be influenced by peers and less future oriented than older groups and this has an impact on behaviours and attitudes.

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<sup>29</sup> Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria*, (2016) State Government of Victoria, 31.

<sup>30</sup> Smart Justice 4 Young People, *Response to Inquiry into Victoria's Criminal Justice System*, 1 September 2020.

<sup>31</sup> *Ibid.*

<sup>32</sup> Commission for Children and Young People, *Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system* (June 2021), finding 4 and recommendations 8 - 10.

<sup>33</sup> Note this recommendation compliments our earlier call in this submission for reform to the *CYFA* repealing mandatory uplift provisions for Category A and B offences.

<sup>34</sup> Sentencing Advisory Council *Rethinking Sentencing for Young Adult Offenders*,

<sup>35</sup> Sentencing Advisory Council, *Inquiry into Victoria's criminal justice system- Submission 017*, 16 April 2021.

Westjustice supports calls by Smart Justice 4 Young People, Sentencing Advisory Council and Jesuit Social Services to expand the dual track system to include young adults aged 21 to 25 (or even to 30). We go a step further and recommend it include community supervision as well (bail and sentencing).

At present Victoria's dual-track sentencing system allows adult courts to sentence young adults aged 18 to 20 years (currently) to serve a custodial sentence in a Youth Justice centre rather than an adult prison if the young person is particularly impressionable, immature or likely to be subject to undesirable influences in adult prison.<sup>36</sup>

Expanding the jurisdiction of youth justice to 25 year old would bring the criminal justice system in line with all young adult service providers whose jurisdiction reaches to 25 years old and in some cases 30 years old.

### *Rethinking how we police children and young people*

We recognise and commend genuine efforts by Victoria Police to increase diversionary options for Aboriginal and CALD youth and reduce their overrepresentation in the justice system and earlier referrals to support service at the local level here in the west.

Westjustice remains wary however about the continued use of proactive and predictive policing approaches to youth crime detection and offender management. Predictive policing technologies that rely on technology-based data collection and analysis have the propensity to produce biased, discriminatory and racialised effects. Effective crime prevention aims to disrupt motivations of offending. However, dedicating resources to police interventions with non-offending youth and intelligence-gathering and data-mining does the opposite; it perpetuates further contact with police and entrenchment into the criminal justice system.

In relation to proactive policing, our position is that Victoria Police member contact with children and young people should be limited to law enforcement. It can be confusing for young people if police step out of the bounds of their role; police may be friendly, but if they commit a crime, they will have to charge them. Police are not social workers or counsellors and cannot nor should not be relied on by young people in the same way.

We also are of the clear view that Victoria Police's Offender Management Project does not sufficiently differentiate youth offenders from adult offenders. Youth Specialist Officers were introduced to focus on repeat, high-impact offending young people, with a view to engaging with them and preventing further offending. The ongoing concern however is that this approach does not factor in systemic discrimination, structural inequities, poverty, trauma and is driving young people towards crime rather than away from it.

Similar concerns have been raised in NSW in relation to the Suspect Target Management Plan (STMP) including a misunderstanding of the scope of power, for example home visits and searches without reasonable suspicion; lack of transparency and accountability, blurring of the role and relationship of the police as law enforcers vis a vis the policed cohort and biased risk assessments.<sup>37</sup>

#### **Recommendation 3**

- 1. Raise the age of criminal responsibility to at least 14.*
- 2. Raise the jurisdiction of Youth Justice to 25 years old (both community and custodial supervision).*
- 3. Legislate to ensure that no child under 16 years can be imprisoned in youth justice detention.*

<sup>36</sup><https://jss.org.au/new-approaches-needed-for-young-adults-in-the-criminal-justice-system/>

<sup>37</sup> The NSW Police's Suspect Targeting Management Plan (STMP) to Effectively Reduce Crime, Oct 31 2020, lexology.com

#### 4. Overhaul Victoria Police's approach to Youth Policing by:

(i) Instituting mandatory and ongoing training regarding youth brain development, unconscious bias, culture and gender competency, framework on out of home care, Adolescent Violence In The Home (AVITH) for all frontline members and criminal investigators;

(ii) Develop a Victoria Police Manual dedicated to youth policing (25) which covers investigation, interview, processing and presumptions in favour of the least punitive enforcement at every stage of the policing process; and

(iii) Mandate publication of data e.g. on stops, searches of children and home visits and the grounds including related Operations.

### 4.3 Opportunities for child and youth crime prevention and early intervention in the West

Westjustice acknowledges that despite considerable investment and effort over many years, we as a sector have been unable to adequately respond to known drivers of youth crime and overrepresentation - while the faces and names of over-represented children and young people have changed over time, their negative and racialised experiences and outcomes in our justice system have persisted.

We have been focused on trying to 'fix' individual young people or groups of young people or their families and communities, through disconnected and fragmented services (or short-term partnerships). These responses have been unable to sustain success or address the complex systems and structural conditions that hold these problems in place (Armytage & Ogloff, 2017). We have persisted with these approaches despite the evidence, which shows that the "problems are also a function of how institutions behave, of policy decisions, of the way markets operate, and even of public attitudes and cultural norms".

We welcome recent steps taken by the Victorian Government towards addressing fragmented, siloed and uncoordinated systems across government and community through the whole of government youth strategy, crime prevention strategy and related building safer communities initiative.

#### *Youth Crime Prevention and Early Intervention Project (YCPEIP)*

It is widely understood that addressing factors that contribute to criminal behaviour can prevent and reduce further offending. However, currently in Victoria, most mandated treatment interventions for children and young people exist after they have been charged with serious or repeat offences. Such interventions often arise as conditions of Youth Justice supervised bail, a deferred sentence or supervised sentencing order (e.g. Youth Supervision Order). These interventions are introduced after a child or young person has travelled deeper into the criminal justice system.

In response, Westjustice has been working with Victoria Police (Wyndham and Brimbank Police Service Areas) to design the YCPEIP. Our other partners include Victoria Legal Aid, relevant Magistrates Courts and Children's Courts, prosecution units, Youth Justice, Youth Support and Advocacy Service (YSAS), Centre for Multicultural Youth (CMY), Headspace & Orygen Youth Health, Jesuit Social Services, Youth Junction and Youth Now. The project is soon to be implemented. It is the culmination of an unprecedented level of cooperation and collaboration amongst these agencies. Our shared goal is to reduce the rate of offending and re-offending amongst children and young people in the West. YCPEIP is currently funded through existing resources of the various agencies and in-kind support and has the following key components:

- Increase the use and consistency of pre-charge warnings, cautions and diversions for children and young people in the West, particularly for those from groups that are overrepresented in

the criminal justice system (e.g. Aboriginal, Maori and Pasifika Australians and South Sudanese Australians).<sup>38</sup>

- Establish a fast-tracked Diversion List at Werribee and Sunshine Children’s Courts - reducing the current significant delay between arrest and the first listing of a Diversion Hearing (from approximately 5 months to within 1 month).
- Deliver a training package to Police on the benefits of early intervention (including cautions, diversions and referrals to legal and social support), the criminogenic risk factors relating to children and young people, and cultural competency.
- Streamline and mandate Police referrals at point of arrest (with consent of the young person) to youth support services (e.g. mental health, AOD) and legal services – triaged by a youth worker ‘Support Coordinator’ role and Victoria Legal Aid.
- Prioritise and increase early referrals for victims to support their recovery.
- Create and employ a Youth Crime Sergeant Portfolio position at participating Police stations to oversee and promote the various aspects of the pilot and provide a consistent approach to processing children and young people (‘train the trainer’ model).

Although the implementation of this pilot has been delayed due to COVID-19, a number of test cases have already demonstrated the benefits of early intervention. These matters, originally earmarked for prosecution, proceeded by way of a caution, with the young person accepting referrals to support services. This has also assisted to reduce the current backlog of Court listed cases. YCPEIP has also deepened the level of coordination amongst partner agencies more broadly when it comes to supporting justice involved youth.

#### *Target ZERO*

In addition to YCPEIP, Westjustice and the CMY have conceived an ambitious collective impact child and youth crime prevention model known as Target ZERO. Target ZERO is designed to eliminate:

- youth criminalisation in Wyndham, Melton and Brimbank; and
- the overrepresentation of children in out of home care, Aboriginal, Australian African, Maori and Pasifika and other minority children and young people in the youth justice system.

Target ZERO currently has the support of 15 expert youth support agencies<sup>39</sup> and we have established an interim working group to continue to develop the model. The terms of reference (TOR), project concept logic and project plan have been developed. The IWG’s commitment is strong, and is based on the acknowledgement that if we are serious about youth crime prevention in the west then a new, collective way of working is required.

The vision entails a commitment over a 10 year period, with the objective to empower children and young people, families and the community to work with government and non-government agencies to drive crime rates towards zero. Zero being the number of Aboriginal, Australian African, Maori and Pasifika and other minority children and young people arrested, charged, convicted and incarcerated which in turn will drive-up community safety. To succeed, Target ZERO needs the commitment of community, government and non-government organisations in Brimbank, Melton and Wyndham. We also need to focus and harmonise work across all domains of a child and their family’s life – which includes health, safety, housing, justice, education and employment.

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<sup>38</sup> A 2017 Crime Statistics Agency study found children and young people in Victoria who were cautioned were significantly less likely to reoffend than those charged. Cautioned children and young people who did reoffend did so later and less frequently than those who were charged.

<sup>39</sup> Current membership comprises: Junubi Wyndham, Co-Health, Jesuit Social Services, Dr Diana Johns, Dr Karen Hart, Dr Mario Puecker, Whitelion, YSAS, Orygen Youth Mental Health, Western RAJAC, Youth and Family Support Network, Westjustice and CMY, YouthLaw.

Target ZERO will establish the frameworks and co-design the interventions with impacted communities and develop the protocols to achieve these twin reductions.

To begin with, we will work with Aboriginal, Australian African, Maori and Pasifika and other minority impacted communities whose children and young people are unacceptably overrepresented in the youth justice system. Once the approach is tested, Target ZERO will expand to address the entrenched overrepresentation of children in out of home care.

#### **Recommendation 4**

*1. Commit and champion the YCPEIP at government level and advocate for priority funding to support its implementation and comprehensive evaluation.*

*2. Commit and champion the Target ZERO project concept at government level and advocate for priority resourcing to progress the development of the project, engage with impact communities to set the targets and co-design the interventions.*

#### **4.4 Areas of unnecessary criminalisation**

Through our various outreach and placed based clinics, Westjustice has identified multiple areas of public life where behaviour is criminalised in circumstances where it ought not to be. This criminalisation not only negatively impacts young people's health and well-being but also potentially normalises engagement with the criminal justice system. It also contributes to the backlog and delay of matters which need not be before the Courts. Four examples are discussed below.

##### *School related and or based offending*

The Westjustice School Lawyer Program embeds 'School Lawyers' in schools in the West.<sup>40</sup> These lawyers are integrated with the wellbeing teams and provide legal advice and education sessions to students. This unique program, piloted by Westjustice in 2015 and the subject of an 'Australian Story',<sup>41</sup> has provided a unique insight into the criminalisation of anti-social school related offending behaviour and the impact on children who are charged. We also see a range of other legal issues (sometimes unique to children), particularly those from lower socio-economic and disadvantaged backgrounds, for which they are further criminalised and marginalised.

#### **CASE STUDY**

*Mia is a year 10 student with suspected ADHD and a complex home situation. She wants to finish school and become a real estate agent, but struggles with impulse control and emotional regulation. She was caught rifling through a classmate's school bag before school, stealing a wallet and damaging the bag. When confronted by school staff she immediately returned the wallet (untouched) and offered to pay for the bag. The school contacted Police, who charged Mia for the incident. The school immediately suspended her, and told her family she would be expelled unless they agreed to enrol her in a different school. Mia's father enrolled her in a school about a 40 minute bus ride from their home, where Mia had no friends. Mia struggled with waking up earlier to arrive on time. She was often late and gained a reputation for being a 'difficult student'. Mia was keenly aware of this and felt the teachers did not like her. After less than a term she stopped attending classes, and within six months she had dropped out.*

<sup>40</sup> See School Lawyer Framework - [https://www.Westjustice.org.au/cms\\_uploads/docs/Westjustice--school-lawyer-program-framework-2018.pdf](https://www.Westjustice.org.au/cms_uploads/docs/Westjustice--school-lawyer-program-framework-2018.pdf)

<sup>41</sup> <https://www.abc.net.au/austory/sins-of-the-father-opener/8629114>

*Simultaneously Mia faced charges for theft and property damage. Mia's family blames her for the offending and has told her if she gets a criminal record she will be kicked out of home. Mia feels isolated, especially as her friends are still at school. She begins hanging out with older teenagers who are involved in regular offending. She starts to be charged as complicit in some of this offending whilst she is on bail and finds herself in and out of remand.*

Problematically, behaviour which could be perceived as a disciplinary issue is occasionally framed as a criminal issue in the school environment. This has far reaching impacts on the relationship between young people and the education system. For some children, particularly from complex or disadvantaged backgrounds, the school is a point of supervision and structure away from chaotic home lives. It can be a stabilising environment, and one which provides school staff with a point of insight into children's wellbeing. When this relationship is compromised, either by police involvement or perceptions of being disliked by the administration, it jeopardises a young person's likelihood of continuing with education more broadly.

This can result in increased levels of absenteeism or behavioural issues, which ultimately reinforces this narrative (for both the school and the children) that the child is not suited to formal education. Importantly, while services do exist to support young people who are disengaging from formal education, there are gaps. The 'Navigator' program intends to support young people to re-engage with education. However, they unfortunately are only funded to assist children 17 and under who 'have attended less than 30% of the previous school term or equivalent'.<sup>42</sup> Therefore, by the time a child is eligible for this program they are already significantly disengaged, making their re-engagement highly unlikely particularly for 16 and 17 year olds who are about to age out of the program. This is compounded by the prevalence of informal expulsions – that is, where a school encourages a child to exit on the understanding that if they do not the child will be expelled. Anecdotally the impact of this is equal to an expulsion, with students who have experienced this language like "they don't want me" to describe why they moved schools. This feeds into a broader narrative about not being accepted in society. The issue was prevalent enough to prompt a 2016 Victorian Ombudsman Investigation.<sup>43</sup>

Another example of children and school students being unnecessarily criminalised are public transport fines. Many children and families struggle to afford the cost of public transport. Reasons for a child not having a valid Myki include financial hardship and family breakdowns. This leads to school absenteeism and/or non-compliant travel. In response to this Westjustice, in collaboration with the Public Transport Ombudsman and a number of key stakeholders introduced the 'Travel Assistance Program' (TAP)<sup>44</sup>, provided prepaid Myki passes to 266 students across 13 schools in the West. This program evidenced increased attendance and punctuality for many students, as well as decreased stress, increased access to wellbeing services and a significant decrease in non-compliant travel and resulting infringements.

The positive link between education and better life outcomes is well established. Similarly, a negative link exists between disengagement from education and disadvantage for children and young people, including increased likelihood of contact with the criminal justice system.<sup>45</sup>

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<sup>42</sup> Department of Education, "The Navigator Program" accessed at: <https://www.education.vic.gov.au/school/teachers/behaviour/engagement/Pages/navigator.aspx#link60>

<sup>43</sup> Victorian Ombudsman Investigation into Victorian government school expulsions 2017 - <https://www.ombudsman.vic.gov.au/our-impact/investigation-reports/investigation-into-victorian-government-school-expulsions/#effect-of-disengagement-from-education-summary>

<sup>44</sup> See TAP report - [https://www.Westjustice.org.au/cms\\_uploads/docs/Westjustice\\_travel-assistance-program\\_nov2020\\_digital.pdf](https://www.Westjustice.org.au/cms_uploads/docs/Westjustice_travel-assistance-program_nov2020_digital.pdf)

<sup>45</sup> Victorian Ombudsman Investigation into Victorian government school expulsions 2017 - <https://www.ombudsman.vic.gov.au/our-impact/investigation-reports/investigation-into-victorian-government-school-expulsions/#effect-of-disengagement-from-education-summary> paras 37-41.

### **Recommendation 5**

1. Fund and equip schools to better manage and prevent offending behaviours in a school setting – e.g. mediation and restorative justice training, culture and trauma informed practice, and resourced wellbeing teams trained to make good referrals (e.g. legal and counselling). By funding these areas, we can incentivise schools to address and compensate for the disadvantage which some children bring to school with them, rather than marginalise those students and see only their ‘difficult’ behaviours.

2. Fund the expansion of the School Lawyer Program in primary, Flexible Learning Centres and TAFE settings to deliver community legal and non-legal information to children and young people Grade 5- 25 and provide parallel information to kinder and school age parents to empower engagement and contribute to crime prevention.

3. Lower the age of eligibility for the Navigator program to any primary aged child as risk of chronic absenteeism and provide support to their parents to address any barriers to school engagement that may exist.

4. Regular collection and release by DET of data on ‘soft expulsions’ and the grounds, in addition to suspensions and expulsions.

### *Reducing the criminalisation of children in residential care*

Children and young people who live in residential care are vulnerable; they are overrepresented in the justice system<sup>46</sup> and underrepresented in the areas of higher education attainment, mental health wellbeing and stable housing.<sup>47</sup>

VLA’s seminal *Care Not Custody* report exemplified children in residential care being charged with smashing a cup, throwing a sink plug or spreading food around a unit’s kitchen. The reality is that if these incidents had occurred in the family home, rarely would they have attracted a police call out. In response we welcome the *Framework to Reduce Criminalisation of Young People in Residential Care* (the Framework) from February 2020.<sup>48</sup> We note that there was a commitment to an Action Plan to support implementation and 18 month review which is now overdue.

At a local level, Westjustice is partnering with Anglicare to deliver services to children and young people in residential care and meet unmet legal need. Our Out of Home Care Legal Clinic pilot project (the OOHCLC pilot) has the potential to reduce recidivism by helping to address underlying legal issues that can often be drivers of criminal offending and reoffending. These legal issues could be debts, family violence and fines.

The OOHCLC pilot aims to raise issues promptly with unit staff and/or their child protection workers to facilitate early resolution and prevent them escalating into responses from the child that could result in criminal charges. It also aims to increase the ability for the child to participate in decision making that affects their lives in residential care placements. When children feel they are heard in this decision making

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<sup>46</sup> Victoria Legal Aid’s (VLA) *Care not custody* report found that 2 in 3 young people that VLA assist with a child protection matter who are placed in residential care require assistance with a criminal charge. The Sentencing Advisory Council’s (SAC) *Crossover Kids; Vulnerable Children in the Youth Justice System* Report looking statewide, found that of the 5063 children sentenced or diverted in the Victorian Children’s Court in 2016-2017, 38% were subject to at least one child protection report. SAC further found that 58% of the 213 sentenced or diverted children in out of home care on 30 June 2017 were in residential care.

<sup>47</sup> See *Keep Caring*: Systemic Inquiry into services for young people transitioning from out-of-home-care, December 2020, Commission for Children and Young People, Finding 1 at [23]; and, *Not Good Enough: Raising Expectations for Young Australians Leaving Care*, <http://thehomestretch.org.au/news/not-good-enough/>

<sup>48</sup> See Framework - <https://providers.dffh.vic.gov.au/framework-reduce-criminalisation-young-people-residential-care>



process, we believe it will be less likely they will escalate and react in a way that could result in criminal charges for things like damaging property out of frustration.

**Recommendation 6**

- 1. Settle the Action Plan to support implementation of the Framework to Reduce the Criminalisation of Children in Residential Care ("the Framework) as a matter of priority.*
- 2. Resource residential care service providers, DFFH child protection (regions) and Victoria Police workforces to provide the training, supervision and practice tools necessary support proper implementation of the Framework.*
- 3. Progress reports regarding implementation of the action plan should be provided to stakeholders to ensure transparency continuous improvement.*

*End the misidentification of child, youth and women victims of family violence as perpetrators*

Westjustice provides front-line family violence advice and case work services, primarily supporting women and children. We represent victims and respondents and we do so holistically, often assisting them through the intervention order proceedings as well as related criminal, family, and tenancy law matters. Many women leaving violent relationships also find themselves with outstanding debts or fines incurred by their ex-partner or by them in circumstances where, due to the family violence, they were unable to pay or otherwise deal with them. We support them with these so they can focus on more immediate issues such as stable housing and safety planning.

We have recently started providing targeted services to women misidentified as perpetrators of family violence through our Restoring Financial Safety Project in partnership with McAuley Community Services for Women. Since commencing this work, we have assisted 11 women. In all of these cases, the alleged offending was in the context of a history of family violence where our client was the primary victim and generally a male partner or ex-partner was the primary perpetrator. Often the alleged offending behaviour was in self-defence. Out of these 11 matters 7 were withdrawn by Prosecutions at Court and 4 received Diversions. Although our numbers are small at present, the demand for this type of support is growing at an exponential rate. For example, Women's Legal Service, reported in 2018 that 32 out of 55 women they assisted named as respondents in intervention order matters were misidentified.<sup>49</sup> Given the cohort of clients we represent we also see a number of family violence issues arise which are unique to CALD clients. For example, in some communities or cultures (especially the South Asian and Indian community) there is significant social stigma and shame attached to an individual and their children when they are charged by police in these misidentification type matters, regardless of the charges being withdrawn later or not.

We see similar criminalisation of children who are victims of family violence. Often responses to family violence used by children and young people are propelling them into contact with the law when they may be victims of family violence themselves, or may be living with a significant intellectual or other disability but received inadequate community support.

**Recommendation 7**

*Direct Victoria Police to implement policy changes and law reform (in consultation with appropriate stakeholders such as Victoria Legal Aid, Women's Legal Service, Community Legal Centres and family violence services) to proactively de-criminalise victims of family violence and prevent misidentification. Examples of this reform should include:*

<sup>49</sup> Women's Legal Service Victoria, *Snapshot of police family violence intervention order applications*, January – May 2018.

- 1. Establish a clear process for someone to raise concerns about a party being misidentified – e.g. ensure any family violence criminal briefs authorised against children or women are reviewed by suitably trained senior police (e.g. Family Violence Liaison Officers) and there is an opportunity for legal practitioners and case-workers to raise misidentification with them prior to authorisation.*
- 2. Victoria Police should develop clear guidelines for considering the withdrawal of related criminal charges where misidentification has occurred and for family violence diversions where withdrawal is not deemed appropriate.*
- 3. Victoria Police should update the VPM to support cautions for children, young people and women with family violence related offending where there is a history of violence perpetrated against them and there are public interest grounds against prosecution (e.g. children with intellectual disabilities, IVO's are in place etc.).*
- 4. Victoria Police should develop and implement a process for review of all Family Violence Intervention Order applications where the risk of misidentification of the primary aggressor is higher, including Aboriginal and Torres Strait Islander women and CALD women.*
- 5. Victoria Police should use greater discretion to withdraw Family Violence Intervention Order applications where there is misidentification and Victoria Police should develop guidance for members to assist with determining whether to withdraw.*
- 6. Link children and their families in with support as soon as possible to address the drivers of violence such as NDIS referrals, respite care (e.g. Westjustice YCPEIP referral pilot).*
- 7. Ensure child and youth specialist applicant and respondent workers are at Court.*
- 8. There should be specific training for Victoria Police to improve understanding of the gendered nature and dynamics of family violence and coercive control, and the contexts which contribute to women's victimisation. This should include a presumption for call-outs to family violence that women and children are much more likely to be the victims of the violence regardless of who called the police first (for example).*

#### **4.5 Ending the fine to crime pipeline**

Infringements disproportionately impact people experiencing disadvantage, and some infringement offences such as begging and having an open container of liquor explicitly criminalise poverty and homelessness. The one-size-fits-all fines system means most vulnerable people who receive fines are unable to pay them, and therefore swept up into harsh enforcement measures, harmful prosecutions and the risk of imprisonment.

Westjustice and other community legal centres provide vital assistance to people with fines to access 'social justice initiatives' and exit points within the system and avoid matters going to court. This has generational flow-on impacts. For example, we often see children and young people commit shoplifting offences for food and clothes their family can't afford because their families are trying to pay off fines. By reducing the impact of fines on vulnerable community members, consequential offending can be prevented.

Major reforms to the fines system are also needed to stem reoffending. The independent Fines Reform Advisory Board (FRAB) inquiry in 2020 recommended consideration be given to concession-based fines, which would legislate that people on Centrelink and others in significant financial hardship would be fined a smaller amount. The legal assistance sector has recommended between 5 and 20% of the full fine amount. This reform would enable people experiencing financial hardship to address their infringements, and avoid criminalisation. Keeping people out of the courts will prevent them entering the recidivist cycle

of exposure to the criminal legal system, which sees hardship compounded and reoffending become more likely.

Another FRAB recommendation that would reduce reoffending and prosecution is the direction to make enforcement review decisions final and binding. Currently, after Fines Victoria reviews an enforcement agency's decision to issue a fine, the enforcement agency has the power to issue a charge and summons for the underlying offence where the infringement is cancelled by Fines Victoria. Making Fines Victoria's decisions final and binding would again prevent vulnerable Victorians being funnelled into the court system. This is especially important given the abolition of the Special Circumstances List in 2019, which means that fines that have been deregistered as a result of a person's special circumstances and are referred to the court closest to where the offending occurred. As a result, there are frequently multiple hearings for related matters across different courts, which are difficult to consolidate. Again, this exposure to the court system increases the risk of reoffending.

#### **Recommendation 8**

- 1. Make Fines Victoria enforcement review decisions final and binding.*
- 2. Introduce a concession-based fines system.*
- 3. Expand the Work and Development Permit Scheme and fund/train local community organisations to deliver appropriate programs for eligible participants.*
- 4. Provide prepaid public transport for children.*

## **5. TOR 3 & 4 - ENSURING JUDGES AND MAGISTRATES HAVE APPROPRIATE KNOWLEDGE AND EXPERTISE AND CONSIDERATION OF THE JUDICIAL APPOINTMENT PROCESSES**

Through our criminal law and family violence duty lawyer practices we have identified some clear areas for improvement when it comes to ensuring judges and magistrates have appropriate skill-sets to deliver accessible and equitable judgments. The manner in which decisions are made, and the process, is equally, if not more important. Clients who feel heard, respected and understood, are, in our experience, are generally more likely to comply with decisions of the Court. The converse is also true. A common experience for our clients is assumptions being made about them and their personal life and attributes which, whether true or not, appear to be based on stereotypes, generalisations or even prejudices. The most alarming examples of this we have seen include judges and magistrates:

- Concerns about lack of victim empathy (i.e. implying a victim is responsible for the family violence because of the way they looked or behaved, questioning whether they 'wanted it' in relation to allegations of sexual assault).
- Not believing victim's allegations of violence or downplaying them, pressuring compromise (e.g. because police did not charge the offender or because the male partner made an intervention order application first in time).
- Failing to recognise and misinterpreting certain cultural-based mannerisms – e.g. for many cultures it is rude and disrespectful to look someone in authority in the eyes, but this can be seen as disrespectful or like someone is lying in Western culture if these nuances are not understood.
- Bullying type behaviours – intentionally intimidating clients and belittling them, including children and young people, name-calling and put downs.
- Racism – making broad statements about particular attributes and behaviour of certain ethnic groups, stereotyping and generalising, trends of harsher sentencing based on cultural or ethnic background.

A recent report from Victoria University, in partnership with Wyndham City Council and the Scanlon Foundation, explored how people who live in Wyndham experience racism. In response to surveys and focus groups the community identified the systemic and institutionalised nature of racism:

*'Racism is a systemic issue, and not a personal or isolated issue. Racism, prejudice and discrimination is as much engrained in institutions like the judicial systems, Police, employment and education, and is usually carried out by people, who are only relaying the messages and ideas reinforced on large scale media platforms and bodies,' a survey respondent of South Sudanese background elaborated.*<sup>50</sup>

This sentiment is certainly consistent with the feelings expressed by many CALD clients we represent at Westjustice. We have had similar feedback from young people and victims of family violence regarding feeling disrespected and marginalised by institutions including the judiciary. This lack of representation and diversity will take some time to change, but in the interim, there need to be minimum expectations set around cultural competency, understanding criminogenic risk factors behind youth offending (including the science around brain development and levels of maturity and judgment), and the nuances and complexity around violence between intimate partners and family members.

### **5.1 Wyndham Community Support Hub**

The new Wyndham Justice Precinct, complimented by a social services hub, presents a unique opportunity to create a best-practice therapeutic court that responds to these community concerns. Wyndham is now home to over 302,000 residents and is rapidly growing. There is a critical need for this precinct design and function to align with other therapeutic courts operating successfully elsewhere in the state (e.g. NJC, Koori Court, ARC List, Drug Court) to address the structural disadvantage and systemic discrimination that drives criminal offending in the West. This precinct represents an opportunity to resurrect Victoria's reputation as an innovator in justice system reforms. But this requires more than just good court infrastructure; there needs to be integrated pre- and post-court support services for people accessing the court, including for victim-survivors of family violence and their families, and services with expertise in supporting vulnerable and at-risk young people. This hub would service the Wyndham community first and foremost, and in the process, enable the therapeutic, rehabilitative and restorative objectives of the new problem-solving court.

#### **Recommendation 9**

*Recruitment of Judicial Officers should include a valuing of expertise, knowledge in core competency areas including trauma, gender, cultural awareness and safety. There should be foundational and ongoing training to allow judicial officers to develop these competencies. Areas include:*

- 1. Understanding criminogenic risk factors and reasons behind re-offending/recidivism*
- 2. Cultural competency*
- 3. Trauma informed practice*
- 4. Differentiating between children and young people, and other adults – particularly levels of maturity and brain development*
- 5. Mental health training – including learning about the links between various mental health conditions, drug and alcohol misuse, and offending behaviour*
- 6. Family Violence training*
- 7. Gender and sexuality training*

*This should be monitored and evaluated periodically.*

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<sup>50</sup>All in this together: A community-led response to racism for the City of Wyndham' - [https://vuir.vu.edu.au/42075/1/Victoria%20University%20-%20VU%20Wyndham%20Anti-Racism%20Project\\_Report\\_V7\\_Final.pdf](https://vuir.vu.edu.au/42075/1/Victoria%20University%20-%20VU%20Wyndham%20Anti-Racism%20Project_Report_V7_Final.pdf), 2021, p36

**Recommendation 10**

*Support and champion at government level the established of a best practice model of multiple therapeutic courts at the new Wyndham Justice Precinct supported by a comprehensive multidisciplinary youth and families community hub encompassing pre- and post-hearing support for people coming into contact with the court.*