



Vision:

**A just and equitable
society for young people**

Youthlaw Policy Platform

Victorian Election 2006

Young Peoples Legal Rights Centre

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Victorian Election 2006

Contents

YOUTHLAW	3
INTRODUCTION	4
OVERVIEW OF RECOMMENDATIONS	4
POLICY AREAS	7
JUVENILE JUSTICE	7
MENTAL HEALTH	8
INDIGENOUS YOUNG PEOPLE	10
CARE AND PROTECTION	11
CRIME PREVENTION	12
ACCESS TO JUSTICE	13
SCHOOLS	14
VICTIMS OF CRIME	15
SENTENCING	16
HUMAN RIGHTS	17
CHILDREN AND YOUNG PEOPLE'S COMMISSION	18
ANTI-TERROR LAWS	19

Youthlaw

Youthlaw, Victoria's state-wide community legal centre for young people, works to achieve systemic responses to the legal issues facing young people, through casework, policy development, advocacy and preventative education programs within a human rights and social justice framework. Youthlaw is based at Frontyard Youth Services which provides a range of free services for young people aged 12-25 who are homeless or at risk of homelessness.

Vision:

A just and equitable society for, and by, young people.

Values:

Youthlaw is a fearless advocate for young people. Youthlaw works within a social justice and human rights framework. Our work is based on principles of community development and we work together with young people to realise our shared vision. We recognise and value the diversity of young people and we strive to reflect that diversity in our work. Youthlaw works collaboratively to stimulate and create systemic change in the community for the benefit of young people.

Mission:

To provide an accessible legal service to young people under the age of 25, focusing on areas of unmet legal need. To address systemic legal and social justice issues in Victoria through community education, advocacy and law reform both for and with young people and their advocates.

Objectives:

1. To respond to young people's unmet legal need and improve young people's access to the legal system.
2. To improve the level of understanding within the community about how the law affects young people.
3. To advocate for systemic changes in legal and social policy to promote the interests and rights of young people.
4. To meaningfully involve young people in Youthlaw.

Introduction

There are often pressures to adopt a tough 'law and order' approach to crime. However, this approach does not address the complex issues related to justice that include poverty, mental health, substance use, family dislocation, discrimination and marginalisation from the community. There must be appropriate investment in crime prevention strategies and policies that promote access to justice for all. Youthlaw calls on all political parties to develop and commit to justice policies that are underpinned by the principles of:

- Prevention and early intervention
- Protection of human rights
- Procedural fairness and natural justice
- Equitable access
- Adequate resourcing
- Rehabilitation
- Diversion
- Restorative justice
- Safety for the whole community
- Participation of young people

Overview

Overview of recommendations

Juvenile justice

Youthlaw supports:

- The retention and further development of the diversionary and rehabilitative focus of Victoria's juvenile justice system within the Department of Human Services.
- The retention of Victoria's highly regarded dual track system.
- The retention of juvenile justice facilities in public hands. Juvenile justice facilities should not be privatised.

Mental health

Youthlaw supports:

- Continued development of diversion programs that allow offenders to access treatment in the community and that support young people with health, housing and employment services.
- Investment in accessible community based mental health services for early intervention.
- Investment in accessible mental health and drug and alcohol treatment services that cater for young people with a dual diagnosis.
- The provision of appropriate mental health supports in custodial facilities and for young people leaving the custodial system.
- Increased capacity of the child and adolescent mental health services to provide outreach to community settings, juvenile justice and correctional centres.
- Investment in an expanded CAMHS system for young people up to the age of 25.

Indigenous young people

Youthlaw supports :

- Expansion of innovative approaches to help address the over-representation of Indigenous young people in the criminal justice system including:
 - ~ Greater use of first and second cautions and summons rather than arrest and bail.
 - ~ The Koori Juvenile Justice Program and the Children's Koori Court pilot.
- The resourcing of Aboriginal community service organisations to deliver a broad range of services to children, young people and families within their communities.
- The involvement of Indigenous agencies in decision making about Indigenous children and policies prioritising Indigenous family placements for Indigenous children in out of home care.

Care and protection

Youthlaw supports:

- Adequate funding for community organisations to provide early intervention support services to children, young people and families.
- Greater attention to the needs of young people in the care and protection system, and those trying to access the system, particularly the 12-17 year old age group. All responses to be developmentally appropriate.
- Investment in flexible leaving care support programs for young people that take into account the young person's housing, study, employment and health needs.
- A rights-based approach to child protection, in a manner consistent with the principles articulated in the Convention on the Rights of the Child.
- Independent and ongoing monitoring of the *Child, Youth and Families Act 2005 Vic* and consequential policies, practices and programs.

Crime prevention

Youthlaw supports:

- Development of a strong crime prevention policy and investment in effective crime prevention programs to enhance community safety.
- The involvement of young people in deliberations about community safety and crime prevention initiatives.
- Polices that welcome young people in public space. We do not support exclusionary policies or laws that seek to remove young people from public space.

Access to justice

Youthlaw supports:

- Increased investment in community legal education projects, particularly with a focus on disadvantaged and marginalised groups of young people.
- Continuing investment in CLCs and additional resources to enable CLCs to become more accessible to young people.
- The retention and continued development of the Youth Referral and Independent Program.
- The expansion of an after-hours legal advice line for young people.

Schools

Youthlaw supports:

- Greater support for schools to develop and implement bullying policies.
- Independent monitoring of bullying policies to ensure that policies are developed and implemented.
- Resources for schools to ensure students with a diversity of disabilities have equitable access to educational opportunities.
- A review of Victorian disciplinary proceedings guidelines.
- The banning of corporal punishment in all Victorian schools.

Victims of crime

Youthlaw supports:

- The development of a Victims' Charter enshrined in legislation to hold criminal justice agencies and government departments accountable for complying with these obligations.
- A well-resourced statutory victim compensation scheme and a well-resourced Victims Support Agency that meets the needs of victims of crime.
- The ongoing implementation of restorative justice systems, such as Group Conference programs where appropriate.

Sentencing

Youthlaw supports:

- The retention of suspended sentences as a sentencing option.
- The ongoing development of alternative non-custodial options.
- Community education campaigns about the role of courts and the sentencing system.

Human Rights

Youthlaw supports:

- Substantial injection of resources to enable public authorities to fulfil their positive obligations under the Charter of Human Rights and Responsibilities.
- Appropriate resourcing of an education strategy to enable those working with children and young people to more effectively advocate for and promote the rights of children and young people.
- Substantial resourcing of a promotional and educational strategy empowering children and young people to participate in the protection and promotion of their human rights.

- Broadening the scope of the Charter to include Social, Economic and Cultural rights and specific rights as outlined in the Convention on the Rights of the Child.
- Effective monitoring of the implementation of children and young people's rights by an independent Children and Young People's Commissioner.

Children and Young People's Commissioner

Youthlaw supports:

- The establishment of an independent Children and Young People's Commission that is based on the principles of:
 - ~ Independence – accountable to Parliament in order to ensure objectivity and candor.
 - ~ Statutory powers – established by legislation which gives the Commission the necessary authority to carry out its functions.
 - ~ Focus on all children and young people up to the age of 18.
 - ~ Adequate resources – commensurate with the responsibilities of the Commission.
 - ~ Broad perspective – broad jurisdiction that takes into account all levels of government, non-government and commercial organisations which impact on children and young people.
 - ~ Accessibility – ensure the Commission is accessible to all children and young people and recognises the diversity of children and young people.

Anti terror laws

- Youthlaw supports:
- Amendments to the *Terrorism (Community Protection) Act 2005 (Vic)*, so that young people under 18 years are not subject to preventative detention orders.
- Increased legislative and procedural safeguards to ensure police powers under the legislation are not used inappropriately to target particular groups of young people.
- The development of a mechanism to monitor the implementation and impact of this legislation with a particular focus on:
 - ~ Preventative detention orders for young people aged 16-18.
 - ~ The impact of the legislation on culturally diverse communities.

Juvenile Justice

Victoria's approach to juvenile justice has earned a strong reputation around Australia with the lowest rates of juvenile detention in Australia (.5 per 1000 as compared to 2 per 1000 across Australia) and the lowest rate of community supervision (2.5 per 1000 compared to a national rate of 3.7 per 1000)¹ and the operation of the unique dual track system.

The dual track system gives courts the discretion to sentence young offenders aged between eighteen to twenty-one to either a juvenile justice facility or an adult prison (or non-custodial options as appropriate). Decisions are made taking into consideration the offender's prospects of rehabilitation and whether they are particularly impressionable, immature or likely to be subjected to undesirable influences in adult prison.

Youthlaw supports Victoria's current juvenile justice policy framework which emphasises diversion and rehabilitation. The system aims to prevent low risk young people from entering the criminal justice system and to rehabilitate more serious young offenders. Such intensive support takes a long-term view and assists in diverting young people from further criminal behaviours and addresses the underlying causes of offending behaviours.

The juvenile justice system in Victoria sits within the Department of Human Services (DHS). Youthlaw believes it is important that juvenile justice continues to be managed within a human services framework, as opposed to an adult corrections model, as the juvenile justice system aims to rehabilitate and work with young people in a developmentally appropriate way. The corrections model which emphasises containment is not an appropriate response for young people, particularly vulnerable young people.

Youthlaw believes that governments have a fundamental responsibility of the protection of children and young people in detention and must not abrogate this responsibility to private providers.

Youthlaw supports:

- The retention and further development of the diversionary and rehabilitative focus of Victoria's juvenile justice system within the Department of Human Services.
- The retention of Victoria's highly regarded dual track system.
- The retention of juvenile justice facilities in public hands. Juvenile justice facilities should not be privatised.

Mental Health

Mental Health

The representation of people with a mental illness within adult prisons is estimated to be between three to five times the incidence of mental illness in the general population.² A study of prisoners in the Victorian Corrections system found that 28% had a diagnosed mental illness.³ Young people with mental health issues and/or intellectual disabilities are similarly over represented in the juvenile justice and corrections systems. The Youth Parole Board conducted a snapshot survey in June 2005 and found that more than 25% of detainees presented with mental health issues, more than 20% with intellectual disabilities and approximately 75% with alcohol or drug use issues.⁴

Overrepresentation in detention has been an increasing trend since the progressive closure of psychiatric institutions which has not been matched by an increase in community based mental health resources. Inadequate access to community-based health services means that the justice system often deals with the issue and it has been described at times as a de-facto mental health system.

The issue of dual diagnosis, where a young person has both a mental illness and a substance use problem, requires specific attention and systematic responses that enable both issues to be dealt with in an holistic manner. There is also the issue of young people turning to substance use to deal with untreated mental illnesses which in turn heightens their risk of coming into contact with the criminal justice system.⁵ The relationship between untreated mental health needs, illicit drug use, homelessness and the criminal justice system needs to be addressed.

Adolescence and young adulthood is the peak period for the onset of mental illnesses. Over 75% of all serious mental health problems commence before the age of 25 years.⁶ However, just 9.5% of the mental health budget is allocated to child and adolescent health.⁷ Youthlaw believes that there must be greater investment in child and adolescent health services in Victoria, including expanded CAMHS (Child Adolescent Mental Health Services) to ensure young people up to 25 are dealt with in a developmentally appropriate manner.

Youthlaw believes that enhancing community based services will assist in diverting young people with mental health issues away from the juvenile justice and criminal justice systems. The emphasis must be on the treatment and rehabilitation of juvenile offenders affected by mental illness rather than punishment. This will also require the continued development of court diversion programs which allow offenders to access treatment and support.

2 Department of Justice (2004) *New Directions for the Victorian Justice System 2004-2014, Attorney General's Justice Statement (2004)* p.8

3 Department of Justice (2003) *Victorian Prisoner Health Study*, p.26.

4 Department of Human Services (2006) *Youth Parole Board and Youth Residential Board Annual Report 2004-2005*, p.ix.

5 Jesuit Social Services (2001) *Heroin Use as a form of self medication*.

6 Orygen Youth Health (2005) *About Youth Mental Health, Information Sheet*.

7 Department of Human Services (2006) *Victoria—public hospitals and mental health services, policy and funding guidelines 2006–07*, p.63.

Where a young person is detained in custody, institutions have a duty to provide adequate medical services, including mental health services. Young people should also have a case plan develop as they leave detention to ensure a smooth transition back into the community. This must include access to community treatment to allow for the continuation of treatment as without treatment, young people with mental health issues are more likely to re-offend.

Youthlaw supports:

- Continued development of diversion programs that allow offenders to access treatment in the community and that support young people with health, housing and employment services.
- Investment in accessible community based mental health services for early intervention.
- Investment in accessible mental health and drug and alcohol treatment services that cater for young people with a dual diagnosis.
- The provision of appropriate mental health supports in custodial facilities and for young people leaving the custodial system.
- Increased capacity of the child and adolescent mental health services to provide outreach to community settings, juvenile justice and correctional centres.
- Investment in an expanded CAMHS system for young people up to the age of 25.

Indigenous

Indigenous young people

The Royal Commission into Aboriginal Deaths in Custody (1991) found that the number of Aboriginal people dying in custody was an outcome of the over-representation of Aboriginal people in detention. Youthlaw is concerned about the continuing overrepresentation of Indigenous people, including young people in custodial detention in Victoria. Indigenous young people are 13 more times likely to come into contact with the criminal justice system than non-Indigenous young people.⁸ The rate of Indigenous young people under juvenile justice supervision in Victoria in 2003-04 is also significantly higher at 23.4 per 1000 compared to 2.4 per 1000 for non Indigenous young people.⁹

It is also concerning that research suggests that Indigenous young people in Victoria do not receive the benefit of diversionary programs such as police cautioning to the same extent as non-Indigenous young people. Indigenous young people (who have no prior police contact) are 10%-15% less likely to be cautioned which increases their chance of acquiring a criminal record.¹⁰

Youthlaw calls for greater use of diversionary approaches (such as first and second cautions) to address these concerns. Youthlaw also supports the establishment of the Children's Koori Court pilot. The Adult Koori Court has significantly reduced levels of recidivism and breach rates amongst Koori defendants and has enabled community participation in the administration of the law. We support the extension of the Children's Koori Court following the pilot period.

We are also concerned about the number of Indigenous children in the care and protection system. At June 2005, Victoria recorded the highest rates of Aboriginal and Torres Strait Islander 0-17 year olds on care and protection orders in Australia (52.8 per 1,000 compared 4.3 per 1,000 non-Indigenous children).¹¹ Victoria also recorded the highest rate of Aboriginal and Torres Strait Islander children and young people in out-of-home care (40.7 per 1000, compared to 3.4 per 1,000 for non-Indigenous children).¹²

The Aboriginal Child Placement Principle requires that Indigenous children should be placed with an Indigenous carer where possible. In Victoria, only 59% of Indigenous children are placed in accordance with the Principle.¹³ While the *Child, Youth and Families Act 2005* attempts to address this issue, the effectiveness of these legislative changes is heavily dependent on the level of resourcing dedicated to Aboriginal organisations to provide support to families.

8 Victorian Council of Social Services (2005) *Sustaining a Fairer Victoria State Budget Submission 2006-7*, p.83.

9 Australian Institute of Health and Welfare (2006) *Juvenile Justice in Australia 2000-01 to 2003-04*, p.31.

10 Victorian Aboriginal Legal Service (2003) *Police Cautioning of Indigenous Juvenile Offenders in Victoria*.

11 Australian Institute of Health and Welfare (2006) *Child Protection Australia 2004-05. AIHW cat. No. CWS 26*, p.39.

12 Ibid, p.51.

13 Ibid p.53.

Youthlaw supports:

- Expansion of innovative approaches to help address the over-representation of Indigenous young people in the criminal justice system including:
 - ~ Greater use of first and second cautions and summons rather than arrest and bail.
 - ~ The Koori Juvenile Justice Program and the Children's Koori Court pilot.
- The resourcing of Aboriginal community service organisations to deliver a broad range of services to children, young people and families within their communities.
- The involvement of Indigenous agencies in decision making about Indigenous children and policies prioritising Indigenous family placements for Indigenous children in out of home care.

Care & protection

The introduction of the *Child, Youth and Families Act 2005 Vic* in 2007 will mean significant changes in relation to the care and protection of children and young people in Victoria. Youthlaw supports policies and initiatives that emphasise the best interests of the child as the paramount consideration in all decision making and the need to protect children and young people from abuse and neglect. Child protection policies must focus on an early intervention and prevention approach and budget allocations must reflect the significant level of resources that are required to enable children, young people and families to access appropriate supports in a timely manner. Inadequate attention to care and protection issues and the lack of access to support can result in young people drifting into the protection and juvenile justice systems.

Youthlaw supports a rights-based approach to the care and protection of children and young people, in a manner consistent with the principles articulated in the Convention on the Rights of the Child, including the importance of family (Article 9), the importance of cultural links (Article 20(3)), the importance of the views of the child being taken into account (Article 12) and the need to protect children from harm and abuse (Article 19).

Youthlaw in particular supports greater attention to the needs of young people as part of the child protection system. We are aware of young people aged 12-15 who have been unable to access assistance from the protection system, where they are unable to live at home with their family or guardian, and may be engaging in high risk behaviour. The system must be adequately resourced to meet the needs of all children and young people.

Youthlaw also supports greater investment in support for young people leaving care. Young people in out-of home care have the right to a safe and supportive experience in care and support in transitioning out of care into independent living. Research indicates that young people leaving care are at risk of not completing formal schooling, unemployment, health problems and of entering the homelessness system.¹⁴

It is important to monitor the development of the *Child, Youth and Families Act 2005 Vic* and any consequential policies, practices and programs to ensure appropriate support, care and protection for children, young people and families.

Youthlaw supports:

- Adequate funding for community organisations to provide early intervention support services to children, young people and families.
- Greater attention to the needs of young people in the care and protection system, and those trying to access the system, particularly the 12-17 year old age group. All responses to be developmentally appropriate.
- Investment in flexible leaving care support programs for young people that take into account the young person's housing, study, employment and health needs.
- A rights-based approach to child protection, in a manner consistent with the principles articulated in the Convention on the Rights of the Child.
- Independent and ongoing monitoring of the *Child, Youth and Families Act 2005 Vic* and consequential policies, practices and programs.

14 Centre for Excellence in Child and Family Welfare (2005) *Investing for success: the economics of supporting young people leaving care.*

Crime prevention

Crime Prevention

It is often seen as politically expedient to adopt tough 'law and order' policies in the lead up to elections, particularly given community concerns about safety. Law and order campaigns typically focus on punitive policies and harsher punishments.

Unfortunately, there is a popular stereotype of young people as anti-social 'troublemakers' and this stereotype is often fuelled by media images. As a result young people's behaviour, particularly in public space, is increasingly regulated. Young people complain of being targeted by authorities such as police, public transport officers and security guards, despite doing often nothing more than assembling in groups in public spaces.

Across Australia, we've seen the introduction of laws such as curfews and move on powers which aim to address young people's 'anti-social' behaviour. Youthlaw does not support the introduction of such laws in Victoria. These laws disproportionately impact on young people, particularly marginalised and disadvantaged young people, and can criminalise non-criminal behaviours, drawing more young people into the criminal justice system.

Youthlaw supports policies that create and maintain young people's equitable and safe access to public spaces where they feel welcome and free from discrimination. We must avoid perpetuating negative perceptions about young people and must challenge exclusionary practices such as curfews and move-on powers.

According to the Australian Institute of Criminology, young people aged 16- 24 experience higher rates of all types of personal crime (assault or threat, robbery) than other age groups.¹⁵ Policies must acknowledge that young people also want to feel safe. Young people often report feeling unsafe on public transport and at school due to bullying and discrimination.

Parties should develop and invest in a strong crime prevention framework and effective crime prevention programs to enhance community safety. Punitive responses do not address the systemic social and health problems underlying offending. Crime prevention initiatives must tackle critical issues including poverty, discrimination, mental illness, education, employment, recreational opportunities and access to stable and long-term housing.

Youthlaw supports:

- Development of a strong crime prevention policy and investment in effective crime prevention programs to enhance community safety.
- The involvement of young people in deliberations about community safety and crime prevention initiatives.
- Policies that welcome young people in public space. We do not support exclusionary policies or laws that seek to remove young people from public space.

Access to justice

Young people experience significant barriers to justice. Traditional avenues for obtaining legal assistance are generally not user friendly and not tailored to children and young people's needs. Many young people with legal problems or issues do not have the skills or the confidence to contact a lawyer for advice and young people won't necessarily identify their issue as a legal one, or one which a lawyer can help with.

We support policies that focus on timely, accessible legal assistance and information that also targets communities where access is particularly limited.

Community Legal Centres (CLCs) provide an important avenue for people to access to free legal advice and information. Youthlaw supports continuing investment in CLCs and initiatives that will expand access to justice for disadvantaged Victorians. In particular, we support resources to enable CLCs to become more accessible to young people, particularly in geographical regions with a high youth population. This would include funding for the employment of specialist youth lawyers in some CLCs and ongoing training for generalist lawyers about working with young people.

Youthlaw supports the recent extension of the successful Youth Referral and Independent Persons Program. The YRIPP scheme provides training and support for a network of independent adults who attend police interviews with a young person where a parent or guardian is not able to attend. The current program is to be expanded from 14 police stations to 101 police stations across metropolitan and country Victoria. We support the continued development of this program.

In addition, we support the expansion of an after-hours legal advice line. This is currently operating in a limited capacity via the YRIPP program and we believe it should be available for all young people across Victoria.

Youthlaw supports:

- Increased investment in community legal education projects, particularly with a focus on disadvantaged and marginalised groups of young people.
- Continuing investment in CLCs and additional resources to enable CLCs to become more accessible to young people.
- The retention and continued development of the Youth Referral and Independent Program.
- The expansion of an after-hours legal advice line for young people.

Schools

Schools

Bullying can be defined as a repeated attack, psychological or physical, social or verbal by those in a position of power. There is now greater awareness of the impact of bullying at school and in the workplace. Bullying can have significant effects including increased depression, self-harm and suicide, school avoidance, anxiety and replicating bullying behavior towards others

There is greater awareness of the need for schools to develop bullying policies and to provide professional development for teachers. However, Youthlaw continues to receive inquiries from parents and young people who are concerned about incidents of bullying and the schools' response.

Youthlaw believes there needs to be greater support for schools and teachers in how to develop policies and how to address bullying behaviours. We also support independent monitoring of school policies to ensure that policies are developed and implemented. There also needs to be more options for young people, their families and schools to address this issue including greater access to independent mediation and counselling.

Youthlaw believes young people with disabilities must have equity of access to education and training opportunities that provide a genuinely safe, appropriate learning environment. Governments also need to maximise opportunities for full integration into mainstream schools and programs, including full participation in after hours or school holiday activities, for children and young people with disabilities. To do this governments must recognise the diversity of disabilities and needs and remove the sometimes arbitrary distinctions which provide resources for particular types of disabilities or which meet one need but not another.

Suspensions and expulsions have a serious impact on students and may result in disruption in education, decline in participation and academic performance, resentment of authority, and increased potential for coming into contact with the criminal justice system. This is compounded for students outside the metropolitan region where there is often little opportunity for students to access education from alternative providers.

Youthlaw believes that suspensions and expulsions should only be used as a last resort and that the following principles should underpin disciplinary proceedings:

- Clear and consistent procedures.
- Natural justice and procedural fairness.
- The opportunity to challenge decisions.
- Alternative dispute resolution processes that promote restorative rather than punitive approaches.

Youthlaw supports the development of national standards for school discipline and a review of the Victorian *Student Discipline Procedures 1994* guide.

Youthlaw opposes the use of corporal punishment in the education system.

Youthlaw supports:

- Greater support for schools to develop and implement bullying policies.
- Independent monitoring of bullying policies to ensure that policies are developed and implemented.
- Resources for schools to ensure students with a diversity of disabilities have equitable access to educational opportunities.
- A review of Victorian disciplinary proceedings guidelines.
- The banning of corporal punishment in all Victorian schools.

Victims of crime

Young people are overrepresented as victims of crime. According to the Australian Institute of Criminology, young people 16- 24 young people have higher rates of all types of personal crime (assault or threat, robbery) than other age groups.¹⁶

Youthlaw supports the development of a Victims' Charter, based on the principles of the United Nations *Declaration of Basic Principles of Justice for Victims' of Crime and the Abuse of Power*. A Charter should set out the obligations on criminal justice agencies and government services to ensure that victims are treated with respect, that they have access to information and services and that they are not exposed to secondary victimisation through their dealings with the criminal justice system.

The development of a Victims' Charter should compliment the existing framework of rights and obligations that apply to defendants in the justice system. The presumption of innocence, the right to counsel and the right to procedural fairness for defendants must be retained for the criminal justice system to operate effectively.

Youthlaw supports the ongoing implementation of restorative justice systems, such as Group Conference programs, which encourage meetings between victims and offenders to help resolve issues related to the offence. These operate effectively in the Children's Court and should be extended to apply to young adult offenders.

Youthlaw is concerned about the lack of adequate compensation, particularly financial compensation, to victims of both sexual and physical assault available under the *Victims' of Crime Assistance Act 1996*. Victims of crime often only have the opportunity of obtaining compensation for pain or suffering through the Victims of Crime Assistance Tribunal (VOCAT) rather than through a sentencing order where the offender has to pay compensation to the victim. Our experience is that those cases are very rare as the vast majority of offenders cannot pay compensation. Often the only recourse is compensation through the State, which is often inadequate, especially in terms of the very limited financial assistance it can provide where appropriate.

Youthlaw supports:

- The development of a Victims' Charter enshrined in legislation to hold criminal justice agencies and government departments accountable for complying with these obligations.
- A well-resourced statutory victim compensation scheme and a well-resourced Victims Support Agency that meets the needs of victims of crime.
- The ongoing implementation of restorative justice systems, such as Group Conference programs.

Sentencing

The sentencing process is a significant part of criminal procedure. It has traditionally been undertaken by judicial officers in a manner which allows the exercise of appropriate discretion within general guidelines outlined in legislation. Judicial discretion in criminal sentencing allows judicial officers to consider circumstances such as:

- The nature and triviality of the offence.
- The impact of the offence on victims.
- The character, economic and social background of the offender.
- The offender's age.
- The likelihood of re-offending.

Discretion also allows for judges and magistrates to consider the interests of relevant stakeholders including victims and their families, the offender and his/her family, the community, and the standing of the criminal justice system as a whole. The weight to be applied to these various interests will vary from case to case, and cannot be calculated as a fixed formula.

Youthlaw opposes mandatory sentencing as it undermines judicial independence and discretion.

Given the significant number of young people in our juvenile justice and adult prison systems with mental health issues and drug and alcohol issues, we support an expanded range of sentencing options that divert these offenders from detention into therapeutic options. We do not support changes to the sentencing hierarchy which reduce sentencing options such as the abolition of suspended sentences.

We are aware of a community perception that courts do not impose 'tough-enough' sentences. We believe that the way to address this perception is through targeted community education campaigns about the role of courts and the sentencing system, rather than through law reform that restricts the discretion of the courts or limits alternatives to imprisonment.

Youthlaw believes that suspended sentences should be retained in the sentencing hierarchy. A suspended jail sentence reflects the seriousness of the offence/s while allowing the court to take into account the personal circumstances of the offender. The role of the suspended sentence is to provide the offender with a second or last chance and serve a number of purposes including:

- Allowing for the rehabilitation of the offender in the community.
- Deterring the individual offender and providing specific general deterrents for others.
- Denouncing the conduct of the offender.
- Avoiding the negative affect of imprisonment, particularly for vulnerable offenders, such as young people with mental health issues.



Youthlaw supports the introduction of alternative non-custodial options. However, it is important that the conditions attached are not so onerous that it will set young people, particularly young mentally and intellectually disabled offenders, up for failure.

We believe that all sentencing orders, particularly involving young people up to the age of 25, should always take into account individual factors and rehabilitation should remain one of the guiding principles in the sentencing of young offenders.

Youthlaw supports:

- The retention of suspended sentences as a sentencing option.
- The ongoing development of alternative non-custodial options.
- Community education campaigns about the role of courts and the sentencing system.

Human rights

Human Rights

Children, young people, families and workers often lack understanding of human rights, specifically the Convention on the Rights of the Child (CROC), and how human rights apply in day to day practice.

In October 2005 the UN Committee on the Rights of the Child recommended that Australia take all necessary measures to give more effect to the recommendations contained in the Committee's *Concluding Observations* which followed the Commonwealth Government's periodic reports. State Governments have a role to play in coordinating policies and effective monitoring of children's rights under CROC.

There is currently no mechanism to adequately monitor the implementation of CROC in Victoria. Youthlaw supports the establishment of an independent Children and Young People's Commission which could both educate the community about children and young people's rights and monitor the implementation of CROC. As child and youth participation is a key principle of CROC and a right as stated in Article 12, it is critical that children and young people contribute to the development of a monitoring process.

Youthlaw welcomes the introduction of the *Charter of Human Rights and Responsibilities* into Victorian law. Although the Charter is not designed to provide specifically for children and young people as a group, it can be utilised to advocate for changes that will promote children and young people's rights and wellbeing. The Charter demands that all branches of government and public authorities (such as hospitals, local councils, police and government authorities) consider how their day-to-day operations, policies and programs affect children and young people's rights. As the Charter sets out the right to participate in the conduct of public affairs, the Charter imposes positive obligations on the Victorian Government to facilitate and listen to the voices of children and young people in matters of social discourse.

Unfortunately, the ability of the Charter to promote children's rights effectively is undermined by the narrow scope of civil and political rights, the limited range of child-specific sections, and the non enforceability of individual rights.

Youthlaw supports:

- Substantial injection of resources to enable public authorities to fulfil their positive obligations under the Charter of Human Rights and Responsibilities.
- Appropriate resourcing of an education strategy to enable those working with children and young people to more effectively advocate for and promote the rights of children and young people.
- Substantial resourcing of a promotional and educational strategy empowering children and young people to participate in the protection and promotion of their human rights.
- Broadening the scope of the Charter to include Social, Economic and Cultural rights and specific rights as outlined in the Convention on the Rights of the Child.
- Effective monitoring of the implementation of children and young people's rights by an independent Children and Young People's Commission.

Children & young

Children and Young People's Commission¹⁷

Youthlaw is a member of the Children and Young People's Commission Coalition that is advocating for an independent Children and Young People's Commission for Victoria. We believe that the establishment of a Children and Young People's Commission led by an independent, statutory Commissioner would better demonstrate and enhance commitment to protecting and promoting the rights, well-being and interests of children and young people in the state.

We support the Youth Affairs Council of Victoria's call for a Children and Young People's Commission which is outlined in more detail in *'Are You Listening To Us?'*¹⁸ The key principles underpinning the establishment of the Commission are its independence, its legislative basis, its focus on children and young people up to the age of 18, its broad perspective, its accessibility to children and its level of resources.

The Commission would promote positive changes for children and young people in Victoria including the physical, sexual, emotional and psychological safety of young people, young people's health and well being and the accessibility and cultural appropriateness of services and programs. A well-resourced and independent Commission would have the power to analyse these issues in a strategic and systematic way, which would lead to improvements in the lives of all young Victorians.

The Commission would have a unique responsibility for protection and promoting the rights of children and young people at a state level. It would also have a broad overview of the issues affecting children and young people in government, non-government and commercial sectors.

The Commission would provide a vital mechanism to promote a 'whole-of-government' approach on issues relating to children and young people. The role of the Commission would complement and add to the work of existing bodies in Victoria such as the Equal Opportunity Commission and the Ombudsman. These bodies do not have an exclusive focus on issues affecting children and young people and are limited in their ability to address issues such as the rights of children and young people.

Youthlaw supports:

- The establishment of an independent Children and Young People's Commission that is based on the principles of:
 - ~ Independence – accountable to Parliament to ensure objectivity and candor.
 - ~ Statutory powers – established by legislation which gives the Commission the necessary authority to carry out its functions.
 - ~ Focus on all children and young people up to the age of 18.
 - ~ Adequate resources – commensurate with the responsibilities of the Commission.
 - ~ Broad perspective – broad jurisdiction that takes into account all levels of government, non-government and commercial organisations which impact on children and young people.
 - ~ Accessibility – ensure the Commission is accessible to all children and young people and recognises the diversity of children and young people.

¹⁷ Written in partnership with the Youth Affairs Council of Victoria
¹⁸ Youth Affairs Council of Victoria (2001) *Are You Listening To Us? The Case for a Victorian Children and Young People's Commission*.

Anti-terror laws

Current commonwealth and state anti-terror legislation applies to young people aged 16-18 years. Youthlaw is particularly concerned about preventative detention orders applying to 16-18 year olds. This is a fundamental breach of our obligations under international conventions, in particular the standard that detention of juveniles should only be used as a last resort. (Article 37(2) of the Convention on the Rights of the Child).

All police now have the power to stop, question and search a person where they believe that the person might be committing, might have committed or might be about to commit a terrorist act. We are concerned that young people may be disproportionately affected by these powers, particularly given they are significant users of and highly visible in public space. When in groups, their presence can often attract suspicion and fear, particularly when perceived as troublemakers.

Of key concern is the indirect impact of the legislation namely increasing fear and racial discrimination in the community and in turn further alienating and isolating young people, particularly young people of Muslim or Arabic background. When young people feel targeted and discriminated against, agencies report diminished self-esteem, an increase in aggressive, defensive and anti-social behavior, and increased expression of anger and violence.

Youthlaw supports:

- Amendments to the *Terrorism (Community Protection) Act 2005 (Vic)*, so that young people under 18 years are not subject to preventative detention orders.
- Increased legislative and procedural safeguards to ensure police powers under the legislation are not used inappropriately to target particular groups of young people.
- The development of a mechanism to monitor the implementation and impact of this legislation with a particular focus on:
 - ~ Preventative detention orders for young people aged 16-18.
 - ~ The impact of the legislation on culturally diverse communities.

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YOUNG PEOPLES' LEGAL RIGHTS CENTRE