



Youthlaw Policy Platform 2011

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 co-located with 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

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

The vast majority of vulnerable and marginalised young people are not serious offenders but are struggling day to day the best they can, having experienced unstable home lives, mental health problems, difficult life circumstances and marginalisation. They are at great risk of dropping out of school, long term unemployment, self harm, homelessness and engagement with the criminal justice system.

Research indicates that a key driver of serious repeat offending is childhood neglect and abuse. These young people often track through child protection to juvenile justice and sometimes adult prison. Resources need to be provided early to these young people and their families as well as through schools, child protection and the juvenile justice system.

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

Access to justice

Youthlaw supports:

- Continuing investment in Community Legal Centre (CLCs) [and Victoria Legal Aid] and additional resources to enable CLCs to be more accessible to young people and targets their unmet legal needs.
- Increased investment in legal advice services promoting better accessibility for young people living in rural and regional areas (including Youthlaw Online)
- Increased investment in community legal education projects, particularly with a focus on educating vulnerable and marginalised groups of young people about their legal rights, the way the legal system operates and how it can be changed.
- Targeted community education program to inform CLD young people and their families that provides information about the law and legal systems as well as individual rights and responsibilities.

Anti terror laws

Youthlaw supports:

- Amending the *Terrorism (Community Protection) Act 2003 (Vic)*, so that young people between the ages of 16 & 17 years are not subject to preventative detention orders (pdo).
- 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 & impact of this legislation with a particular focus on pdo orders for young people aged 16-18.
- Opposition to extended special powers being given to Victoria Police to deal with terrorism beyond powers already given by the criminal law system.

Bail

Youthlaw supports:

- A commitment to reducing the numbers of young people remanded in custody and only remanding a child or young person in custody as a last resort.
- And welcomes the Youth Justice Intensive Bail Support Pilot linked to Melbourne Children's Court for young men aged 15-18 years who live within the Department of Human Services (DHS) North and West Metropolitan Region.
- Additional resourcing and expansion of specific bail support programs in both the Magistrates' Court and the Children's Court that assist young people to meet their bail conditions, particularly housing and placement conditions. This includes the Koori Intensive Bail Support program.
- Implementation of other recommendations in Victorian Law Reform Commission's Review of the *Bail Act 1977 (Vic)* especially their recommendations that relate to children and young people (Recommendations 123 to 134, 145 and 146), including that bail conditions are used sparingly to ensure attendance in court and do not interfere with daily life of alleged offender.

Bullying and Cyber bullying

Youthlaw supports:

- Greater support for schools to develop & implement bullying policies & respond systematically, effectively to all issues of violence & intolerance experienced by students.
- A recognized course of action under the Equal Opportunity Act (Vic) for students to bring actions against educational institutions that do not meet their duty of care to prevent bullying
- Independent monitoring of bullying policies to ensure they are developed and implemented.
- A number of preventative, educative initiatives (for parents, teachers and young people) aimed at strengthening and protecting young people against cyber bullying. These strategies include:
 - Raising the awareness of young people about what they can do to protect their information online, personal decision-making in on-line social spaces, criminal laws and penalties relating to “sexting”.
 - Educating parents and encouraging setting of appropriate controls for their children’s engagement with digital-technology, and
 - Supporting teachers to assist in identifying students at risk of bullying or being bullies themselves.

Care and protection

Youthlaw supports:

- Increased funding to the early intervention and prevention arm of the child protection system
- A rights-based approach to child protection, in a manner consistent with the principles articulated in the *Convention on the Rights of the Child* and legislative reforms that recognise the obligation on government to comply with the various related rights and to provide adequate services and support to children and families.
- Additional resourcing of Child FIRST (Child Family Information, Referral and Support Teams) to maximise early intervention opportunities
- Government attention to ensuring that there are effective, child-sensitive procedures available to children and their representatives, including:
 - child friendly information, advice, advocacy, including support for self advocacy;
 - access to independent complaints procedures, and
 - Access to the courts with necessary legal and other assistance.
- Children should participate and be heard throughout the protection measure process, before making decisions, while it is implemented and also after implementation.
- All children assessed as lacking capacity to give instructions are afforded separate legal representation applying a best interest’s model.
- Legal representation to be afforded a child who is mature enough to give instructions and the practitioner act in accordance with their instruction so far as is practicable.
- Policies that address the over representation of Aboriginal young people in the child protection system.
- Calls for the child protection system to respond appropriately to the protection needs of young people aged 15 to 25 years, by adequately funding and providing support workers for transitional services for young people leaving care that take into account their housing, study, employment & health needs.
- Evaluate and provide sustained investment of the new Leaving Care Information Line.

- DHS promoting, training and supporting staff about the Department's responsibilities to support young people leaving care up to the age of 21 years (under the CFYA)
- DHS informing and supporting young people transitioning from care so they are aware of and access their leaving entitlements.
- Independent and ongoing monitoring of the *Child, Youth and Families Act 2005 Vic* and consequential policies, practices and programs.

Community safety in public spaces

Youthlaw supports:

- Policies that welcome young people in public space. We do not support exclusionary laws that seek to remove young people from public space such as move on powers and increased stop and search powers found in the *Summary Offences & Control of Weapons Acts (Vic)* and *Graffiti Prevention Act*.
- Authorities to actively engage young people to participate in community decision making processes regarding public space design, use and management and other community safety and crime prevention initiatives.
- Additional strategic funding for the development of community infrastructure to support communities to become more 'youth inclusive'.
- Seek input from young people to devise and implement solutions to violence that addresses their needs as victims of violence.
- Drunk in public offences – Inclusion in legislation or Code of Conduct for Police of treatment of young people suspected of being drunk – eg. guidelines around treatment, how long they can be held for, access to advice / phone calls while in custody, and right to be breath-tested.
- Knife carrying and knife violence are separate issues requiring different policy responses:
 - Smart justice solutions to knife carrying should deal with the causes of weapon carrying through addressing legitimate safety concerns that vulnerable/homeless young people have when using public spaces – i.e. investing in projects and programs to get them off the street, early intervention and education campaigns – not through harsh law enforcement and punishment and breaching human rights.
 - Knife violence should be dealt with as part of a broader campaign to reduce violent crime, and the harms associated with drugs and alcohol

Coronial Inquiries

Youthlaw supports:

- The establishment of a specific pool of funds to enable community legal centres to provide legal representations for interested parties (including children and young people) including acting in a representative capacity.
- Reforms to *Coroners Act (Vic)* to provide family members with the opportunity for greater involvement in the process, including greater access to information and the right to be kept informed about decision-making processes.
- Independent investigation of deaths in police custody.
- Superintendent Williams's findings (July 2009) for the revision of police training program including lessons on communicating, conflict resolution and identifying and managing vulnerable people, particularly young people.
- Reintroduction of crisis support units providing highly experienced mental health professionals to travel with and/or assist police and to appropriately defuse situations,/ make appropriate immediate referrals and access disability mental health service.

Criminal records

Youthlaw supports:

- The introduction of legislation which clearly regulates criminal record management and release of criminal histories. This legislation should attach various privacy practice protections to the handling of criminal history records information and include a right on the part of the record subject to see and correct the record. It should distinguish between convictions and non-convictions (finding of guilt or charge proved where no conviction recorded).
- The amendment of the Victoria Police Records Information Release Policy (2005) that allows the release of criminal history information on the basis of findings of guilt (thereby releasing findings of guilt without conviction) to information on the basis of convictions only.
- The establishment of a spent convictions scheme to reduce the stigma attached to criminal records. Such a scheme needs to be supported by the protection of the Equal Opportunity Act prohibiting discrimination on the grounds of “irrelevant and spent criminal records” by Victorian Equal Opportunity and Human Rights Commission and provide effective remedies, and the codification of the scheme i.e. by Victoria Police.

Disability

Youthlaw supports:

- individualised provision of supports to children and young people with a disability that attaches the funding to the person, not to services
- Supports in the education system should be individualised and centred on the needs, wishes and educational goals of the young person or child. They should be flexible, ongoing, comprehensive and well funded throughout the young person’s formal education to foster lifelong learning.
- National Disability Insurance Scheme to support people with disabilities regardless of how their disability was acquired
- a policy for ensuring attendant support in tertiary settings is available, flexible and integrated.

Discrimination

Youthlaw supports:

- a positive duty on government to prevent discrimination by addressing the needs of marginalised groups and groups experiencing discrimination, eg. newly arrived, homeless, gay and lesbian, international students, those with a disability, those with mental health issues, etc
- Youth friendly and accessible complaints systems

Diversion: reducing youth offending

Youthlaw supports

- A 2 tiered diversionary system, with a legislative framework, available throughout Victoria, to ensure young people are not further drawn into the criminal justice system. This would include a 1st tier diversion for new offenders such as is currently provided through ROPES and a 2nd tier diversion for young people with more entrenched offending and at risk of further offending, such as currently provided through the Moorabbin court and Youth Connections Right Step program.

- Guidelines and administration of police cautioning in Victoria be incorporated into legislation so that all apprehended young people may benefit from this diversionary strategy. (as per Recommendation 18 final report on the “*Inquiry into strategies to prevent high volume offending by young people*” (July 2009)
- Increase availability of mental health, housing, drug and alcohol and employment programs for young offenders such that these are available in all instances where a sentencing magistrate believes it would be appropriate for a young person (as per recommendation 16 final report on the “*Inquiry into strategies to prevent high volume offending by young people*” (July 2009).
- The highly effective ROPES program to operate State wide. Currently young people in many regions are unable to access this program.
- Maintain and increase funding to the highly effective Youth Justice Group Conferencing program, and expand to all areas of the state (as per recommendation 19 final report on the “*Inquiry into strategies to prevent high volume offending by young people*” (July 2009).
- 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 and the positive impact diversion programs.

Early intervention and crime prevention

Youthlaw supports:

- Social development programs which teach and support effective interpersonal communication, life skills and positive social behaviours as these are essential components of an early intervention and prevention strategy to reduce violence-targeted to those at risk of leaving education or who have left education.
- Strategies directed at school leavers as well as family and child development, community capacity building and post-detention release which:
 - Provide intensive high quality intervention for at risk children and their families
 - Provide voluntary and non-stigmatising support to families and children
 - Connect young people to their community locally
 - Ensure employment and training strategies that prevent or reduces young people from engaging in antisocial behaviour or criminal offending
 - Support young people during key transition periods (e.g. grade 5 through to year 7)
- Increased investment in the *Better Youth Services* pilots (the *Vulnerable Youth Framework*) to enhance the capacity of mainstream and universal services to contribute to young people living successfully in their communities through capacity building, early detection and youth development. They also provide a strong link to the range of other more intensive support services for young people.
- The expansion of crime prevention and recidivism prevention programs rather than measures that would result in increased penalties, convictions and imprisonment rates.

Employment and wages

Youthlaw supports:

- The removal by the *Equal Opportunity Act 2010* (Vic) of youth wages (employers allowed to discriminate and pay people under 21 years according to their age)

- Increased education to young people both via school curriculum and other means about rights at work to help minimise abuse and discrimination at work and to reduce incidence of employers taking advantage of young people.
- The provision of more plain language information to international students about their workplace rights.
- The relaxation of the 20 hour work restriction on the student visas of international students

Homelessness

Youthlaw supports:

- Youth specific early intervention and prevention service responses designed to meet the needs of young people who are traditionally vulnerable to experiencing periods of homelessness.
- Targeted sustainable crisis and long term accommodation stock equal to the level of need, with special attention given to the needs of young people located living in rural and remote locations.
- A move away from crisis accommodation and more medium term (2 year) supported accommodation that links young tenants into education and employment.
- Youth specific service responses to youth homelessness that account for the unique needs of young parents and young people who are same-sex attracted and gender diverse.
- Rental assistance schemes that safely and securely meet the longer terms housing needs of young people.
- Initiatives designed to meet the housing needs of young people leaving care.
- Improving standards to ensure basic needs, safety and amenity of all rooming houses.
- Registration of rooming house operators and premises to regulate the management of private rooming houses to prevent exploitative practices
- Expansion of bail support programs like the Supervised Bail Pilot in Children's Court and Court Integrated Services Program (CISP) for adults in some Magistrates Courts which include accommodation options.
- Increased resources for pre-release and post release programs that seek to break the cycle of offending, including accommodation, family reunification, pathways to employment and education and general specific support programs.
- The development of a state-wide policy framework for key DHS areas that cover housing, child protection and children, youth and family support services; with the aim of responding to the specific needs of unaccompanied young people under the age of 16 years who present at homeless services.
- Calls for more help to find employment, financial help for young people leaving out of home care up until the age of 25, a transition plan for every care leaver and guaranteed access to housing for all children leaving care to prevent them falling into homelessness.

Human Rights & discrimination protection

Youthlaw supports:

- The enactment of a federal Human Rights Act as recommended by the National Human Rights Consultative Committee.
- The establishment of independent National and Victorian Children and Young People's Commissioners to ensure that the rights and well being of children and young people are protected, promoted and monitored.

- Substantial resourcing of a promotional and educational strategy empowering children and young people to participate in the protection and promotion of their human rights
- The resourcing of a process for reviewing the Victorian Charter that involves and engages young people,
- The retention of the Victorian *Charter of Human Rights and Responsibilities*
- A review of the Victorian Charter considering the inclusion of social, economic and cultural rights and specific rights as outlined in the Convention on the Rights of the Child.
- Amend the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* to confer an individual right of remedy for human right breaches that may result in damages, compensation and other remedies.
- The amendment of the *Equal Opportunity Act 1995 (Vic)* to repeal statutory exemptions other than those that are positive and in line with affirmative action.
- The prohibition of discrimination on the basis of a person's criminal record, low income status and homelessness.

Infringements

Youthlaw supports:

- And welcomes the introduction of reduced public transport fines for children under 18 years and calls for the expansion of this initiative to all types of infringements.
- The inclusion of hardship provisions for on the spot infringements to enable young people up to 18 years experiencing financial stress to apply for fines to be reduced to a sum proportionate to their income
- The introduction of a full concession for public transport travel by homeless young people
- Registrars (CAYPINS and Infringement) dealing with applications to review infringements be supported and encouraged to waive fines on grounds of the special circumstances of the young person before them.
- The provision of strengthen authorisation procedures by the Department and additional training and support to Public Transport operators and Authorised Public Transport officers to ensure young people are treated in a respectful, non-threatening & courteous manner, and compliance with the Victorian Department Of Transport *Code of Conduct* and public authority obligations under the Charter of Human Rights and Responsibilities.
- Authorised Public Transport Officers have the discretion to not issue infringements or report offences where young person appears to demonstrate special circumstances
- Ongoing monitoring of the performance of authorised officers in relation to the Code.
- Complaints against authorised officers are lodged at a centralised contact point and are investigated independently of public transport operators.
- The provision of adequate training, management and monitoring of newly appointed protective service officers (PSO) especially with respect to interacting with young people.

Mental health

Youthlaw supports:

- A legislative guarantee that children and young people be treated in an age appropriate clinical setting;
- The clarification of the law regarding when parents/guardians can consent to treatment of children (people aged under 18);
- Youth under 18 years having the right to appeal their treatment to the Mental Health Review Board where they are being treated against their will as a voluntary patient but under the consent of their parents - most children (persons aged under 18)

treated against their will for a mental illness are treated with the consent of their parents rather than under the provisions of the Mental Health Act (Vic) – this results in many young people being denied the protections currently accorded by the Act.

- Children under 18 years having the right to legal representation when appearing before the Mental Health Review Board regarding involuntary treatment orders.
- Guaranteeing and resourcing legal representation for all involuntary patients coming before the Mental Health Review Board who wish to have it.
- 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 Child and Adolescent Mental Health Services (CAMHS) for young people up to the age of 25
- The funding of CAMHS at the same level as adult mental health services in Victoria;
- Staying Connected Report (Interface Councils, 2006) recommendations for increased State Government resources for the provision of locally-based, youth-specific mental health services, including:
 - Crisis outreach;
 - Multi-disciplinary staff, including youth-friendly GPs, case workers, psychologists;
 - Consultant psychiatrists; and
 - Youth-specific intake services in each region.
- Continued development and resourcing of flexible and appropriate diversion programs that allow offenders to access treatment in the community and that support young people with health, housing and employment services.
- Expeditious response from CISP to facilitate young people obtaining bail.

Policing

Youthlaw supports:

- Clear law requiring a young person to be informed of their right to refuse photographing by police, in and out of police custody. Where there is no consent, Magistrate approval is required for photographs of children and young people to be taken.
- The establishment of an independent Crimes Statistical Unit, to:
 - Monitor and collect information relating to crimes statistics and causes of crime
 - Disseminate this information to the media and community; and
 - Provide independent advice to government.
- The development of youth-focussed training programs designed to train police personnel and others with authority in relation to all issues affecting their work with young people.
- The retention & further development of the Youth Referral and Independent Person Program (YRIPP via legislative amendments that:
 - Require the presence of a trained independent person at every police interview with young people.
 - Legislation to define the role of an independent person and include making sure a young person understands their legal rights, assisting them to exercise any of those rights, and provide referrals to early intervention and diversionary support services.

- The establishment of accessible, understandable & independent complaints process for young people to lodge complaints about their interactions with, or treatment by police.
- Independent investigations of deaths in police custody
- Immediate implementation of increased and regular police training on, de-escalation of violent confrontations and communicating and identifying and managing vulnerable people including young people.

Prisons

Youthlaw supports:

- Adhering to the principle of detention as a last resort and recognition that the experience and stigma of a prison record can affect a young person's chances at rehabilitation and employment increasing the likelihood that they will remain involved in criminal activity.
- Crime prevention, rehabilitation and recidivism prevention programs addressing the underlying causes of crime and offending of young people.
- Suspended sentences, diversions, fines, Community based orders are sentences that keep young people out of prison.
- Increased resources for pre-release and post release programs that seek to break the cycle of offending, including assistance with accommodation, mental health issues, family reunification, pathways to employment and education and general specific support programs.
- The recommendations of the Victorian Ombudsman¹ in relation to the Melbourne Youth Justice Precinct, in particular his call for regular and independent oversight, investigations be conducted by high level experienced staff, greater regard and compliance with responsibilities and duties under legislation and the Charter.

Schools, alternative, and tertiary education

Youthlaw supports

- Increased funding to public schools to improve their resources, increase teacher numbers and reduce student –teacher ratios.
- Support schools to provide a range of prevention and early intervention strategies to support engagement and improved educational outcomes (as per recommendations 9 of final report on the "*Inquiry into strategies to prevent high volume offending by young people*")
- The examination of options for establishing partnerships between departments of education and community-based service providers to facilitate referral of students to external counselling and support services where required and appropriate.
- Schools developing alternatives to punitive punishment (such as suspensions and expulsions) and better engage students. Suspensions and expulsions should only be used as a last resort. Schools need to consider alternative ways of dealing with misbehaviour when it occurs and to adopt proactive approaches for dealing with these students. One suggestion is alternative dispute resolution processes that promote restorative rather than punitive approaches.
- Review school policies with a particular focus on providing support for suspended students and assist them to re-engage with education.
- Providing subsidies to meet the costs of attending secondary & post-secondary education.
- increased investment in alternative education programs that support young people who are not compulsorily required to attend school i.e. local TAFE and other training providers, especially in rural and remote Victoria

¹ G E Brower, 'Investigation into conditions at the Melbourne Youth Justice Precinct' (Report of investigation, Ombudsman Victoria, 4 October 2010) 10
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- Adequate and timely funding of support programs for students with disabilities designed to give them equitable access to quality education.
- Recommendations of the Baird Review of the *Education Services for Overseas Students (ESOS) Act 2000*, especially the provision of plain language fact sheets on visa conditions and ESOS consumer protections, and transparent, accurate written agreements between students and the educational provider.

Sentencing

Youthlaw supports:

- The re-establishment/retention of suspended sentences as a sentencing option under the Sentencing Act 1991
- The ongoing development of alternative non-custodial options.
- Community education campaigns about the principles behind youth sentencing, the role of judges, courts and the sentencing system.
- Provision of intensive support for young offenders aged 22 to 25 years in the adult system similar to that provided by Youth Justice in the Children's Court. Supervision to be based on the Youth Justice model rather than the Corrections (CORE) model.

Victims of crime

Youthlaw supports:

- A statutory victim compensation scheme that meets the support needs of young victims.
- A well-resourced Victims Support Agency and Young Victims Strategy that is responsive to the needs of young victims of crime and is accessible to victims of crime from diverse backgrounds.
- Maintain and expand restorative justice initiatives such as Group Conferencing programs

Youth Justice

Youthlaw supports:

- The retention of Victoria's highly regarded dual track system.
- The retention of youth justice facilities in public hands. Youth justice facilities should not be privatised.
- The retention of management of operational activities in Victoria's three Youth Justice centres by the Youth Justice Custodial Branch, Department of Human Services rather than Department of Justice
- Expansion of approaches to help address the over-representation of CALD young people within the criminal justice system.
- Expansion of innovative approaches to help address the over-representation of Indigenous young people in the criminal justice system including:
 - Greater use of first & second cautions & summons rather than arrest & bail.
 - The Koori cautioning pilot linking young people with services and support
 - The Koori Juvenile Justice Program
 - The Koori Intensive Bail support program
 - The Children's Koori Court pilot.

Position Papers

1. School discipline and disengagement from education
2. Young people and safety: alcohol, violence and knife crime
3. Young people, public space and exclusionary laws
4. Respect, young people and officers in positions of authority
5. Reducing youth offending through diversionary programs

Position Paper 1: School discipline and disengagement from education

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.

Research indicates lack of engagement with education is a strong predictor of criminal offending by young people.² Disengagement from school is also a strong predictor of long term and chronic homelessness. Teenagers usually have their first experience of homelessness while they are still at school and three quarters are 15 or younger. (Chamberlain and Mackenzie 1998)

Increasingly experts are raising concern about over reliance and content of school disciplinary and are advocating for a range of positive and preventative strategies be employed by schools to address student behaviour.³

Youthlaw receives many complaints about school discipline including handling of suspensions and expulsions. General concerns we hear include schools not listening to students, a lack of fairness and lack of transparency and accountability of disciplinary process and lack of avenues for appeal.

Many young people with behavioural issues in fact have limited opportunities for participation in education. There is not enough early intervention or counselling offered in schools to address a student's needs/behaviour that may lead to disciplinary proceedings e.g. learning difficulties, not fitting in and bullying by other students. Often the school first intervenes when it becomes a discipline issue & only respond with disciplinary measures e.g. perception that the school wanted to get rid of them because they "didn't fit in"

We have heard of minimal follow-up of young people who have been expelled, with some not attending school for a number of years.

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, procedural fairness.
- The opportunity to challenge decisions.
- Alternative dispute resolution processes that promote restorative rather than punitive approaches.

Youthlaw supports

- Support schools to provide a range of prevention and early intervention strategies to support engagement and improved educational outcomes (as per recommendations 9 of final report on the "*Inquiry into strategies to prevent high volume offending by young people*")
- Additional resources provided to schools and related community based support services to ensure recommendations from the Victorian Governments Vulnerable Youth Framework can be fully implemented. (as per recommendation 10 of final report on the "*Inquiry into strategies to prevent high volume offending by young people*")
- Increased investment in alternative education programs that support young people who are not compulsorily required to attend school i.e. local TAFE and other training providers, especially in rural and remote Victoria
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² Discussion Paper "*Inquiry into strategies to prevent high volume offending by Young People*" (August 2008) Drugs and Crime Prevention Committee, Parliament of Victoria

³ *ibid*

- Schools developing alternatives to punitive punishment (such as suspensions and expulsions) and to better engage students. Suspensions and expulsions should only be used as a last resort. Schools need to consider alternative ways of dealing with misbehaviour when it occurs and to adopt proactive approaches for dealing with these students. One suggestion is alternative dispute resolution processes that promote restorative rather than punitive approaches.
- Schools having re-entry policies for excluded and disaffected students.
- the development of national standards for school discipline and a review of the Victorian *Student Discipline Procedures 1994* guide.

Position Paper 2: Young people and safety: alcohol, violence, and knife crime

“We've got kids as young as 10 or 11 who have been picked up carrying knives that they intend to use on someone. So we've got to send a message.”

Victoria's Premier John Brumby
‘Police poised for new street search powers’,
The Age, 9 August 2009

Street violence is an issue receiving substantial attention from the media, government and community. Media stories have created a perception that violent crime, perpetrated by young people with knives, is on the increase. There is a general perception that young people are largely responsible, that there is an increase in youth crime and anti-social behaviour and recurring themes that youth are out of control and display a lack of respect.

However young people tell us they feel unsafe and fearful, particularly at night, especially around local train stations. Some believe that drugs and alcohol contributes to street violence, and many report a lack of police presence.

Research shows that young people are more often victims rather than offenders. Vulnerable & marginalised young people in particular experience high levels of violence particularly on the streets.

Victoria Police 2008-9 statistics indicate:

- youth crime against the person (homicide, rape, robbery, assault and abduction) is down by 3.3% (this is following 3 yrs of gradual increases)
- adult crimes against the person increased by 5.1%.

Despite recent attention there is little evidence that illegal knife carrying or violent crimes involving knives is increasing. Although individual cases of knife *violence* have been highlighted in the media, crime statistics do not show an increase in knife violence. According to police crime data, when adjusted for population increase, assaults with knives have remained constant over the past decade.ⁱ

Most recently the Victorian government introduced significant new stop and search powers, new street offences, and move on laws to curb street violence. The search powers which give police powers to search anyone – including children – in designated areas, as the government itself has admitted – violate the Victorian Charter of Rights, including the right to privacy and children's rights.

Analysis of the impact of similar powers in the UK questions whether they actually reduce carryingⁱⁱ or knife violence.ⁱⁱⁱ They may in fact be counterproductive, as they disproportionately affect young people and marginalised groups, straining relations between with police and leading to greater insecurity – a major motivation for young people to carry knives.^{iv}

Knife carrying and knife violence are separate issues requiring different policy responses.

Knife carrying is most commonly done by very young people who feel anxious about their safety and feel the need to protect themselves. Research suggests that the vast majority of those who carry knives never use them in violent crime, and grow out of the habit – knife carrying peaks at 14 years of age.^v Although no single factor causes knife carrying, research indicates that fear and insecurity is major factor, and that the influence of family, school and peer group is also important.^{vi} While males are much more likely to carry knives than females, there is no evidence that race or ethnicity is a factor in knife carrying.^{vii}

Solutions to knife carrying should deal with the causes of weapon carrying through early intervention and education campaigns – not through harsh law enforcement and punishment and breaching human rights. A report by RMIT-Victoria Police suggests three areas of intervention.^{viii}

- Information dissemination and education – a targeted, long-term information campaign is an essential part of reducing knife carriage. The campaign should work at various levels, from

the general - including mass media, school curriculum and parents – to the specific – including juvenile offenders.

- More support services for young people at risk – Research shows that young people who carry knives often face multiple and interrelated problems including drug dependence, victimization, homelessness and mental health issues. Specific programs targeting weapons carriage in services already catering to these groups could be effective in reducing knife carrying.^{ix}
- Creating safer communities – As long as young people feel unsafe in their communities, weapon carrying will continue. Programs designed to create safer communities with the active participation of young people can play a role in overcoming this.

Knife violence is associated with quite different demographics and behaviours. Research suggests that both the perpetrators and victims of knife violence tend to be older – peaking in the late teenage years and early twenties - and there is a strong correlation between involvement in the drug trade and use of knives in violence.^x

Knife violence should be dealt with as part of a broader campaign to reduce violent crime, and the harms associated with drugs and alcohol

It is evident that that violence on the streets is a whole of community issue not just a youth issue. It is critical young people input into developing solutions to this social problem which impacts so heavily on them.

Youthlaw supports:

- The establishment of a Crimes Statistical Unit, independent of Police and Government, to monitor crimes statistics, and the causes of crime, provide accurate statistical information to the community and to provide independent advice to government.
- Knife carrying and knife violence are separate issues requiring different policy responses:
 - Smart justice solutions to knife carrying should deal with the causes of weapon carrying through early intervention and education campaigns – not through harsh law enforcement and punishment and breaching human rights.
 - Knife violence should be dealt with as part of a broader campaign to reduce violent crime, and the harms associated with drugs and alcohol
- The creation of meaningful opportunities for young people to participate in community decision making processes regarding public space design, use and management and other community safety and crime prevention initiatives - Police, State government and business cannot effectively manage public space safety issues without a range of community input, including that of young people.

Position Paper 3. Young people, public space and move on powers

The introduction of new state laws in December 2009 in the *Summary Offences Act 2009* formally gave police move on powers.

These laws infringe on children and young people's right to be free from discrimination and freedom of movement and assembly protected by the Charter of Human Rights and Responsibilities.

Although these laws do not explicitly target young people the powers are so broad that they are open to misuse and unfair targeting of young people because they disproportionately occupy public spaces, both as a result of choice and necessity.

Move on powers and practices have the effect of preventing young people from moving through, remaining in, gathering and "*hanging out*" in areas of public space.

Move on powers also have a negative impact on young people because young people feel more alienated and unjustly excluded from public space and this leads to an escalation of conflict between police and young people⁴, thus drawing more young people into the criminal justice system.

A number of states, including Queensland, New South Wales and Western Australia have introduced criminal and summary move on laws. Experience from these jurisdictions show that move on powers are unlikely to reduce incidents of crime, or address underlying causes of youth offending, but rather be misused without valid reasons as a means of regulating young people's access to public space.

A review conducted by the NSW Ombudsman⁵ of move-on powers introduced in 1998 authorising police to disperse people acting in a disruptive manner found that of 14,455 move-on directions issued during the one year study:

- 48% of all directions were issued to people under 17, with the peak age being 16.
- 16 year olds were nine times more likely to be 'moved on' than 26 year olds, and 19 times more likely than 36 year olds.
- Move-on directions were issued to young people more on the basis of who they were, rather than what they were doing.
- In all recorded incidents for the year, young people under 25 represented 54% of total incidents, but the same group accounted for 79% of move on directions in the same period.⁶

Move on directions can be verbal under the new laws. There are no checks built in the legislation to ensure a reason is given for someone being moved, or whether the reason given is legitimate or whether the person understood. Furthermore there is no stipulation that anything be recorded by the enforcing officer in terms of when the ban was given and the duration of the ban. It is very likely most police will not record in any detail of move on directives. This reduces the possibility of oversight and review.

Even before the laws were introduced young people told us about many experiences of being moved on by security guards at shopping complexes, even though they just congregating in a safe, popular accessible space. Young people also reported harassment by the police, being asked to move on, often without any reason, except that the young person was congregating with friends in a public space.

⁴ In particular New South Wales Ombudsman, *Policing Public Safety*, 1999 and Paul Spooner, 'Moving in the Wrong Direction: An Analysis of Police Move-on Powers in Queensland' (2001).

⁵ New South Wales Ombudsman, *Policing Public Safety*, 1999, p.255.

⁶ Saul, B. 2000 'Olympic street sweeping: 'moving on' people and the erosion of public space', *Polemic*; 11(1): 34- 37.

Youthlaw supports:

- 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 such as move on powers the *Summary Offences Act*.
- Police being required to give written directions to move on outlining the reason, the geographic area to stay away from and the duration.
- Monitoring the implementation and impact of these new laws on young people and reporting to Victoria Police and State Government.
- A model of youth crime prevention that is based within a framework of human and children's rights which address the causes of youth offending and antisocial behaviour, and:
 - Is inclusive of young people's needs, views, interests and aspirations
 - Builds young people's skills and strengths and supports families
 - Ensures suitable diversionary programs are available to all young people apprehended or charged with criminal offences

Position Paper 4. Respect, young people and officers in positions of authority

Public Transport Ticket Inspectors

According to their Code of Conduct Public Transport Authorised Officers (“ticket inspectors”) must “*treat young people in a respectful, non-threatening and courteous manner*” (Code of Conduct DOT 2009: 10).

However young people report widespread dissatisfaction with Authorised Officers with regular experiences of being treated disrespectfully, humiliated and abused and the escalation of these interactions at times into verbal and occasional physical abuse.

Some of these exchanges stem from misunderstandings on both sides. Inspectors have a perception of young people as trouble makers and fare evaders, and are unaware or have limited understanding of the various factors that may inhibit their ability to buy a ticket i.e. young people with a disability, or homeless, or financially disadvantaged.

Young people and passengers are often unaware of the powers inspectors have and what they are and are not allowed to do. For example inspectors can use reasonable force to detain someone without a valid ticket. Inspectors have discretion whether to issue an infringement or not.

Young people get scared and defensive when they are confronted by large groups of inspectors, which leads to confrontation. Often confrontations that lead to assaults and other charges end in criminal records for young people which affect their future.

In May 2009 we initiated *Campaign Respect* to raise awareness amongst young people of their rights on public transport and the powers of authorised officers and to improve treatment of young people by authorised officers.

Police

Police have an important role to uphold the law and investigate reported criminal acts; however they also have an obligation that any treatment of young people promotes their sense of dignity, takes into consideration their age, special circumstances and facilitates their reintegration into society taking into account the child's age.⁷

However many police have a propensity to stereotype and treat young people as trouble makers, and rarely treat them with respect. Many young people speak of unfair and disrespectful treatment by police, at best ill treatment, and at worse abuse. We hear mostly stories of general harassment in public places, young people being treated as suspects, subject to random and arbitrary searches. Police often stop young people in the street and ask for their names and addresses without a good reason. Indigenous young people, homeless young people and refugee young people complain of being routinely picked on by police in some areas.

A report launched in March this year, claims routine over-policing, physical assault and verbal abuse by police against African youths in three Melbourne municipalities City of Greater Dandenong, Flemington and Braybrook.⁸

Many young people suspected of committing an offence feel nervous, intimidated, pressured, tricked, confused, stressed when they had to answer questions from police in interview. The current provision for the presence of another adult (or independent person) in a police interview with young person under 18 years, is a necessary part of a humane, fair, just, age appropriate, efficient and effective criminal justice system, and an important means of compensating for the disadvantage experienced by young people when being interviewed by police.

⁷ Article 40 CROC/ section 23 Charter

⁸ “Boys, you wanna give me some action?” Interventions into Policing of Racialised Communities in Melbourne” report by Springvale Monash Legal Service, Fitzroy Legal Service and Western Suburbs Legal Service. http://www.fitzroy-legal.org.au/cb_pages/images/LegalAid_RacialAdol_FA2.pdf

Many young people have spoken to us about not reporting incidents to police or poor response to incidents they did report. For young people one of the main barriers to reporting crime as a victim is if you have a criminal conviction. If you have a criminal conviction you might feel that you are treated badly by the police because of the previous conviction.

Although homeless young people living on the street are exposed to high levels of violent hate crime, they are unlikely to be report these crimes to police.⁹ Some of the homeless young people we are in contact with at Frontyard Youth Services report a great deal of distrust for the police they encounter on the street and at stations. Young people don't have much confidence in the notion of 'police integrity'. They report feeling reluctant to report crime fearing they will not be believed and fearing retribution or even physical violence.

Police complaints

Youthlaw supports:

- The provision of additional training and support provided to authorised officers to help them adhere to the Code of Conduct and treat young people in a respectful, non-threatening and courteous manner.
- Raise awareness among young people regarding grounds for complaints and the avenues through which they can make complaints.
- Ongoing monitoring of the conduct and performance of authorised officers in relation to young people.
- The development of youth-focussed training programs designed to train police personnel and others with authority in relation to all issues affecting their work with young people. Police training in children's matters should deal with the contexts of children's lives and the variety of social, cultural and economic factors that contribute to juvenile offending. One of the aims of training should be to promote respectful interactions between police and young people.
- the maintenance & further development of the Youth Referral and Independent Person Program (YRIPP via legislative amendments that:
 - require the presence of a trained independent person at every police interview with young people.
 - legislative reform setting out the role of an independent person in legislation and include making sure a young person understands their legal rights, assisting them to exercise any of those rights, and provide referrals to early intervention and diversionary support services
- The establishment of accessible, understandable & independent processes through which young people can lodge complaints regarding problems and interactions with police, public transport authorised officers & others in positions of legal authority over young people.

⁹ NYC at p 290, http://www.nyc.net.au/files/Australias_Homeless_Youth.pdf
Youthlaw Policy Platform 2011

Position Paper 5. Reducing youth offending through diversionary programs

Research indicates that diversionary programs, including cautions and conferencing, are more positive ways and effective approaches to reducing young people's re-offending behaviours and contact with the criminal justice system, than traditional and more punitive methods of punishment.

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.

We believe that all sentencing orders, particularly involving young people up to the age of 25, should always take into account the guiding principles in the sentencing of young offenders, being: individual factors, the need to wherever possible divert the young person from the criminal justice system and rehabilitation.

Cautions

In Victoria diversion has historically operated through Victoria Police's cautioning program. It has long been regarded as an important program for diverting young offenders away from court. A warning or a formal police caution may assist in reducing the chance of re-offending for first time offenders through fear of prosecution, and it also avoids the embarrassment of a court appearance. Studies¹⁰ on formal cautions and the likelihood on re-offending have been conducted, and results indicate that cautions are an effective way to reduce re-offending among young people.

In Victoria, cautioning remains within the ambit of police discretion and in our experience is used inconsistently. However, legislation has been implemented in all other States.

Diversionary programs

Statistics show that, once convicted, young offenders were more than likely to re-offend. For young offenders, community based diversionary strategies that minimise contact with the formal justice system can provide a less intrusive and less stigmatic form of intervention and offer opportunities for community reintegration.

The Ropes Program is an example of a diversionary program that operates after a young person is charged by police and before any formal court hearing. It operates throughout metropolitan Melbourne and in a number of country regions. First-time offenders aged from 13 to 17 who admit their offence such as shoplifting, assault, car theft and criminal damage will undergo a rope-climbing course with police instead of being convicted, in a bid to prevent their return to crime. Providing the course is successfully completed the young person is not required to appear in court and charges are withdrawn/ struck out. This means there is no finding of guilt and no sentencing order made against the young person.

The program has successfully lowered the rates of recidivism. The program at Ringwood has been operating for over five years. From January 2003 to December 2007, 515 young people have participated in ROPES. 62 (12%) have re-offended. The figures from Sunshine, which is the second oldest program, are from June 2005 to December 2007. There have been 263 participants and 30 (11%) have re-offended. Frankston has had 201 participants between June 06 and December 07 with a re-offending rate of 10%. (*reference these stats*)

Group Conferencing operates as a pre-sentence program in Victoria used to divert young people away from supervisory court orders. It has legislative endorsement in *Children, Youth and Families Act 2005* (Vic) and *Courts Legislation (Neighbourhood Justice Centre) Act 2006*, which allows the

¹⁰ A study conducted by Vignaendra and Fitzgerald suggests that 58 per cent of young people who were cautioned by police in New South Wales in 1999 would not re-offend within a five year time period.¹⁰ A study by Dennison, Stewart and Hurren on the impact of cautioning on young offenders in Queensland showed that young people cautioned for their first offences are less likely to commit a further offence, with only 31 per cent of the young offenders having further contact with the justice system.

court to consider whether a sentence should be suspended so a young person may attend a group conference.¹¹

A review of the pilot of group conferencing in 2006 commissioned by DHS, *Report on the Juvenile Justice Group Conferencing Program* (Effective Change Pty. Ltd, January 2006) noted that 86% of those who participated in group conferencing received good behaviour bonds at Court, thereby diverting young people from more onerous orders. The review also noted that after 12 months 16% of group conference participants had re-offended compared to 40% of those offenders who received probation orders and had not been involved in a conference.

Youthlaw supports:

- The rules, procedures, guidelines and administration of police cautioning in Victoria be incorporated into legislation so that all apprehended young people may benefit from this diversionary strategy.
- There is a need for significant resourcing of diversion programs that allow young offenders to access treatment in the community and that support young people with health, housing and employment services.
- The government fund the ROPES program to operate state wide.
- Police more consistently refer to diversionary programs and work with other agencies who can assist in screening out cases and providing alternatives to prosecution.
- The Government maintain its investment in group conferencing initiatives.
- 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.

ⁱ Victoria Police Crime Stats [need proper citation of sources here]

ⁱⁱ Silvestri et al, *Young People, Knives And Guns*, 44.

ⁱⁱⁱ Fitzgerald, *Analysis of MPS Knife Crime Data and the use of s60 searches* (2010), Unpublished briefing document, 4-6; <http://www.guardian.co.uk/uk/2010/jan/24/stop-and-search-operation-blunt>

^{iv} Bondy et al, *Living on Edge*, x, 25.

^v Bondy et al, *Living on Edge*, vii, 23, 112.

^{vi} Bondy et al, *Living on Edge*, vii; Eades, Grimshaw, Silvestri, Solomon, *Knife Crime: A review of evidence and policy* (2007) Centre for Crime and Justice Studies, 23.

^{vii} Bondy et al, *Living on Edge*, vii-viii.

^{viii} Bondy et al, *Living on Edge*, 127-136.

^{ix} A British scheme aimed at young people admitted to hospital with knife injuries has been effective in reducing readmission rates. [get citation]

^x Bondy et al, *Living on Edge*, vii.

¹¹ *Children, Youth and Families Act 2005* (Vic) s414.