

# *Juvenile Justice Diversion in Victoria: A Blank Canvas?*

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## *Abstract*

Unlike many jurisdictions in Australia, Victoria has not adopted a legislative, court-based diversion scheme for addressing crime committed by children and young people. The state has also seen limited investment in diversionary programs and an over-reliance on discretionary police cautions. For young people in rural and regional areas, access to diversion programs and support services is especially limited. This article examines the limited diversionary options available in the current youth justice system, identifying strengths and opportunities. It concludes that legislated, court-based diversion schemes — assisted by community programs that provide appropriate intervention and support to those at risk of reoffending — are an essential means of addressing young people's engagement in crime.

## **Introduction**

The stigma associated with early juvenile offending can remain with young people throughout their lives, impacting education and employment opportunities, and relationships (Bushway 1998; Cunneen and White 2002; Fader 2011; Gatti et al 2009; Pager 2003; Ruddell and Winfree 2006). As Becker's (1963) seminal work demonstrated, social groups create deviance by labelling certain acts as 'deviant' and treating individuals who commit those acts as 'outsiders', facilitating powerful processes of criminalisation and marginalisation. Similarly, Lemert (1969) revealed how labelling processes can lead to secondary deviance, whereby labelled individuals begin to identify with and adopt such identities. Born of this theoretical framework centred on the concept of labelling, diversion strategies aim to redirect young offenders away from the criminal justice system, primarily to avoid the stigmatising and criminogenic impacts associated with interactions with the justice system (Cunneen and White 2002; Farrington 1977).

Indeed, evidence suggests that processing young people through the juvenile justice system may do more harm than good (Bernburg and Krohn 2003; Ericson and Vinson 2010; McAra and McVie 2007). Most juvenile crime is episodic and transitory, with young people predominantly 'growing out' of offending behaviour over time through a maturation process (Cunneen and White 2002; Mukherjee 1983; Richards 2011). Young offenders typically become involved in crime between 12 and 16 years of age, with those aged 15–17 years most likely to come into contact with the police (Richards 2009). The majority of these

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young people have one or two contacts with the criminal justice system and do not reoffend (Rose 2006; Weatherburn 2004). However, research suggests that the young people who proceed to Children's Court adjudication are significantly more likely to reoffend (Chen et al 2005).

A recent longitudinal study of 1037 young men in Canada found that involvement in the juvenile justice system increased their likelihood of later involvement in the adult justice system. In particular, it was found that the greater the intensity of, and the more restrictive, the intervention, the stronger will be its criminogenic effects and the greater will be the negative impacts later in life (Gatti et al 2009). Conversely, studies have shown that young people who are diverted away from the criminal justice system experience lower levels of recidivism compared to those who are dealt with by the courts (Allard et al 2010; Cunningham 2007; Hayes and Daly 2003). Thus, legal intervention by the juvenile justice system may actually perpetuate youth offending and marginalise young people by processing cases that could be better remedied in informal settings within the community. Importantly, diversionary schemes can also assist in ameliorating the problem of overburdened courts and are an alternative to the highly costly and too often overcrowded and ineffective juvenile corrections system (Morris and Maxwell 2003; Weatherburn et al 2009).

As well as reducing reoffending and justice system costs, youth diversion programs are supported by international law. Australia is a signatory to the United Nations *Convention on the Rights of the Child* and consequently all Australian jurisdictions are obligated to ensure that appropriate diversionary measures are afforded to children and young people. In particular, art 40.3 states:

Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

...

- (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

This general principle is also embodied within Australia's broader human rights obligations under the *International Convention on the Elimination of All Forms of Racial Discrimination* and the *International Covenant on Civil and Political Rights*.

The Victorian Government has committed to reducing young people's engagement in crime by creating clearer pathways to prevention and rehabilitation programs, demonstrating its appetite for innovative and effective programs that prevent and reduce offending and recidivism (Department of Justice 2012). Yet, despite the legal, financial and social benefits of diversion, unlike other Australian jurisdictions such as New South Wales, Victoria has not adopted a legislative, court-based diversion scheme that addresses the criminal behaviour of children and young people. There has also been limited investment in diversionary programs. This article examines the diversionary options available in the current Victorian juvenile justice system and proposes a number of means to develop a more robust youth diversion scheme for young Victorians.

Diversion primarily operates at three levels:

1. crime prevention strategies — which aim to prevent young people becoming involved in criminal activity in the first instance;
2. diversionary schemes — which aim to divert young offenders away from the criminal justice system as early as possible; and
3. sentencing options — which aim to divert young people away from custodial sentences (Polk 2003; Polk et al 2003).

This paper is essentially concerned with the second level of diversion — those practices that divert young people early in the justice process, particularly prior to Children’s Court adjudication and sentencing.

## **Diversion in Victoria**

In Victoria, adults (mainly first-time offenders) who are charged with summary offences and appear in Magistrates’ Court criminal proceedings can access the Criminal Justice Diversion Program (‘CJDP’). Under s 59 of the *Criminal Procedure Act 2009* (Vic), if an accused person acknowledges responsibility for the offence with which he or she has been charged, and the magistrate considers it appropriate, the Magistrates’ Court may adjourn the proceeding for up to one year to enable the accused to complete the CJDP (subject to the acquiescence of both the prosecution and the accused person). Magistrates may include a number of conditions to a diversion plan, including an apology to the victim; a letter of gratitude to an informant; a donation; compensation to the victim; an undertaking of good behaviour; and participation in voluntary work, an anger management course, a defensive driving course, or road trauma awareness, and drug and alcohol counselling or treatment. A request for inclusion in the CJDP can be made by several parties, including the informant, the sub-officer authorising the brief, the prosecutor, the defendant, the defendant’s legal representation or the court (including the magistrate or the criminal justice diversion co-ordinator) (King et al 2004). In addition to this formal legislative diversion program, the range of problem-solving courts operating in Victoria may also be described as a form of diversion for adult offenders. These specialist courts focus on addressing the underlying problems and disadvantages associated with criminal behaviour. Specialist courts within the Magistrates’ Court of Victoria’s jurisdiction include the Drug Court, the Family Violence Division, the Koori Court and the Neighbourhood Justice Centre.

The Victorian Children’s Court’s sentencing principles in relation to young people, which are outlined in the *Children, Youth and Families Act 2005* (Vic), can broadly be interpreted as adopting a tertiary diversionary approach to the extent that they prioritise certain needs of the young offender — including the importance of minimising stigma, and of the young person remaining linked to education or employment opportunities and, where possible, maintaining familial relationships — with rehabilitation as the central overarching aim. Other youth diversionary strategies operating within the Victorian justice system include police cautioning and a small number of police, court-based and community-run programs.

### ***Police cautioning of young people***

Similar to other Australian and international jurisdictions, Victoria Police can issue formal cautions to young people. Formal cautions generally follow a simple format involving the

youth, an officer and a guardian. Typically, the purpose of the caution is to explain to the offender the impact of the offence and the possible consequences of future offending behaviour. According to Victoria Police statistics, one year after being cautioned, most young people (80 per cent) have not reoffended and, after three years, 65 per cent have not reoffended (Victoria Police 2010:10). Victoria Police operates a specific drug diversion program for offenders over 10 years of age who have been apprehended for use or possession of an illicit drug (not including cannabis) and have received a caution conditional upon attending a clinical assessment and drug treatment. Additionally, based on their discretion, Victoria Police members may issue informal cautions for a variety of minor offences that are not recorded.

### *Non-cautioning diversion programs for low-level youth offending*

#### **Ropes Program**

The Ropes Program is a court diversion program which is a joint venture between Victoria Police, the Children's Court of Victoria and municipal youth workers. Police officers pair up with young offenders in the activity of climbing ropes, which is followed by a discussion about the impact of having a police record and the consequences of offending. After the offender successfully completes the program, police recommend to the court that the charge be struck out, which results in no finding of guilt and no sentencing order (Little and Karp 2012:34). The program has recently been evaluated and found to be effective in reducing youth reoffending, although Victoria Police has not yet released the evaluation report. As the Sentencing Advisory Council ('SAC') cites in its 2012 report on sentencing young people in Victoria, 'while the program is certainly of value to young people in terms of offering a second chance, for those young people most likely to reoffend (an estimated 25 per cent of participants) the program is less likely to be contributing to sustained change' (KPMG 2010, cited in Little and Karp 2012:34). This is primarily due to the limited nature of this intervention as young people are only engaged in the program for one day, and receive minimal follow-up subsequent to program completion.

#### **Youth Support Service**

The Youth Support Service ('YSS') aims to prevent young people deemed to be at low risk of offending from entering the justice system by addressing the underlying causes of their engagement in criminal behaviour. Young people aged between 10 and 17 years who are in the early stages of involvement with the justice system, or who are assessed as being at risk of future involvement with the justice system, are referred to a youth worker for casework support. Funded by the Victorian Government, the YSS program has been operating since April 2011, with 35 youth workers based in community service organisations across Victoria, including 23 in Melbourne and 12 in the regional centres of Ballarat, Bendigo, Geelong, Latrobe Valley, Mildura and Shepparton. However, an internal evaluation of the YSS that examined the reach of the program in its first year of operation revealed limited involvement from Victoria Police (Stanley 2011). Rather, court advisors, community organisations, Victoria Legal Aid and Youth Justice were identified as the primary sources of referrals to the program.

#### **Rural Outreach Diversion Worker Program**

The Rural Outreach Diversion Worker ('RODW') Program works primarily with young people aged 12–25 years who have been apprehended for a non-drug-related offence where their offending can be linked to substance abuse. Rural Outreach Diversion Workers 'provide a link between the community, police, courts and the drug treatment service

system' (Orchard et al 2005:6). Young people are referred to the program via the Community Offenders Advice and Treatment Service by various sources, including the police, courts, schools, legal advocates and juvenile justice. Referrals can also be made to the program at a number of stages in the justice process, including pre-arrest (after a caution has been issued, for example), pre-trial (at the prosecutor's discretion) and once at court (at a magistrate's discretion).

### ***Diversion for higher-level youth offending***

The diversionary programs discussed thus far do not address the needs of those young people who are beyond the early stages of offending but are not yet engaging in serious offending behaviour. Such mid-level offending requires a greater degree of support than is currently provided by Victoria's diversionary framework.

### **Right Step**

Right Step is a pilot program which has been developed to assist in addressing the paucity of interventions for young people that have moved beyond the early stages of offending. The program is confined to one area of Melbourne and is co-ordinated by a community organisation (Youth Connections) in conjunction with Victoria Police and the Magistrates' Court, with both police and magistrates able to refer young people to the program. It targets repeat offenders and primarily involves counselling and case management to assist participants to overcome the identified barriers that are causing them to reoffend. The program evaluation is pending and initial program outcomes are encouraging; however, the pilot funding ceased at the end of 2012.

### **Youth Justice Conferencing**

While tertiary diversion programs that aim to divert young people away from custodial sentences are not the focus of this article, it is worth noting that youth justice conferencing remains one of the few diversion options available for Victorian young people engaged in more serious offending. Group conferencing aims to identify ways of redressing the harm associated with the young person's offending behaviour. The young person attends the conference with his or her family, a convenor, a police officer and a legal representative. The victim(s) of the offence or the victim's representative are also permitted to attend the session. Through the conferencing process, young people are assisted to acknowledge and understand the impact of their offending behaviour on their victim(s) and the community (see Department of Human Services 2012). Consistent with international models such as that adopted in New Zealand, most Australian jurisdictions enable police to refer young people directly to conferencing processes.

In Victoria, under the *Children, Youth and Families Act 2005* (Vic), young people may only be referred to a youth justice conference by a magistrate, and conferences are primarily used as a pre-sentencing process, whereby the magistrate takes into account the young person's participation to inform sentencing options. As Richards (2010) explains, this is to avoid net-widening, so that minor offences, which are more appropriately diverted via police cautioning, are not unnecessarily filtered through the conferencing process (see also People and Trimboli 2007). Successful participation in a youth justice conference diverts young people from community-based orders and other more severe sentencing options. While youth conferencing is diversionary in nature in that it aims to divert young people away from more severe sanctions, including custodial sentences, a criminal record will still apply, regardless of the outcome.

## Limitations in the Victorian youth diversion system

Seemingly, diversion is firmly embedded within the Victorian juvenile justice system, through the overarching aims and sentencing principles encapsulated in the *Children, Youth and Families Act 2005* and the various programs detailed above. While Victoria is often acknowledged as a leader in juvenile justice approaches due to the state's significantly lower rates of young people on remand or serving custodial sentences (Australian Institute of Health and Welfare 2011; Blagg 2009; Department of Disability Housing and Community Services 2011; Mazerolle and Sanderson 2008), its diversionary framework at the gateway to the juvenile justice system remains ad hoc and largely underfunded (Little and Karp 2012).

In 2012, the differences between the adult justice system and the youth system were brought into sharp contrast by the Sentencing Advisory Council report examining the sentencing of offenders aged from 10 to 17 years in Victoria (see Little and Karp 2012). The report highlighted how offences dealt with in the Children's Court are mostly non-violent and many of them are minor; for example, transit offences accounted for over one-third of all principal proven offences dealt with by the Court. This was reflected in the severity of the sentences imposed: excluding transit offences, 70.3 per cent of cases were sentenced to undertakings, bonds or fines, 25.6 per cent to supervisory orders (probation, youth supervision or youth attendance orders), and only 4.1 per cent of cases were sentenced to youth detention (Little and Karp 2012:x). Despite the lack of diversionary options, or perhaps because of it, low-level offences are processed through the Children's Court with sentencing dispositions reflecting the relative lack of severity or seriousness.

This section identifies and discusses some of the central issues which hinder the equitable provision of diversionary strategies for all Victorian young people. It contends that Victoria's current approach to juvenile diversion is overly reliant on discretion-based police cautioning, consists primarily of a limited number of short-term, geographically based government, community and philanthropically funded programs, and particularly disadvantages rural and regional young people.

### *Police as primary gatekeepers*

As is the case across Australia, youth diversion in Victoria is largely dependent upon the decisions and actions of the police. Victoria Police acts as a primary gatekeeper to the Ropes Program and YSS, as well as the juvenile justice system more broadly, deciding who will be diverted through informal and formal cautions, and which young people will continue to be processed through the justice system via the courts. However, unlike police organisations in all other Australian states and territories, Victoria Police issues cautions based solely on discretion, as formal cautioning has not been underpinned by legislation.<sup>1</sup> This is of particular concern given that research suggests that the arbitrary nature of police discretionary powers generally works against the interests of young people, such that these powers become predominantly discriminatory, particularly for certain groups like homeless young people and those from refugee and migrant backgrounds (Blagg and Wilkie 1995; Brown et al 2001; Collins et al 2000; Cunneen 1994; Hopkins 2007; Walsh and Taylor 2007; White 1996). Studies have also highlighted the limited incidence of police referrals of

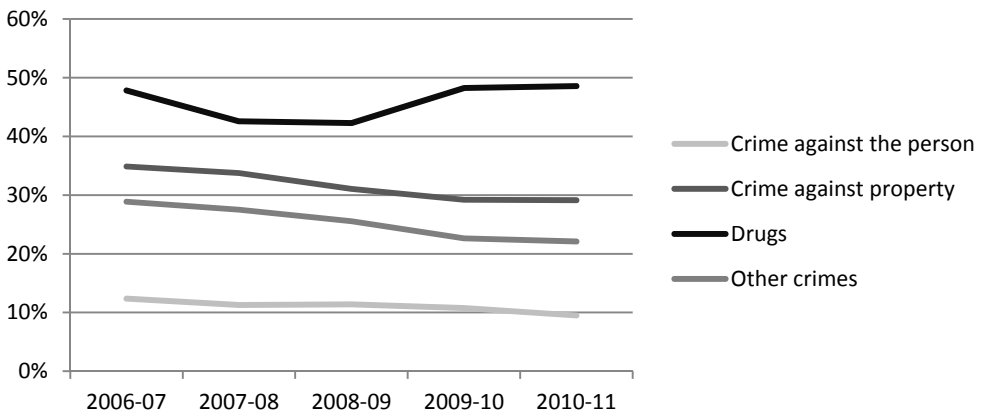
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<sup>1</sup> See *Children and Young People Act 2008* (ACT) ch 4; *Young Offenders Act 1997* (NSW) pt 4; *Youth Justice Act* (NT) pt 3; *Juvenile Justice Act 1992* (Qld) pt 2 div 2; *Young Offenders Act 1993* (SA); *Youth Justice Act 1997* (Tas) s 8; *Young Offenders Act 1994* (WA) pt 5 div 1.

young Indigenous people to diversionary processes (Allard et al 2010; Richards 2010; Taylor 2004).

Indeed, Victoria Police currently has the lowest rate of diversion among all Australian states and territories (Richards 2009), particularly in relation to the issuing of cautions, which the organisation has acknowledged to be a result of ‘a general lack of knowledge ... within the operational environment regarding the long-term benefits of effective diversion processes’ (Victoria Police 2010:10). As Figure 1 demonstrates, since 2006 there has also been a downward trend in the proportion of cautions issued to young offenders in Victoria for all offence types other than drug offences, which have their own unique cautioning program.

**Figure 1:** Victoria Police cautioning of juveniles 2006–11



Source: Data compiled from 2006–11 cautioning data obtained from Victoria Police Statistics Division. Earlier comparisons are problematic given the changes in definitions: prior to the 2005–06 financial year, a juvenile alleged offender was someone under 17 years of age at the time of being processed by police, whereas since 2005–06, a juvenile alleged offender has been defined as someone under 18 years of age at the time of being processed by police. Traffic offences and offences dealt with by penalty notices are not recorded on the police LEAP system so are not included in this data.

While police discretion has the potential to foster fairness by ensuring the unique circumstances of each case are taken into account, in place of a rigid application of the law, the risk inherent to a solely discretionary approach is that the decision whether or not a young person is to be diverted is exclusively dependent on the officer dealing with the young person. Additionally, the literature repeatedly demonstrates how youth crime is regularly politicised and subject to moral panic, with policing priorities particularly susceptible to political law and order campaigns spurred on by media reports of crime waves (see, for example, Cohen 1972; Collins et al 2000; Sercombe 1999; Simpson 1997). Within such a climate, discretionary police cautioning has the potential to be moved entirely off the agenda, in the absence of a universal, legislated approach to juvenile diversion.

Indeed, our analysis of Victoria Police cautioning data reveals an ad hoc approach to cautioning across the State, with overall formal cautioning rates for 2010–11 ranging from as little as 14 per cent in the Metropolitan Division ND1 (Melbourne and Yarra), to 31 per cent in the Metropolitan Divisions of ND2 (Hobsons Bay, Maribyrnong and Wyndham) and SD4 (Frankston and Mornington Peninsula). Variances were even greater where data

was analysed by offence type, with the proportion cautioned for crimes against the person ranging from 22 per cent in Horsham to one per cent in Melbourne/Yarra (see Table 1).

**Table 1:** Proportion of juveniles formally cautioned for offences against the person 2010–11 by region

Region	Total cautioned	Total processed	Percentage cautioned
Horsham	11	49	22.4
Wodonga	19	108	17.6
Mildura	26	156	16.7
Surf Coast	6	37	16.2
Geelong	36	230	15.7
Latrobe	38	243	15.6
Shepparton	18	128	14.1
Wangaratta	15	112	13.4
Mitchell	13	108	12.0
Frankston & Mornington Peninsula	37	328	11.3
Cardinia, Casey & Greater Dandenong	102	911	11.2
Warrnambool	12	115	10.4
Brimbank & Melton	38	384	9.9
Hobsons Bay, Maribyrnong & Wyndham	39	419	9.3
Ballarat	16	180	8.9
Benalla	4	46	8.7
Glen Eira & Kingston	22	278	7.9
Bass Coast	5	64	7.8
Banyule, Darebin, Nillumbik & Whittlesea	35	457	7.7
Hume, Moonee Valley & Moreland	36	477	7.5
Bendigo	15	208	7.2
Swan Hill	3	60	5.0
Port Phillip & Stonnington	3	148	2.0
Melbourne & Yarra	7	538	1.3

Note: Tables 1 and 2 do not include all Victorian policing areas/regions. Figures do not include young people that were informally cautioned during this period.

Data on the number of juveniles cautioned for offences against property also demonstrates significant variances across regions, ranging from only 13 per cent in Latrobe through to a high of 40 per cent in the Hobsons Bay, Maribyrnong and Wyndham region (see Table 2).

**Table 2:** Proportion of juveniles formally cautioned for offences against property 2010–11 by region

Region	Total cautioned	Total processed	Percentage cautioned
Hobsons Bay, Maribyrnong & Wyndham	358	903	39.6
Port Phillip & Stonnington	120	316	38.0
Brimbank & Melton	257	690	37.2



Region	Total cautioned	Total processed	Percentage cautioned
Frankston & Mornington Peninsula	481	1348	35.7
Bass Coast	57	165	34.5
Wangaratta	133	395	33.7
Cardinia, Casey & Greater Dandenong	625	1879	33.3
Benalla	46	146	31.5
Glen Eira & Kingston	255	841	30.3
Wodonga	128	435	29.4
Banyule, Darebin, Nillumbik & Whittlesea	376	1333	28.2
Geelong	271	1002	27.0
Hume, Moonee Valley & Moreland	265	989	26.8
Mitchell	52	200	26.0
Bendigo	136	546	24.9
Melbourne & Yarra	205	836	24.5
Swan Hill	49	201	24.4
Shepparton	123	509	24.2
Surf Coast	45	215	20.9
Warrnambool	57	274	20.8
Horsham	45	228	19.7
Ballarat	151	770	19.6
Mildura	83	447	18.6
Latrobe	128	962	13.3

Historically, young people are more likely to be apprehended for property offences than for offences against the person (Richards 2011), with cautioning rates also likely to be higher for less serious offences, including minor property offences (see Little and Karp 2012:31). However, the recent analysis of the Victorian Children's Court by the SAC noted that the vast majority of young people brought before the Court have committed minor property or public transport-related offences, highlighting the significant number of young people who could more appropriately be dealt with through diversionary measures earlier in the justice process (Little and Karp 2012). Importantly, the data presented here only provides a brief snapshot of cautioning rates across Victoria; further research is required to examine the factors leading to such variability in cautioning practices across regions.

### *Ad hoc program rollout, resourcing and eligibility*

Victoria's juvenile justice diversionary framework is currently characterised by a mixture of government, community and philanthropically funded (predominantly short-term) programs that are geographically based (Little and Karp 2012) and largely reliant on the initiative and resources of individual communities. The Ropes Program is unfunded and currently only operates throughout metropolitan Melbourne and in a small number of country regions. Right Step operates largely in one suburb of Melbourne, funded by a philanthropic trust as a short-term pilot program and, despite its successes to date, its future remains uncertain.

Various programs also incorporate eligibility criteria that exclude certain young people. For example, the YSS program incorporates criteria that prevent current clients of Youth Justice or the Department of Human Services (including those in child protection) from

being referred to the program, which is particularly concerning given the high correlation between young people's involvement in the criminal justice and child protection systems (Indig et al 2011; Kenny and Nelson 2008; Little and Karp 2012). Similarly, the Ropes Program is limited in its scope and application. It is restricted to young people who have no prior involvement in the program and have had no more than two prior cautions, where the offence is considered relatively minor and the young person is deemed to be unlikely to reoffend (Little and Karp 2012:38). As such, a 'one-chance' diversionary system appears to apply for low-level offenders. Moreover, young people who have moved beyond the early stages of low-level offending are routinely excluded from diversionary programs, and limited options currently exist for diverting young people entering the justice system as a result of mid-level offending or multiple instances of low-level offending.

### ***Inequitable outcomes for rural and regional young people***

There has been limited analysis of diversionary pathways (or indeed of young people's interactions with the justice system more broadly) in regional and rural Australia. Yet young people residing outside metropolitan Melbourne experience a unique set of circumstances that have a significant impact on the accessibility of diversionary schemes.

#### **Limited specialisation of the Children's Court in regional areas**

While the custom-built Melbourne Children's Court utilises the expertise of specialist children's magistrates, matters heard by the Children's Court in regional locations are presided over by circuit magistrates on gazetted days. Anecdotal evidence suggests that this can lead to inequitable outcomes for regional young people and limited uptake of diversionary pathways (Coverdale 2011). Furthermore, the SAC reports that the deferral of sentencing (where the sentencing of a young person may be deferred by up to four months to enable a pre-sentencing report to be compiled, which may also include referrals to support services) may be used less frequently in rural and regional areas, due to a reluctance on the part of circuit court magistrates to retain cases where they are uncertain of when they will next be sitting in that region, or where they have limited experience with Children's Court diversionary and deferral processes (Little and Karp 2012:75).

Similar concerns have been documented in relation to court referrals to the RODW Program, where participation necessitates magistrate discretion. As one worker explained to the program evaluators: 'I have tried to engage with the courts, [but] the new magistrate in the area is very tight and doesn't seem very interested in the program' (Orchard et al 2005:34). Effective diversion relies on the presiding magistrate having adequate knowledge of appropriate programs, as well as an understanding of the importance of diverting young people prior to their becoming further embedded in the justice system.

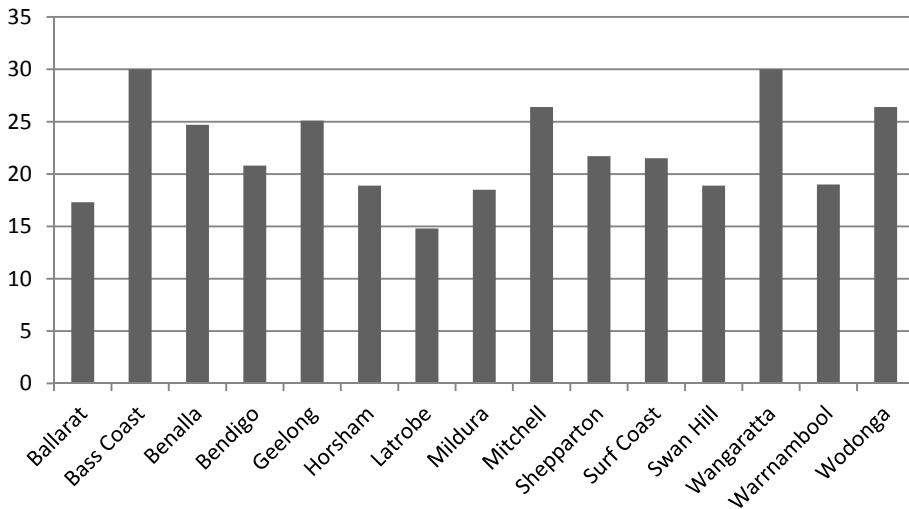
#### **Differential policing of rural young people?**

Some authors suggest that there is less tolerance of young people's criminal behaviour in rural areas, and that rural police are more likely to be influenced by local culture and priorities (Barclay et al 2007; Jobes 2003). This includes a greater focus on those perceived to be 'outsiders', perhaps resulting from the higher visibility of marginal young people (particularly with a criminal record) in rural areas (Jobes 2003; Meek 2006). A 2005 evaluation of the RODW Program noted that its success 'hinges in part on securing timely and appropriate referrals from police' (Orchard et al 2005:28), yet RODWs expressed frustration at the limited number of police referrals to the Program. Issues that emerged from this report included police resistance to the broader philosophy of diversion, limited police time to engage in RODW outreach/training activities, limited understanding around when a

young person is suitable for the Program, and discretionary judgments regarding the best ‘localised’ way of dealing with young people that do not involve diversionary strategies.

Indeed, our analysis of police cautioning in rural and regional Victoria reveals that many areas have total formal cautioning rates well below the average 2010–11 state (25 per cent) and metropolitan Melbourne (also 25 per cent) formal cautioning rates (see Figure 2).

**Figure 2:** Percentage of juveniles formally cautioned in Victorian rural and regional areas for all offence types in 2010–11



Note: this graph does not include all rural and regional Victorian policing regions/areas. Percentages are based on the total number of juveniles formally cautioned out of the total number processed.

The majority of these regional areas also fell well below the 2010–11 average (29 per cent) state formal cautioning rate for property offences examined as part of this research.

**Limited program rollout and resourcing in rural areas**

While the implementation of diversion programs in metropolitan Melbourne is ad hoc, diversionary options are particularly scarce in regional and rural communities. Blagg (2009:24) refers to the limited diversionary options available to young people in regional, rural and remote Australia as ‘justice by geography’. Similarly, Coverdale (2011) describes this as a form of ‘postcode justice’. In Victoria, there is limited access to the Ropes Program in rural and regional areas, and the YSS program is restricted to six major regional centres. Where diversion programs do exist, these can be limited by a paucity of community-based interventions, including accommodation services, or mental health and drug and alcohol programs (Coverdale 2010; Orchard et al 2005; Victorian Auditor-General 2008). Indeed, the success of innovative programs such as Right Step largely relies on their positioning within a ‘youth hub’ — a network of well-resourced and locally based services. Similarly, the RODW Program evaluation (Orchard et al 2005) highlighted the significant gaps in services in rural and regional Victoria which have largely constrained the efficacy of the program, as well as the impracticality of outreach across vast regions.

A further issue not so prevalent in larger metropolitan areas is the limited anonymity afforded young people accessing treatment programs in smaller regional centres. The RODW evaluators identified a certain ‘small-townism’, which can impact confidentiality for clients, exacerbate any stigma associated with participating in such programs and consequently negatively impact the uptake of such programs (Orchard et al 2005:52).

## Youth diversion in Victoria: The need for reform

In 2010, an interdepartmental steering committee was established ‘to scope a co-ordinated and comprehensive approach to diversion for young people in Victoria’ (Little and Karp 2012:28). After much deliberation, the Victorian Department of Justice released a discussion paper — *Practical Lessons, Fair Consequences: Improving Diversion for Young People in Victoria* — which seeks community views about diversion responses for young people who may have contact with police or appear before the Children’s Court (Department of Justice 2012). The paper notes that ‘Government is interested in examining whether there are opportunities to improve diversion within current resourcing’, but makes no commitments to introducing legislative or policy changes, and qualifies the discussion by reference to improving services ‘within current resources’ (2012:iii). To date, the government has not released a report of its consultation with community in late 2012 and has removed the discussion paper from its websites.

While contemplated by the discussion paper, a legislated Children’s Court-based diversion scheme for addressing criminal behaviour by children and young people has not been adopted in Victoria, unlike other jurisdictions.<sup>2</sup> The lack of such a framework has resulted in decisions to divert being largely discretionary and most often the sole responsibility of police. Multiple referral sources are required to ensure checks on police decision-making and increase the likelihood of and opportunities for young people being diverted (see Figure 3). In New Zealand, if the police attempt to circumvent the process by arresting a child and placing that child before the court, the court itself is compelled to refer the matter to diversionary schemes. According to Prichard (2010), the legislated capacity of courts to refer young people to diversionary programs enables judicial review of the police as gatekeepers. Given concerns regarding the discretionary nature of police cautioning, justified by the variations across policing regions and the low and declining levels of police use of diversion strategies in Victoria, it is somewhat problematic that secondary checks and court-based diversionary options have not been implemented.

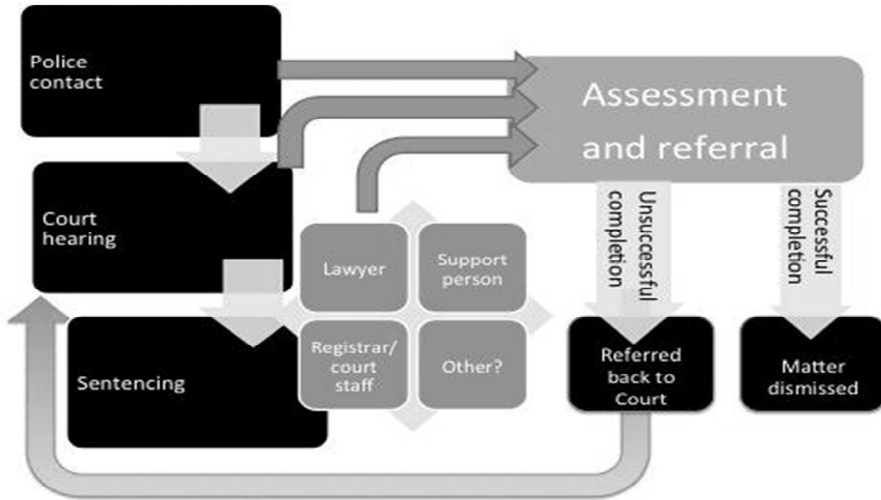
Polk et al assert that ‘one of the most significant strengths has been the way diversion has been treated as a coherent system of interlocked elements in the more recent legislation in most Australian states and territories’ (2003:xiv). In Victoria, a Children’s Court-based legislative scheme would act as an overarching framework (both symbolically and practically) for implementing a more robust diversionary scheme for young people, and would assist in strengthening a more sustained commitment to diversion across the justice system. Importantly, it would compel the court to consider diversion as an option for *all* young people prior to adjudication. A court-based approach would also ensure that by reforming current arrangements we are not simply net-widening and heightening community-based surveillance of ‘at-risk’ young people by an ever-increasing number of

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<sup>2</sup> See, eg, *Children’s Services Act 1986* (ACT) ch 3; *Young Offenders Act 1997* (NSW) pt 5; *Youth Justice Act 1992* (Qld) — however, some of these initiatives were wound back in 2012 with the change in Queensland’s state government); *Young Offenders Act 1993* (SA) pt 2 div 3; *Youth Justice Act 1997* (Tas) div 3 pt 2, div 4 pt 4.

institutions, leading to the unintended consequence of perpetuating stigma for young people as they are increasingly filtered into programs for ‘problematic juveniles’ (Kelly 2000).

**Figure 3:** Rethinking youth diversion in Victoria: Providing multiple avenues of referral to diversion



However, it is vital that such a framework is matched with adequate and sustained resourcing. In other state jurisdictions, like New South Wales, where such court-based legislative schemes exist, concern remains regarding limited program roll-out and funding (Youth Justice Coalition 2011). International best practice favours an intensive ‘wrap-around’ approach to working with those most at risk of enmeshment in the system, and not solely with low-level, one-time offenders (Blagg 2009; see also Australian Human Rights Commission 2001). Specifically, the most successful diversion programs are those that provide more intensive and holistic individualised caseworker support (Blagg 2009; Bull 2003; Passey et al 2007). Appropriate service planning and delivery for rural and regional young people requires a focus on co-ordinated programs that are in tune with local needs and context, including consideration of the *availability*, the *accessibility* (including transport and accessibility for young people from diverse backgrounds) and the *acceptability* of services (respecting community values and ensuring privacy and confidentiality) (Metsch and McCoy 1999:771). While these may seem implausible in a climate of human service budget cuts and heightened support for heavy-handed law and order approaches to juvenile crime, proponents argue that diversionary programs are in fact more cost effective. Frequently cited, for instance, are Victorian Government figures that show that it costs approximately \$528 each day to keep a young person in custody (Wooldridge 2011), compared to \$14–29 per day for community-based supervision (Victoria Auditor-General 2008) and approximately \$2500 for three months of intensive casework in the community and longer-term follow-up support through a program such as Right Step (figure derived in consultation with Right Step Program Manager, 9 May 2012).

There are, however, significant difficulties associated with attempting to measure the economic effectiveness of diversion programs. The above comparison suggests that there is a dichotomy in diversion practice: that young people who receive intensive case management diversionary support would have otherwise been sentenced to a period of

incarceration. These figures also do not reflect the cost of myriad interrelated services often supporting young people in addition to diversionary programs. Further, it is far more difficult to place a monetary value on other 'goods', including reduced expenditure on justice services (policing, courts and corrections), or the benefits of reduced marginalisation and increased civil and community engagement. Indeed, within the current context it is virtually impossible to project the future costs and benefits of a more robust diversion system without data to support the outcomes; therefore, the design of any future diversion program must be based on thoughtful data collection and evaluation methodology.

## Conclusion

Access to diversionary schemes in the current Victorian juvenile justice system is primarily dependent upon where young people reside, the level of resourcing and commitment to diversionary options within individual communities, and the discretionary decision making of individual police officers. Such a context has resulted in an inequitable and ad hoc system in which even young people who have been fortunate enough to access a scheme in the past are subject to short-term, 'one chance and you're out' approaches, which provide limited scope for addressing the complex needs of young people interacting with the justice system.

There is an urgent need for government to consider and implement more effective and equitable ways of responding to young people's engagement in criminal behaviour, to prevent young people from becoming unnecessarily enmeshed within the justice system. The introduction of a legislated, court-based diversion scheme similar to that which is currently afforded adults accessing the Magistrates' Court of Victoria would be a vital first step towards addressing these inequities. An effective juvenile diversionary framework also requires multiple referral pathways to ensure young people are provided with every opportunity to be diverted away from the justice system at multiple points along the way. Moreover, it is imperative that this is coupled with sustained, long-term, individualised support that addresses the complex needs underlying young people's engagement in crime.

Finally, the paucity of data held by bodies such as the Department of Justice, the courts and the SAC on the operation of the criminal justice system in regional areas has been highlighted in numerous reports (Blagg et al 2005; Coverdale 2011; Ericson and Vinson 2010; Ross 2009; Victorian Auditor-General 2008). As Coverdale (2010:72) notes, the 'lack of data impacts on the effectiveness of government policy making and reflects a poor recognition of the need for the ongoing review of the delivery of equitable justice system services across metropolitan and regional Victoria'. The most recent report on the Victorian juvenile justice system by the SAC omitted any regional analysis (see Little and Karp 2012). Similarly, there is a lack of rigorous research on the impacts of the current rural regional context on young people's access to equitable justice outcomes. Studies that examine the policing of young people are predominantly urban based, young people's experiences of circuit court magistrates and courts are primarily anecdotal, and little has been documented regarding young people's diversionary pathways within a rural context. Applied research is also required to ensure that diversionary schemes are appropriately implemented and designed to be responsive to all Victorian young people, irrespective of geography.

## Legislation

*Children and Young People Act 2008* (ACT)

*Children, Youth and Families Act 2005* (Vic)

*Children's Services Act 1986* (ACT)

*Criminal Procedure Act 2009* (Vic)

*Juvenile Justice Act 1992* (Qld)

*Young Offenders Act 1997* (NSW)

*Young Offenders Act 1993* (SA)

*Young Offenders Act 1994* (WA)

*Youth Justice Act* (NT)

*Youth Justice Act 1997* (Tas)

## United Nations Conventions

*Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990)

*International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969)

*International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976)

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