



## **Submission to the Victorian Royal Commission into Mental Health ) from the Young People's Legal Rights Centre (also known as Youthlaw), 5<sup>th</sup> July 2019**

### **About Us**

The Young People's Legal Rights Centre (Youthlaw) is a specialist youth community legal centre in Victoria. We are a state wide service. Each year we assist up to 3,000 young people with legal advice and court representation.

We have a focus on vulnerable young people under 25 with unmet legal need. We deliver our legal services through frontline youth services such as:

- Frontyard Youth services (homelessness service)
- Youth centres (focus on young people disengaged from school / high unemployment)
- 6 Headspace centres throughout Victoria (mental health service)
- Youth substance abuse services
- Services supporting young people transitioning from child protection to independence
- The family violence service system and youth services (assisting young people with current & past family violence)

### **The mental health of vulnerable young people under 25**

#### *At Frontyard Youth Services*

- Our core services are our clinics at Frontyard Youth Services (Frontyard), located in the Melbourne CBD. Frontyard has a focus on young people under 25 at risk of or homeless.
- A very high proportion of our clients (about 80%) have mental health issues - a mixture of undiagnosed and diagnosed mental health conditions and psychological damage from childhood trauma (abuse, neglect, parent deaths, parent substance abuse & mental ill health, & family violence). Many have been diagnosed or present with dual issues such as cognitive disorders and mental health, substance abuse and mental health & disabilities such as autism spectrum disorder and mental health.

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- Clients assisted by mental health services previously have usually lost contact with them & often have no on-going mental health treatment or support. This is often due to the chaotic nature of the lives including unstable housing and substance abuse. They have usually lost connection with any previous regular supports.
- In the last 3 months 2 young adult clients of Frontyard and Youthlaw died from suicide. Youthlaw was also notified by a youth substance abuse service of another young client who had taken her life within the past 6 months. This has affected us all. In the aftermath we have reflected on these and other clients who present with high degrees of emotional distress. In discussion with the mental health clinicians at Frontyard and other services it would seem that a significant number of Frontyard clients experience chronic suicidal ideation.
- We reflected on services at Frontyard and what might have made a difference. We all agree that the service system for these young people and particularly the mental health services are inadequate & not suited to their needs. There are few services to refer clients too and there are so many obstacles to accessing them.
- Frontyard has recently established a mental health program *Check –in* designed to address the needs of young people aged between 12 and 25 displaying psychological distress and who are at risk of or experiencing homelessness<sup>1</sup>
- *Check-in* is based with and integrated with other youth services (housing, health and legal and youth case management) at Frontyard. Young people can be assisted at the time they seek other services and as is needed. The multidisciplinary group of youth mental health clinicians provides early intervention, recovery-oriented triage and assessment, mental health service navigation and therapeutic support to young people who display psychological distress and may present with challenging, at risk and/or suicidal behaviors. In our experience the *Check-in* model is excellent. It is suited to the needs of these vulnerable young people and is meeting a large gap in this area of mental health . It supports referral to external & individual specialists and reduces the many hurdles to accessing mental health services (eg. appointments, travel, entry criteria, limited sessions etc).

*Recommendation:*

- Increase funding to Check-In and to piloting similar models of integrated mental health services for vulnerable cohorts of young people.

*Our observations of the mental health system for young people, across Victoria*

- In all our service delivery across Victoria we observe that there is a major gap in easily accessible, on-going & free mental health services & supports for young people. Most services require multiple actions including a GP visit & referral, attendance at private psychologists and psychiatrists, entry screening, limits & conditions such as regular

<sup>1</sup> <https://www.melbournecitymission.org.au/services/program-detail/check-in>

attendance to continue accessing the service, many cost money, and many have waiting lists. For young people who are leading mental health impacted lives this is a lot to navigate and most don't know how to or can't do it themselves.

Our observations of the specific services available:

1. *Mainstream mental health treatment*: Referral from a local GP to a psychologist under the 10 session Medicare funded mental health plan. This requires the young person to initiate and attend a GP and then attend a psychologist they don't know in a different location. This model works best with people who the capacity to make these arrangements and have a stable home and a GP. The limited number of sessions is not sufficient for serious mental health conditions such as experienced by the young people we see.
2. *Youth generalist mental health service*: Headspace has a very accessible physical entry model and is very youth friendly. It still requires a young person to take the initiative and contact them and attend appointments. It cannot assist young people with long-term and complex mental health conditions requiring more than 10 sessions. There are usually delays to get appointments (weeks). They are suited to young people in stable housing and with capacity to initiate and attend appointments.. Youthlaw has strong relationships with 6 Headspace centres throughout Victoria. Clinicians display great skill in identifying & referral clients to non- mental health services (such as ours) & they take great care with such referrals. Many young people attending headspace have legal issues and they struggle to attend to them. They are also greatly relieved when these issues are resolved.
3. *Victorian Gov't mental health services*. This includes their Child & Adolescent Mental Health Services (CAMHS) for 0-18 years and Adult and Specialist mental health services for 16-64. We rarely contact these services directly relying on our mental health partner organisations to do so, given their focus on serious and complex mental health. We have used the CAT team and Vic Mental Health services in situations of planned suicide.
4. *Tertiary level service*: Orygen provides good case managed support once a young person meets their criteria (psychosis /post suicide attempt / complex) and is allocated a worker. We get a lot of referrals from Orygen workers as does Frontyard Youth services as many of the young people they assist become homeless and have legal issues. Orygen recently established a mental health assessment worker at the Melbourne Children's Court ( see below)
5. *Homeless youth mental services*. The Check-in service at Frontyard is described above. It also includes assertive outreach. Another outreach program for adults is provided by Co-health<sup>2</sup>
6. *Activity based support programs*. We value & refer clients to activity based programs. An example of this is the Jesuit Social Services Connexions program<sup>3</sup> for young people with mental health & substance abuse issues Jesuit College also runs the Artful Dodgers program targeting young people with barriers ( ie substance abuse & mental) to employment<sup>4</sup>

<sup>2</sup> <https://www.cohealth.org.au/health-services/mental-health/mental-health-outreach/>

<sup>3</sup> <https://jss.org.au/what-we-do/mental-health-and-wellbeing/connexions/>

<sup>4</sup> <https://jss.org.au/what-we-do/mental-health-and-wellbeing/artful-dodgers-studios/>

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*Recommendations:*

- Advocate for a review of the 10 session limit to Medicare funded mental health plans where a young person under 25 has mental health condition requiring longer treatment .
- Greater funding to Headspace centres to ensure they can meet the needs of young people seeking their assistance.
- Substantial investment in free universal mental health services for young people and their families' at all opportune intervention stages such as at preschool, primary school & secondary school. These services to also address mental health conditions, learning disabilities, childhood trauma and family violence.

**Interactions with police**

- In our experience of representing young people (under 25) over the past 19 years it is undoubtedly the case that young people with a trauma background or mental illness do attract police attention because of their mental health related behaviours and are charged in regard to these behaviours.
- This is exacerbated by the common overlap between having a mental illness and substance abuse. Many clients also have dual issues such as having a cognitive disability and mental health issues.
- Young people with serious mental illness are frequently in public spaces due to homelessness, lack of employment and poverty are vulnerable to being over policed. This increases contact with a range of authorities including police. Young people with mental health issues we have interviewed say they feel stigmatised and treated unfairly by authorities.
- In our experience, at the point of contact with police, young people are treated only as an offending person and there is little in the way of a mental health response provided.

*Police attending mental health incidents*

- Police are often the first responders to public incidents involving people who are clearly mentally unwell.
- We have called for years (with mixed success) for police to be adequately trained in mental health awareness and/or to have mental health practitioners called to such incidents. We have also advocated for training to de-escalate interactions with young people (whether mental health is an issue or not).
- Police need to act professionally no matter what the behaviour of a young person is. We believe they should have knowledge of child & youth brain development and mental health presentations, so they appreciate what contributes to behaviour.
- In our experience interactions often escalate due to the manner & tone and outright aggressiveness of officers. For young people with trauma backgrounds or mental ill health

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they often have difficulties with emotional regulation and impulse control. These interactions often escalate for this reason.

- Escalation can have serious consequences for young people resulting in serious & multiple charges and a criminal record.
- At its most extreme escalation has resulted in a disturbing number of adult and youth police shootings. Examples include Tyler Cassidy aged 15 shot dead by Victorian police in 2008<sup>5</sup> and 22 year old Courtney Topic shot dead by NSW police in Feb 2015.<sup>6</sup> In both these incidents there is considerable evidence that police acted in aggressive and inappropriate ways and without mental health expertise called?

#### *Police response to private incidents*

- Police are also often the first responders to private incidents involving people who are mentally unwell. The call to police is usually made by a family member and the young person can be directing abuse at family members or towards themselves (example - threatening to suicide).
- The way in which police respond can highly influence the behaviour of the young person. We have become aware of a number of incidents where the young person became highly agitated and even violent because of the aggressive and directive way police interacted with them. Family members usually want police to help get the young person to hospital for treatment.
- Police have become very alert to family violence. This is commendable however we believe that when they intervene due to an adolescent using violence in the home care needs to be taken to respond not only by use of the law ( eg intervention orders) but taking into account the mental well-being of the adolescent. This is consistent with the Royal Commission into Family Violence recommendation for a different response to adolescents using violence in than adult perpetrators of violence.
- The Centre for Innovative Justice at RMIT has conducted excellent research on adolescent violence in the home (AVITH). Their preliminary findings strongly suggest multiple contributing factors including undiagnosed disabilities, undiagnosed mental health conditions, perpetration of violence by others in the family & learned male violence.
- We believe there needs to be a more comprehensive response to these incidents and that mental health needs to be a key consideration & wherever possible mental health expertise involved at the point of intervention or soon afterwards. . Lack of timely support will only exacerbate the situation for the adolescent and for family members.
- Our experience is that many mental health services are reluctant to accept AVITH young people refuse because their assessment is that mental health is secondary or minor issue.

<sup>5</sup> [https://en.wikipedia.org/wiki/Death\\_of\\_Tyler\\_Cassidy](https://en.wikipedia.org/wiki/Death_of_Tyler_Cassidy)

<sup>6</sup> <https://www.theguardian.com/australia-news/2018/jul/30/police-tactics-entirely-inappropriate-in-shooting-death-of-courtney-topic-says-coroner>

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This is perhaps understandable however not helpful to the young person or their family. In our view there needs to be a more integrated service response.

#### Recommendations:

- Mental health (and other relevant experts) to attend incidents involving adolescents using violence in the home, with police.
- Police are obliged to give referrals to mental health services with cautions
- Intensive training of police about mental health issues and how they may present in young people
- Abolish public order offences that criminalise behaviours arising from mental health conditions OR provide clear sentencing guidelines requiring Magistrates to consider the mental health of the defendant and therapeutic diversion or referral to the ARC list ( see below under courts)

#### Bail and remand

- There is much public commentary at present about tightened bail laws. Our experience is that young people experiencing a mental health crisis are more likely to be dealt with by the police than by a mental health service. They are also at high risk of bail being refused because of their erratic behaviour, inability to comply with conditions and unstable housing. People needing support and mental health care are being locked up on remand for short periods effectively becoming mental health institutions.
- Remand population have limited access to mental health support. The new bail laws have amplified pressure on services and access to rehabilitative programs with Victoria's remand population doubling in the last 6 years<sup>7</sup> and the adult remand population now constituting almost one third of Victoria's overall prison population<sup>8</sup>. Prison undoubtedly damages the mental health and wellbeing of those entering the system and undermines efforts to reduce rates of reoffending.

#### At court

- Courts currently provide limited access mental health assessment. This is not in the interest of Magistrates sentencing and is a missed opportunity to intervene & identify undiagnosed mental health issues.
- The Melbourne Children's Court has a clinic however demand is much greater than capacity and
- Prioritises serious criminal cases and complex child protection cases. The Melbourne Children's Court has however recently begun a service provided by Orygen. A psychologist is available to all before the court to obtain a mental health assessment. This is very welcome

<sup>7</sup> <https://www.sentencingcouncil.vic.gov.au/projects/remand-and-sentencing>

<sup>8</sup> <https://www.legalaid.vic.gov.au/about-us/news/reviewing-victorias-bail-system>

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as it can be used by any client. It has the potential to identify mental health issues earlier. We look forward to evaluation of this service.

- We also attend with clients at the Magistrate's Assessment and Referral Court (ARC list) in Melbourne.<sup>9</sup> . A list is also operating at a number of other courts. ARC is a therapeutic court. It is low key and informal in design and much less confronting. Those before the list develop a plan with the ARC case manager, which is regularly monitored by the Magistrate for up to 12 months. If successfully complete they receive a discount in sentencing. The outcome is often an undertaking with condition to continue with therapeutic treatment. In contrast CCOs which do not provide as much support effectively set the young person up to fail & there is a high failure rate.
- The CISP Program (Court Integrated Services Program) is a bail support program accessed via many courts in Victoria . It allocates a CISP worker to assist defendants at risk of re-offending with drug, housing and mental health issues. Our experience is that CISP has long waiting lists and prioritises those facing serious sentences such as CCOs. The program needs to be funded better to enable use to all who could benefit from it.

#### Recommendations:

- Subject to positive evaluation of the Orygen mental health assessment program at the Melbourne Children's court consideration be given to funding such positions in all major Children's Courts and all major Magistrates courts
- Funding for the ARC list to be made available in all major courts
- The CISP program is adequately funded to enable those who need the program to have access to it, and to reduce waiting lists.

#### **Children & young people with a trauma background in the criminal justice system**

An aspect of mental health that we confront daily is the impact of childhood trauma from abuse, neglect, family issues or family violence. A high percentage of our clients have experienced childhood trauma. About one-quarter have had child protection intervention.

We understand and observe that such trauma can significantly affect emotional regulation and impulse control. For some it expresses itself in anger, impatience and aggression, for others in self-harm & substance misuse. In our experience these behaviours undoubtedly increase the risk of entering the criminal justice system.

The recently released Sentencing Advisory Council Crossover report<sup>10</sup> provides an insight into the impact of childhood trauma & also the crossover between a child protection history and entering the criminal justice system.

- Of all children sentenced or diverted in the Children's Court in 2016 & 2017 1,938 or 38% had a history of child protection.
- Of these 58% offended between the ages of 10 & 15

<sup>9</sup> <https://www.mcv.vic.gov.au/about-us/assessment-and-referral-court-arc>

<sup>10</sup> <https://www.sentencingcouncil.vic.gov.au/publications/crossover-kids-vulnerable-children-youth-justice-system>

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- 1 in 2 youth detention detainees had a child protection background

The report (1st of 2) presents compelling evidence that this crossover is not inevitable and much could be done to prevent their trajectory into the criminal justice system.

We quote from the concluding remarks in the executive summary

“On any given day, the Criminal Division of the Children’s Court is likely to sentence children who are known to the Victorian child protection service due to their experience of trauma, abuse, harm, neglect, parental death or incapacitation or the risk of harm.

Research has established that a child’s experience of abuse and trauma can disrupt healthy brain development and can cause children to remain ‘hyper-vigilant’ and reactive to perceived threats and triggers. This can have consequences for a child’s emotional and behavioural regulation.

For children removed from their families into out-of-home care, this may also include removal from the child’s community, friends and school, and their experience of care can compound the trauma that they have already experienced.

Previous research also suggests that children in care may be more likely to be prosecuted for behaviour that would usually be dealt with in the family home, contributing to their over-representation among sentenced and diverted children.

Childhood trauma is, therefore, clearly relevant to sentencing, particularly when there is a nexus between the trauma and a child’s offending.

The focus on rehabilitation in the Children’s Court requires an understanding of the context of a child’s offending and the role played by circumstances such as abuse, separation from family and the experience of out-of-home care.

The Court of Appeal has specified that the matters to be taken into account in sentencing a child under section 362 of the CYF Act require the sentencing court to consider ‘the effect of the proposed sentence on the child ... and to impose a sentence which fits the young offender as much as – or perhaps even more than – it fits the crime’.<sup>11</sup> Section 362 includes the need to strengthen the relationship between the child and the child’s family and the desirability of allowing the child to live at home.<sup>12</sup> However, the section is silent in relation to a child who currently is not safe with their family and who cannot live at home. There is no requirement in section 362 for the court to take into account:

<sup>11</sup>. *CNK v The Queen* [2011] 32 VR 641, [4]–[16].

<sup>12</sup>. *Children, Youth and Families Act 2005* (Vic) ss 362(a)–(b).

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- the child's experience of abuse, trauma, neglect, parental death, loss, removal from family or experience of out-of-home care and how these circumstances relate to the child's offending;
- the need to ensure that the child has a safe, stable and secure place to live; or
- the need to protect the child from harm or the risk of harm.<sup>13</sup>

In light of the prevalence of children with child protection backgrounds in the youth justice system, further legislative guidance on the way that a sentencing court may take into account a child's background and experience of trauma may be valuable ".<sup>14</sup>

### **Youth detention**

Young people involved in the Youth Justice system have high rates of mental ill health. In 2017 53 % of young people in custody presented with a mental health issue and 30 per cent had a history of self-harm or suicidal ideation. In addition a 37% had been subject to a child protection order & 70% were victims of abuse, trauma or neglect.

From our experience we are confident in suggesting that a high proportion of these young people would not be in custody if their trauma and mental ill- health ha been addressed early in their lives, particularly those with a history of child protection.

These figures also highlight the need for youth justice clients to have regular access to highly experienced mental health practitioners.

### **Adult prison**

Youthlaw is very concerned about young adults under 25 in the adult prison system. There is little in the way of a differentiated response for young adults and their numbers are steadily increasing due to a number of factors including tightening of bail and parole and increased police numbers.

The adult prison population has a high proportion of prisoners with mental illness. The most recent AIHW survey (2018) report suggests 2 in 5 (40%). More needs to be known about the mental health of young adults and the services they are being provided in prison.

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<sup>13</sup>. *Children, Youth and Families Act 2005* (Vic) s 362. The list of reports and other matters to be taken into account by a court in sentencing a child is set out in *Children, Youth and Families Act 2005* (Vic) pt 5.2 div 5.

<sup>14</sup> <https://www.sentencingcouncil.vic.gov.au/publications/crossover-kids-vulnerable-children-youth-justice-system>

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### Age of Criminal Responsibility

- The age of criminal responsibility in Victoria is 10 years.<sup>15</sup> This is the age at which a child can be investigated for an offence, arrested by police, charged and locked up in a youth prison. The age of criminal responsibility is legislated through a conclusive presumption that a child under the age of 10 years is incapable of committing an offence
- Victoria's age of criminal responsibility is the one of the youngest in the world.
- To prevent mental illness in an adult one of the best things we can do is to keep them out of the prison system at an early age. This will improve all their outcomes in life.
- A child forced into criminal system is less likely to complete their education, find employment and more likely to die an early death.
- The United Nations Committee on the Rights of the Child consistently recommends a minimum age of 14 years old.

#### *Recommendation:*

- To support children and prevent early criminalisation, which can be a precursor, causal and aggravating factor for mental illness in children, the Royal Commission should recommend that the Victorian Government raise the age of criminal responsibility to 14 years old.

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<sup>15</sup> *Children, Youth and Families Act 2005* (Vic), s 344.

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