



Uniting Church in Australia
SYNOD OF VICTORIA AND TASMANIA

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**Submission by the
Justice and International Mission Unit
Synod of Victoria and Tasmania
Uniting Church in Australia
To
Agenda for Children and Young People**

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The Justice and International Mission Unit, Synod of Victoria and Tasmania welcomes this opportunity to make a submission in response to the *Agenda for Children and Young People – Consultation Paper*. The Unit commends the Tasmanian Government for this initiative to improve the lives and well-being of children and young people in Tasmania.

In the Uniting Church 'Statement to the Nation' at the Inaugural Assembly of representatives from across Australia in June 1977 the Assembly recognised that the Gospel led Christians to uphold 'the importance of every human being', 'and a concern for the welfare of the whole human race.' The statement also committed the Uniting Church to 'work for the eradication of poverty and racism within our society and beyond.' It affirmed 'the rights of all people to equal educational opportunities, adequate health care, freedom of speech, employment or dignity in unemployment if work is not available.' This concern for people extends to children and youth.

This submission will focus only on those aspects of the *Agenda for Children and Young People* that the Unit has direct experience with due to its work over a number of years, or in some cases (such as child employment), more than a decade.

1. Breastfeeding

The Unit notes with concern the figure in the Consultation Paper that only 48% of mothers exclusively fed to six weeks in 2008-2009. Further the rates of breastfeeding for Tasmanian Aboriginal children are much lower, with only 45% of Aboriginal mothers breastfeeding at six weeks.

It is a well recognised fact that breastfeeding is the best start in life for a baby, where breastfeeding is possible. This view is held by the World Health Organisation (WHO) and UNICEF and continues to be confirmed by medical research. The World Health Organisation recommends exclusive breastfeeding for the first six months of life, the introduction of local,

nutrient rich complementary foods thereafter with continued breastfeeding to two years of age and beyond.¹ In reaching this conclusion the WHO Expert Consultation reviewed more than 3,000 references.²

The Unit supports the Consultation Paper's statement that "A key strategy for ensuring the best possible start in life is to promote breastfeeding and healthy nutrition. Improving the current rates of breastfeeding particularly in those communities with the lowest rates of breastfeeding is a key priority. The Child and Family Centres and other services that parents attend are important settings in which breastfeeding can be promoted." We therefore support the direction to "Ensure that all Child and Family Centres have a health promoting focus responsive to local need. A key priority is to promote breastfeeding and have supportive breastfeeding practices and policies."

1.1 Australian National Breastfeeding Strategy

The Unit believes that the *Agenda* should include in its directions an indication that Tasmania will align its efforts on breastfeeding rates with the *Australian National Breastfeeding Strategy 2010 – 2015*, given the strategy was endorsed by the Tasmanian Minister for Health. It is important that any Tasmanian strategy to increase breastfeeding rates includes the key elements of the National Strategy of protection, promotion, support and monitoring.

1.2 Breastfeeding and Social Disadvantage

The Unit notes recent research showing that while overall duration of breastfeeding remained fairly constant in Australia between 1995 and 2004-2005, the gap between the breastfeeding rates of the most disadvantaged families in terms of income and those families on the highest incomes has widened considerably. For example, in the 1995 National Health Survey, the proportion of infants being breastfed at 6 months was 37.7% in the lowest Socio-Economic Indexes for Areas (SEIFA) quintile compared with 53.1 % in the highest quintile. By contrast, in the 2004-2005 National Health Survey, the breastfeeding rate at 6 months was 37.1% in the lowest quintile compared with 66.0% in the highest quintile.³

At Local Government Area level in Tasmania, the rates for exclusive breastfeeding at six weeks were significantly below the state average in George Town, Brighton, West Coast, Central Highlands, Southern Midlands, Burnie, Derwent Valley, Glenorchy and Launceston. Low rates of breastfeeding as well as a number of other risk factors for very young children such as smoking during pregnancy and low birth weight appear to cluster in areas of disadvantage.⁴

As formula-fed infants are more likely to become ill and be admitted to hospital, the failure to increase breastfeeding rates for low SEIFA families indicates increasing health inequalities in Australian children. The Tasmanian Government must continue to take action to address this inequality.

1.3 The Right of Mothers to make an informed choice regarding Breastfeeding

The Justice and International Mission (JIM) Unit is not opposed to the use of breastmilk substitutes and understands that there are situations and circumstances where breastfeeding

¹ World Health Assembly Resolution 54.2, 2001.

² Colin Binns, 'Encourage and Support Breastfeeding', in National Health and Medical Research Council, *Dietary Guidelines for Children and Adolescents in Australia*, 10 April 2003, p. 1.

³ Lisa H Amir and Susan Donath, 'Socioeconomic status and rates of breastfeeding in Australia: evidence from three recent national health surveys', *Medical Journal of Australia* 189(5), 2008, 254-256.

⁴ Tasmanian Government, *Kids come first report 2009: Outcomes for children and young people in Tasmania*, p.44

will not be possible. However, the Unit believes that the decision not to breastfeed should be one that a mother makes with the best objective and accurate advice possible, informed by the latest medical research. Mothers should be aware of the risks to themselves and their babies if they choose not to breastfeed when they are able to do so. Such decisions should be free from the commercial interests of baby food companies. The Unit is concerned that the marketing activities of the manufacturers of breastmilk substitutes undermine breastfeeding rates and the effectiveness of spending by Federal, State and Territory Governments in promoting breastfeeding in the Australian community.

The decision not to breastfeed is a one way decision. Once a mother decides to use infant formula and stop breastfeeding, once her body ceases to produce breastmilk this decision cannot be reversed. This reinforces the need for this to be an informed decision made without commercial influence.

1.4 Requiring Ethical Standards on the Marketing of Breastmilk Substitutes

The internationally recognised standard for the marketing of breastmilk substitutes is the World Health Organisation *International Code of Marketing of Breastmilk Substitutes* (WHO Code), which has been supplemented by subsequent World Health Assembly (WHA) resolutions. These standards are seen as the minimum required in order to protect breastfeeding rates against unethical marketing practices. In Australia, the marketing of breastmilk substitutes is covered by the voluntary *Marketing in Australia of Infant Formulas: Manufacturers and Importers Agreement* (MAIF), which falls short of the requirements of the WHO Code and subsequent WHA Resolutions.

In 2007, the Federal Parliamentary Standing Committee on Health and Ageing tabled its report from its Inquiry into Breastfeeding, *The Best Start*, making 22 recommendations for increasing breastfeeding rates in Australia. Recommendation 22 states:

That the Department of Health and Ageing adopt the World Health Organisation's International Code of Marketing of Breast-milk Substitutes and subsequent World Health Assembly resolutions.

In December 2008, the Minister for Health and Ageing released the Government's response to *The Best Start* report. With regard to the recommendation about the implementation of the WHO Code, the Government noted the recommendation and promised to:

... consider Australia's response to the World Health Organisation's International Code of Marketing of Breast-milk Substitutes and related World Health Assembly resolutions in the context of developing a National Breastfeeding Strategy.

The Unit welcomes that in Tasmania, the Department of Health and Human Services (DHHS), Child Health and Parenting Service (CHAPS) have developed protocols to prevent infant formula sales representatives from meeting directly Child and Family Health Nurses and prevents CHAPS accepting promotional material, infant formula samples and professional development from formula companies. There is a Memorandum of Understanding between CHAPS and the Community Nutrition Unit of DHHS and a strong commitment and relationship to make sure that professional development is not provided by infant formula companies.⁵

As part of its strategy to increase breastfeeding rates the Unit urges the Tasmanian Government to provide legislative implementation of the WHO Code to the extent that is possible and that it urge the Federal Government to introduce the WHO *International Code of*

⁵ Correspondence from Mark Byrne, Director, Disability, Child, Youth and Family Services, 27 February 2009, ref: 46295 – HS - DCYFS

Marketing of Breastmilk Substitutes and subsequent relevant WHA Resolutions into legislation or as an enforceable mandatory industry code under the *Trades Practices Act 1974*.

2. Alcohol Reform

The Unit notes that the Consultation Paper provides the alarming statistics that in Tasmania there are high rates of mothers drinking alcohol during pregnancy (16% in 2006) and that in 2008 21% of 12-15 year olds and 48% of 16 -17 year olds were drinkers.

The Unit supports the suggested direction to “Identify early intervention and prevention strategies for children and young people engaging in high risk behaviours, including tobacco, drug and alcohol consumption.”

2.1 National Preventative Health Taskforce Recommendations

The Unit believes that the *Agenda for Children and Young People* should commit to implementing the relevant recommendations of the report by the National Preventative Health Taskforce, *Australia: The Healthiest Country by 2020*.

The Taskforce stated that Australia’s overall per capita alcohol consumption is high by world standards, with estimated that 13% of Australian children aged 12 years or less, that is one in eight, are exposed to an adult who is a regular binge drinker. Further, 31% of parents involved in substantiated cases of child abuse or neglect experience significant problems with alcohol use.

The Taskforce also noted that three major reviews just published have shown that:

- Alcohol advertising and promotion increases the likelihood that adolescents will start to use alcohol, and drink more if they are already using alcohol;
- There is a causal link between exposure to alcohol commercials and role models on acute alcohol consumption; and
- Among young people who had previously not drunk alcohol, ownership of alcohol branded merchandise is independently associated with susceptibility to, and initiation of, drinking and binge drinking.

The Tasmanian Government should seek to do what it can to restrict marketing activities by the alcohol industry that target young people, or are displayed to young people.

2.2 Health Advisory Labels on Alcohol Products

In the absence of any meaningful action by the Commonwealth, the Unit urges the Tasmanian Government to require the introduction of health advisory labels on alcohol products to remind consumers of the health impacts and risks of alcohol misuse and the consumption of alcohol during pregnancy. The Tasmanian Government would be wise to seek support from other State Governments to seek such a requirement of the alcohol industry.

Research released at the start of June 2010 by the Alcohol Education and Rehabilitation Foundation (AERF) showed that one in three Australian women are drinking alcohol while pregnant or breastfeeding. The consumption of alcohol during pregnancy can contribute to:

- miscarriage;
- premature birth;
- small babies who are more prone to illness, slow growth and development; or
- still-birth.

The AERF survey of over 1,000 people found 49% of Australians admit to only having a vague knowledge of the 2009 Australian Guidelines to Reduce Health Risks from Drinking Alcohol and a further 24% had no knowledge at all.

Health groups, such as the Australian Drug Foundation and VicHealth, have called for health advisory labels on all alcohol products to better inform consumers and help prevent harms, such as fetal alcohol syndrome. Fetal alcohol syndrome is incurable and is the leading cause of preventable, non-genetic, intellectual disability. They point out that at the moment there is more health related information on a carton of milk than on a bottle of alcohol.

At least 43 countries already have some form of on-product labelling, with 14 of these having mandatory health labels primarily around alcohol use and pregnancy.

Assisting pregnant women to understand the health risks to their unborn children would seem to be an important addition to make to the *Agenda for Children and Young People*.

3. Protection for Children and Young People in Employment

The Unit notes the statistic from the Consultation Paper that in 2008 only 61.8% of students stayed on to complete Year 12. The Unit agrees with the Consultation Paper (p.32) that “adolescence can be a particularly trying time for young people and they can be exposed to additional risk.” This extends to situations of employment, where adolescents are at greater risk of being exposed to dangerous workplace environments or exploitation by unscrupulous employers.

The Unit strongly supports the suggested directions to “Assist young people make a successful transition from school to further education or training or full time employment” and to “Enhance life skills training, including promoting resilience and self-esteem and actions that minimize risk taking behaviour.”

Work, for the majority of children and young people can be a formative, rewarding and valuable experience. Unfortunately however, research shows that this is not the case for some children and young people. Tasmania has the least amount of legal protection for children who are employed. South Australia shares similarly modest legal protection for employed children, but is working to implement significant legal reform in this area. The Unit urges that the *Agenda for Children and Young People* include a commitment to introduce appropriate legal protections for children under the age of 16 in the workforce, which will help ensure that work undertaken by Tasmanian children is a rewarding and safe experience.

Under the Commonwealth *Fair Work Act* child employment law is still the responsibility of the States (see Section 27 (2) (e) *Fair Work Act*). However, Professor Andrew Stewart, the John Bray Professor of Law from the University of Adelaide, believes that if a State or Territory child employment law were to come into direct conflict with a Commonwealth provision⁶ the Commonwealth provision would override State laws⁷.

According to Professor Andrew Stewart⁸, only limited provisions of general application in Tasmania exist in relation to child employment:

- Section 82 of the *Education Act 1994* stipulates that a person must not employ or permit to be employed, a school-aged child during the hours when they are required to attend a school or undertake home education, except as authorised by the Secretary of the relevant government department.
- Section 94 of the *Children, Young Persons and Their Families Act 1997* also provides that a person must not procure or induce a child who has not attained the age of 11 years to offer anything for sale in a public place. A similar prohibition applies in relation to children aged under 14, though only between the hours of 9:00pm and 5:00am. The prohibitions do not, however, cover taking part in a sale whose proceeds are for the benefit of a school or a charitable purpose.

Other, more general parts of ‘Division 1 – Offences’ in the Tasmanian *Children, Young Persons and Their Families Act* could also be relevant to the welfare of children in the workplace:

⁶ Note that in his paper he is referring to the predecessor to the *Fair Work Act*, the *Workplace Relations Act*

⁷ Stewart, A. [Prof.], 2008, *Making the working world work better for kids*, NSW Commission for Children and Young People, Sydney, Pg. 18

⁸ Stewart, A. [Prof.], 2008, *Making the working world work better for kids*, NSW Commission for Children and Young People, Sydney, Pg. 52

- Section 91 – states that a person (this would probably include employer) ‘who has a duty of care in respect of a child must not intentionally take, or fail to take, action that could reasonably result in’:
 - ‘physical injury’ or ‘sexual abuse’;
 - ‘psychological harm of such kind that the child’s emotional or intellectual development is, or is likely to be, significantly damaged’; and
 - ‘the child’s physical development or health being significantly harmed.’
- Section 92 – ‘A person who has the control or charge of a child must not leave the child without making reasonable provision for the child’s supervision and care for a time which is unreasonable.’
- Section 93 – Appears to empower the responsible Minister to disallow children below the age of 14 to in any way engage in certain ‘restricted public entertainment’ events unless they are ‘for a school or charitable purpose’ or in a ‘religious service.’

Sections 91 and 92 could be of particular relevance to safety, in relation to preventing harassment and other forms of abuse. Section 92 could also be relevant to the issue of proper supervision of children aged less than 18 years of age in the workplace.

Most young people work⁹ however there is a lack of comprehensive data about the details of the nature of work that is undertaken. The Australian Bureau of Statistics completed one study into the employment of children between the ages of 5 and 14¹⁰. In Tasmania, the survey indicated that 5,300 children aged between 5 and 14 had worked in the last 12 months. This represents 8% of Tasmanian children in that category (note this data has 25-50% relative error and should be used with caution). In Victoria, a state in which stronger laws are in place, the survey indicated that 37,500 children aged between 5 and 14 had worked in the last 12 months – representing 5.8% of Victorian children in that category.

The survey found that in Australia in the 12 months up to June 2006, 175,100 children aged between 5 -14 had worked. Nationally, of those children who had worked, 54% had worked for an employer, 33% had worked for a family business or farm and 16% had worked for themselves. Of the children who worked, 42% worked 13 weeks or more during the year, and 83% of the children who worked had worked during school terms. Of those children who worked during school term time, 11% worked 10 hours a week or more. This increased to 25% of these children working 10 hours a week or more during holiday periods. Further, 58% of those that worked during school terms did so on Mondays to Fridays.

Table 1. From the ABS study from June 2006¹¹ of children who worked during school terms, the most common occupations were:

| Occupation | % of children aged 5-14 |
|--|--------------------------------|
| Technicians and Trade Workers | 4.0 |
| Community and Personnel Service Workers | 14.0 |
| Carers and Aides | 6.5 |
| Other Community and Personal Service Workers | 7.5 |
| Clerical and Administrative Workers | 5.1 |
| Sales Workers | 12.0 |
| Labourers | 59.4 |

⁹ Fetter, J., 2008, *Young people in the workplace*, Reform, Issue 92, Australian Law Reform Commission, pgs 64-66

¹⁰ Australian Bureau of Statistics, 2006, *6211.0 Child Employment*, Australia, [online], available from: <http://www.abs.gov.au/ausstats/abs@.nsf/mediareleasesbyTopic/976F18A6FCC83FCCCA2572820077A4A7?OpenDocument> [21 November 2007]

¹¹ Australian Bureau of Statistics, 2006, *6211.0 Child Employment*, Australia, [online], available from: <http://www.abs.gov.au/ausstats/abs@.nsf/mediareleasesbyTopic/976F18A6FCC83FCCCA2572820077A4A7?OpenDocument> [21 November 2007]

| Occupation | % of children aged 5-14 |
|---|-------------------------|
| Cleaners and Laundry Workers | 10.6 |
| Farm, Forestry and Garden Workers | 16.9 |
| Food Preparation Assistants | 5.1 |
| Leaflet and Newspaper Deliverer | 20.1 |
| Other Labourer | 6.7 |
| Other (including entertainment and advertising) | 5.4 |

3.1 Studies and data relating to employment of children – safety

There is a lack of detailed data pertaining to the employment of children, and particularly those below the age of 15. In Victoria, available data indicates that there were between 700 and 1,000 injuries per annum of children aged under 20, between 1996 to 2006.¹² Research undertaken by the South Australian *Children, Youth and Women's Health Service* stated that, "On average, 30 children aged 0 to 14 years die on Australian farms each year and around 600 are admitted to hospital because of farm-related injuries"¹³.

3.2 Provision of work entitlements (and a safe environment) for young people

In Victoria, there is evidence to suggest high levels of non-compliance with award and agreement entitlements for young workers¹⁴. Similarly, submissions to the *Child Employment Principles Case* held by the Industrial Relations Commission of New South Wales¹⁵ identified disturbing trends in the areas of:

- unpaid training;
- non-payment of loadings or penalty rates for weekend and late night work;
- lack of advanced notice of rosters;
- underpayment; and,
- lack of provision of meal breaks.

Some key issues raised in the *Child Employment Principles Case* related to breaches of Occupational Health & Safety regulations. The issue of high rates (and non-reporting) of accidents involving young people featured prominently in the case. The high incidence of harassment and bullying of children/young people in employment, particularly verbal, and sometimes physical were also cited. Earlier analysis (2005) conducted by the NSW Commission for Children and Young People¹⁶, *Children at Work*, found that '40 per cent of the workers surveyed had sustained some form of work-related injury, with half of those requiring treatment'¹⁷ and that, 'girls are more likely than boys to be injured ... and children

¹² Victorian Workcover Authority, 2006, *2005-2006 Statistical Summary*, [online], available from: http://www.worksafe.vic.gov.au/wps/wcm/resources/file/ebf75404d211372/statistical_summary_05_06.pdf [21 November 2007]

¹³ Children, Youth and Women's Health Service (CYWHS), *Farm Safety*, [online], available from: <http://www.cyh.com/HealthTopics/HealthTopicDetails.aspx?p=114&np=305&id=1755> [21 November 2007]

¹⁴ Job Watch Inc., 2004, *JOBWATCHING: The Official Publication of Job Watch Inc. Newsletter*, June 2004, [online], available from: <http://www.job-watch.org.au/jwnews/jwnews0406.pdf> [21 November 2007]

¹⁵ Industrial Relations Commission of New South Wales, 2007, *Child Employment Principles Case 2007*, [online], available from: <http://www.lawlink.nsw.gov.au/ircjudgments/2007nswirc.nsf/c45212a2bef99be4ca256736001f37bd/72d833e9000d754bca2572df0009e495?OpenDocument> [7 June 2007]

¹⁶ Based on a survey of nearly 11,000 children in Years 7–10 in 22 New South Wales schools

¹⁷ NSW commission for children and young people [Fattore, T.], 2005, *Children at work*, Sydney, pg 103

from the most disadvantaged areas are most likely to be seriously injured'¹⁸. 48 per cent of those surveyed had suffered verbal harassment, while one-fifth had experienced physical harassment (in such areas as 'tricks played on them', 'being threatened and intimidated', 'being physically hurt or pushed', 'having personal possessions damaged' and 'being touched inappropriately')¹⁹.

In Victoria, an owner of a shop was found to have offered free DVD loans to his employees, in lieu of wages²⁰. In Victoria the issue of exploitation of young people due to unpaid trials (outlined in the previously cited *Child Employment Principles Case*) was addressed by the Victorian *Workers' Wages Protection Act 2007* which 'ensures that employers pay wages in money'²¹.

3.3 Balancing school and work

In Tasmania young people are required to complete the school year during which they turn 16 and to continue participating in education or training until they turn 17. They may leave earlier if they gain a vocational qualification at Certificate III level or are employed for more than 25 hours each week²².

Sharon Bird (Member for Cunningham, NSW), as a member of the inquiry into 'Combining school and work: supporting successful youth transitions'²³ by the Federal House of Representatives Standing Committee on Education and Training, has stated: "There is anecdotal evidence to suggest that in some cases students are spending almost as many hours undertaking paid work as they are at school...²⁴".

It is important to note that the inquiry into combining school and work has found that attempting to balance part-time work and study can be a significant struggle for some students, who are striving to maintain a social life and participate in sporting and recreational activities.

The Committee's press release states²⁵:

It has been comforting to note that for the vast majority of students, they believe that their employers understand the needs of students and provide flexibility to help them balance schooling commitments. Nonetheless the committee has received feedback from students—particularly those employed by smaller businesses—where their employer is unable to offer the same degree of flexibility. Students working longer hours during the school week are finding that they are too tired and unmotivated to study.

¹⁸ NSW commission for children and young people [Fattore, T.], 2005, *Children at work*, Sydney, pg 103

¹⁹ Ibid, pg 119

²⁰ Walliker, A., 2008, *No wage offer by Video Dogs owner a 'mistake'*, Herald Sun, 18 June, [online], available from: <http://www.news.com.au/heraldsun/story/0,21985,23883028-661,00.htm> [13 May 2009]

²¹ Note that the Victorian Workers' Wages Protection Act 2007 is repealed by the Fair Work (Commonwealth Powers) Bill 2009 (Vic)

²² Tasmanian Department of Education, *Starting and leaving ages*, [online], available from: <http://www.education.tas.gov.au/school/parents/starting/starting-and-leaving-ages> [13 May 2009]

²³ Available from: www.apf.gov.au/edt

²⁴ About the House, *24/7 Teens: should we be worried?* Issue 36, March 2009

²⁵ House of Representatives Standing Committee on Education and Training: Inquiry into combining school and work: supporting successful youth transitions [Chair: Ms Sharon Bird MP, Deputy Chair: Dr Dennis Jensen MP], 2009, *Over 1,000 students have their say on balancing school with part-time work* [media release], Canberra, 25 March, [online], available from: <http://www.apf.gov.au/house/committee/edt/schoolandwork/media/media04.pdf> [25 May 2009]

The following comments extracted from responses to the survey (in the press release) are typical of those students who are finding combining school and work a challenge:

- *If I don't have a lot of time to do my homework after work then that's my weekends gone ... which means 'no life'!!*
- *Teachers believe year 12 students should not work whilst doing their HSC and try and discourage their students from it. I think this is hard as I personally need to work during this time.*
- *There is no time left to study... After work (9-5 on Saturday and Sundays, and 4 hours on Thursdays) I'm too tired and unmotivated to do much study."*
- *...as teenagers we need to learn the values of earning money and if we keep needing to take time off from work, our employers will eventually fire us because we would be unreliable.*
- *I may only work one or two (lengthy) shifts in a week, but the school offers no assistance with maintaining the work load. They do not encourage applying for or maintaining jobs until completion of year 12 has been achieved... I think both school and work need to take into account that I do have a job/school work and be more flexible.*
- *My job is very flexible, but I know of others who have set shift time slots who feel the stress of a job rather overwhelming, especially when parental pressure is a contributing opinion when maintaining a job.*

Earlier research dating from 2003 found that participation in part-time work during high school is associated with an increased likelihood of dropping out before the end of Year 12.²⁶ The more hours that a child worked beyond five hours a week the more likely they were to drop out. Males who work 5 to 15 hours per week during Year 9 were approximately 40% less likely to complete Year 12 than those who did not, while male children who worked more than 15 hours per week were 60% less likely to complete Year 12. Over 14% of the sample of students surveyed worked more than five hours a week.

The researchers warned that it could not be assumed that in all cases part-time work simply erodes commitment to study. They pointed out it was possible that some students may have decided that they will leave school for work at quite an early age.²⁷

Also, the findings were not all negative. They found there was a 65% increase in the odds that a young person will gain an apprenticeship or traineeship, rather than be unemployed, if that young person worked in a part-time job during high school. Further, there was over a 40% increase in the odds that a young person would be in full-time employment, rather than unemployed, if that young person worked in a part-time job during high school.²⁸

A 2011 study by the Melbourne Institute of Applied Economic and Social Research on tertiary students aged under 25 found the more hours worked the less likely they were to complete their course if studying full-time.²⁹ Working 8 to 16 hours a week reduced course completion rate by 5%, while working between 16 and 24 hours a week reduced it by 8% and

²⁶ Vickers, M.; Lamb, S., and Hinkley, J., *Student Workers in High School and Beyond: The Effects of Part-Time Employment on Participation in Education, Training and Work*, Australian Council for Educational Research, February, 2003, p. 12.

²⁷ Vickers, M.; Lamb, S., and Hinkley, J., *Student Workers in High School and Beyond: The Effects of Part-Time Employment on Participation in Education, Training and Work*, Australian Council for Educational Research, February, 2003, p. v.

²⁸ Vickers, M.; Lamb, S., and Hinkley, J., *Student Workers in High School and Beyond: The Effects of Part-Time Employment on Participation in Education, Training and Work*, Australian Council for Educational Research, February, 2003, p. vi.

²⁹ Polidano, C., and Zakirova, R., *Outcomes from combining work and tertiary study*, Melbourne Institute of Applied Economic and Social Research, National Centre for Vocational Education Research, 2011, pp. 3, 8.

working more than 24 hours a week reduced it by 14%. However, finding a job considered connected with the student's career while studying had a significant positive impact on course completion.

The evidence suggests that in the right circumstances some level of work can have positive benefits for children, but as hours of work increase there is likely to be negative impacts on completion of formal education. This provides a case why the Tasmanian Government should legislate to limit the amount of hours children can work while still at school.

3.4 International human rights instruments as a guiding framework

The Uniting Church in Australia supports human rights standards recognised by the United Nations³⁰.

To comply with the UN *Convention on the Rights of the Child*³¹, the legal framework and resources underpinning the Tasmanian child employment framework must provide strong safeguards to ensure children and young workers' (under the age of 18) are afforded conditions appropriate to their development. Articles 31 and 32 have particular relevance.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment;*
- (b) Provide for appropriate regulation of the hours and conditions of employment;*
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.*

Australia is a party to the *ILO Convention No. 182 on the Worst Forms of Child Labour Convention*³² which seeks to ban child pornography and prostitution, and work that is physically and/or psychologically hazardous:

Article 3

For the purposes of this Convention, the term the worst forms of child labour comprises:

³⁰ The Uniting Church in Australia, National Assembly, [Eleventh Assembly], 2006, *Dignity in Humanity: Recognising Christ in Every Person, A Uniting Church in Australia Statement on Human Rights*

³¹ United Nations: Officer of the High Commissioner for Human Rights, 1989, *Convention on the Rights of the Child*, [online], available from: <http://www.unhcr.ch/html/menu3/b/k2crc.htm> [12 May 2009]

³² International Labour Organisation, 1999, *C182 Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour* [short title: *C182 Worst Forms of Child Labour Convention*], Geneva, [online], available from: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C182> [13 May 2009]

- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

In addition, Australia is a party to the *C87 Freedom of Association and Protection of the Right to Organise Convention*³³, which includes a commitment (see Article 2) to, ‘workers and employers having the right to establish and join organisations of their own choosing without previous authorisation’.

3.5 Stewart’s minimum requirements

In his paper, ‘Making the working world work better for kids’³⁴ Professor Andrew Stewart stated that, as a minimum, child employment laws should cover:

- the minimum age for the performance of certain types of work;
- the minimisation of conflicts between work arrangements and schooling;
- limitations on working hours; and,
- employer obligations, including appropriate supervision.

These and other requirements are recommended to guide law reform in Tasmania.

3.6 Education and information provision

It is important to provide resources that ensure vulnerable and inexperienced young workers have access to information about their legislative rights. Provision of training to young people in the secondary and Vocational, Education and Training sectors is vital to ensure each generation of new workers understands basic work and safety standards, as well as the benefits of freedom of association.

3.7 Prohibitions on certain kinds of work

Tasmanian law should be reviewed to ensure that it complies with its international obligations. This would include checking that there is no opportunity for a child to be employed at businesses where pornography or adult entertainment/prostitution services are provided (in such areas as ticketing or sale of certain material).

3.8 Police checks

The Australian Institute of Family Studies states on their website³⁵ that there are no legal statutes that require people working with children to undergo a police check in Tasmania. Individual organisations may however have their own policies in this regard.

3.9 Compliance

The *Convention on the Rights of the Child*³⁶ (Article 19) requires ‘prevention, identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment,

³³ International Labour Organisation, 1948, *C87 Convention concerning Freedom of Association and Protection of the Right to Organise* [short title: *C87 Freedom of Association and Protection of the Right to Organise Convention*], San Francisco, [online], available from: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C087> [13 May 2009]

³⁴ Stewart, A. [Prof.], 2008, *Making the working world work better for kids*, NSW Commission for Children and Young People, Sydney, pg. 6

³⁵ Australian Institute of Family Studies, *Working with children and police checks*, [online], available from: <http://www.aifs.gov.au/nch/resources/police/policechecks.html#tas> [12 May 2009]

and, as appropriate, judicial involvement.’ The Tasmanian government should ensure that maltreatment of children in the workplace is addressed by providing education, training and promotion as well as appropriate mechanisms to enforce compliance where unscrupulous employers seek to exploit younger workers.

3.10 Highest Standard

Where a Commonwealth or State legislation, or Award, or enterprise agreement, provides for better conditions than what is recommended here, these should prevail.

3.12 Recommendations in relation to protecting Children and Young People in Employment

3.12.1 The Fair Work Act and children

The standards set out in the *Fair Work Act* specifically pertaining to children and young people, should be afforded to all Tasmanian children:

Explanation of enterprise agreements

In Section 180 (6) (b) of the *Fair Work Act* there is a requirement for employers to explain a proposed enterprise agreement for ‘young employees’. This must be done ‘in an appropriate manner taking into account [their] particular circumstances and needs’ – see Section 181 (5) (b).

Review of bargaining impact on young people

The General Manager of Fair Work Australia ‘must review the effects ... of bargaining ... on the employment (including wages and conditions of employment) of ‘young persons’ – see Section 653.

A national minimum wage for junior employees

Section 294 sets out that there must be a national minimum wage³⁷ for junior employees who are not covered by new ‘modern awards’.

Deductions or payments

The *Fair Work Act* specifies that a parent or guardian must approve in writing ‘deductions or payments’ (that benefit the employer) for a worker under 18 – see Section 326, (1) (d).

Individual flexibility arrangements

‘Individual flexibility arrangements’ are a feature of the new industrial relations system. Provided that the worker is ‘better off’ (144 (4) (c) – ‘modern awards’) (203 (4) – enterprise agreements) a worker may make arrangements to vary conditions. Importantly, young people under 18 must have the written consent of their parent or guardian before such arrangements are made (144 (4) (e) (ii) – modern awards) (203 (7) (a) (ii) – enterprise agreements).

School-based apprentices and trainees

Sections 126 (awards) and 199 (agreements) allow school-based apprentices and trainees to be paid loadings in lieu of annual leave, personal carer or paid absence (public holidays) under certain circumstances (provided that there is ‘no detriment’ – see section (2) of section 199).

³⁶ United Nations: Officer of the High Commissioner for Human Rights, 1989, *Convention on the Rights of the Child*, [online], available from: <http://www.unhchr.ch/html/menu3/b/k2crc.htm> [12 May 2009]

³⁷ This may be implemented as late as 1 July 2011

Young people are not specifically protected in some key areas in the *Fair Work Act*:

- sections 357-359 set out safeguards against sham arrangements pertaining to independent contracting but there are no specific safeguards for children; and,
- 'Part 3-2—Unfair dismissal' does not contain specific protections for children.

All Tasmanian employers should take special care to explain the Award or agreement regulating the workplace. An employer must not employ a junior at a rate that is below the national minimum wage for junior employees.

3.12.2 Minimum age for the performance of certain types of work

Any workplace where a child is to be employed or engaged to work must be registered by the appropriate Tasmanian Government authority.

Children under the age of 15 may only engage in 'light work', and this can be done with the written consent of a parent or guardian and the school Principal. The definition of 'light work' should be modelled on section 5 of the Victorian *Child Employment Act 2003*.

As is the case with the Victorian *Child Employment Act 2003*, children under the age of 13 may only work in limited fields of employment. Work for these children must be limited to tasks that are 'light' by nature and should only be undertaken in the not-for-profit or entertainment industries (or in a family business). Children should only be permitted to work for employers (other than working within a small business run by their family) who have been certified as suitable by an appropriate Tasmanian authority as established in legislation.

3.12.3 Minimise conflicts between work arrangements and schooling

In addition to the requirements set out in Section 82 of the Tasmanian *Education Act 1994* prohibiting children from working during school hours, an added requirement should be developed. Such a requirement should mirror Section 11(2) of the Victorian *Child Employment Act 2003* which ensures that no 'child engages in employment if the nature and extent of the employment is such as to prejudice the child's attendance at school or their capacity to benefit from instruction' (also see next recommendation in relation to work permitted during school hours).

3.12.4 Limits on working hours

Limits on working hours should be modelled on Sections 21 (hours of work) and 22 (rest breaks) of the Victorian *Child Employment Act 2003* where children under 15 must not be permitted to work during school hours (unless exempted by the Minister) - hours of work are capped at 12 hours per week during school term, and 30 hours per week during holidays (including a half-hour rest break after three hours work) and work may not generally be performed outside of the hours of 6am to 9pm.

3.12.5 Employer obligations, including supervision

3.12.5.1 Supervision

Consistent with the principles cited in section 92 of the Tasmanian *Children, Young Persons and Their Families Act 1997*, a child under 15 undertaking work must be directly supervised at all times by an adult. An employer of a child aged 15-17 must make reasonable arrangements to ensure a young worker receives appropriate supervision and care. Also, a child under the age of 16 must not be allowed to supervise others in a workplace.

3.12.5.2 Unpaid trial work

The Tasmanian government should ban unpaid 'trial work'. According to Unions Tasmania, considerable anecdotal evidence exists to suggest the prevalence of unpaid trial work,

particularly in hairdressing. This reform should ensure that legitimate programmes overseen by educational institutions are not unduly disadvantaged.

3.12.5.3 Independent contracting

Consistent with the reasons behind the provisions in the *Fair Work Act* relating to ‘individual flexibility arrangements’³⁸, Tasmania should legislate to ensure that children may only be able to be engaged as an independent contractor if their parent or guardian provides written consent.

3.12.5.4 Working with children police check

Certain employers should undergo a check³⁹ (perhaps modelled on the Victorian *Working with children check*) if they are working with children under the age of 18.

3.12.6 Unfair dismissal

A remedy should be available for young people if they are dismissed for raising workplace issues relating to their entitlements or safety, in good faith.

3.12.7 Education and training and information provision

Provision of training to young people in the secondary and Vocational, Education and Training sectors should be provided in basic work and safety standards. Such training should also provide information about where children and young people can seek advice or assistance. If needed, the Tasmanian Government will ensure that extra resources are provided in this area.

3.12.8 Occupational health and safety

Existing State and Commonwealth laws should be taught to young people in the secondary and Vocational, Education and Training sectors.

3.12.9 Freedom of association

The provision of training to young people in the secondary and Vocational, Education and Training sectors should include understanding of the *Freedom of Association and Protection of the Right to Organise Convention*⁴⁰ of the ILO (and its’ practical ramifications for young people at work) as a learning outcome.

3.12.10 Information sheets

Consistent with the recommendations included here, all young Tasmanian workers should be provided with an information sheet which clearly stipulates their rights and responsibilities.

3.12.11 Advice line

An advice and referral phone line and website should be provided to all children and young people working in Tasmania.

3.12.12 Enforcement

Extra resources are required to ensure the effective implementation of legislation to protect children and young people. A new or existing Tasmanian Government authority should

³⁸ See 144 (4) (e) (ii) – *modern awards* and 203 (7) (a) (ii) – *enterprise agreements* in the *Fair Work Act* of the Commonwealth - young people under 18 must have the written consent of their parent or guardian before such arrangements are made

³⁹ This could be based on the framework contained in the Victorian *Working with Children Act 2005*

⁴⁰ International Labour Organisation, 1948, *C87 Convention concerning Freedom of Association and Protection of the Right to Organise* [short title: *C87 Freedom of Association and Protection of the Right to Organise Convention*], San Francisco, [online], available from: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C087> [13 May 2009]

undertake inspections of employers of predominately young people so as to investigate potential breaches (and repeat offence breaches) of law in the areas of pay, entitlements and safety regulations (in consultation with other authorities with responsibility in these areas). Consistent with the other recommendations cited in this submission, this government authority should also provide and facilitate industrial relations and safety education and training for young workers and students in the secondary and Vocational Education and Training sectors.

Protocols with the Office of the Fair Work Ombudsman (Commonwealth) should be established for monitoring State and Commonwealth workplace conditions of children and young people.

4. Prison as a Last Resort for Children

4.1 Uniting Church in Australia and Juvenile Offenders

The Uniting Church in Australia supports human rights standards recognised by the United Nations (UN)⁴¹. National public policy and practice in the area of juvenile justice reform must be judged against international human rights instruments, keeping in mind Christ's call and example to work for justice for the oppressed and vulnerable⁴² outlined at the beginning of this submission.

Sources of Internationally recognised Human Rights for imprisoned people include the UN *Convention on the Rights of the Child*⁴³. In addition the *Liberty to the Captives (Mandatory Sentencing)*⁴⁴, policy of the Uniting Church in Australia National Assembly specifically refers to the United Nations *Rules for the Protection of Juveniles Deprived of their Liberty*.⁴⁵

The *Convention on the Rights of the Child*⁴⁶ (UNCRC) of the United Nations outlines the minimum legal protections afforded to children, ensuring that all signatory States provide separate legal representation for a child in any judicial situation concerning their care, and asks that the child's viewpoint be heard in such cases.

The United Nations *Rules for the Protection of Juveniles Deprived of their Liberty*⁴⁷ sets out a mandate for the protection of juveniles deprived of their liberty at the behest of the State. The *Rules* stipulate the minimum standard of treatment for those under the age of 18 who have, as a last resort, been held in detention for a period of time determined by a judicial authority. They are consistent with the human rights and fundamental freedoms afforded to all persons. Specifically, juveniles shall not be deprived the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the terms of their imprisonment. They are entitled to a minimum standard of accommodation, apparel and medical care, the opportunity to access educational facilities, work and vocational training, and to appropriate forms of recreation. On admission to the facility, every effort must be made to ensure the individual's cultural or religious requirements are understood and accommodated for.

Juveniles are often disadvantaged⁴⁸. In 1999, the Uniting Church in Australia, Synod of Victoria and Tasmania, advocated for increased funding levels to those parts of the Juvenile justice system that facilitate community-based rehabilitation of young offenders and 'early

⁴¹ Dignity in Humanity: Recognising Christ in Every Person: A Uniting Church in Australia Statement on Human Rights (2006) (Uniting Church in Australia Assembly), section 12

⁴² Dignity in Humanity: Recognising Christ in Every Person: A Uniting Church in Australia Statement on Human Rights (2006) (Uniting Church in Australia Assembly), section 18

⁴³ Specifically referenced in: 2000, Liberty to the Captives (Mandatory Sentencing), 00.21.02, The Uniting Church in Australia Assembly and available online at: <http://www.un.org/documents/ga/res/45/a45r113.htm>

⁴⁴ 2000, Liberty to the Captives (Mandatory Sentencing), 00.21.02, The Uniting Church in Australia Assembly

⁴⁵ Specifically referenced in: 2000, Liberty to the Captives (Mandatory Sentencing), 00.21.02, The Uniting Church in Australia Assembly

⁴⁶ United Nations, 1989 [in force 1990], Convention on the Rights of the Child, resolution 44/25, [online], accessed at: <http://www2.ohchr.org/english/law/crc.htm> [14 January 2011]

⁴⁷ United Nations [General Assembly 68th plenary meeting], 1990, United Nations Rules for the Protection of Juveniles Deprived of their Liberty, resolution A/RES/45/113, [online], accessed at: <http://www.un.org/documents/ga/res/45/a45r113.htm> [14 January 2011]

⁴⁸ 2000, Liberty to the Captives (Mandatory Sentencing), 00.21.02, The Uniting Church in Australia Assembly

intervention' through investing more extensively in support services within the primary and secondary phases of state education⁴⁹.

4.2 Restorative Justice for Juvenile Offenders

Many Australians have little or no confidence in incarceration to rehabilitate (and to deter future offending or teach prisoners skills)⁵⁰. Evidence suggests that in Australia 50% of all juveniles in detention have been detained previously and more than 50% of juveniles are reconvicted within 6 months of being released; furthermore, nearly 80% of juveniles who have experienced detention will be subject to community or custodial supervision (with almost 50% being imprisoned)⁵¹. Juveniles given custodial orders reoffend at about the same rate as those given non-custodial orders and incarceration affords high negative flow on effects such as decreased future employment prospects⁵². Research shows that employment contributes to termination of criminal activity⁵³; educational attainment is associated with better employment prospects (and higher income)⁵⁴. Conversely, there is a strong association between low literacy and crime⁵⁵.

Research strongly suggests that criminal justice approaches that emphasise greater police numbers and punishment in most cases fail to effect significant crime reduction⁵⁶. Punitive measures appear to be an unhelpful approach.

The Unit is particularly supportive of restorative justice programs being used with juvenile offenders to try to address the offending behaviour in a way that reduces re-offending. Reducing re-offending, which includes the need to address the causes of the offending in the first place, is the best way to enhance community safety. Reducing the number of crimes should be seen as a more desirable goal than a focus on harsh punishment for offenders regardless of its impact on overall crime rates. Restorative justice provides a community-centred alternative:

⁴⁹ 1999, re: Juvenile Justice, 99.4.4

⁵⁰ Lynne Roberts, L., Indermaur, D., 2009, What Australians think about crime and justice: results from the 2007 Survey of Social Attitudes, Australian Institute of Criminology, [online], available from: <http://www.aic.gov.au/documents/4/8/A/%7B48A3B38B-376E-4A7A-A457-AA5CC37AE090%7Drpp101.pdf> [15 September 2010]

⁵¹ Australian Institute of Criminology [Payne, J.], 2007, Recidivism in Australia: findings and future research, Research and Public Policy Series, No. 80, [online], accessed at: <http://www.aic.gov.au/documents/0/6/B/%7B06BA8B79-E747-413E-A263-72FA37E42F6F%7Drpp80.pdf> [18 January 2011]

⁵² Australian Institute of Criminology [Weatherburn, D., Vignaendra, S., McGrath, A.], 2009, The specific deterrent effect of custodial penalties on juvenile reoffending, AIC Reports, Technical and Background Paper 33, [online], accessed at: <http://www.aic.gov.au/documents/A/3/D/%7BA3DB5DEB-2A53-4272-87CF-CE510D13481B%7Dtbp33.pdf> [19 January 2011]

⁵³ Przybylski, I. [RKC Group], 2008, What Works, Effective Recidivism Reduction and Risk-Focused Prevention Programs, A Compendium of Evidence-Based Options for Preventing New and Persistent Criminal Behavior, Denver

⁵⁴ Australian Institute of Health and Welfare, 2010, *The health of Australia's prisoners 2009*, accessed at: <http://www.aihw.gov.au/publications/phe/123/11012-c02.pdf>

⁵⁵ Australian Institute of Family Studies [Vimpani, G., Patton, G., Hayes, A.], 2002, The relevance of child and adolescent development for outcomes in education, health and life success, Children's health and development: new research directions for Australia, Research report no.8 [edited Ann Sanson, A.], [online], accessed at: <http://192.135.208.240/institute/pubs/resreport8/ch2.pdf> [18 January 2011]

⁵⁶ Commonwealth of Australia [Attorney-General's Department], 1999, Pathways to prevention: Developmental and early intervention approaches to crime in Australia, National Crime Prevention National Crime Prevention, Canberra, [online], accessed at: <http://www.ag.gov.au/agd/www/Ncphome.nsf/Page/B78FEDFB9A1D980ACA256B14001A096E?OpenDocument> [18 January 2011]

Crimes harm people and relationships. Justice requires that harm be repaired as much as possible. Restorative justice is not done because it is deserved, but because it is needed. Restorative justice is ideally achieved through a cooperative process involving all the primary stakeholders in determining how best to repair the harm done by the offense. ... A criminal justice system that merely doles out punishment to offenders and sidelines victims does not address the emotional or relational needs of those who have been affected by crime. In a world where people feel increasingly alienated, restorative justice restores and builds positive feelings and relationships. A restorative criminal justice system aims not just to reduce crime, but to reduce the impact of crime as well. The capacity of restorative justice to address these emotional and relational needs and engage the citizenry in doing so is the key to achieving and sustaining a healthy civil society⁵⁷.

In Australia all jurisdictions legislatively provide that detention be a 'last resort' for juveniles⁵⁸; and Tasmania is no exception to this rule.

4.3 The Tasmanian Youth Justice Act 1997

There is a growing belief that the emphasis in juvenile justice ought to move from simple punishment towards making young offenders accountable for their actions, while at the same time involving families in making decisions about their children and in addressing the needs and rights of victims⁵⁹. Since the early 1990s diversionary practices in Tasmania have worked within this framework, and have been developed over time in three key stages:

Pre-1995, the only diversionary practices were informal responses, including cautions. In the second phase, 1995–2000, restorative justice influenced the introduction of police conferences as another method of diversion. During this phase cannabis cautioning also began. Since 2000, with the proclamation of the Act [Youth Justice Act 1997], there are five titles for different forms of diversion: informal cautions, formal cautions, police conferences (which are not mentioned in the Act and are technically recorded as formal cautions), community conferences and cannabis cautions (which also are not mentioned in the Act)⁶⁰.

The *Tasmanian Youth Justice Act 1997* is underpinned by a 'restorative justice based model' that fosters 'participation of victims, recognition of the role of parents and guardians, and opportunities for diversion and rehabilitation are all strong themes which underpin the philosophy of enabling young people involved in the youth justice system to reach their full potential as citizens'; it encourages juveniles to be responsible for their offences and 'restore the harm done to victims and the community'⁶¹. Examples of restorative justice processes in

⁵⁷ International Institute for Restorative Practices, 2003, In Pursuit of Paradigm: A Theory of Restorative Justice, International Institute for Restorative Practices, August 12, [online], <http://www.iirp.org/pdf/paradigm.pdf> [18 January 2011]

⁵⁸ Australian Institute of Criminology [Richards, K., Lyneham, M.], Juveniles in detention in Australia, 1981–2008, AIC Reports, Monitoring Reports 12, [online], <http://www.aic.gov.au/documents/A/E/7/%7BAE78B0BB-3C6F-450D-9950-BE22DDEB9972%7Dmr12.pdf> [18 January 2011]

⁵⁹ Strang, H., "Restorative Justice Programs in Australia", Report to the Criminology Research Council, March 2001, p. 6.

⁶⁰ Prichard, J., 2010, Net-Widening and the Diversion of Young People From Court: A Longitudinal Analysis With Implications for Restorative Justice, The Australian New Zealand Journal of Criminology, 43(1), p. 118

⁶¹ Department of Health and Human Services [Sonnens, M.], 2009, Paper no. 3, Consultation with Young People, Review of the Youth Justice Act 1997: Responses to Consultation, [online], accessed at:

Tasmania include the community conferencing program (*Youth Justice Act 1997*) and the pre-court diversionary program for offenders aged 10-17 (operating in concurrence with formal police cautioning with elements of conferencing)⁶².

4.4 Police Cautioning and Conferencing

Police cautioning was adopted in most Australian jurisdictions as a major alternative to charging first-time offenders and less serious offences, while some States also introduced children's panels, with the more ambitious objectives of addressing underlying problems in the lives of young offenders⁶³. However, by the late eighties, critiques of these diversion programs were growing. These related to their tendency to widen the net of social control by formally dealing with trivial offences that would previously have been ignored, to concerns about the protection of the legal rights of young offenders, and to accusations of race, gender and class bias.

However, more recent research indicates that net widening need not be associated with diversionary programs; even if these are led by police via formal cautions and police conferences⁶⁴ (although some programs have displayed some elements of net widening even while appearing to cut reoffending)⁶⁵. US and Canadian research also shows that police are able to effectively conduct restorative justice conferencing⁶⁶.

University of Tasmania researcher Jeremy Prichard analysed 50,000 police records and found that between 1991 and 2002 court appearances dramatically reduced and diversions correspondingly increased and there was no evidence of 'net widening'. However, detention orders significantly increased over this period which suggests the need for different forms of diversion for serious repeat offenders in Tasmania such as residential programs⁶⁷. A national⁶⁸ survey by Dr Kelly Richards stated concerns Indigenous juvenile offenders are more likely to go to court in comparison to restorative justice processes. He also found there appears to be excessive use of conferencing for very young offenders (rather than warnings and cautions for minor offences), as well as some possible 'net widening' for juvenile female offenders⁶⁹.

http://www.dhhs.tas.gov.au/_data/assets/pdf_file/0007/48328/YJ_Consultation_Young_People_Full.pdf [18 January 2011]

⁶² Victorian Association for Restorative Justice, Restorative Justice, [online] accessed at: www.varj.asn.au/rp/rj/restorativejustice.doc.doc [18 January 2011]

⁶³ Strang, H., "Restorative Justice Programs in Australia", Report to the Criminology Research Council, March 2001, p. 5.

⁶⁴ Prichard, J., 2010, Net-Widening and the Diversion of Young People From Court: A Longitudinal Analysis With Implications for Restorative Justice, *The Australian New Zealand Journal of Criminology*, 43(1), pp. 112-129

⁶⁵ NSW Bureau of Crime Statistics and Research [Attorney General's Department] [People, J., Trimboli, L.] 2007, An Evaluation of the NSW Community Conferencing for Young Adults Pilot Program, Sydney, [online], [http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/L16.pdf/\\$file/L16.pdf](http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/L16.pdf/$file/L16.pdf) [18 January 2011]

⁶⁶ McCold, P., 1998, Police-Facilitated Restorative Conferencing: What the data shows, International Institute for Restorative Practices, [online], accessed at: <http://fp.enter.net/restorativepractices/policeconferencing.pdf> [18 January 2011]

⁶⁷ Prichard, J., 2010, Net-Widening and the Diversion of Young People From Court: A Longitudinal Analysis With Implications for Restorative Justice, *The Australian New Zealand Journal of Criminology*, 43(1), pp. 112-129

⁶⁸ Note: this paper does not include data from Tasmania as this material is not publicly available and was not able to be provided to the AIC

⁶⁹ Australian Institute of Criminology, 2010, Restorative justice measures for juvenile offenders not having intended impact, Media Release, 31 August, [online], accessed at: <http://www.aic.gov.au/en/media/2010/august/20100831.aspx> [18 January 2011]

A Conference for a young adult is defined as:

... a decision-making forum in which the offender and his/her family/support group meet face-to-face with the victim of the offence and his/her family/support group. During the conference, the participants decide on what can be done to repair the harm caused by the offence. A draft intervention plan is then prepared which specifies the decisions made by the conference participants. This draft plan must be approved by a magistrate. The process ends once the offender completes the requirements of the intervention plan⁷⁰.

The Tasmanian Department of Health and Human Services Tasmania, states that youth justice conferences 'aim to assist juveniles to accept responsibility for, and repair harm caused by, their offending behaviour; assist victims by facilitating their participation in decision-making; improve community confidence in the criminal justice system; and provide the young person with support to develop pro-social behaviours and to avoid recidivism'⁷¹. Under the Tasmanian *Youth Justice Act 1997* 'a juvenile must agree to the convening of a community conference and must sign an undertaking to attend the conference (the juvenile, the relevant police officer and the victim - if present at the Conference - must agree on the outcome of a community conference)⁷².

4.5 Restorative Justice Programs in Victoria and Tasmania

4.5.1 Tasmania

The Unit notes the Tasmanian Government submission to a House of Representatives Inquiry into the high levels of involvement of Indigenous juveniles in the criminal justice system⁷³ covered a range of issues for young adults in general and outlined a number of specific and general research projects, strategies, programs to assist juvenile offenders. These included:

- Meenah Mienne ('my dream') - a mentoring program that brings young people and artists in the Aboriginal community together to share time, tell stories and create art;
- Investigating the establishment of a Children's Court model;
- Establishing alternative bail options (including structured support);
- Enhancing education and training, including pre and post learning transition at the Ashley Youth Detention Centre (AYDC);
- Integrating case management models – pre, during and post detention at the AYDC;
- Integrating case management - child protection and community youth justice services;

⁷⁰ NSW Bureau of Crime Statistics and Research [Attorney General's Department] [People, J., Trimboli, L.] 2007, An Evaluation of the NSW Community Conferencing for Young Adults Pilot Program, Sydney, [online], [http://www.lawlink.nsw.gov.au/lawlink/bocsar//bocsar.nsf/vwFiles/L16.pdf/\\$file/L16.pdf](http://www.lawlink.nsw.gov.au/lawlink/bocsar//bocsar.nsf/vwFiles/L16.pdf/$file/L16.pdf) [18 January 2011]

⁷¹ Australian Institute of Criminology [Richards, K.], 2010, Police-referred restorative justice for juveniles in Australia, Trends & issues in crime and criminal justice, No. 398, August, [online], accessed at: <http://www.aic.gov.au/documents/8/B/B/%7B8BB6EC00-2FDD-4CB9-A70F-DC451C3C22BD%7Dtandi398.pdf> [18 January 2011]

⁷² Australian Institute of Criminology [Richards, K.], 2010, Police-referred restorative justice for juveniles in Australia, Trends & issues in crime and criminal justice, No. 398, August, [online], accessed at: <http://www.aic.gov.au/documents/8/B/B/%7B8BB6EC00-2FDD-4CB9-A70F-DC451C3C22BD%7Dtandi398.pdf> [18 January 2011]

⁷³ Tasmanian Government, 2010, Inquiry into the high levels of involvement of Indigenous juveniles and young adults in the criminal justice system, House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, March 2010, [online], accessed at: <http://www.aph.gov.au/house/committee/atsia/sentencing/subs/Sub%20090.pdf> [18 January 2010]

- Lungtalanana Program - AYDC access to the Tasmanian Aboriginal Centre's (TAC) (Clarke Island) facility - an alternative to the AYDC that can be used for young people (subject to assessment criteria);
- The U-Turn program which allows young people who have committed an offence related to motor vehicles to undertake vocational education and training through restoring a vehicle that has been damaged due to crime. The victims of crime are then provided with a restored vehicle;
- Court Mandated Diversion of Drug Offenders Program (CMD) which allows juveniles (and adults) pleading or found guilty treatment, rehabilitation and alternative pathways and service provision referral (the CMD has been largely successful in preventing or delaying relapses)⁷⁴; and
- Mental Health Diversion List which is a 'problem solving court' (as part of the Hobart Magistrates Court). The pilot program diverts eligible defendants to mental health and other services to address the underlying issues of offending behaviour and provides alternative criminal sanctions if mental health problems cause offending behaviour.

4.5.2 Victoria

The Neighbourhood Justice Centre supports a restorative justice group conference program for young adults between 18 and 25 years of age. The Neighbourhood Justice Centre has one court which sits as a Magistrates Court (hearing all summary offences, but not sexual offences), Children's Court (Criminal Division), Victims of Crime Assistance Tribunal and Victorian Civil and Administrative Tribunal. A 2010 evaluation of the Neighbourhood Justice Centre found that offenders were 14% less likely to re-offend than those processed in other courts.⁷⁵

In Victoria, Koori Courts operate in an informal atmosphere allowing greater participation by the Koori community in the court process in a 'round table' atmosphere. It encourages defendants to take responsibility for their actions and to recognise the consequences of their behaviour. All offences that can be heard in a Magistrates Court can be heard in the Koori Court, excluding certain family violence offences, and all sexual offences. The Koori Court will only hear cases where the defendant has pleaded guilty. An evaluation of two Koori Courts found reduced rates in the areas of: repeat offending, breach rates for community corrections orders and Koori defendants failing to appear for their court dates.⁷⁶

4.6 Juvenile Justice Recommendations

The Unit supports the approach in the Consultation Paper that "emphasises early intervention strategies targeted at young people who are at risk of greater involvement in the criminal justice system, accompanied by alternative approaches to custody and bail options to assist in diverting young offenders and providing better rehabilitation of those who receive a custodial sentence. Under this model detention would be a last resort and complex underlying problems will be addressed as early as possible." The Unit also agrees that the high proportion of young people on remand compared with those sentenced to imprisonment "highlights the need for a more diverse range of bail and remand options which assist in

⁷⁴Success Works, 2008, Tasmania's Court Mandated Drug Diversion Program: Evaluation Report, [online], accessed at: http://www.justice.tas.gov.au/data/assets/pdf_file/0020/115463/CMD_Eval_Final_Report_Jan_09.pdf [18 January 2011]

⁷⁵ "Neighbourhood Justice Centre, 2010, Evaluating the Neighbourhood Justice Centre in Yarra 2007 – 2009, p. ii, [online]. www.neighbourhoodjustice.vic.gov.au

⁷⁶ Victorian Department of Justice [prepared Harris, M.], 2006, *Victorian Aboriginal Justice Agreement: "A Sentencing Conversation", Evaluation of the Koori Courts Pilot Program*, October 2002 – October 2004

addressing both the care and protection or welfare needs of the young offender as a means of helping them divert away from the criminal justice system.”

The Unit supports suggested directions in this area, especially:

- Actively involve the community in reviewing and reforming the youth justice system to build confidence and trust in ways of addressing youth offending.
- Strengthen diversionary and targeted interventions that make a difference to rates of youth offending.
- Strengthen universal early intervention services and tackle the risk factors that contribute to young people getting involved in crime.
- Provide alternative community programs and support services to maximize the number of young offenders who can be diverted from the criminal justice system.
- Amend the Youth Justice Act 1997 to allow magistrates the options to defer sentencing after a young person is found guilty so that he or she can engage in a court supervised program of therapeutic intervention that addresses the problems contributing to criminal behaviour.
- Develop alternatives to custody for young people through establishing alternative bail options, including structured and supported bail programs.
- Undertake cost analysis of diversionary bail supervision and support processes compared with the cost of remand into the Ashley Youth Detention Centre.
- Screen young offenders for disability, mental illness and drug and alcohol abuse and make sure that services are available to address these needs.
- Avoid detention whenever possible and reduce the number of young people remanded and detained at the Ashley Youth Detention Centre.

The Unit is supportive of the Court Mandated Drug Diversion Program. The Unit also supports the victim/offender mediation through Victim Support Services and the U-Turn program.

The Unit believes restorative justice principles should continue to underpin the juvenile justice system in Tasmania

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