

THE WINSTON CHURCHILL MEMORIAL TRUST OF
AUSTRALIA

Report by - SALLY REID - 2007 Churchill Fellow

**Independent Persons or Appropriate Adults?
Supporting Young People in Police Interviews**

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Signed

Dated

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Introduction and Acknowledgements

I am the Program Manager of the Youth Referral and Independent Person Program (YRIPP), a partnership program that provides Independent Person volunteers to attend police interviews with young people where a parent or guardian is not available. YRIPP is currently expanding from a small pilot to a program that is responsible for the provision of Independent Person services in 103 Police Stations across Victoria and as a result, is confronting a number of challenges in ensuring that the quality of service provision established during the pilot can be maintained and even enhanced under such a large scale program.

This research aimed to learn from the experiences of international programs that had encountered and overcome the sorts of challenges with which YRIPP is currently presented. My travels gave me a clarity and perspective that I had not been able to achieve while managing the only program of this particular kind in Australia. As a result, the lessons I learned and recommendations that I make relate not just to program operation and administration but also to the sorts of legislative and policy reforms that I now believe are necessary to ensuring that Victoria's approach to this area is as appropriate and effective as it can be.

This research would not have been possible without the generous support of the Winston Churchill Memorial Trust of Australia and I am extremely grateful to the Trust. I am also sincerely grateful to the people mentioned in the program below, who generously gave up considerable time in their extremely busy schedules, to share with me their experiences in this field. They also facilitated access to other relevant people and provided me with local (or in the case of NAAN, central) program materials which will be invaluable in implementing our program of support in Victoria. I am very grateful to every one of you and would be happy to do the same for you should you ever visit Australia.

I would like to say a particular thank you to Gil Slocombe, Darren Smith and Teena Sloanes and their respective agencies who not only did the above but also arranged access for me to their program volunteers and training sessions and to Gil Slocombe and Anna Elliot for kindly accommodating me while in Somerset.

Special thanks also to Carmel Guerra, Professor Rob White and Nadine Liddy for their assistance with the fellowship application, to CMYI and YACVic, YRIPP managers, who gave me the time to undertake the fellowship and to the YRIPP team who did such a great job in covering my absence at such a busy time.

Finally, I would like to note that the views expressed in this paper are entirely my own and do not represent the views of YRIPP management, staff or partner agencies.

Executive Summary

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Independent Persons support young people in police interviews when a parent or guardian is unavailable to attend. To ensure that the rights of vulnerable young people are upheld during police interviews and that any future offending is reduced, appropriate performance of this Independent Person (IP) role is vital. The State Government has recently provided funding for the expansion of the Youth Referral and Independent Person Program (YRIPP) to expand from a small, successful, pilot program, to a coordinated system of IP support across Victoria.

While YRIPP puts Victoria at the cutting edge within Australia in this field, this research aimed to learn from overseas models in continuing to develop this innovative program of IP support. In particular, the research aimed to enhance the performance of volunteer IPs in Victoria through an examination of some of the operational issues associated with the recruitment, training, support and retention of similar volunteers in the UK.

Prior to undertaking the Churchill Fellowship, I had understood that there were national standards in these areas in the UK, with which all local areas were expected to comply and from which YRIPP could learn. What I found, however, was that the delivery of similar services in the UK varied considerably and did not always meet national standards. Programs visited, however, were often of a high standard and I learned a lot from every visit about specific strategies and materials that we could use in our program in Victoria to improve the performance of our IPs.

In addition, however, my travels allowed me to step back from the operational issues associated with the implementation of YRIPP and to think broadly and strategically to identify the precise nature of any challenges the Victorian program is experiencing, or may soon experience, in relation to the performance of our IP volunteers. I held discussions with the Home Office, the Youth Justice Board and the National Appropriate Adult Network which, in addition to the lessons learned in my discussions with local agencies, provided me with an opportunity to think 'outside the square' about how these challenges might be overcome.

Key conclusions include that in order to ensure the most effective IP support service for young people in police custody, in addition to some operational changes, there are a range of legislative and policy reforms that should be made in Victoria. This research makes extensive recommendations (pages 41 to 43) relating to each of these areas. In particular, the research recommends legislative reform around the IP name and role and the agency responsible for the provision of IP services. It also recommends monitored, Statewide principles and standards in this area and consistent core training for all IPs, with capacity for local and regional variation where appropriate, as well as local management of certain aspects of IP programs.

Dissemination of this research will be to the YRIPP partners and advisory committee, which include a range of statutory and voluntary agencies, with a view to the recommendations impacting directly on program operations. In addition, this report will be disseminated to government, community and law reform agencies to commence a dialogue on the appropriateness of the recommendations and "next steps" in ensuring Victoria achieves international best practice in this field.

Program

15th October 2007 – 15th November 2007

Week 1

London

- Attended and presented at National Appropriate Adult Network AGM and Network Meeting, London (arranged through Liz Pritchard and Maria Newey)
- Met with Alan Brown and Neil Curtis, Policing Powers and Protection Unit, Home Office, London

Week 2

Sheffield

- Met with Darren Smith, Project Manager, SOVA Sheffield Youth Justice Projects
- Met with John Graham, SOVA Sheffield Youth Justice Projects
- Held discussion with Appropriate Adult volunteers, SOVA Sheffield
- Attended training provided by Link solicitor, Mike Jones for Sheffield Appropriate Adult volunteers

Birmingham

- Met with Balbir Singh, Project Co-ordinator, Birmingham Youth Offending Service
- Met with Birmingham Youth Inclusion and Support Manager and team

Sandwell

- Met with Nacro Manager and team, West Midlands

Week 3

Doncaster

- Met with Cath Smith, Operational Manager – Practice, Doncaster Youth Offending Service
- Spoke to Noushin Mostowfi, previously Volunteer Coordinator, Doncaster Youth Offending Service

Oxfordshire

- Met with Sue Howarth, Acting Deputy Head of Service, Oxfordshire Youth Offending Service
- Met with Gordon Richardson, Oxfordshire Youth Offending Service

Week 4

Somerset

- Met with Tom Whitworth, Manager, Somerset Youth Offending Team
- Met with Anna Elliott, Operations Manager, Somerset Youth Offending Team
- Met with Gil Slocombe, Appropriate Adult Coordinator, Somerset Youth Offending Team
- Met with Peter Harrison, Service Response Coordinator, Somerset Youth Offending Team
- Met with Appropriate Adult volunteers, Somerset Youth Offending Team

- Met with Inspector Phil Joy, Somerset and Avon Constabulary
- Met with Inspector Heather Jennings, Somerset and Avon Constabulary
- Interviewed about my Churchill Fellowship by radio stations BBC Somerset Sound, Orchard FM and Kiss FM

Port Talbot, Wales

- Met with Adam Davies, Volunteer Coordinator, Neath Port Talbot Council, Youth Offending Team branch

Week 5

Portsmouth

- Met with Mary Bridgman, Centre Manager, Sexual Assault Resource Centre (previously Coordinator of Hampshire Appropriate Adult program)
- Met with Phil Boswell, Chief Inspector, Custody Policy and Development, Hampshire Constabulary
- Met with Ian Robinson, Solicitor

London

- Spoke to Ruth Searle, Senior Strategy Advisor, Youth Justice Board.
- Met with Liz Pritchard, Chief Executive, National Appropriate Adult Network
- Spoke to Kristian Bridge, Youth Justice Manager, NCY Trust
- Spoke to Alex Hawkins, Director, The Appropriate Adult Service Ltd

Sutton

- Met with Yvonne McPhee, Deputy Chief Officer, VSS
- Met with Teena Sloanes, Appropriate Adult Coordinator, VSS
- Attended EQUINOX training on Drugs and Alcohol for volunteer Appropriate Adults, Sutton
- Held discussions with volunteer Appropriate Adults, Sutton

Main Body

The Victorian context

Under Section 464(E) of the *Crimes Act* 1958 (Vic)¹, when police interview a young person under 18 who is suspected of committing an offence, they are required to have a parent or guardian present at the interview. If a parent or guardian is not available, they must have an 'independent person' in attendance. Traditionally, however, there has been no regulation around the provision, training and performance of Independent Persons (IPs) in Victoria and limited and sometimes contradictory guidelines as to their role.

As well as committed individuals who have performed the role at police stations, local and sometimes larger IP programs have emerged over the years to provide this essential service. The system has, however, generally relied on the goodwill of individuals, agencies and local groups who have often lacked adequate funding to provide IP services and have consequently lacked an underpinning infrastructure to support those performing the role. The IP field has consequently been highly ad hoc in terms of:

- individuals' and programs' understanding of the IP role;
- the amount, type and quality of training provided to perform the role;
- the recruitment, screening and deployment of IPs to police stations; and
- local police involvement with and practices relating to IPs.

These factors have resulted in variations in the service and support provided to young people in police custody.

In 2003, the Victorian Department of Justice funded the Centre for Multicultural Youth Issues (CMYI) to establish and implement the Youth Referral and Independent Person Program (YRIPP), a coordinated Independent Person system of support for young people in police custody.

YRIPP was funded to establish a Statewide infrastructure for the provision of IP services in Victoria. It aimed:

- to work with and improve the IP service provided to young people in custody; and
- to divert young people, including refugee, newly arrived and Indigenous young people, from progression to higher levels of the criminal justice system through referring them to appropriate community support services to address the risk factors associated with offending.

In July 2007, the Victorian Government provided \$1m per year for two years to fund the expansion of the YRIPP pilot to a Statewide program operational in 103 police stations.

¹ According to Bell J, Section 464(E) was introduced into the *Crimes Act* in 1988 by the *Crimes (Custody and Investigation) Act* of that year "as part of a package of reforms of fundamental importance to the fair conduct of police interrogations" *DPP v Toomalatai* [2006] VSC 256.

Rationale for the research

YRIPP is a cutting edge program in Victoria and Australia however as the program expands across the State, it faces a number of challenges. In particular, it is expanding its volunteer base from 80 to 450 and to ten times the initial program size. Without a commensurate funding increase, the program is changing from a model of local to regional coordination and the program's management model is changing to reflect the different needs of the program now being managed. Perhaps the greatest challenge facing YRIPP is how to train volunteers across the State when the training program that was provided under the pilot to program volunteers was highly resource intensive and is not feasible on a Statewide scale.

As the manager of YRIPP since its inception, I was keen to look at international best practice in this field and to see whether there were other programs which had faced the sorts of challenges with which YRIPP was presented. The research was aimed at helping Victoria to continue and improve the standard of service delivery established under the pilot, while expanding across the State.

The United Kingdom was chosen as it appeared to be the area from which Australia could learn the most in this field. In particular, it was chosen because:

- British law has a similar requirement about the presence of an “appropriate adult” (their term for an IP) during police interviews;
- Preliminary research suggested that a similar system of support had been established across the UK², which is approximately the same size as Victoria, and that the UK had already encountered and responded to many of the challenges now confronting Victoria in this area;
- The National Appropriate Adult Network (the national membership body supporting and representing organisations providing a similar service in England and Wales) has extremely useful information on its website and provides national standards for Recruitment, Retention and Training of Appropriate Adults and the delivery of Appropriate Adult services and I was keen to see the extent to which these standards were complied with across the country; and
- The UK literature made frequent reference to accredited training for UK volunteers performing a similar role, a direction in which the Victorian Government is keen to move.

Initially, I had felt that the key area for exploration was volunteer training. Appropriate training for, and hence performance of the IP role in Victoria is essential to both ensuring that young people's rights are upheld during police interviews, preventing miscarriages of justice and reducing the chances of future offending (through linking young people with appropriate support services post interview). Specifically, this research aimed to gain an understanding of how the national standards and accredited training played out across the United Kingdom and to ensure that Victoria is reflective of international best practice.

It quickly became apparent, however, that it was not possible to study the specific area of training without an examination of the history and legislative underpinnings of the Appropriate Adult (AA) role in the United Kingdom, as well as models of management and service provision of such programs. The lessons to the Victorian

² While there were other countries that had a similar legislative provision requiring a person to attend the interview, I could not find other coordinated systems of delivery of such services from which Victoria could learn.

program are therefore much broader than just those relating to the areas of volunteer recruitment, retention and training and include lessons relating to improving the clarity around the role of the IP, as well as an examination of factors to be taken into account when considering appropriate models of management for IP programs beyond 2009. It is hoped that the recommendations from this research will improve the quality and consistency of the IP service provided to young people in police custody in the longer term.

Contextual issues

A huge number of lessons were learned in this research and a great variety of helpful program materials picked up along the way. Some of these lessons and materials are directly transferable to the Victorian context. The different contexts in which the Victorian and United Kingdom programs are operating, however, made some of the lessons less transferable, or at least, more difficult to extract. In particular, there were:

- Political differences, for example, many of the powers residing with the State in Victoria reside with the Local Authority in the UK;
- Legislative differences, particularly as relate to suspects' rights, police powers and data sharing;
- Differences in geography, population density and demographic factors and linked to this, the scale of youth offending and the usage of IP/AA programs;
- Broader policy, service system and funding differences; and
- Different philosophical underpinnings and emphasis.

Despite these differences, however, I was continually struck by the similar issues that the programs were dealing with and the similar responses that had been developed to deal with them through our respective programs.

I do not review all the projects and places I went to and detail the comments of the people I spoke to, although there are many quotes from the various stakeholders³. Nor do I provide a comprehensive review of the literature in this field. Instead, I have attempted to bring together into themes, the comments made to me by various stakeholders, documents and resources provided to me in my travels and my own knowledge of this field in Victoria, from the unique perspective of having managed the Victorian Statewide IP service since its inception. The research gave me a new perspective on the way in which the program operates in Victoria and many ideas on how Victoria could learn from the UK to improve services provided to young people in police custody. This report is intended to contribute to a dialogue to improve support provided to young people in police custody.

History of AA provision in the UK

In 1912, the Queen's Bench Division in England promulgated a set of rules, known as "the Judges Rules", to guide police officers in the interrogation and treatment of suspects. These rules were amended in 1964 and, after modification, re-enacted as a Code of Practice pursuant to the *Police and Criminal Evidence Act 1984 (PACE)*⁴. PACE and its associated Codes of Practice were introduced following rising

³ I have generally not attributed comments to individuals as a number of people asked not to be identified in relation to particular comments and it was difficult to ensure these comments were not identifiable where other comments were attributed.

⁴ Oxfordshire Youth Offending Team Appropriate Adult Training, Trainer's Manual.

community concern around the detention, treatment and questioning of suspects. In particular, cases of wrongful or potentially wrongful detention had resulted from unreliable evidence or confessions. Indeed, many stakeholders made reference to a number of situations where alleged offenders had been incarcerated for crimes they were later found not to have committed.

A range of new procedures were introduced under PACE, one of which was to formalise the role of the Appropriate Adult (AA), an independent third party brought in by the police to provide special assistance to “vulnerable” suspects, including juveniles under 17⁵ and adults believed to be suffering from a ‘mental disorder’ or a learning disability⁶. The National Appropriate Adult Network (NAAN) manual notes that the inclusion of the AA role in the PACE guidelines was:

an acknowledgement that convictions for vulnerable suspects risked being unsafe and unsatisfactory where existing guidelines for dealing with them were not fully understood or implemented⁷.

While PACE improved the situation in terms of providing guidelines around the Appropriate Adult and, according to one stakeholder, “codifying stuff that wasn’t previously codified”, there was still no legislation determining which agency should deliver the AA service. The task was often carried out by youth justice or social service workers and often as an adjunct to other tasks. Section 38, Part (4)(a) of the *Crime and Disorder Act 1998* (UK), however, made statutory provision requiring local authorities and others (through Youth Offending Teams⁸) to ensure “the provision of persons to act as appropriate adults to safeguard the interests of children and young persons detained or questioned by police officers”.

The respective roles of the IP and AA

The Victorian legislation does not detail the role of the IP, it simply says that there must be one⁹. Furthermore, there is limited binding legal precedent in the area.

The Victoria Police Manual states that:

the presence of the parent/guardian or independent person is required to:

- *provide emotional support to the child*

⁵ The UK is still grappling with the issue of the anomalous position of 17 year olds in the justice system that was resolved in Victoria on July 1 2005 after the introduction of the Children and Young Persons (Age Jurisdiction) Act. This Act amended the age jurisdiction of the Criminal Division of the Children’s Court from 17 to 18 years.

⁶ Note that the equivalent service for ‘vulnerable adults’ in Victoria is the Office of the Public Advocate’s Independent *Third* Person (ITP) Program which provides Independent Third persons for people with cognitive impairments. However, unlike Victoria’s IPs, ITPs are not required under legislation but rather under police operational procedures.

⁷ National Appropriate Adult network (2006) Training Course for Appropriate Adults (module 2, p3).

⁸ Every local authority in England and Wales has a Youth Offending Team (YOT). YOTs are teams comprised of representatives from the police, Probation Service, social services, education, health, drugs and alcohol misuse and housing offices. Each team has a manager who is responsible for the coordination of the work of the youth justice services.

⁹ An exception to this is in the Children, Youth and Families Act 2005 (Vic) s346(8) which states that: *An independent person present in accordance with subsection (7) may take steps to facilitate the granting of bail, for example, by arranging accommodation.* However there is a lack of clarity whether this is even the same Independent Person referred to as being present at the police interview. Bail assessment and support for young people is generally conducted by the Central After Hours Bail Assessment and Placement Service, an after hours service of the Department of Human Services, and these representatives would not normally attend a police interview.

- *ensure the child's evidence is accurately recorded*
- *be able to present an independent account of the interview at any court proceedings* (VPM Instruction 112-3, Section 6.1).

Inferences from this as well as legal precedent across Australia, albeit sometimes non-binding precedent, and the role descriptions various local IP projects have developed over the years, assisted in the YRIPP partner agencies¹⁰ defining and agreeing the role for the purposes of the YRIPP pilot. What YRIPP came up with is very similar to the role as outlined by the Home Office in their guide for appropriate adults.

Indeed, the wording around the overall role is almost exactly the same for both and revolves around being clear that the role is not a passive one but includes supporting, 'advising' and assisting the young person, serving as a witness for the interview, facilitating communication between the young person and the police, ensuring that the young person understands and feels able to exercise their legal rights and observing whether the police are acting properly and fairly and if not, taking appropriate action.

The word "advising" is perhaps the key difference between the two role definitions. The concept of "advising" has created a lot of controversy in relation to the role of IPs in Victoria in the past. In part, this is because of its potential to be confused with *legal* advice. In particular, when YRIPP was first being established, police voiced concern about IPs in Victoria in the past "advising" young people to give a "no comment" interview. Both stakeholders in Victoria and the UK would agree that this is unacceptable and overstepping the boundaries of the role, as it comprises *legal* advice, something which the IPs are not qualified, nor in attendance, to provide.

The point of difference between the two is that in the UK, the AA should *advise* the young person, for example, *to receive* legal advice. In the discussions I have had with Victoria Police since YRIPP's inception, this is not how police understand the role of the IP in Victoria who they suggest should always be an "independent" person.

As a result, when the YRIPP partners agreed the role of the Independent Person, as the State endorsed Independent Person program, the word "advise" was not included in the role but instead, the role description suggested providing "information" and "support". In the above example, in Victoria, the IP would ensure the young person understands their right to legal advice and facilitates access to a solicitor if required but would not advise the young person one way or the other about whether or not to seek such advice. YRIPP has subsequently spent much time working with program volunteers to ensure they understand the distinction between providing *information* and providing *advice*.

This is despite Justice Hampel's ruling in the Victorian Supreme Court case of *R v Gilbert* 1994 (unreported) that the Independent Person must be more than just the presence of an "appropriate adult": "The purposes of his presence are first to *advise* the person being questioned and to observe whether the interview is being conducted properly and fairly and secondly, to facilitate communication with the person being interviewed" [Italics added].

¹⁰ the Centre for Multicultural Youth Issues, the Youth Affairs Council of Victoria, Victoria Police, the Federation of Community Legal Centres, the Victorian Aboriginal Legal Service along with the then Department of Immigration and Indigenous Affairs and then program funders, the Department of Justice.

Speaking to agencies in this field in the UK demonstrated that projects and volunteers do seem able to distinguish between *general* advice (of the type a parent might give) and *legal* advice. In addition, stakeholders saw it as essential in protecting the rights of the young person that AAs were empowered to advise the young person.

My research indicates that Victorian IPs are not able to protect the rights of young people in police custody to nearly the same extent as are Appropriate Adults in the UK. In respect to the legislation, the ability of an IP to protect the rights and interests of young people in police interviews is hampered in three key ways:

1. by the term 'Independent Person' and its interpretation;
2. by the lack of legislation and associated guidelines around the role of the IP; and
3. by the lack of legislation ascribing responsibility to any particular agency to provide Independent Persons and to particular individuals to perform the IP role.

1. The term “Independent Person”

Victoria's term “Independent Person” creates significant confusion in police interviews as police often suggest that the IP should be *independent from all parties to the police interview*. This means that if the IP suggests to a young person that they should seek legal advice, that they are no longer being “independent” but are overstepping the boundaries of the role and “taking the side of the young person”.

While the Independent Person is in attendance to assist the police, in as much as the police must have an IP to conduct the interview and the IP provides a witness should anything be called to question in relation to the police interview process, the IP is also and perhaps predominantly there for the support of the young person. After all, no witness is required in most interviews with adults. Presumably an adult, whether parent, guardian or Independent Person, is required to attend the police interview because of the recognition of the particular vulnerabilities young people experience in their dealings with police and the additional support they therefore require during this process.

The *spirit* of Section 464E of the Victorian *Crimes Act* is surely that the Independent Person should be *independent of the justice system*, rather than independent of all parties to the interview. Given that the Independent Person is in attendance *in place of a parent or guardian*, it is difficult to imagine any other reasonable interpretation of the spirit of this legislation.

Interestingly, the Sheffield Appropriate Adult Service, Volunteer Information Pack notes, for example, that

Although it is true to say that an AAs presence is helpful to the police – in that officers can get the detainee 'processed', volunteers should always bear in mind their role is to support a vulnerable detainee and to ensure their rights are respected (p15).

While there is still sometimes conflict in relation to the AA role in the UK, unlike in Victoria, the general principle of the person being there to support a young person appeared to be understood and not questioned by any stakeholders with whom I met. The term 'Independent Person' causes role confusion in Victoria for those in the

role¹¹ and others in attendance at police interviews. Furthermore, it hampers performance of the IP role in line with the spirit of the legislation.

The term also causes confusion for police, solicitors and other agencies in terms of the different role of Independent Persons and Independent *Third* Persons, who attend interviews for people with cognitive impairments⁶.

A more appropriate name would facilitate better protection of the rights of vulnerable young people in police interviews. In all discussions with programs in the UK, stakeholders felt that the term “appropriate adult” worked well and did not encounter the same difficulties as the Victorian term¹². Refer to recommendation 1 at the back of this report.

2. Lack of legislated role

As noted above, In Victoria, beyond the basic question of whether the IP is in attendance to support the young person, there is the question of what the person’s role is at the police station and in the police interview. Nowhere in Victoria’s legislation does it detail the IP’s role. In practice, this leaves the area too open to interpretation.

In the UK, those I spoke to were relatively clear about the AA role, whether they were police, solicitors, program coordinators, Youth Offending Team (YOT) workers or AAs themselves. They pointed to the detail of the role as enshrined in the *Police and Criminal Evidence Act* (PACE) and its associated Codes of Practice. Stakeholders continually noted that this sets the parameters for all in attendance at a police interview.

Under PACE Code C, not only is there detail about the AA role but there are also *rights* and *duties* afforded to the AA. By specifying the tasks that the AA can (and indeed, must) carry out, the AA’s role is much clearer to all involved. In addition, the guidelines provide for quite an interventionist role of the AA and during the process, there are various stages at which the police must consult with or provide information and documentation to the AA.

Within the legislative guidelines, at least two of the rights given to the AA appeared to be absolutely essential rights to also be granted to Victoria’s IPs. The first relates to defining the role while at the police station. The PACE Code C Guidelines state:

11.17 *If an appropriate adult is present at an interview, they shall be informed:*

- *they are not expected to act simply as an observer; and*
- *the purposes of their presence is to:*
 - *advise the person being interviewed;*
 - *observe whether or not the interview is being conducted properly and fairly;*
 - *facilitate communication with the person being interviewed.*

¹¹ A recent comment by an Independent Person in Victoria provides a case in point here. In response to the suggestion that IPs should be referring young people to health and welfare support services after the police interview, she stated “once we get involved in the young person’s affairs, we are no longer *independent*”.

¹² A manager from one AA program had had one situation where a (vulnerable adult) client had asked why the “appropriate adult” was more “appropriate” than himself, but this the only occasion where anybody raised any concerns about the term “appropriate adult”.

In addition, under paragraph 9, they shall be informed of this at the police station. By all accounts, this generally occurs at the start of the taped interview when the interviewing officer reads the role statement. Under the guidelines, the detainee must also be advised that the duties of the AA include giving advice and assistance to them and that they can consult privately with the AA at any time (Code C, section 3.18).

Although there were still some interpretation issues in relation to this “headline role”, agencies saw this reading of the role as an important step and I believe it would be extremely useful in Victoria to set the parameters of the role for all parties to the interview, to help those performing the IP role understand that they have a valued place in the interview process and to give IPs the confidence to be assertive in undertaking their role.

The second essential right for Victoria’s IPs relates to the AA’s right to override a young person’s desires and call a solicitor on their behalf.

6.5A In the case of a juvenile, an appropriate adult should consider whether legal advice from a solicitor is required. If the juvenile indicates that they do not want legal advice, the appropriate adult has the right to ask for a solicitor to attend if this would be in the best interests of the person. However, the detained person cannot be forced to see the solicitor if he is adamant that he does not wish to do so.

In addition, the custody officer is required to remind the AA and detainee about the right to legal advice and record any reasons for waiving this right. Agencies saw this as an important safeguard for young people. Interestingly, I believe it is also in line with replacing the role of a parent or guardian who would have little hesitation in overriding their child’s wishes and calling a solicitor. What is more, many of the programs I visited suggested that they have policies precluding their AAs from attending interviews at all unless a solicitor is also in attendance.

One stakeholder stated: “Police want things to be water tight after a couple of high profile vulnerable adults ended up in prison for things it turned out they couldn’t have done”. Whether as a result of the legislative guidelines or as a result of the public’s perception of “forced confessions” on previous occasions, discussions with senior police in the UK also demonstrated support for the concept of the AA. Officers noted that it was due to police not following appropriate practices that certain high profile cases had resulted in convictions being quashed and the police having “egg on their face” for not following appropriate protocols. As a result, my sense was that the profile of the Appropriate Adult and perceived need for the role seemed to be much higher in the UK than is the case for the IP in Victoria.

While PACE and its Codes and guidelines were generally seen to be relatively clear on the rights given to Appropriate Adults, workers in the field did comment on how much one was required to “fish around” to piece together the role, rather than the role being detailed in one place. NAAN noted in its response to the recent PACE review that it would be useful to have something abstracted from the Codes relevant to the Appropriate Adult. If Victoria is to frame legislation and guidelines in this area, we have the ideal opportunity to set out in one place the person’s role as well as their rights and duties.

In addition, some projects complained that even with all the guidelines, there were still sometimes issues around interpretation but they nevertheless found PACE extremely helpful in setting the parameters of the role for all involved. Some projects

also complained that there was not enough respect by police for their volunteers nor an understanding that these people were, indeed, *volunteers* rather than paid workers¹³. Refer to recommendations 1 and 2 at the back of this report.

3. Who performs the IP/AA role

a. The responsible agency

As previously noted, Section 38 of the *Crime and Disorder Act 1998* (UK) put a statutory obligation on local authorities and others, through Youth Offending Teams⁸, to ensure “the provision of persons to act as appropriate adults to safeguard the interests of children and young persons detained or questioned by police officers”. There is no similar provision in Victoria’s legislation.

Whether the Youth Offending Team ran the AA service ‘in house’ or subcontracted the service to another provider, all stakeholders I spoke to saw it as an extremely positive development that the responsibility for providing such a service was enshrined in legislation. This was in contrast to the situation for vulnerable adults¹⁴.

It is acknowledged that projects visited reflected a positively skewed sample of the UK’s Appropriate Adult services, being largely those who were affiliated with the National Appropriate Adult Network and also those who were prepared to receive an international guest. It is also noted that legislation alone is not enough to ensure the existence of AA services across the UK as some stakeholders made reference to the “unacceptable” situation in a neighbouring local authority area where police still “pull people in off the street” to do the role, in the absence of an appropriate adult service. Some spoke of police sometimes using the local vicar or supermarket security staff to perform the role. If true, this suggests the need for better central monitoring of the existence and appropriateness of such services as well as an analysis of whether resourcing in the area is sufficient to provide the sort of service required under PACE.

Placing a statutory obligation on a particular agency to deliver the Independent Person service in Victoria would be an extremely positive development in ensuring the availability of suitable persons to perform the role when police require it¹⁵. Such a statutory obligation would need to go hand in hand with strategies to ensure appropriate resourcing to whichever agency was charged with the responsibility of delivering this service as well as a level of monitoring of such services (refer to recommendations 1 and 2 at the back of this report).

¹³ This is perhaps not surprising given that in many areas, people performing the role were in fact paid workers.

¹⁴ Although AAs are required for juveniles and vulnerable adults in the UK, there is no equivalent statutory provision for any agency to provide the service for vulnerable adults. This was raised many times in my visits to Appropriate Adult programs. Some services I visited provide Appropriate Adults for vulnerable adults as well as juveniles however where auspiced or contracted through the local Youth Offending Team, this creates a number of funding and implementation issues.

¹⁵ The State Government currently has a contract with the Centre for Multicultural Youth Issues to expand the provision of Independent Person services to 103 police stations across the State, there are, however, many police stations which are not covered by the expansion and furthermore, the program is funded to June 2009 only.

b. Appropriate persons to perform the IP role

In addition to a lack of legislation making an agency responsible for the provision of Independent Person services, there is no legislation that says that Victoria Police have to use a registered/accredited Independent Person if a parent or guardian is unable to attend the interview. As a result, police can call anybody to perform the role, regardless of levels of training.

What this means is that if the police at a local police station are unhappy with the way in which a person performs the IP role, they can call somebody else to perform the role. This undermines the strength of the IP role and has the potential to seriously reduce the assertiveness and effectiveness of individuals acting in the role and agencies providing IP services.

In the UK, under PACE Code C Section 1.7 part 4, a definition is provided such that the “appropriate adult” means, in the case of a juvenile:

- (i) *the parent, guardian or, if the juvenile is in local authority or voluntary organisation care, or is otherwise being looked after under the Children Act 1989, a person representing that authority or organisation;*
- (ii) *a social worker of a local authority;*
- (iii) *failing these, some other responsible adult aged 18 or over who is not a police officer or employed by the police.*

By suggesting the person in attendance should be a social worker of a local authority, the UK guidelines go some way towards addressing this concern.

Several things are of interest here. The first is that parents and guardians are incorporated *within* the definition of “appropriate adult”. This is in contrast to the Victorian *Crimes Act* (1958) which sees an Independent Person called to attend situations where a parent or guardian is unavailable. The classification of parents *within* the Appropriate Adult role in the UK and *outside* the Independent Person role in Victoria has interesting ramifications.

The term “appropriate adult” in the UK suggests that some people may not be “appropriate” to perform the role. This means that police have the discretion, and indeed are *required* to exercise discretion, in determining whether someone is “appropriate” to attend the interview, *even where they are a parent*. While both sets of legislation put the parent/guardian first in line to attend the interview, both describe certain situations where police should not use a parent. These generally relate to where they are suspected of being involved in the offence in some way, for example as a victim or co-offender. The UK guidance suggests that police should take “all reasonable steps” to secure the parents’/carers’ attendance¹⁶. The UK guidance, however, has additional notes suggesting situations in which a parent may not be appropriate for example, “If a juvenile’s parent is estranged from the juvenile, they should not be asked to act as the appropriate adult if the juvenile expressly and

¹⁶This is reinforced by some AA programs whose policy is to refuse to attend unless they believe that police have taken all reasonable steps to secure parent or guardian attendance. This is also in line with Youth Justice Board standards in relation to remand management. Anecdotally, the experience in both Victoria and the UK is that once schemes deliver a quality service, it is often easier and faster for police to go to that service than to try to secure parental attendance.

specifically objects to their presence". (Under PACE, Code C, Notes for guidance 1B).

Conversely, the current situation in Victoria mandates police to first make all efforts to ensure the presence of a parent/guardian (rather than an Independent Person) which effectively means *even if this is not in the child's best interests*. The Victoria Police Manual section 6.1.3 suggests that "an Independent Person must be present if the parent/guardian does not want to attend and does not nominate another person to attend for them or it is undesirable for a parent/guardian to be present" however this does not seem to be consistent with the legislation¹⁷. While police in the UK risk evidence being inadmissible if the person in attendance is not "appropriate", police in Victoria risk evidence obtained in interview being inadmissible in court if they have not made sufficient attempts to secure the attendance of a parent/guardian prior to calling on an Independent Person. While anecdotal evidence in Victoria suggests that police do sometimes use their discretion in this area (in line with the requirements of the Victoria Police Manual), regardless of the way in which the legislation is framed, police are not empowered through legislation to use their discretion in this area *in the best interests of the young person*.

Those interviewed in the UK stressed the need for police discretion in decisions around the "appropriateness" of a particular adult. Adopting this approach in Victoria, with clearly circumscribed criteria around the considerations police should take into account in making such a decision, would help us to ensure that the best interests of young people in police custody are served.

Victoria could, however, improve on what is currently a problem in both the United Kingdom and Victoria by having a commensurate requirement that where a parent/guardian is not in attendance, a *registered* or *accredited*¹⁸ Independent Person must be present. This would stop the current practice where police in both countries may still call any available person to fulfil the role, regardless of training, and help to ensure the attendance of appropriate, screened and suitably trained persons to perform this support role for young people in custody. Legislation would obviously need to go hand in hand with strategies and resourcing to ensure the availability of such accredited persons across Victoria in all police stations where interviews with young people occur (refer to recommendation 8).

The benefits of parents Vs trained AAs

During discussions with stakeholders, the issue continually came up as to whether the appropriate adult role should really be performed by a parent/guardian or by a trained person. Indeed, it was suggested that there is a conflict between the role as initially envisaged (that is, replacing parents) and the role it has developed as a quasi professional one with a model of service delivery and standards.

In discussion with stakeholders, views ranged from: "The Appropriate Adult should be about welfare. If you said all Appropriate Adults will be trained people, you're changing the role which is welfare. It's still right that the first point of call is a parent"

¹⁷ The legislation has been interpreted as requiring the police to satisfy themselves that a parent or guardian is **not available** before seeking to use an independent person (see *R v McQueen* Unreported S.C. 7/8/1997 no.5437/97 Hedigan J).

¹⁸ Note that the term accredited here does not relate to tertiary accreditation but rather means "recognized" through the appropriate body (for example a Government department or their subcontractors). This is in line with Youth Justice Board standards but not specified in the UK legislation.

to: “there’s no point having a parent or carer there if they don’t know why they’re there”.

It was suggested by some people outside the Home Office that the Home Office was considering introducing a totally professional role, beyond even volunteers, with “parents and family members removed from the equation”. The CEO of the National Appropriate Adult Network suggested that “the jury’s out on that” but that it would lead to significant resource implications. It was also suggested by several stakeholders that this would conflict with the Government’s “parental rights and responsibilities” agenda which aims to improve parenting and increase parental responsibility for their children. Another option being considered was that parents attend the station but that the AA sits in on the interview rather than the parent, which would appear to be the best of both worlds for young people but may also create resourcing issues.

Clearly, what a parent/guardian and a trained Appropriate Adult bring to the role is very different. Unlike a trained AA, a parent/guardian:

- has legal responsibility for their child and arguably may even have the ‘right’ to attend an interview;
- is generally concerned about the welfare of their child;
- may have some influence over their child, whether positive or negative. An AA program coordinator told of a boy who was brought in for being in possession of cannabis and “his Father came down and put the fear of God into him and it was a good thing because the police couldn’t deliver that. It saves some children. We’re not allowed to do that. We’re nice to them when being harsher might work better.”

Unlike an AA, however, a parent/guardian:

- may not actually know the best ways of protecting the welfare of their child nor have the confidence to do so at the police station¹⁹; and
- would not generally have knowledge of the custody/interview process nor the expertise to perform the tasks required of the appropriately trained AA. It seems that as the system has become more regulated with the introduction of PACE and other pieces of legislation, the general view is that the “support person” who attends the station with a young person should have the expertise to negotiate this system.

An excellent UK guide in the area notes that it is “...tempting to conclude that the skills’ base required to substitute as the appropriate adult, in cases where a parent or other relative is unable or unwilling to attend the police station, is relatively low and that extensive knowledge of procedures and legislation is unimportant. The guide goes on to state, however, that it:

...should not be forgotten...that what parents and other family members lack in terms of knowledge or training, they will generally make up through a heartfelt concern for their children’s best interest. It is precisely those children and young people who require an appropriate adult service from the YOT – those without the support of their family at the police station – that are likely to be the most

¹⁹ This may particularly be the case for refugee parents who have had a history of trauma associated with police or other authority figures in the counties from which they have come and therefore are highly fearful of the police.

*vulnerable. It is accordingly incumbent on those providing that service that they do their utmost to compensate for that disadvantage by delivering a practice that is high quality, knowledge based and underpinned by training*²⁰

What the above quote suggests is that if a young person cannot have a parent/guardian to look after their welfare, this should be compensated for by having someone who understands the system and process. To some extent, this both recognises and legitimises the potential shift in role where a parent/guardian is not in attendance.

Resolution of the above would appear to hinge on the question of why an AA or indeed an IP is needed in the first place. If the purpose is to protect the young person from the vulnerabilities inherent in their age, then it is important to look at what these vulnerabilities are. Such vulnerabilities would presumably include those related to the young person's general physical and emotional welfare, their ability to understand the process and rights available to them during the process, as well as the confidence to exercise these rights, should they choose to. Judge Jennifer Coate noted that the parent / guardian is considered to be the person who is most reassuring, is most concerned about the young person's situation, provides the most comfort and protection to the young person and can communicate with the young person in a way that they will understand and that this is the person for whom an IP is standing in²¹.

The fact that parents are not always capable of appropriately fulfilling this role does not constitute a valid argument that a professional or volunteer AA should not be trained to do it, where the parent/guardian is not available to attend.

Role tensions: AAs vs Solicitors

In addition to the questions around the movement from parents to professionals, another tension which continually arose in discussions was in terms of the role of the AA versus that of the solicitor.

There was certainly agreement amongst stakeholders that an AA should never offer legal advice²². In addition, several of the AA programs I visited said that they would not have their AAs attend an interview unless a solicitor was also in attendance²³, and the AA had the right to call this solicitor. Although there were continual complaints about the length of time solicitors took to attend police stations, the UK appeared to have a fairly impressive infrastructure in terms of duty solicitors available for people in custody²⁴.

²⁰ Nacro (2003) *Acting as an Appropriate Adult*, Nacro good practice guide, p3.

²¹ Comments made by the then President of the Children's Court, Judge Jennifer Coate, on 10th December 2003 in a forum on the legislative basis for IPs and the IP role.

²² Interestingly, parents will often offer what is effectively legal advice to their children, albeit unintentionally, perhaps unknowingly and not construed as such, for example, by saying "just tell the police the truth". Such a comment by a parent, however, would be unlikely to be subjected to the same scrutiny as if the comment were made by an Independent Person as, for example, in the case of *R v Gilbert* 1994 (Unreported).

²³ In addition, the right to silence was qualified in the UK under the *Criminal Justice and Public Order Act* 1994 such that it may now harm a suspect's defence if they do not mention something during questioning that they later rely on in court, a caution young people, and indeed, adults, have considerable difficulty understanding. It is possible that this may create more of an imperative for a solicitor to be present at a police interview in the UK rather than providing advice over the telephone.

²⁴ This included advice through people who are not solicitors but are trained to give legal advice called Accredited Representatives. There seemed to be a sort of "de-professionalisation" going on in the UK

In Victoria, solicitors generally refuse to sit in on police interviews, allegedly for fear of becoming a witness to the proceedings. For this reason, they would generally provide telephone legal advice to a young person in custody prior to the interview, if requested, although most young people do not request this service. Even telephone legal advice is not available for many people at police stations across Victoria after hours²⁵. This creates a considerable impediment to suspects exercising their right to seek legal advice. Every stakeholder I encountered in the UK was shocked by the Victorian situation in relation to legal advice. They could not understand the concerns of Victoria's solicitors around becoming a witness given that they would presumably be protected by legal privilege in *private* communications and the police interview was on the record anyway. They suggested that, "most solicitors recognise children and vulnerable adults shouldn't be given advice on the phone only."

Conversely, they suggested that usually when a parent attends the interview, there is no solicitor in attendance. It would appear to be an inequitable system where two people who have specialist knowledge of the process attend for this group of young people, albeit with one of the two having a special focus on welfare, where other young people have only a parent with limited knowledge of the process and in some cases, an approach which provides limited support for the welfare of the young person. It was also suggested by some that it was "a waste to have both an Appropriate Adult and a solicitor present" with two stakeholders questioning why a solicitor could not perform both roles when "any solicitor worth their salt would look after the client's welfare anyway"²⁶. The only reason raised here was the practical time constraints on the solicitor to adequately deal with welfare issues²⁷. It was suggested, in fact, that the AA scheme was making up for the lack of ability to get a lawyer and that "we wouldn't want our AAs to become untrained, lesser paid solicitors and a professional service is heading in that direction."

According to a solicitor in the UK, a key differences between a solicitor and an AA attending the interview is that if a solicitor is there, the police are under an obligation to give some disclosure. In addition, a key difference between the AA and the solicitor is that the AA does not have legal privilege so can be called as a witness against the young person where the solicitor cannot (in relation to the private communications they have had prior to the interview).

In terms of the roles, in theory, stakeholders were generally clear on the distinction between a solicitor and an AA, for example, "the role of the lawyer would be to sit in on an interview and advise through the interview. Tell the police they can't ask this or that. The AA might make a welfare decision. It's a different role." It was interesting though that when I met with one group of volunteers, they suggested that their role changes when there is a solicitor present as they believe the solicitor will be "more qualified" to pick up any issues so that makes them less likely to speak up. "You do

where aspects of traditional roles were being given to lesser trained, lesser paid persons, for example this legal role and Police Community Support Officers undertaking aspects of policing.

²⁵ Victoria Legal Aid has so far been expanding its after hours telephone legal advice line to each of the police stations to which YRIPP expands, alongside the expansion of YRIPP.

²⁶ Interestingly, PACE Code C, Notes for guidance part 1(f) precludes a person acting as an Appropriate Adult if they are in attendance in the capacity of a solicitor.

²⁷ It was suggested that police have a duty of care to look after people in custody and they are monitored in this by Independent Custody Visitors, the Independent Police Complaints Commission (national) and the Professional Standards Department (in the county police force). They suggested that this comprised enough people looking out for a young person's welfare in custody so as long as a solicitor was present, an AA may not be necessary.

feel protected”, said one AA. This may imply that the AA’s role goes beyond a welfare one.

This is particularly the case given one of the AA’s roles is to facilitate communication. When police use words children don’t understand, the AA jumps in and says, for example, “do you know what a forensic pathologist is?”. This seems simple enough but according to some programs visited, the AA is responsible for things like ensuring that the questioning is “not oppressive” or “assumptive” or “leading” and volunteers suggested to me that their biggest issue is not knowing exactly when to intervene. One AA volunteer stated, “sometimes I look back and think ‘I should have said X’”.

The implications for Victoria

It is difficult to draw conclusions and recommendations from all of this for Victoria however at the very least, if an IP is attending the police interview in place of a parent, we should recognise that their role is a support and protection role for the young person rather than one of an “independent witness”. The IP should therefore be empowered to do what a parent would be expected to do, short of disciplining the child, which would include suggesting to the young person that they obtain legal advice or indeed, over-riding the young person’s wishes and calling a lawyer on their behalf and generally acting according to the young person’s best interests. Specific recommendations relating to the role of the IP and legislative change are provided at recommendations 1, 2 and 3 at the back of this report.

Models, standards and best practice

Before I travelled to the UK, I had understood that service delivery in the AA field comprised central resourcing (through the National Appropriate Adult Network), enforceable national standards and locally funded AA projects in each local authority area. I was particularly interested in how the model was working in terms of achieving consistency and high quality AA services, in order to inform the development of an appropriate model of service provision for Victoria in the longer term. It was, however, more complicated than this.

Central Roles: The Home Office

The Home Office is the government department overseeing areas relating to the reduction of crime and anti-social behaviour in the UK. The Home Office oversees policing and custody and is therefore responsible for PACE (1984) and its reviews. In that sense, it is the body that has responsibility for the Appropriate Adult area. In addition, the Home Office provides updated Guidance for Appropriate Adults, which aims to simplify the requirements of PACE (1984) for those in the role.

The Home Office also funds the National Appropriate Adult Network (refer below).

Central Roles: The Youth Justice Board

The Youth Justice Board (YJB) for England and Wales is an executive non-departmental public body that oversees the youth justice system²⁸. The YJB works to reduce youth offending and to ensure that custody for young people is safe, secure and addresses the causes of their offending behaviour.

The YJB has produced a plethora of useful and high quality materials relating to the above goals. It was suggested by Youth Offending Teams (YOTs) that there was a positive trend in terms of more guidance and information from the YJB for YOTs and their subcontractors. It was also, however, continually alleged that the AA area did not seem to be a priority area for the YJB.

The YJB has set National Standards for Youth Justice Services and is responsible for the monitoring of these standards, which is through monitoring of the performance of the YOTs. Although the YJB has set specific standards relating to Remand Management, several of which relate to Appropriate Adults, I only became aware of these well into my travels and these standards were rarely mentioned by stakeholders visited.

These standards are very broad. They really only stipulate that the AA service must be provided by the YOT or accredited YOT volunteers, that the YOT must ensure that parents are supported to attend where possible and informed of the outcome if not in attendance, that the AAs receive “appropriate” training, guidance and support and that they have been Police checked and Department of Health register checked and that the AA service meets the requirements of PACE (1984) and the role is conducted in accordance with PACE.

Some stakeholders suggested, however, that there was no real consequence of not meeting these standards and no real sense amongst YOTs that they were accountable to the YJB. It seems that the lines of accountability were unclear in the

²⁸ The YJB is now part of the Ministry of Justice rather than the Home Office while the Home Office has retained the police and custody area.

context of the YOT being a *local* partnership that was accountable to each of its partner agencies. One stakeholder stated “If a YOT manager says we are not going to supply AAs, where do you go?”²⁹

Central Roles: The National Appropriate Adult Network (NAAN)

With funding from the Home Office, NAAN’s literature states that it is the national membership body supporting and representing organisations providing Appropriate Adult services in England and Wales. It aims:

- To promote and protect the rights and interests of young people and vulnerable adults in police custody; and
- To support the development and maintenance of effective appropriate adult services throughout England and Wales³⁰.

NAAN was initially established as an informal support network for Appropriate Adult programs in 1995. Stakeholders described NAAN’s initial development as ‘organic’ prior to being set up in more recent years as a formal organisation to provide support and information for its members. NAAN resources include a very impressive website, a training pack and DVD for member programs to use in the training of their AAs, network meetings and conferences and updates on PACE and other relevant legislation.

Project coordinators generally found the network very useful in terms of understanding the complexities and discussing the issues around AA services. It was suggested that NAAN was a “very effective way of keeping abreast of effective practice” and provided a “focused voice regarding concerns” in the field.

One AA program coordinator stated: “If it wasn’t for these network meetings I don’t think I would have achieved what I have with the AA work...the network meetings I’ve been to ...group work and good practice exercises... I write it all down and review it on my way home and bring questions to the next training.” This coordinator then described a situation where his local YOT manager had been incorrect in his understanding of a particular aspect of the legislation and because of what the coordinator had learned through NAAN, had been able to correct the YOT manager who in turn revised the local policy. The coordinator suggested that even now having been in the role for some time, “I’m still getting value from it...I learn new stuff every time... In another year’s time I’ll still be learning things because things are changing in youth justice constantly and you can never know enough.”

Interestingly, however, prior to visiting AA programs, I had thought that programs that were *not* members of the network might be of a lower quality than those within the network, for example, less organised, provide less structured/fewer hours training and have less clear policies and procedures. In as far as I could judge, however, this was not the case. The more important factor appeared to be the priority afforded the AA area by the Local Authority/YOT including local resourcing for AA services as well as whether the local YOT or AA provider was independently keeping abreast of legislation and policy changes.

²⁹ This appears to be tapping in to a broader discussion around YOT’s accountability to the YJB on national standards for youth justice more generally and a perceived lack of action for non compliance.

³⁰ National Appropriate Adult Network (2007) *Promoting Best Practice in Appropriate Adult Work*.

The NAAN Standards

Key to NAANs establishment and resourcing was the development of national standards and a self assessment tool for the delivery of AA services. These standards are in the areas of volunteer recruitment, retention, training and service delivery and provide considerable detail for agencies to ensure the delivery of a high quality service.

According to Lis Pritchard, NAAN CEO, the Home Office funded the NAAN because they were interested in gaining consistency in the AA area and a key priority was to develop standards for such services, which was done through extensive consultation of the membership. Prior to visiting the UK, however, I had understood that services would be expected to comply with these standards however this was not the case. In discussions with member projects, only some had completed the self assessment tool for their own project to ascertain levels of compliance with the national standards. Members did not see this as compulsory and often they suggested that time and resourcing constraints had prevented them from completing it. One coordinator stated that, "this is not monitored by NAAN, it's just for you to know yourself."

Several of the people I interviewed were, or had been, on the Board of NAAN and were certainly "old hands" in the area. Comments included: "I know what we're doing is right because I've been a part of it since day one and I go to all the meetings". Consequently, these members often suggested that they were generally meeting and often exceeding the NAAN standards in most areas.

As mentioned earlier, not all AA providers are members of the NAAN and therefore have access to many of NAAN's resources. Awareness of the standards amongst non-members varied. One non-member service knew something of the standards while another, upon hearing of the standards, said "that's interesting, I wonder if we comply".

It was suggested by many projects that the value of NAAN, and the standards, was for "new players in the field" or people "putting in fresh bids" to run a program. One coordinator stated "the national standards are about offering new projects the opportunity to consider various aspects of what they would consider in developing a service and give them a range of options". For example, if a project was establishing a callout system for police to use, the standards would provide a framework and options.

Interestingly, where projects had been in operation a long time but had identified areas where they were not meeting the standard, they often felt unable to take any action to address this as the particular standard was "out of their control", for example because of limited local resourcing. Examples included a standard saying projects should have individual supervisions with volunteers which one coordinator from an extremely busy project suggested was unrealistic "...when you're running a scheme that has this many callouts a year!" Another coordinator suggested that he had completed the self assessment tool and found they were compliant with the "vast majority of standards" but had "three or four action points which were never enacted because they are things we can't do anything about", for example, having 24 hour support for volunteers. Another referred to the idea of having different AAs attend for co-offenders saying, "in an ideal world, you should get different people to attend for co-offenders but practically that can't be done and realistically doesn't affect the

service delivered by the AA because the focus is not a legal one”³¹ (refer to recommendation 10 at the back of this report).

While some programs complained that NAAN had no teeth, members generally did not want to see teeth that would clamp down on their own program! This was particularly in light of the fact that NAAN had obviously consulted very well in the development of the standards and achieved the aim of the membership having ownership over them, to the point that projects often suggested that the resources and standards were based on their own project.

Issues and Problems: The NAAN Dilemma

In my visits, it became clear that NAAN is hamstrung. The network wants membership of the body to imply a high level of service delivery in the AA area, that is, that member projects are meeting NAAN standards. Ideally, potential funders would then look to NAAN membership as a *pre-requisite* to providing funding to local AA services. This would lift the standard of AA service delivery across the UK.

At the same time, however, the network is genuinely committed to the improvement of AA services across the UK. As such, they are hesitant to restrict network membership because they want to help all areas to become compliant with the standards, through a ‘carrot’ rather than ‘stick’ approach, especially given that some areas are operating their AA programs on minimal resourcing. They feel that projects are generally committed to providing a good service and keen to show they are meeting the standards. They want members to complete the self assessment tools and demonstrate that they’re working towards the standards and if not, to explore why not. It was suggested that full membership down the line might be with people demonstrating they have met or, initially, are working towards meeting the standards.

Unfortunately though, while NAAN is able to provide projects with the “know how” to run an AA service and by all accounts, is successful in achieving this goal whether an AA service can become compliant with the standards relies partly on a number of factors outside NAAN’s control including:

Services localised

Despite central regulation and guidance, the UK has the significant difficulty in achieving consistency in this area that each Appropriate Adult service must operate in the context of its local area. Like Victoria, in the UK there are significant differences across local areas, for example in geography, demographics, levels of disadvantage and access to services. Unlike Victoria, however, while PACE is the minimum standard, AA services must operate within a *local* police force which has its own policies and procedures, *local authority* policies and procedures and, where the service is contracted out, the *local agency’s* policies and procedures. One program coordinator stated that the NAAN have “helpful ideas and suggestions but in real life, you have to work with what the local police want to do”.

³¹ Interestingly another interviewee made a comment about a local case where the AA was interviewed, in addition to the solicitor, because of concerns they had both compromised the situation by appearing for co-offenders. The general rule of thumb, according to one stakeholder was “the more serious the offence, the more important it is to have separate appropriate adults”. In addition to normal confidentiality requirements, it was suggested that where an AA is called to attend for co-offenders, they should have their private conversation with each young person prior to any police interview.

While in Victoria there are certainly differences in practice and culture at different police stations, local authorities and local agencies, regulation of this field in Victoria is generally at the *State* rather than *local* level which makes it considerably easier to achieve consistency.

What this means for the UK is that there are considerable local constraints operating on individual AA programs in terms of their ability to meet national Standards. This includes the level of funding dedicated towards the AA area locally, the nature of local funders and local funding priorities, the YOT manager's priorities, the policies and procedures of the local police force and the nature of the program's management and administration, to name a few. All of this provides a greater imperative for local management of this field in the UK.

Saying that, the message was clear from UK agencies that even in Victoria where we do not encounter as many of these local variations, "you need to match the program to the geography and the demography" and you need "local solutions to local problems". Stakeholders generally thought it was very important that they be given the authority to "sort things out locally". In addition, it was suggested that if you centralise, you lose local community and volunteer motivation. On the other hand, there was also frequent suggestion, even by program coordinators, that there needs to be a standard which is directed through legislation and then mandated and monitored. Beyond this, however, stakeholders felt that there could and should be local control.

NAAN resourcing

NAAN has limited ability to provide a high level of individual or local area assistance to projects at the time when it is needed. Despite attempts to increase their funding base, NAAN does not have a level of funding that enables them to provide individual assistance to programs in meeting the standards³².

The ambiguous status of NAAN

According to the YJB, NAAN is the national organisation overseeing the AA area. The Home Office, however, did not refer to NAAN in this way. Nor does NAAN have funding security with funding provided on a year to year basis.

One project coordinator stated that "the Home Office was happy to fund NAAN who set up some groups to look at national standards. When they did that, however, the Home Office said 'they're not national standards they're NAAN national standards and we're not ratifying them', which was frustrating for the group". The Home Office, however, state that they have always been clear in their communications with NAAN that NAAN's "National Standards" should be referred to as Best Practice Guidance rather than National Standards because they have no recognised status and are neither accredited nor enforceable.

Another project coordinator spoke of the importance of there being national standards "because of the fluidity of the workforce in police...if you set a standard of practice then when police move into different areas they know what to expect and it reduces conflict. PACE doesn't do that because it's down to the interpretation of the individuals involved... you don't get consistency with the legislation, you get it from the national standards, practice around the legislation. NAAN should have teeth to enforce the national standards". Similarly, it was suggested that standardisation

³² NAAN applied for national lotteries funding for a development worker to assist schemes to "get up to scratch with the standards" but the bid was not successful.

around the country would mean that volunteers who perform the AA role and staff who coordinate AA services could travel in their respective roles, without having to re-train.

Instead, however, time and again I heard the catchcry from projects and other stakeholders that, “NAAN has no teeth” NAAN has neither adequate resourcing to monitor compliance with the standards nor the power to address non-compliance should it arise. Interestingly, the Home Office also commented on NAAN’s lack of teeth when the Home Office would presumably be the very agency in a position to give NAAN teeth, for example through mandating funders to ensure that local AA services are compliant with NAAN standards. The Home Office note that it is currently looking to develop a suite of measures and indicators to cover all aspects of the custodial process and have sought NAAN’s engagement in this process (refer to “UK future directions” section of this document).

Models, Standards and Best Practice: Summary of the Central Roles

The current situation in this field in the UK would therefore appear to be that:

- the Home Office provides guidance for AAs and updates to PACE;
- the YJB has broad national standards in this area but these are very limited and not enough to ensure high quality service delivery and, by most accounts, not generally policed;
- the NAAN has an assessment tool and detailed standards, compliance with which would appear to indicate a high standard of service delivery. NAAN, however, lacks both adequate resourcing to assist programs to complete the assessment tool and move towards compliance with the standards and the power to enforce such compliance. Further, compliance with these standards appears to have little bearing on local funding for AA services.

Models, Standards and Best Practice: Local Models

Operationally, the AA field was characterised by difference in terms of:

Type of agency delivering the service and method of service provision

My research included discussions with:

- Youth Offending Teams delivering the AA service “in house” through paid YOT staff or through the establishment of an AA scheme using volunteers, paid sessional staff or a hybrid of the above;
- small non-government organisations or large national charities subcontracted by the YOT and sometimes other agencies to deliver appropriate adult services in a local government area using appropriate adult volunteers and/or paid sessional staff and sometimes paid program staff; and
- private companies using “paid volunteers”³³.

Perhaps not surprisingly, almost all areas thought their particular model of delivery was the best while several noted problems with other types of service delivery in this area. A comparison of the respective merits of the various approaches is beyond the scope of this research. The “Operational Issues” section, however, raises some of

³³ This was the slightly anomalous term used to describe situations where a service, such as a private company, paid casual workers an hourly rate to attend the police station at certain times to perform the AA role.

the issues around the provision of services being linked to different types of agencies and approaches.

Scale of AA schemes

Geographically, the schemes I encountered varied in geographical size but were generally a single Local Authority Area. They also varied in the number of police stations covered by the AA service³⁴ and numbers of people available to perform the AA role.

Rostering processes

Schemes differed as to whether they provided direct telephone numbers for AAs to the police with rosters or had a callout system through a central number, the length of time an AA was rostered on for (from one hour to several hours), the number of people on the roster at any one time and the screening of calls from police prior to an AA being sent to attend the interview.

Hours of operation

When YRIPP was first established in Victoria, it was considered by all stakeholders to be a good thing to have a 24/7 service to support young people in custody. The NAAN standards, however, suggest that services should operate between around 8am and 11pm.

The local areas had Emergency Duty Teams that provided a range of after hours emergency work and often did the AA role after hours. While there were many issues raised by stakeholders in relation to the work of the Emergency Duty Teams, an analysis of these issues is beyond the scope of this research. Some stakeholders did, however, suggest that this was important as they believed it was unreasonable to expect volunteers to attend the police station in the middle of the night. They also felt that young people should not generally be interviewed in the middle of the night, which would appear to be a positive step in looking after young people's welfare³⁵.

Type of service delivered

Appropriate Adult services in the UK under *PACE* and Independent Person services in Victoria under Section 464E of the *Crimes Act*, relate to interviews with suspects. Police also, however, require a third party to be present when interviewing victims and witnesses. The UK AA services varied in terms of whether or not they provided this additional service. YRIPP currently does not although this would appear to be something that the Government should review (refer to recommendation 5).

The programs also varied in terms of whether they attended as Appropriate Adults for vulnerable adults⁶, which was not mandated to any agency, and whether they attended for full interviews only or also for the reading of rights.

³⁴ Given that the entire UK is approximately the size of Victoria, however, there is no scheme comparable to YRIPP in terms of scale. In addition, no scheme I encountered had more than 100 volunteers and Victoria is currently aiming to train 450 volunteers in this role. Generally the UK schemes I encountered were more likely to have around 20 volunteers.

³⁵ This was, however, an easier position to maintain in the UK where police are allowed to keep a young person in detention for 24 hours with an uninterrupted rest period of 8 hours, usually at night. In most circumstances, police in Victoria would not be able to remand someone in custody over night without having charged them with an offence and a Bail Justice conducting a bail hearing and making a decision to remand them.

Training of AAs

Training was a key area that I went to the UK to explore. In particular, I was interested in how the national standards in relation to training played out as well as the appropriateness of accredited training in this area. In fact, every local area I visited used a different training package and had a different approach to training with AAs receiving different amounts and types of training. This is described in detail under the “Training” section below.

Frequency of usage

Callouts for local AA services ranged from just a handful of calls a month to hundreds of calls for AAs each month.

Contractual requirements

Local contracts for AA services differed in terms of such things as the number of volunteers who should be trained and available to perform the role, the percentage of callouts that must be attended and the speed at which a volunteer should attend the police station.

Funding body and level of funding

Funding for AA services was at the local level and was not “ring fenced” and consequently, schemes varied greatly in terms of the level and source of such funding. This was in the broader context of stakeholders telling me that the *Crime and Disorder Act* (1998) stipulated only that YOTs must be established in each area, with money pulled from the seconded agencies. YOTs themselves, however, vary greatly in the level of such funding and consequently, the resourcing they provide to the AA area³⁶.

I understand that most local schemes operate on considerably less than the NAAN felt was necessary to administer an effective and professional service. In addition, many agencies could not tell me the budget for their AA service because it was integrated within the YOT itself and therefore, in many ways, an invisible cost. One stakeholder told me that AA services were generally kept “in house” in rural areas or smaller YOTs as it was not economically viable to subcontract the service in this situation and more difficult to find someone to deliver it. Sometimes, coordinators are responsible for the coordination of *all* volunteer services at a particular YOT. Given how many programs there are involving volunteers now at most YOTs, this would appear be an unrealistic role. As I have discovered through implementing YRIPP, even a small number of callouts in a local area still requires an infrastructure and critical mass of volunteers to be available to attend such callouts when they do arise.

Speed of service delivery

³⁶ Stakeholders also spoke of YOTs currently experiencing considerable pressure due to their increased volume of work. In addition to the increase in programs they suggested they were being expected to run, they spoke of two things that had unintentionally increased the numbers of young people being drawn into the system for minor offences. These were firstly the *Crime and Disorder Act* 1998 which reduced discretion in terms of decisions around at which point to process young people for minor offences through providing mandatory triggers for action. The second thing which they suggested had increased the number of young people being brought into the system was police targets related to offenders “brought to justice” which did not distinguish according to the severity of the offence and consequently, led to a police focus on “low hanging fruit”, that is, young people who had committed minor offences where police would not traditionally have intervened.

The quality of service delivery has been dealt with in other parts of this report. In terms of speed, the two hour standard set by the YJB for an AA response to a police callout was not always complied with by projects, even in their local funding contractual requirements³⁷.

Models, Standards and Best Practice: Implications for Victoria

Many of the areas in which the UK's AA services differ to each other are not important and it appeared to be the position of all stakeholders that a level of local control is essential to running an effective service. I think it is important also, not to try to ensure consistency for consistency sake. At the same time, however, some of the differences between the programs and comments made by stakeholders did suggest variable and sometimes less than satisfactory service provision for young people in police custody. Where services did not meet standards, this appeared to be largely attributable to lack of adequate local resourcing or lack of knowledge of the standards or priority afforded to these standards.

In order to overcome these potential problems in Victoria, the notion of having a set of broad principles around the wellbeing of young people in custody and a basic minimum standard for the delivery of Independent Person services appears to be a good one. Accompanying these strategies, however, must also be a central resourcing role to providing local areas with the tools to effectively meet the standards, an adequate level of funding to allow compliance with these standards at the local level and a level of monitoring to ensure such compliance. Refer to recommendations 4 to 8 at the back of this report.

³⁷ All programs I spoke to were extremely impressed by the Victorian situation where IPs under YRIPP are generally at the station within 40 minutes of a callout from the police.

Operational Issues

Integration and Coordination: The agencies delivering AA services

During my discussions, I was told a considerable amount about the respective merits of, and issues associated with, the different types of service provision in this area. The below documents some of these issues from which Victoria can learn.

Services provided by Youth Offending Teams

Whether attended by volunteers or staff, where the service is managed by Youth Offending Teams, potential benefits appeared to be:

- providing a more coordinated and integrated service for young people. For example, when a YOT received a request for an AA, they could look up their database and check whether there had been contact with that young person previously and if there was anything that the AA should be aware of;
- providing a holistic service for young people through being able to deal with the range of issues affecting a young person through referring to other parts of the YOT, both during and after the process, informally and formally. This was from issues as simple as clothes required for the young person in custody to linking in with agencies to address risk factors associated with the offending to be picked up in individual management plans;
- safety in terms of being able to plan an appropriate person to attend the station based on knowledge of the young person, whether this be an experienced volunteer or a staff member; and
- the opportunity to pick up on and intervene early to address issues affecting a young person.

In addition, where YOT *staff* deliver the service, rather than volunteers, benefits include:

- expertise in working with the client group;
- consistency of service delivery for the young person where they are already connected to the YOT, for example being able to send a young person's caseworker; and
- building skills in the staff group. One YOT worker suggested that "normally our staff are agents for the court so they have power to breach" and that it was good for them to have to advocate for young people with people who were more powerful than themselves.

There were also some problems raised in relation to this integrated approach, namely:

- that it is "sucking too many young people into the system when we know that intervening too early can actually increase offending"³⁸; and
- that the YOTs were under resourced and were not always reliable at getting AAs to attend for interviews; and

³⁸ Money given to prevention in recent times has been given to the YOTs. This means that young people are brought into the YOT system, including onto the YOT database from which the YOTs then report to the Youth Justice Board. This is compounded by the issue that a YOT target is to reduce offenders into the system however a government police target is to increase the number of offenders brought to justice resulting in them targeting the easy to detect, minor offences³⁶.

- that the YOTs did not necessarily afford the AA role the highest priority and there were gaps in the rosters where they used volunteers.

Volunteer schemes, whether run by the YOT or a charity

If run well, volunteer schemes:

- meet other needs and allow local people to engage with the police process;
- involve people in their local community;
- are independent of the YOT and therefore can address benefits in terms of linking with services outside the justice system; and
- can link in with the YOT where appropriate.

However, challenges for volunteer programs include:

- maintaining adequate numbers;
- sometimes being heavily reliant on a small number of volunteers who enjoy going to the police station which is potentially problematic in terms of being prepared to support young people when this requires standing up to the police;
- when contracting out the service, YOTs don't always take account of minimum funding required to manage an effective service; and
- concerns around the treatment of volunteers by police. There were sometimes complaints about a lack of respect for the fact, or perhaps awareness of the fact, that these people were *volunteers*.

Private companies

It was suggested that private companies:

- were cheaper than NGOs;
- have guaranteed standards of service delivery, for example in terms of callout times and are able to ensure this as they pay their Appropriate Adults;
- attract more qualified people, including people who have volunteered for Appropriate Adult programs in the past;
- pay their "volunteers" which some saw as increasingly appropriate as the AA role becomes more professionalised.

However, there was some concern around:

- whether a private company should have access to all the sharing of resources if their aim was to make a profit and they could find ways of undercutting the NGOs providing the service;
- private companies paying "volunteers" to undertake the role;
- not knowing how much it will cost because cost is per interview or hour rather than a set annual amount for the delivery of the service; and
- the per hour rate being considered to be quite high.

Implications for Victoria

It is difficult to draw out the lessons of all of this to the Victorian context. Looking at the respective merits of the different approaches, the one thing that is clear to me when comparing them to Victoria's approach is that we should be striving to ensure better integration between statutory Youth Justice/Child Protection services and the Independent Person support area. In the absence of a YOT model and legislation which allows data sharing between agencies collaborating for a young person's case management, this presents considerable challenges. It is essential, however, to

ensuring more integrated, professional and effective interventions for young people coming into contact with criminal justice agencies.

In particular, some involvement of or links with these agencies may be appropriate where the young people being interviewed are already clients of these statutory services. Refer to recommendation 9 at the back of this report.

Training

The training materials I was shown were excellent and program coordinators were very generous in providing me with resources which could be adapted to use with our IP volunteers in Victoria³⁹. The NAAN had developed a high quality training pack, including a training DVD, and parts of this training were often used by members.

Generally, however, programs had “cobbled together” a training program based on local needs, the NAAN package and pre-existing packages in theirs and other local areas. The way in which they implemented the training (for example, whether AAs had to complete the full training program prior to going on the roster) was also variable.

This was in line with the NAAN CEO’s view that the training pack is there for people who want to use it. “We didn’t want to say to members you have to choose between what your organisation says and what we say. Look at your training pack and see if there are gaps in your training and use ours to supplement it. We’re a small organisation and can’t say to big volunteer agencies we have the answers. It’s better to influence people than tell them what to do, especially as an umbrella body and especially when we can’t enforce it”. She noted, however, that the training pack brings in more NAAN members.

I found that local training and policies had often developed in response to specific local issues. For example, in one area there had been a court case where a staff member had been “brought to task” for their performance in the AA role. This staff member had therefore researched every aspect of the role to provide an extremely comprehensive training program for local AAs in the future. In another area, there had been a negative outcome from the same AA appearing for co-offenders and this local program was therefore mindful of not allowing this to occur³¹.

It was interesting that sometimes, members suggested that there were conflicts between local policies, for example, of the local authority, and their agency’s policies. An example is the local authority might have a policy around *not* working with people with a conviction while the auspice agency might encourage such work. Added to this was the NAAN standards. Both NAAN and its members saw the purpose of the network as providing advice and guidance as opposed to the employer who has “policies and procedures that must be adhered to”.

The Youth Justice Board has developed a three day Foundation Training program for volunteers, which some programs were using, at least in part. The YJB is responsible for monitoring this, through their role as YOT inspector. According to the YJB, this may be substituted or combined with local training so volunteers can be trained in “core skills” for a range of functions, for example health and safety, confidentiality

³⁹ This includes training manuals and modules, specific training activities and materials and program policies and monitoring forms. Similarly, the UK programs were very interested in the Victorian materials which I gave them, particularly the YRIPP multilingual brochure for parents attending police stations in support of their children.

and boundaries, and then specialise, for example in AA work. Again though, the YJB see their role as an advisory, influencing, negotiating one and therefore facilitating local responses, at least in the AA area. It was suggested that “It’s up to their local areas and relationships locally and heads of region in encouraging that.”

Some complained of their agency’s training becoming quickly outdated with legislative changes in the area. Being kept abreast of legislative change and having a body to be responsible for updating recommended policies, procedures and training materials would appear to be the greatest potential benefit of there being a central resourcing body.

The prospect of NAAN actually delivering the local training was discussed however some questioned whether central trainers could deliver local training where there were different local police procedures in local areas of which central trainers would not be aware. In contrast to this, it was also suggested that it would be good to have standardised training so that it doesn’t matter where you live or work, you can do the AA role across the UK.

Accreditation

In terms of accredited training, again, there was no consistency here. Some programs offered it and others did not. Where accreditation was offered by AA services, it was sometimes accredited for all volunteers undertaking AA training and sometimes only where the particular volunteer wanted to become accredited. Where it was offered, there were different views on how much work and expense this incurred for the organisation, which perhaps is partially reflective of the variety of training providers in the area.

Some suggested that accredited training encourages people to do the role and gives more credence and “professionalism” to the scheme. Those in favour also suggested that for the work they are required to complete and the responsibility they are given in undertaking the role, AAs should “receive something”. They suggested that accreditation looks good on a CV and can assist in finding a job in the field. Some felt, however, that they would have to make their training more substantial to have it accredited.

The view was also expressed, however, that accredited training was “burdensome, bureaucratic and slow”. It was suggested that most AA volunteers would not be interested in accreditation and that we are “over-egging the pudding” in this respect. In addition, it was noted that some volunteers are “not good on writing” and “not bothered about a certificate” and that “the best volunteers are retired or have just finished work” and are not interested in doing something to further their careers.

It was, however, suggested that if the UK is looking at increasing the range of backgrounds from which they draw volunteers⁴⁰, something Victoria’s YRIPP is certainly endeavouring to do, accreditation can offer a route into paid employment for recently arrived minority groups who may not have traditional or UK recognised qualifications.

Interestingly, none of the programs I visited had a focus on cultural diversity issues and no training was provided in this area, beyond equal opportunities/anti discrimination training. This is in direct contrast to the Victorian program which came about partially in response to a perceived need to ensure that IPs are culturally

⁴⁰ This relates to one of the NAAN standards.

sensitive in their approach to young people in custody. This was particularly surprising in light of the changing demographics in the UK and the large numbers of new arrivals settling across the country.

The NAAN is keen to go forward with its members and have its training program accredited. This would mean that members who did this would deliver the same training program. Many members, however, are unable to afford this. NAAN recommends accreditation as an option rather than a requirement.

Volunteer Recruitment and Retention

I found that the UK programs were encountering the same challenges as Victoria's YRIPP in terms of the recruitment and retention of appropriate volunteers. Examples include trying to ensure a diversity amongst the volunteers that is reflective of the community from which they are drawn, training people in the role only to find that they do not commit to a roster or do not commit to a roster for a significant period of time or do commit to a roster but then are not reliable in attendance. This is noted not to undermine the huge and valued commitment that many volunteers both here and in the UK make to the respective programs but to identify some of the challenges in this area.

Many of the steps the UK were taking to address these issues were similar to those being taken in Victoria. There were, however, a couple of ideas to improve volunteer retention, namely:

- Providing a more detailed up front agreement with volunteers in relation to what the program is committed to and what the expectations are on volunteers in terms of availability and callouts; and
- Not providing certificates/references to volunteers upon completion of training but waiting until they have completed a set number of interviews.

YRIPP faces the particular challenge that in some areas, especially some remote rural areas, it is likely that there will be only a small handful of calls in a year for Independent Persons. The difficulty is having volunteers who are trained, rostered and motivated to attend when they are called to attend the police station, when such a call may come through only once in six months. I did not come across any program in the UK that complained of losing volunteers through lack of usage however there were some quite low callout areas who provided ideas to improve volunteer retention in such areas. These included making links with other similar volunteer programs to try to keep the volunteers engaged in volunteering with the service more generally. While YRIPP does not provide services other than the IP service, we could look to improve links with other similar program to get a pool of "justice related volunteers" in local areas. YRIPP could make such connections with groups such as Independent Third Persons (managed by the Office of the Public Advocate) and the Central After Hours Assessment and Bail Placement Service (CAHABPS)⁴¹. Refer to recommendations 11 and 12 at the back of this report.

Volunteer Support

It was suggested that there is a Government direction in the UK to "get more and more done by volunteers" and that there is a huge interest in the community in volunteering. However, it was also suggested that the government has not always

⁴¹ Given the potential conflict of interest between the role of Bail Justice and the IP role, it is not recommended that YRIPP seek cross-over of volunteers amongst this group.

been realistic here. Some felt that the Government has a limited view of volunteers in that they think people “work for nothing” and this has meant that sometimes there have not been enough resources geared towards supporting the infrastructure required for volunteer programs. While it was expressed that a lot of resources had been put into volunteer programs, it was suggested that these were sometimes misdirected to new services rather than supporting existing volunteering to encourage good practice, including where volunteers support statutory services. In the words of one coordinator, “sometimes people expect miracles from volunteers.”

One particular learning for me was in the area of the expectations that we in Victoria have of our IP volunteers. Currently YRIPP volunteers can be called upon to attend any type of offence at the police station. One particular issue that came up for many of the Appropriate Adult program I visited was a policy or local practice that staff members or at least “very experienced volunteers” attend for very serious offences, such as sex offences or murder. Some even had a backup system for situations where a volunteer had attended but felt “out of their depth”. This may have stemmed from the notorious Fred West case to which many alluded where the Appropriate Adult⁴² was awarded damages for trauma because of what they had heard in the police interview.

This was achievable for these UK programs for several reasons:

1. As the service was often integrated within a Youth Offending Team (refer to the previous section on agencies delivering AA services), it was possible to send a staff member as soon as the callout came through. Even after hours, there was an Emergency Duty Team covering emergency “welfare type” issues in the Local Authority Areas;
2. Even if the program was not integrated within a YOT, for example was auspiced by a charity, because the scheme covered only a Local Authority Area, in most cases it was possible for the staff member to travel to the station in not more than an hour or so to undertake the role;
3. Under the PACE guidelines, police should not generally interview a young person in the middle of the night and many services say they will not attend at night, so there is very limited callout during these hours.; and
4. Police can hold a young person in custody for 24 hours so there is not quite the same rush as we have in Victoria to get an IP to the station, although there are still considerable time pressures.

Conversely, Victoria has several factors mitigating against being able to send a YRIPP staff member⁴³ for these serious cases including:

1. the size of the regions covered by a YRIPP Regional Coordinator, for example Wodonga to Merbein, mean that a coordinator may have to travel several hours to get to a station in their catchment;
2. the length of time Victoria Police can keep a young person in custody. This is defined as a “reasonable time” under the *Crimes Act* and is unlikely to allow for the length of time a coordinator might take to arrive at the station;
3. the lack of backup support services after hours. The program is “stand alone” rather than falling under a statutory agency and as such, does not have the

⁴² Equivalent to an Independent Third person rather than Independent Person in this case as they were in attendance for a ‘vulnerable adult’.

⁴³ In addition to three central staff, YRIPP has eight Regional Coordinators across Melbourne and Victoria who are responsible for the coordination of all aspects of the program in their region. This includes management and support of program volunteers.

same backup staff or after hours support. Indeed, most YRIPP staff are employed on a part time basis; and

4. the fact that Victoria Police can interview a young person at any hour of the day or night and hence the program volunteers are on a 24/7 roster.

In order to protect the program volunteers from possible trauma and indeed, protect the program from possible law suits, it is important that we look at this area. While YRIPP has a counselling policy in place for volunteers who feel they require it after attending the station, it may be important to restrict the types of crimes for which an IP will attend the station. In order to do this, YRIPP should explore the possibility of working more closely with other agencies, particularly statutory agencies such as Youth Justice, Child Protection and the Central After Hours Bail Assessment and Placement Service, to discuss the possibility of their staff attending interviews for these very serious offences. Refer to recommendation 9 at the back of this report.

Future Directions

UK Future Directions – Positioning of the AA service

The Home Office suggested that they are currently looking at the option of developing a national framework to support recruitment, training and development to support volunteers and ensure the delivery of services against agreed National Standards. They were floating the idea that all custody volunteers, such as Independent Custody Visitors and Appropriate Adults, should be brought under one roof. They saw this as sitting best under an independent, central monitoring board where the Chair reports to the Home Secretary. This is a similar model to that for prisons in the UK. This statutory inspectorate would report to the Home Secretary and, according to the manager of the Police Powers and Protection unit, “that would be the teeth”.

The Home Office suggested that this Central Monitoring Board, perhaps HM Inspectorate of Constabulary, would look at how AA services are operating and how they can help, with “not just a stick, a carrot as well”. The Home Office suggested that there would still be local implementation and ownership which they recognised as important to maintain local community motivation, but consistency achieved through agreed standards around children, welfare, wellbeing and the criminal justice system, consistent training and a national reporting system relating to national standards and outcomes. Under this model, it was suggested that recruitment and training would be undertaken by the Police Authority, either as commissioning bodies or direct service providers.

Some were concerned about the Police Authority having such a role. PACE stipulates that an AA should not be employed by the police. NAAN takes this to mean that police should not be paying for an AA service. Some within NAAN also have concerns about the Police Authority, which is made up of local people and to which police are accountable, having a role in any funding/management arrangement due to concerns around *perception* of independence when, it was suggested, the “average punter” does not distinguish. This is particularly interesting given recent changes to the contract management arrangements for YRIPP in Victoria which, after a departmental restructure, were transferred from Crime and Violence Prevention, within the Department of Justice, to Victoria Police.

Future directions in Victoria – Positioning of IP services

Victoria has a number of volunteers who support people in custody. These include:

- Bail Justices;
- Central After Hours Assessment and Bail Placement Service, part of which operates using volunteers;
- Independent Persons for suspects under 18;
- Independent Persons for victims and witnesses under 18; and
- Independent Third Persons for people with cognitive impairments.

At the moment, each of these services operates separately with different levels of legislative backing, profile and resourcing. The area requires improved integration. Practically and operationally, there would be significant benefits in following the proposed Home Office model of housing all custody related volunteer initiatives together. These include:

- potential economies of scale with volunteer numbers, in terms of volunteers being able to undertake more than one custodial role, if appropriate;
- economies in terms of training of volunteers as there is considerable overlap in training required by volunteers working under each of these programs;
- simplifying and streamlining the callout process for police through a single point of call for all police station volunteers across the State⁴⁴.

The roles do, however, appear to require at least *some* different training and there is some suggestion that it would be useful to develop specialist services for juveniles, distinct from those for vulnerable adults²⁰. With this in mind, perhaps it would be more appropriate for the Independent Person program and other programs relating to *young people* in custody to sit under a youth oriented agency, such as the Office of the Child Safety Commissioner.

It was suggested during my research that there was a shift underway towards seeing young people in custody as “children in need” rather than “young offenders” and therefore moving away from the adult system upon which the police system is based. This would appear to be an appropriate move for Victoria too, particularly in light of the Convention on the Rights of the Child and the recently enacted, *Charter of Human Rights Act 2006* (Vic). As noted above, whatever model we move towards needs to allow for better integration of Independent Person services with existing statutory agencies responsible for service provision to young people in the justice system, to ensure a more cohesive service system.

⁴⁴ The different callout processes, overlap in names of people to attend the interview create considerable confusion for all agencies working in this area, not to mention people in custody.

Conclusion: An improved model for Victoria

Whether the Victorian Government chooses to facilitate the delivery of IP services locally or as a Statewide service, via a statutory agency or through a community agency, or through any other model of service delivery, lessons from the UK would suggest that several changes are important to achieve high quality service provision in this area. Victoria requires:

- Legislative reform around the role of the IP and government endorsed guidelines around this role;
- Agreed broad, Statewide principles around the wellbeing of young people in custody and a basic minimum standard for such services;
- A quality assurance framework including monitoring and review;
- Appropriate levels of resourcing to allow compliance with the set standards for service delivery;
- A level of centralized management including a consistent, core, centralised training program;
- Local training in relation to locally variable issues for example, local referral protocols and processes; and
- A level of management at the local level to recruit, train and support IP volunteers, manage relationships and identify and respond to local issues arising.

Because of Victoria's levels of government and the fact that a Statewide Independent Person Program is already under establishment, the Victorian Government is currently in an ideal position to circumvent many of the challenges currently facing the UK in this area. My research would suggest that the above strategies will help to ensure high quality service delivery of IP services across the State in the longer term. This, in turn, is essential for ensuring the provision of the best possible service to vulnerable young people in police custody in Victoria.

A list of specific recommendation is provided in the following section.

Recommendations

Role of the Independent Person and legislative change

1. That Victoria consider the introduction of legislation and associated guidelines to:
 - a) change the term “independent person” in Section 464E of the *Crimes Act 1958* (Vic) to “appropriate adult”;
 - b) place a statutory responsibility on a particular agency to provide Independent Persons for police interviews as required, even if they contract out the delivery of the service;
 - c) provide for a level of monitoring of the existence and performance of Independent Persons across the State;
 - d) detail the persons required to perform the Independent Person role. In particular, legislation should require police to ensure that the person attending the police interview is indeed “appropriate” in terms of the child’s best interests⁴⁵. Further, the legislation should state that where the appropriate adult is not a parent or guardian, that the person attending is an *accredited* Independent Person, with a definition provided of this term that includes the completion of a recognised training program;
 - e) establish and detail the *rights of, duties afforded to and role of* the IP in the justice process.
2. That in drafting the above legislation and associated guidelines, Victorian legislators:
 - a) have regard to the UK’s *Police and Criminal Evidence Act* (1984) and its associated Codes of Practice;
 - b) include an authorisation for IPs to override a young person’s wishes in relation to legal advice by calling a solicitor on behalf of a young person where they believe that receiving legal advice would be in the young person’s best interests;
 - c) include a requirement that the IP role be read out at the commencement of all police interviews with young people under 18, to set the parameters for all involved;
 - d) consider the respective benefits and disadvantages of placing parents/guardians *within* or *outside* the definition of Independent Person;
 - e) consider the benefits of having an Independent Person attend police interviews, even where a parent is in attendance;
 - f) consider the identification of “vulnerability” rather than age as the reason for requiring a support person in a police interview. Age should then be listed as only one type of vulnerability with processes detailed for dealing with each of the vulnerable groups⁴⁶.
3. That the Victorian Government examine ways to ensure that young people in police custody have access to 24/7 legal advice. This should include an

⁴⁵ Guidance should be provided to police on how to make this decision.

⁴⁶ For example, cognitive impairment may be another area of vulnerability listed to improve on the current situation where the Independent Third Person is not provided for under the legislation.

exploration of the appropriateness of and barriers to solicitors attending police interviews in person, rather than providing telephone legal advice.

Program Administration and Integration

4. That the State government and agencies delivering IP services work together to develop a set of broad principles around the wellbeing of young people in custody and a basic minimum standard for the delivery of such services. These principles and standards should then form the basis of any government contract for the delivery of such services in the future.
5. That the Victorian Government give consideration to the respective merits of:
 - a) the administration of YRIPP falling under a central monitoring board responsible for the wellbeing of young people; and/or
 - b) bringing all non-police roles relating to police custody under one auspice for improvement of administration, operation and integration. This may include Bail Justices, Independent Persons for suspects, victims and witnesses, Independent Third Persons for people with cognitive impairments and after hours bail support roles. Where this occurs, it should also allow for specialist training of the respective volunteers.
6. That aspects of the management and implementation of any Independent Person program in Victoria be resourced, performed and monitored centrally, whether through a statutory or voluntary agency, to allow for quality control and consistency. This should include, but be not limited to, overall responsibility for core IP training and resourcing.
7. That the implementation of IP services allow for local management and variation as far as possible, for example, as relates to local referral processes and protocols, local management and support of IPs and local responses to issues arising, while still ensuring consistency with the centrally resourced program in core areas.
8. That the State government ensure the provision of appropriate levels of resourcing to allow compliance with the principles and standards referred to in recommendation 4 above;
9. That YRIPP and statutory Youth Justice and Child Protection agencies and their after hours services work more closely:
 - a) to improve integration of services for young people at police stations, particularly where the young person is already a client of one of these statutory services;
 - b) to improve support to IP volunteers out of hours; and
 - c) to ensure that very serious offences are attended by appropriate, paid professionals rather than volunteers.

YRIPP Internal Operations

10. That YRIPP introduce a policy to preclude IPs attending for multiple alleged offenders where these young people are accused of serious offences.

11. That the YRIPP partners work across the state to develop closer links with other similar programs and service providers towards providing volunteers with additional volunteering opportunities to diversify their skills and reduce attrition resulting from under-use, particularly in rural and remote areas.

12. That YRIPP:

- a) explore the viability of only providing certificates / references to volunteers once they have performed the IP role in police stations a set number of times;
- b) enhance the existing program contracts with program volunteers to specify the length and nature of their service commitment and to detail the supports provided to them by YRIPP in return;
- c) examine other specific aspects of policies, procedures, training and administration within materials brought back from the UK and where relevant, incorporate best practice into the Victorian program;
- d) develop a working protocol with Victoria Police for IP services for young people;
- e) join the National Appropriate Adult Network in the UK and monitor local performance in line with the self assessment tool to ensure ongoing compliance with international best practice in this area; and
- f) continue its policy of ensuring that all volunteers complete the full training program prior to commencement as an IP volunteer but also explore opportunities for providing recognised accreditation for volunteers who are interested in completing this.

Appendix 1: The Youth Referral and Independent Person Program

YRIPP was established as a partnership program of the Centre for Multicultural Youth Issues, the Youth Affairs Council of Victoria, the Federation of Community Legal Centres, the (then) Department of Immigration and Multicultural and Indigenous Affairs, the Victorian Aboriginal Legal Service and Victoria Police.

YRIPP was initially funded to operate in nine police stations as an 18 month pilot under *Safer Streets and Homes*, Victoria's Crime and Violence Prevention Strategy 2002-2005 and continued to receive funding in its pilot form until June 2007.

YRIPP was funded to establish a Statewide infrastructure for the provision of IP services in Victoria. It aimed:

- to work with and improve the IP service provided to young people in custody; and
- to divert young people, including refugee, newly arrived and Indigenous young people, from progression to higher levels of the criminal justice system through referring them to appropriate community support services to address the risk factors associated with offending.

Key program objectives include to:

- strengthen existing IP networks and establish new ones if required;
- reliably allocate trained IPs for police interviews with young people. This involved establishing a single telephone number for police to call 24/7 to have a trained, including culturally trained, independent person to be sent to the police station for interview with a young person;
- develop multilingual brochures to assist parents/guardians to understand the police process in Victoria as well as their role when they attend police interviews with their children;
- implement referral systems for those at risk to culturally appropriate community support services;
- work with legal services towards expanding the availability of 24/7 telephone legal advice for young people in police custody; and
- develop strategic partnerships with relevant local agencies to reduce offending by culturally appropriate diversionary means.

In July 2007, the Victorian Government provided \$1m per year for two years to fund the expansion of the YRIPP pilot to 103 police stations across Victoria.