

15 October 2018

Office of the Hon Martin Pakula MP
Attorney-General and Minister for Racing
Level 26, 121 Exhibition Street
Melbourne VIC 3000

Transparency and equality in the access to diversion programs in Victoria

Dear Attorney-General,

We are concerned about the lack of transparency in decisions to grant access to diversion programs in Victoria. Diversion presents a valuable opportunity for an accused to engage with rehabilitation and contribute to the community. Diversion stops the cycle of recidivism and mitigates the negative consequences of involvement with the criminal justice system.

Pursuant to section 59(2)(c) of the Criminal Procedure Act 2009 (the Act), an accused cannot participate in a diversion program unless the prosecution consents. This requirement means that once the prosecution has decided not to refer a matter to diversion, there is no opportunity for judicial input. An accused is not provided with reasons for the denial and there are no avenues for appeal. The current system offends principles of natural justice and is an inappropriate vesting of unchecked and unfettered discretion in the prosecution. This results in inconsistent outcomes for individuals and particularly disadvantages minority communities who are already overrepresented in the justice system.

Legislation that gives the judiciary the decision to refer an accused for diversion would resolve the above concerns. In light of the significant benefits to both individuals and the community of a fair, transparent diversion scheme, the Victorian Government cannot overlook the need for reform in this area. We note your government's 2014 election commitment to improve access to justice and support the most vulnerable in our community, to build a fairer, safer Victoria. Changing the Act to ensure accused people have a fair chance at engaging in rehabilitation, which reduces recidivism, is in line with this commitment.

The undersigned individuals and organisations urge you to remove the requirement in the Act that the prosecution consent to diversion and allow the ultimate decision in this regard to rest with the judiciary.

We further direct you towards the work of legal advocacy bodies calling for reform, including Liberty Victoria's Rights Advocacy Project report (appended), and the submissions of the Law Institute of

Victoria,¹ the Victorian Aboriginal Legal Service,² the Criminal Bar Association of Victoria³ and Victoria Legal Aid⁴ to the Magistrates' Court of Victoria.

We look forward to the urgent action required.



¹ Law Institute of Victoria, Submission to the Magistrates' Court of Victoria, *Review of the Criminal Justice Diversion Program*, 26 May 2015.

² Victorian Aboriginal Legal Service Co-operative Limited, Submission to the Chief Magistrate of the Magistrates' Court of Victoria, *Review of the Diversion Program in the Magistrates' Court*, 8 March 2016.

³ Criminal Bar Association of Victoria, Submission to the Magistrates Court of Victoria, *Review of the Criminal Justice Diversion Program*, 5 June 2015.

⁴ Victoria Legal Aid, Submission to the Department of Justice, *Improving Diversion for Young People in Victoria*, September 2012.

