T R A N S C R I P T

STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES

Inquiry into youth justice centres in Victoria

Melbourne — 14 June 2017

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Witness

Ms Fleur Ward.

The CHAIR — I welcome you to the proceedings this afternoon. Thank you for coming along. We are looking forward to hearing what you have to say. All evidence taken at this hearing is being recorded and is protected by parliamentary privilege; therefore you are protected against any action for what you say here today, but if you go outside and repeat the same things, those comments may not be protected by this privilege. I can see you have some notes; I am sure there are things you want to say to us, so I might open up to you, and then we will have some questions.

Ms WARD — Thank you once again for hearing from me for the second time, although it has been a few years. I am a lawyer who has practised for a decade in the Children's Court. I am a children's law specialist, and I hold a master of mental health science specialising in child psychotherapy from Monash University. As a lawyer I act each day for young people and parents and carers alike within the family division of the Children's Court of Victoria, and the children and young people that I represent often cope with more in a single day than most adults could cope with in a year both in terms of their familial circumstances and the way they find themselves treated within the child protection system. Then there are the parents for whom I act, who endure, as we would know, unrelenting and overwhelming circumstances personally and perhaps in trying to deal with the children in their care and their behaviours.

My job is my greatest privilege, and I wanted to try today to give you the benefit of all of my — it has only been a decade; there are more senior people to me — experience and the benefit of that. I have considered carefully what I think would most expeditiously assist my clients and the parents for whom I act. When I say 'my clients' I mean the children, young people and parents for whom I act. I believe this inquiry could easily set about dramatically improving and making more functional our youth justice and child protection systems if it recommended that the government take three very basic steps or measures.

The first is — and I am sure you have heard about before and read Victoria Legal Aid's *Care Not Custody* report — to implement the protocol which the New South Wales government is currently implementing up there, which is a joint protocol to ensure that six steps are taken before the police are called for children in residential care; the second measure I think prudent, or I would implore you to take, is that we must urgently implement robust training and tertiary requirements for workers within the youth justice and residential care system; and the final matter would be that we immediately need to create therapeutic residential options for young people with substance abuse and mental health issues.

If these three measures were taken, I can assure you that the complexion of both systems would be far improved immediately. In terms of the protocol, which I assume you have read, I would just say to you in terms of my experience that my clients that exist and live in those residential units are there because their families cannot have them and because foster carers will not have them either. We then daily criminalise them because there is a practice within the department that they must report to the police any property damage; otherwise the insurance claim will not be honoured.

I would remind this committee of section 134 of the Children, Youth and Families Act, which demands that the department must make provision for the spiritual, emotional and physical development of a child in the same way that a good parent would, and I do not believe that a good parent would report all and any property damage committed by their child to the police or have their children charged regularly with things said or done in anger.

You will see, as I have said before, the joint protocol has six steps. I have a copy of it here if you would like to see it. It is very, very simple. It is the brochure that is going to be put up in all residential care homes and also in all offices of DOCS in New South Wales, and I understand from speaking to my very fine colleagues in New South Wales legal aid that they are implementing 3 hours of training as a mandatory requirement. It will be an online training course for all residential care staff to make sure that they are properly apprised with this protocol, and I say that they are very simple measures which we could easily take here.

I understand for some reason the government has not been prepared to commit to this, but I would implore this committee to recommend it in the strongest terms because it is a simple, inexpensive option which will have great impact. I am happy to hand that up if it would be of assistance.

The CHAIR — Thank you; that would be good. Are we able to table that? Yes.

Ms WARD — I was reminded by Magistrate Jenny Bowles, who is coming to speak to you later in the day, that it is important that perhaps you have the benefit of some of the individual stories in relation to my clients,

but I would be interested to know from the committee to what level you would like to hear about those exemplifications or examples. Perhaps if I could just go quickly to the second point, and then I will deal with some of the examples of my clients.

In terms of the robust training, the issues of criminalising kids in residential care are directly related to the weak and inappropriate requirements. I think that this committee is already aware that there is only three weeks of training for staff up in Malmsbury or any youth justice facility, and that is grossly inadequate. It is my view that most staff mean really well and work extremely hard, but they have perhaps one-tenth of the skill that is required to deal with some of the most difficult children in our community. I would say that they need training on a psychodynamic level to contain children, and I do not mean that in terms of containing them physically, although that may be a remedy that has to be pursued in different ways, but I mean containing — this is talking in terms of my child psychotherapy background — in terms of creating a responsive, calm and kind environment in which these children can function well and we can help create change for them, because that is the purpose.

I would refer this committee to the amazing work of Dr Nathan Hughes of Birmingham University, who has looked at the issues of neurodisabilities. Once we understand that the children in residential care or in youth justice facilities have essentially been rejected or self-selected out of their families and we appreciate that their inner worlds are chaos — if we start from that premise — we also understand that a lot of them exist with neurodisabilities, which are things such as ADHD, autism, dyslexia, fetal alcohol syndrome and brain injuries.

There is a report by the children's commissioner of the UK in 2012 called *Nobody Made the Connection*, and so the United Kingdom's government has done a lot of very good work in terms of starting to understand what is really causing the offending, that these are not just bad children but there are good reasons for their behaviours that need some moderation and assistance. What we are doing effectively here is sentencing, criminalising and then sentencing again and again young people often with neurodisabilities, and then we wonder why they have never effected change.

I have here a general summary, if you like, of this report from the United Kingdom children's commissioner, which, for example, put in terms of an analysis of the general population those with learning disabilities at 2 to 4 per cent, but within the young people in custody, for example, it was 23 to 32 per cent. Those with dyslexia made up 10 per cent in the general population but 43 to 57 per cent within the young people in custody. Also traumatic brain injury was 24 per cent in the general population but up to 71 per cent in young people in custody.

Unfortunately the workers in both systems just do not have the skill necessary to respond to what I understand on an experiential level — and in terms of speaking to all of my colleagues and knowing a lot of young people within both systems — to be what the UK would call neurodisabilities, but also behavioural management plans are not being properly put in either. So I could easily hand that around if that would assist as well. I am happy to tender it. I feel like I am in court.

The CHAIR — Just while you are pausing, Ms Ward, I was just thinking, in terms of the case studies you referred to and in the interests of time, if you are able, could they be submitted in writing if that is not asking you to do something onerous?

Ms WARD — Yes, of course. They are really just short examples that I have brought with me to illuminate what has happened, but if I could just make my final point about the therapeutic residential options and give you just a couple of very quick examples. I am conscious of time, and your questions are more important than I think my statement is. Just to preface to you that Magistrate Jenny Bowles in her Churchill fellowship — you will hear from her later in the day — has done the work. She has been overseas, she has had a look at everything and she sits on that bench every day, so I would implore you to consider seriously everything that she says because I cannot emphasise enough that my clients 8 to 17 with serious mental health issues are confronted with a system in Victoria in terms of mental health provision which is just simply failing.

I have a nine-year-old client in a residential unit who assaults staff daily to the point that one was hospitalised recently, and it has taken me nine months of agitation to get her to have some play therapy. She was recently sexually abused last week by another co-resident. She is in urgent need of psychiatric help, she has extremely disturbed behaviours, but the moment that she turns 10 in two months she will be criminalised in her behaviours

because the assaults on the staff are so severe, the damage to the property is so catastrophic and she is escalating. The kind staff do a very good job. I have observed them trying very hard, but we are failing her.

Then in relation to therapeutic residential options for those children that have serious substance abuse issues, I have a 15-year-old client whose mother saved and scraped together enough money to send her to a detox facility in Bali because we did not have one here. I think it is absolutely outrageous in our beautiful First World country that a Second or Third World country such as Bali would be the place that a mother in Victoria would look to send their child. That detox facility worked to a point, but she had been in residential care — my client — and had taken up ice. She has returned and gone back to those decisions. So those two short examples I hope illuminate to you — I can go through hundreds of others — that therapeutic residential options will be expensive, but they are what we need.

There is a report by KPMG from April 2016, which you may or may not have seen. I have printed out for you, if it assists, the general summary of their recommendations. We say that Magistrate Bowles's work is perhaps the reason that has been examined, but there has been a costing by the government, and if it would assist you, just by way of succinct analysis, I am happy to hand that up as well.

The CHAIR — I think we have that, but please hand it up anyway just to make sure.

Ms WARD — The final thing I would say to you all is the answers lie simply in, really, I think the work of New South Wales, the UK and New Zealand, and if you have the opportunity to examine it, I could send you easily the work of Judge Tony Fitzgerald. They have I think 80 per cent of all children on diversion over there. Their youth justice system is a credit. It is world renowned, and if we were to look to what they are doing there and emulate it — the answers lie there. We do not have to reinvent the wheel. We just have to look to comparable common-law jurisdictions, as close as New South Wales.

I would just say to you quickly that we need really good judicial education. We need a crossover list in the Children's Court, and I would like to see some truancy officers back because my clients in DHHS care will not go to school, and in New Zealand if you do not go to school, there is a whole team of people that will come out and work with you or your family, whereas my clients — and I am a strong believer in the importance of education, and you will all know that your trajectory, if you engage with education, is far better and can dissuade you from other poor decisions. So if we start from premises of understanding and approach young people with boundaries and kindness, in that order, you will find a myriad of young people will be able to go home and that our youth justice facilities would be far emptier, in my opinion.

The CHAIR — I want to start with a very brief question while you draw breath. You referred earlier to the six steps in resi-care protocol that New South Wales is introducing. Where else is that used, if anywhere? Where did they get it from, and do you have any sense of why it is that it will not be introduced in Victoria?

Ms WARD — In relation to your first question I think it has been as a result of some trialling that has been done overseas and I think particularly within the English system. They have also struggled with the same issues this committee is grappling with — and society as a whole, and I think New Zealand has been a forerunner in what they are doing in residential care services as well. I imagine that is where the protocol has come from, and in terms of the reluctance I just cannot understand it. Victoria's Legal Aid report, if you have had a look at it, is the analysis of thousands of cases, given that they represent many children across the family division and criminal division of our court, and they have come to the point of saying, 'This is the most important thing that the government can do in recent times'. I cannot fathom why this government would not endorse that.

Ms CROZIER — Thank you very much, Ms Ward, for being before us this afternoon. You have just provided for us some documentation regarding the report of the children's commissioner in England that was undertaken in October 2012, looking at neurodevelopmental disorders. Does that get assessed anywhere in the out-of-home care system or youth justice system here in Victoria or anywhere else in Australia?

Ms WARD — That is a fantastic question, but unfortunately not.

Ms CROZIER — Obviously you think it should be. Could you explain to the committee how that would be undertaken?

Ms WARD — It depends on whether or not you are thinking about that being a precursor to any other service provision or whether or not you are just talking about the assessment of risk in terms of children being placed together.

Ms CROZIER — I would say both, because looking at the document you have provided it is learning disabilities, dyslexia, communication disorders, attention deficit hyperactivity disorder, autistic spectrum disorders, traumatic brain injury, epilepsy and fetal alcohol syndrome. They are very significant.

Ms WARD — It would be my preference that any young person that comes into contact with a child protection or youth justice service is assessed in a proper way. In New Zealand what they do is that there is a cohesive intergovernmental approach, if you like, and within any youth justice matter there is a psychologist, someone from the police, someone from DOCS or the equivalent and someone from the department of education. So they are doing a very good job in having those initial assessments and then that being worked on cohesively, but in our system I think it would have to be the Department of Health and Human Services undertaking that as an initial step in terms of where young people can then be placed and with whom or what services could be fed into the family to answer those needs.

Ms CROZIER — Have you got the numbers that New Zealand is dealing?

Ms WARD — In terms of thousands of children?

Ms CROZIER — As a comparison to what DHHS is dealing with here in Victoria.

Ms WARD — No, I am sorry. I could make those inquiries. I understand they had a very innovative government a few years ago that put many millions of dollars towards Judge Becroft's and Judge Fitzgerald's youth court, and that has just done beautifully well. I think their numbers are roughly the same as ours, except they have got 80 per cent, allegedly, on diversion.

Ms CROZIER — I want to come to the diversion, but in relation to the initial assessment that is undertaken to identify any one of these neurodevelopmental disorders of a child, do you believe DHHS has the capacity to do that, or what would be required?

Ms WARD — I have given evidence to this inquiry before that there is a profound and outrageous lack of allocation of workers in the family division as it is, and the workforce is overrun. There would have to be an injection of funding in relation to that, and protective workers, with the greatest respect, would not necessarily have the skill level, but it could be that we could create a small, distinct body of psychologists that could undertake that assessment in the first period. I have brought with me a number of articles from Dr Nathan Hughes, who is really the author of the UK's Children's Commissioner's report of 2012, and that idea of us connecting and understanding what is actually causing it. It may be that he would assist. He has been visiting here in Melbourne before, and he could assist you in relation to the scaffolding of that.

Ms CROZIER — Thank you. Just one last question, if I may, and it goes to the point of diversion programs: I am just wondering what your views are on having parental input into those diversion programs.

Ms WARD — A lot of my colleagues that practise widely in youth justice will say that you can have effective diversion programs for very serious offending if you have the right recipe of service provision, parental support and police input. For anything to work if that child is at home, and even if the child is out of care, having the imprimatur of the parent in that option being pursued I think is enormously important.

As a general practice I understand that there are some attempts to inquire, but if you are in out-of-home care and have been for a long time, then the department is your guardian and whether or not there is a conflict between a department that has notified or effectively provided — —

I have seen the department hand over hundreds of pages of CRIS note incident reports to the police to assist them in charging young people. There might be some conflict in them consenting to a diversion, but prima facie the answer to your question is that parents should be involved to the extent that they possibly can be.

Ms PATTEN — Thank you for that. I feel like we can walk away now. I feel quite confident with those three very strong recommendations. There have been significant recommendations about increasing the age of

criminal responsibility from 10 to 12, and I am wondering if you could comment on how that would affect some of your clients specifically or whether you endorse such a recommendation?

Ms WARD — I believe that 10 is roughly about right in terms of understanding what we call mens rea. In doli incapax there was some discussion I understand about abandoning that idea of rebutting the presumption that they did not have capacity. I think 10 is probably about right given the increasing maturation of young people from a very yearly age, but the doli incapax common-law option is really important for children that we can establish just did not know, and that can be up to 14. So as long as that is there sitting against the principal age — —

Ms PATTEN — You can start at 10 to follow that test — —

Ms WARD — Yes.

Ms PATTEN — We were very fortunate to receive submissions from a number of the children in Parkville and Malmsbury as part of this process. I have just been flicking through them. We received 24 in all. The majority of them were very critical of their legal representation, I am afraid — 'My experience with lawyers and courts is I am treated like rubbish' and so on. It seemed to be a very common thread through those submissions. Obviously this is the experience of the children and they feel very strongly. Is there a way that we could improve that so those children do feel that the courts have heard them, because what they seem to be expressing is that they do not feel like they are heard. They do not feel like their lawyers listen to them. They feel like they are just meat in the grinder, I suppose, and go through the process without having an input.

Ms WARD — That is the worst thing I have heard, Fiona — —

Ms PATTEN — I am so sorry, Fleur.

Ms WARD — It is terrible for about four different reasons but principally because many of my colleagues that practise in youth justice I would trust with my life, and I think if you were to sit in the Children's Court and you were to listen to the pleas that were done by a lawyer that is properly engaged with the young person, it can be the difference between oblivion for that young person.

Ms PATTEN — I have heard you say this before, and I have certainly witnessed it. So where is this disconnect happening?

Ms WARD — I am not sure whether you have heard from legal aid, but in their child protection review they are looking at this issue of having one lawyer across both jurisdictions, but that seems to be an issue with the quality of representation. I heard from Justice Bell recently, who has, you will all be aware, in the Supreme Court been very agitated about the treatment of children in Barwon. But he said to me it is the three Vs: it is about people having a voice, young people in particular; about voluntariness, so rather than compelling people, getting them to engage and agree; and also validation. So it seems to me that if that is the experience of young people in Parkville, then we have failed on that level.

I can only say to you that I sit on Children's Law Specialisation Committee, and of course I am the chair of the children and youth issues committee of the LIV. We have been working together on improving the quality of representation, and I will take that back. But that is disgusting if that is their experience, and I am very sorry for it on behalf of any of my colleagues who may have participated in that. I am very sorry to hear that.

Mr MULINO — Thanks very much for your evidence, and there is a lot of academic research that we can look into here. I guess one of the three recommendations that you raised that I am interested in is around more robust training, and we have heard this from a number of sources. I would be interested in your thoughts on the complexity of the youth justice system and the fact that clearly for some people robust tertiary education is going to be necessary and quite sophisticated training. But for others it may be something more targeted and short and sharp. I just wonder what your thoughts are about the breadth of different roles that exist in the system.

Ms WARD — It is a very good question, and last night when I was trying to craft what to say to you all I considered that really if I had a magic wand, it would be that every person that works within both systems is trained in psychology and education, but no-one has six years to do that. So I would say that we would design a short curriculum, if you like, but it would have to be six months to a year, which I do not think is unreasonable,

and you take the very poignant parts out of perhaps a few disciplines. I thought child psychotherapy, psychology, criminology and education would be a good start. But I also take your point, and I think Jenny Bowles will make a similar one, that within her therapeutic residential unit, for example, there are different staff members performing different roles. You are right; you may have a high level of sophistication perhaps in training for some, but even down to the cleaner is important in terms of the culture of an organisation and a home.

You may have people who do not have many levels of scaffolding, but I would say that what we have at the moment is not assisting and we should up the ante in terms of what is required. It will assist the staff in managing. I understand that the casualisation of the workforce in Malmsbury and Parkville has really been one of the reasons we have had such an issue. If you think about it, I would struggle to go to work if I did not have the skills to answer young people. For the confronting physical circumstances in which they find themselves, we are not equipping them very well. There are workers in those units who, I think, would be grateful to know.

The nine-year-old that I was talking about before, I cannot tell you the difficulty we have had even getting therapeutic consultants out to work out the behavioural management plan for this young girl. They want the skills. They say to me, 'I'll sit through disability training', but a lot of them do not even have disability certification. Sorry, I have taken a long time to answer your question, but it was such a good question.

Mr MULINO — No, that is very useful. Thanks.

Ms CROZIER — I would like to go to one other one in relation to your paper about the diminishing powers of the Children's Court. We had some information provided to us prior. Would you just comment on that and how that has impacted in relation to potential numbers that have ended up in youth justice?

Ms WARD — The way it is impacting and is likely to continue to impact is that the children who are in residential care, let us be honest, are now getting down to as young as seven or eight, but usually it is between 10 to 17. For the most part, we might be able to find a nice family for 10 to 12 year olds if their behaviours are good enough, but usually foster care families will not take them. If we are talking about the age bracket of say 12 to 17 or 12 to 18, if those children have been in the system for some time, the family reunification orders are likely not available to us because the two years have amassed and our court cannot consider reunification. Then they are put on these blunt orders, which are the two-year care by secretary orders. If they are in residential care, the care by secretary order will be running. But because there are no condition for contact, that means that young people are in systems without having regular contact with their families, and that is an issue in terms of, in my experience, young people then acting up even further.

If you deny a child the right to see even what we might call a difficult parent, that is unlikely to cause a calm and settled approach in them, and also there is no regular review of their care arrangements. Residential care will always be a reality in Victoria and any other jurisdiction where children are removed. We are not going to be able to get rid of it. There will always be a place, and all the out-of-home care providers will tell you the same thing. But we are criminalising the kids in care, and because our court is not able to regularly review the care arrangements — because now they are mandatory two-year orders or they are going until the children are 18 — I think that is a risk for our young people and the likelihood of their mistreatment being discovered is lessened.

The CHAIR — Ms Ward, thank you very much for coming here today. We appreciate you being here and the evidence you have given. You will receive a transcript within a few weeks for review. Thank you.

Ms WARD — Thank you very much.

Witnesses withdrew.