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 — 19 April 2017

Members

Ms Margaret Fitzherbert — Chair
Ms Nina Springle — Deputy Chair
Mr Daniel Mulino
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Participating Members

Mr Greg Barber
Ms Georgie Crozier
Mr Nazih Elasmar
Ms Colleen Hartland
Mr Gordon Rich-Phillips

Witnesses

Dr Trish McCluskey, Director Strategic Initiatives, and

Mr Julian Pocock, Director Public Policy and Practice Development, Berry Street Childhood Institute

Open hearing resumed.

The CHAIR — I will reopen proceedings. I want to welcome everybody who is present, including those in the gallery. The committee is hearing evidence today in relation to the inquiry into youth justice centres in Victoria, and the evidence is being recorded. Welcome to this public hearing. All evidence 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 invite you to address the committee. We have been asking people to give a short presentation if they wish of no more than 10 minutes and there will be questions after that.

Mr POCOCK — Thanks, Chair. We will probably take most of the 10 minutes. I will make a few comments and then Trish will as well, and then we are very happy to elaborate and answer any questions the committee has.

Firstly, thanks for the opportunity to be here. Before I start I want to acknowledge that we are meeting here on the lands of the Wurundjeri people and pay my respects to their elders past and present.

Some of the key points from Berry Street in relation to this inquiry focus on the fact that many of the young people in youth justice are young people and children that we have worked with. As committee members probably know, about 45 per cent of the children and young people in youth detention have had some contact with the child protection and out-of-home care system. Probably the strongest predictor of whether or not someone will end up in youth justice is having spent time in child protection. We think we need to think about reform of the youth justice system and youth justice centres as part of thinking about reform of out-of-home care child protection and how we intervene earlier for children and young people in this space.

You are probably also aware that over 60 per cent of children and young people in the youth justice system are themselves victims of family violence, abuse, neglect, trauma and maltreatment, and that about a quarter of children and young people in the youth justice system have some mild intellectual disability or developmental delay. There has been a lot of discussion in the media and elsewhere about the cohort of children and young people in youth justice. We are not sure that that discussion has actually really shone a light on what the realities of the cohort are.

We think it needs to be said that from Berry Street's perspective we want to see evidence-informed policies, practices and approaches in this field as much as any other field in terms of what is likely and what is best able to minimise offending and reduce reoffending. What we know is that the tough-on-crime rhetoric that we hear — I would have to say probably from all sides of politics, particularly as we get closer to the state election — is in no way evidence-informed or useful, and in no way does it contribute to making the community safer.

We know some things that do. We know that diversion programs do work. We know that in Victoria, unlike in the adult system, we do not have a legislated approach or a legislated right to make sure that diversion options are available to children and young people at all points within the system. We have to question why that is the case. We know that over 80 per cent of the young people that access the Ropes program do not reoffend. We know that over 80 per cent of young people later in the process who access youth conferencing as a diversion option do not reoffend. We would really be asking this committee and the Victorian Parliament to think about why Parliament and why successive governments have not invested in youth diversion programs that do minimise offending, that do minimise reoffending and that do protect the Victorian community.

We wanted to say something about the impact of crime on victims — and interestingly we had a little chat to a colleague in the foyer who has got well-founded concerns about this. Berry Street is equally concerned about the impact of crime on victims. We think we probably all have personal stories to tell of people we know through our neighbourhoods, our communities and our families who have been victims of crime. I was beaten senseless by a bunch of 16-year-olds when I was 17 and I did not enjoy it very much.

I think what we have to do, though, is step beyond our own personal stories of being victims of crime or the personal stories of people we know in the community and understand that to really honour victims of crime the most useful thing we can do is work with perpetrators in ways that have evidence and are effective, rather than going down a path of demonising perpetrators to the extent that all we do is fuel fear of crime in the community

and create policy responses such as longer sentencing options, holding young people in remand for extended periods of time when they have not been before the court, mandatory sentencing and those sorts of options, when all the evidence shows that all they do is promote reoffending and create more victims than would otherwise have been created.

If we are really concerned about victims the thing to do is to invest in diversion programs and other strategies that prevent offending and reoffending. That is the best thing we can do for victims and indeed for everyone. I will hand over to Trish.

Dr McCLUSKEY — Thank you for letting us come in and speak today. I really appreciate it. I wanted to talk about only a couple of key points. I will just take a point that Julian talked about before, the tough-on-crime approach. I think it is entirely understandable, but it is like a great deal of myths. If it worked, it would be great, but what we know is that it simply does not.

One of the most concerning things in the youth justice area at the moment — and we have referred to this in our submission — is that it is our youngest cohort of children, the 10 to 14-year-olds, who are the most persistent offenders and reoffenders. I know from the work that Berry Street does with young people that some of that is because their chronological age and their developmental age is markedly different. A number of them are presenting with intellectual disabilities, cognitive concerns and other issues related to themselves having been victims very early in their life. So often they find themselves before the courts at a young age. Quite frankly, although this is solely an opinion and not something I know from research, what it seems like is that when young children, 10 years old to 14, appear before the Children's Court, it seems to be particularly disinhibiting. Once they have faced what to many of us would be very nerve-racking and the ultimate or next to ultimate sanction, there is little to fear.

For a lot of them, their moral reasoning, their maturity and their ability to actually differentiate and to understand the impact of their behaviour on their victims is extremely limited, which is why it is not particularly surprising that as young people get older, they are less likely to reoffend. However, that 10 to 14-year-old cohort has the highest rates of reoffending, even higher than adult cohorts, which leads to another point that we made in the submission, which is that Australia remains significantly out of the advice of the UN convention on the rights of the child, which is saying that the age of criminal responsibility of below 12 is not internationally acceptable.

As we have seen in a number of other jurisdictions, the age of criminal responsibility is being brought into line with new understandings that we have in neurobiology and in children's maturation. Particularly boys seem to mature somewhat later in their moral reasoning, but one way or another the committee has been very clear. Even in the United States, where there has been traditionally a very punitive approach to both youth justice and adult justice systems, there is a move away from incarcerating very young children.

I am really concerned that we look to — and you will see there is a table in our submission — how we are going to respond to the young people who are actually most at risk and most likely to come before the system again and again and then ultimately find themselves in the adult jails.

Also on the issue of doli incapax, where an independent person decides whether in fact someone with an intellectual disability or cognitive impairment or other issues is actually able to determine right from wrong, I think again we are out of sync internationally and we need to look at that.

I had an opportunity last year to go to New York and a number of other places in the US and look at some of the things that were working over there in their child protection system and their youth justice. As you would be aware, they have probably spent a decade trying to reduce their youth justice population, which bears no comparison to ours because it was unbelievable. But they have been very successful in reducing the number of young people who are detained.

One of the interventions that I saw everywhere — and I would encourage you to look if you cannot sleep at night or want something to read — is they introduced multisystemic therapy, particularly aimed at young people who have antisocial behaviour, challenging behaviour or criminogenic behaviour, because not only did their own research show that locking children up was often re-traumatising for children who had been abused and neglected, their Harvard study, which I have noted in there, showed that in the longer term it actually did not keep the community any safer and that locking kids up was criminogenic in itself.

So it is great to be critical, but you have to have something to fill that vacuum, and certainly multisystemic therapy is used throughout the States and internationally. Certainly at Berry Street we really believe that this is a viable alternative, not something that we think is a great idea that is empirically validated to keep young people out of incarceration.

The other thing I would like to draw the committee's attention to respectfully, if you have time, is that in 2007 Victoria took a fantastically innovative step and changed the Children, Youth and Families Act 2005 to include therapeutic treatment orders, and a therapeutic treatment board was established. This was a very high-level multidisciplinary board with people from police, from health, from the Office of Public Prosecutions et cetera, and on that board what they would hear were referrals that would be made for young people aged between 9 and 15 who had problematic sexual behaviour such that they had offended against another person, usually a younger person in their family or neighbourhood or what have you. So what would happen is, being referred to the board, there would be a decision made on whether they would be put on a treatment order for a year, sometimes two years, or referred to court. Most of the time — well over 90 per cent of the time — they were referred to a treatment order that they must attend every week or so for a year.

I remember when I first joined the board, I thought, 'Well, what about the victim? How do they feel?'. Hearing that this young person did something that usually was very confronting to read — and we would see victim impact statements and what have you — you would think, 'How does that feel for the victim?'. The truth of it was — and I chaired that board for five years and I can assure the committee — that, yes, there was someone who may have felt that other things should have happened to that young person. But had they received what was very likely a non-custodial sentence just because of issues of burden of proof or even if they had been incarcerated, that would have done nothing to stop future victims — nothing at all. You are incarcerated for a period of time and then you are out, and nothing about your behaviour, your frame of reference or your values has changed, whereas the therapeutic treatment board, the first of its kind in the world, has been able to prove over the last 10 years that the number of victims of that nature of offence can be reduced dramatically. I think if we can do it in one area of offences, we can do it in a lot more. Thank you.

The CHAIR — Thank you very much. Are there any questions?

Ms CROZIER — I will be very quick because I know time is very short. Thank you so much for your presentation. Could you just confirm for me how many children in out-of-home care and residential care Berry Street has responsibility for?

Dr McCLUSKEY — That is a very good question.

Mr POCOCK — In residential care, about 110.

Dr McCLUSKEY — Yes.

Mr POCOCK — It could be in the order of 100 in residential care.

Ms CROZIER — And there are about — —

Dr McCLUSKEY — There are about 400 in Victoria.

Ms CROZIER — So that is a cost of about $400 000 per child to look after.

Dr McCLUSKEY — About $250 000 per child.

Ms CROZIER — I know we know 45 per cent are in out-of-home care, but I want to understand how many in the residential care system are ending up in youth justice.

Dr McCLUSKEY — It is a good question, and I do not have the answer. What we do know is that there is a disproportionate representation of kids who are in residential care who do have contact with (a) the police and (b) eventually the youth justice system.

Ms CROZIER — Thank you; I appreciate that. I am just trying to comprehend why you do not know how many children in residential care do not end up in youth justice. Do you not keep those figures?

Dr McCLUSKEY — I think one of the problems with doing that is that often children are in and out of residential care. Some can be there for a while, but other children will spend really brief periods of time there — —

Ms CROZIER — In youth justice or in residential care?

Dr McCLUSKEY — No, sorry, in residential care.

Ms CROZIER — Sure. So — —

Mr POCOCK — Georgie, I think of the population of young people we are working with in residential care, at any one time about a quarter of them might also be the subject of a youth justice order.

Ms CROZIER — Yes. Thank you for that clarification. I will let others ask questions now because we are short of time, but thank you for that.

Mr MULINO — Just a couple of questions on diversion. You have pointed to a significant body of evidence which indicates that diversion is an important part of any effective youth justice system. I am just wondering: what are the key characteristics of diversion programs that you think are likely to be successful?

Mr POCOCK — I think diversion needs to be available at all points across the system and that diversion programs need to have a balance of supporting the young person's own development as well as supporting the young person to understand the impact and consequences for others of their behaviour and their offending, where they have offended.

Within our current approach to diversion in Victoria, we have what is on paper a logical approach, starting with police cautioning and moving through to youth justice group conferencing for young people who may have an established pattern of reoffending, so it is a graduated approach. There is good evidence from New Zealand. We would refer the committee to the work of Judge Tony Fitzgerald, and we can provide copies of materials that Judge Fitzgerald has provided to us from the Auckland district youth court.

I think a critical difference in their approach is that the group conferencing model is at the front end. In our system the youth justice group conferencing is sort of at the end of the diversion line. We would argue that it should be at the front of the diversion line and that children and young people who are offending need to be confronted with the consequences of their behaviour through youth justice group conferencing models as soon as possible, not as late as possible. That would be more likely to ensure that we further minimise reoffending, and we think, with the valid expressions there have been to this committee and within the community around 'Where are the victims in all of this?', it would actually mean that the victims have a place at the start of that process, not just at the end of it. So they would be some things that we would point to.

Mr MULINO — Just a quick follow-up: there are obviously a range of approaches that people have adopted and that you could adopt. There are a few different diversion programs in Victoria. There is one that Jesuit Social Services have as a pilot, which has been rolled out more broadly after some successes there, and there is Empower Youth and Young Pacifika. I am just wondering: broadly speaking, would you say that these are programs that are having a positive effect within the system?

Mr POCOCK — We would. There was a paper from the Department of Justice some time ago, *Practical Lessons, Fair Consequences*, which sought advice on what would constitute an appropriate set of diversion programs. There has not been, as far as we are aware, really detailed follow-up from government about how to respond to the evidence that was provided to that discussion paper. There is other work that the Department of Justice and Regulation have gathered, all of which has not seen the light of day.

One of our suggestions to that process is that a useful thing for the department to do would be to actually publish, as your question would suggest, some detailed evidence of what are the evidence-informed practices of effective diversion programs. Berry Street runs a program called the Gippsland wilderness program, which is a bush adventure therapy program that works with young people in care to try and support their healthy development, if I can put it that way. There are other programs that people are running which could be brought into the diversion net, so to speak, if government was to really finish the work that was started through the *Practical Lessons, Fair Consequences* discussion paper.

Dr McCLUSKEY — Can I just add to that? I think one of the issues about whether or not a program is a successful diversionary program is that what often happens is that if it is, or whatever, it is often not rolled out across the state. One of the things we know absolutely is that 25 per cent of young people who are on youth justice orders are from two or three postcodes, and we know from *Dropping off the Edge* and other demographic research that has been done where the postcodes are. I think one of the things that is going to aid diversion is to say, 'We know where those communities are', and that successful community diversionary programs need to be there, along with child abuse prevention programs, which I guess in the end is the ultimate diversion.

Ms SPRINGLE — Can I ask about the move of youth justice into the department of justice away from DHHS and how that will impact on child protection?

Mr POCOCK — I suppose the most we can say about that move is that it would seem to us that the move was unplanned, that it was a reactive response to the current issues in youth justice centres and that it has been difficult for agencies to really get a clear sense of what the impacts of that might be. Certainly we are concerned that moving youth justice from the Department of Health and Human Services into the Department of Justice and Regulation has the potential for a more punitive practice approach to permeate through the youth justice service. That said, we are certainly encouraged that the Secretary of the Department of Justice and Regulation has made very clear that the department wants to work with agencies and others to develop the practice within youth justice centres and within the youth justice service generally.

So I think there is probably some opportunity there to build good practice within the system, and the department is clearly open to wanting to do that. There is the issue about the Secretary of the Department of Health and Human Services being the guardian for children in child protection. Previously, while it sat within that portfolio when someone was on a youth justice order, I think it was probably a more seamless system in terms of one secretary of one department holding all the responsibility for the care, custody, development and guardianship of children and young people. So it will be important to watch how having that responsibility split between two departments rolls out.

Ms SPRINGLE — You said it seemed to be a bit of a kneejerk reaction in your view. Was there any consultation that you are aware of, or that you partook in, from government around that decision, as a peak child protection agency?

Dr McCLUSKEY — No.

Mr POCOCK — No, there was no consultation with us, and we are not aware that the government undertook any public consultation or sought any particular views about that decision before it made that decision.

The CHAIR — If I could ask briefly for you to elaborate on something you gave evidence on a short time ago, talking about this issue of young people: it is better for everyone involved in the unfortunate incidents that lead to children being in the criminal justice system if there is something that is fairly immediate that indicates the severity of what has happened and what the consequences are. It is better for young people, who often are waiting for ages to see any sort of consequences and sometimes do not understand the process, and it is better for others as well, including victims. Ideally, how would that work? Do you have a view on a practical system change that could provide that?

Dr McCLUSKEY — Can I just speak from having worked in South Australia for quite a long time? They have the children's aid panels where immediately, unless it is a matter is of particular severity, what will happen is at that stage — when I worked there it was a social worker from the department, a member of the police force and usually a volunteer from the community — they would convene what was known as a children's aid panel. The young person would be required to come to a meeting, usually pretty quickly afterwards, and a discussion would be had about their behaviour. They would be asked why they behaved like that and what have you.

Basically the only possible outcome was a warning, but it was interesting the deterrent effect that that had and the number of young people who then did not come back. If the young person happened to be an Aboriginal young person, there was an Aboriginal elder on the panel, and again it seemed to have significant impact. But as Julian alluded to earlier, the difference between that and current conferencing is that currently here in Victoria it is done at a later stage, whereas the South Australian panels were done pretty well immediately. There was a

time frame, and I cannot remember what it was but it was definitely within 14 days of the young person being apprehended by police.

The CHAIR — So what sort of stage of the legal process would that occur at? I guess what I am asking is: would someone need to have been charged, for example, or were they just being cautioned? When does that intervention happen?

Dr McCLUSKEY — They were being cautioned. Again, agreement would be needed with police for discretion about cautioning rather than charging, so I guess that would be at the discretion of the police.

The CHAIR — Does that process still continue in South Australia?

Dr McCLUSKEY — As far as I know.

Ms CROZIER — I have one very quick last question. The diversion programs that you have spoken about: the figures for June 2014, there was around about 80 per cent diversion program engagement. It has dropped, from June 2016, to less than 60 per cent. Have you got an assessment of why that has occurred?

Dr McCLUSKEY — No, I did not know that. That is very interesting.

Mr POCOCK — No, I do not. I could suggest it might be because of the increasing number of young people on remand. The population that might potentially be eligible for diversion has increased significantly, so the proportion of that population that is accessing diversion will have dropped because the investment in diversion has not matched the investment in incarceration, if I can put it that way. That would be the hypothesis I would look at.

Mrs PEULICH — Just one quick question: in terms of the kids who end up in care, is there a cultural characteristic, apart from obviously some of the contributing drivers or characteristics of life, that some of those children are drawn from? Is there a particular culture that dominates those statistics or are they drawn from the multiculturally diverse communities?

Mr POCOCK — The statistics of the out-of-home-care population?

Mrs PEULICH — Yes.

Mr POCOCK — No, I do not think there is a cultural overlay that one can apply.

Dr McCLUSKEY — There certainly is not in youth justice. With children who are in out-of-home care, Aboriginal children are represented at 10 times the rate, and while it is a very small population, there is obviously disproportionate representation in out-of-home care.

Mrs PEULICH — So if we remove the Indigenous population, how does the remainder — —

Dr McCLUSKEY — With some of the characteristics of the remainder, I think it is probably fair to say that again there is a disproportionate representation of children who are in-out-of-home care who have intellectual and cognitive disabilities and then other developmental delays often because of a range of things — anything from injuries to not attending school to the gamut of trauma-related issues — which is why I was noting before that with a disproportionate number of young people who are in out-of-home care clearly their chronological age and developmental age are not compatible.

Mrs PEULICH — So 30 per cent of multicultural backgrounds in those statistics once you take the Indigenous population out?

Dr McCLUSKEY — No, I do not think it is anything near that. I am a little bit reluctant to guess, but I would think at the moment it would have to be less than 10 per cent.

Mr POCOCK — Multicultural.

Mrs PEULICH — Is there any reason why you think that statistic would be?

Mr POCOCK — I think the other thing I would say about the nature of the out-of-home care population and who ends up in the child protection system is that it is about what gets reported. So, for instance, for Aboriginal and Torres Strait Islander children across the country, they are far more likely to be in the child protection system and they are far more likely to be in the child protection system because of issues of poverty and neglect and very severe material poverty, whereas at times within public discussion of these issues I think people assume that sexual abuse is the dominant reason why Aboriginal children end up in care. But if you look at the data and you look at non-Aboriginal children alongside Aboriginal children, with the non-Aboriginal population of kids in care sexual abuse is much more likely to be the presenting issue for non-Aboriginal children than it is for Aboriginal children. That is about what community members report and what they see, so it is complex.

Mrs PEULICH — You have sort of moved away from my question, and that is: to what extent are children in care drawn from that multicultural population? Are they reflective of the broader numbers?

Dr McCLUSKEY — No, they are not.

Mrs PEULICH — Are you able to speculate or hypothesise as to the reasons?

Mr POCOCK — I think it goes back to what I was alluding to. It is about who reports. The child protection system responds to what is reported to it by members of the community, by certain professions.

The CHAIR — I think we are very close to time, so I am going to draw things to a close there. I thank both of you very much for coming today and giving evidence. It is much appreciated by everybody. You will be provided with a copy of the transcript from today's proceedings within a few weeks so that you can comment on that. Thank you.

Dr McCLUSKEY — Thank you.

Mr POCOCK — Thank you.

Witnesses withdrew.