

TRANSCRIPT

STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES

Inquiry into youth justice centres in Victoria

Melbourne — 19 April 2017

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Witnesses

Mr Wayne Muir, Chief Executive Officer,

Mr Patrick Warner, Principal Legal Officer, Civil Section, and

Ms Nerita Waight, Lawyer and Policy Adviser, Victorian Aboriginal Legal Service.

The CHAIR — I would like to welcome everyone here today to this public hearing, including members of the public in the gallery. The committee is of course hearing evidence today in relation to the inquiry into youth justice centres in Victoria, and the evidence is being recorded. I welcome the witnesses to the hearing today and to this meeting of the legal and social issues committee. All evidence taken at this hearing 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. What I am going to do now is invite you to address the committee if you wish. We are suggesting to most witnesses that they take 5 to 10 minutes, and then we will open up for discussion and questions. I am in your hands.

Mr MUIR — Firstly, I would like to thank you for your invitation to appear before the committee.

The CHAIR — You are most welcome.

Mr MUIR — I would like to acknowledge the traditional owners of the land on which we gather and pay my respects to elders, past and present, and obviously to all here today. With me I have Patrick Warner, who is a principal legal officer in our civil team, and Nerita Waight, who is also a family lawyer and policy adviser.

As you are probably aware — I will not go in depth — the Victorian Aboriginal Legal Service has been in existence from around 1972 onwards. We were formed by a group of concerned Aboriginal and non-Aboriginal people as a result of an increase in contact with the justice system of Aboriginal and Torres Strait Islander people. We provide a range of legal and related services across Victoria. We are the largest provider of legal assistance services to Aboriginal and Torres Strait Islander people in this state.

We operate across family, civil and criminal law, and about 35 per cent of our clientele are female. We have a high family law, child protection and family violence practice as well. We operate a 24-hour service. It is an on-call service, so if someone is taken into custody, we are meant to be notified within an hour of that occurring. We have a range of notification systems in place so that if someone is arrested as a result of a sheriff's matter, we are also notified by the sheriff's office or the police. We are notified under current arrangements if someone is taken into custody for youth justice, and the child safety notifications we are also notified of. There is a broad breadth of notification mechanisms in place for the Victorian Aboriginal Legal Service.

Rather than going into any more of that as a bit of an opening statement, I think we will just answer questions. The data tells us that on an average night 34 in every 10 000 Indigenous young people are in prison compared to just 1.3. These are national figures I am using.

The CHAIR — Sorry, what was the figure?

Mr MUIR — There are 34 in every 10 000 compared to just 1.3 for non-Aboriginal. Aboriginal and Torres Strait Islander youths are 26 times more likely to be detained than their non-Aboriginal counterparts. The over-representation involves a number of factors, including child removal and child protection; inequalities in education, health, wellbeing, employment and life expectancy; and poverty and intergenerational trauma and grief.

The high rates of child protection services involvement and high rates of out-of-home care, especially residential care, have a direct correlation to the youth justice system, not just here in Victoria but pretty much in every jurisdiction across this country. You can have a look at the interim report from the royal commission, which points to that, and you can see previous reports from South Australia and other jurisdictions that also point to a similar intersect.

If I can give you very quickly a bit of a case study that might help shape some of this, we are calling this person Daniel. Obviously we are protecting his identity. Daniel survived severely traumatic instances as a child. He was removed from his young mother at the time of his birth. His mother was incarcerated within a youth justice facility at the time of his birth. He was unable to make a connection with her but also with extended family and others within the broader kinship network, hence almost since birth impacting on his sense of connection and cultural place, if you like.

Daniel spent some of his life in the care of his grandparents, but obviously this was difficult to maintain and he ended up in and out of care — and I do use the term 'care' very loosely. If the state was a parent, the children would be removed. After spending periods of time in residential care, Daniel started offending and would

regularly abscond from places and return to his grandparents or his community. Daniel has self-described having little connection with his culture and blames himself for this disconnection with his family and siblings, which is clearly not a making of his own. Daniel does not have a pathway out of youth justice, as he requires intensive support — in housing, mental health, intergenerational trauma and grief, and cultural connectedness — to reduce his offending. This is currently not available.

If we think about some of the overrepresentation in the youth justice system, if we think about Daniel's case for a moment, and then go to what we think are at least some of — not all of, but some of — the potential solutions in this space, given that the federal government has committed to signing or ratifying OPCAT, there will be a requirement for an independent oversight mechanism in every jurisdiction. Having said that, we would suggest that there be a part of that mechanism as a youth justice oversight committee or mechanism. We believe that that committee should be looking at related policies and practices and should provide reporting back to Parliament through the necessary mechanism as to what they are finding — and even to the public.

Just because the system says something is available does not mean it is actually being delivered. Just because the system says there is a mental health program, you are assuming that there are staff in a facility available to facilitate access to that mental health provision. As we know by various reports by ombudsmen, by Cameron, by the Muir report — which we have only had snippets of — understaffing, casualisation of staff, continued overuse of lockdowns, isolation and whatever other terminology people might want to apply is a problem.

We think there needs to be an elders and residents program, as part of that cultural connectedness that we talked about for someone like Daniel, and that that involves elders who are regularly a part of the youth justice framework in there and also a part of other youth justice programs. An extension to this would be what we are calling a community visits program. Sometimes it is not pertinent or there is not the availability of transport or because of health, wellbeing or extended family care mum or dad cannot get there — or, sadly, sometimes mum or dad might actually be incarcerated. So how does little Daniel, for example, keep up community connectedness? How does little Daniel keep some sort of sense of connection to kinship and broader family? The concept of being able to have what we are calling community visitation might be someone from the extended family or a significant other community member with a connection to the family and to Daniel, to help rekindle, particularly when Daniel is coming out of a youth justice facility. What is the connectedness and how do we make that transition smoother?

Which is kind of a nice segue into the next point. We believe there needs to be a transition program, a program where an appropriate service is charged with the responsibility of connecting with the young person, starting to build an exit plan, if you like. What sorts of programs would they be accessing, what sort of support should they be getting whilst they are in there, what do they need to access and how are we going to facilitate that on the way out? Accommodation, if it is not already available via family or extended family; access to education, training or employment; access to health, mental health and wellbeing services — how we are planning for those things and how we are helping people to transition into those points. Corrections Victoria might say they have something called a post-release program. We question the quality of such a program. So simply just implanting that over the top of youth justice would be a failure, in our view. That is why I make that point.

This support should be up to 12 to 24 months upon exiting. It may seem like a long period, but it is our view that this investment is better placed in terms of reducing recidivism than it is paying for continued incarceration but also the broader social impact on the community in terms of community safety and people feeling under fear or threat. If we have the investments right in terms of that stuff, we should see a reduction in recidivism, which is surely what we all at the end of the day want.

In some of the current rhetoric that was around in, if I can coin the phrase, the recent crisis in our youth justice facilities, one of the rationales, apart from the lack of staffing and programmatic responses, was also the supposed overcrowding or nowhere for people to go. Well, frankly — I have said this previously to departmental people, and I will say it here — that was incorrect; those statements simply were incorrect, particularly in regard to our clients. We are advocating that there needs to be some sort of what we might call a youth version — for those who might be familiar with it — of Wulgunggo Ngalu in Gippsland, which is a Corrections Victoria Aboriginal-managed and run facility for adults. It is based on a cultural foundation and cultural integrity where people can go at the moment at least and do things like community-based orders or in fact at times be bailed. These mechanisms exist in the adult space; they do not exist necessarily in the youth space. Having said that, and I will go back to my previous comment, when the comments were made that there

was nowhere for these young people to go, in the Aboriginal space there was something called Barooka Youth Healing just outside of Echuca. Surprisingly at the time of these events their 20 beds were empty. I am not too sure who did what work to identify whether or not there were appropriate facilities or otherwise, but we would argue that that work was obviously lax.

The CHAIR — I might just pick up the last point that you were making there in relation to Barooka Youth Healing, if I heard the name correctly. Can you tell me a bit more about it?

Mr MUIR — The youth healing farm?

The CHAIR — Yes. In particular who it is set up for, who typically uses it and how long do they stay there?

Mr MUIR — It is combined funding and meets the required standards from DHHS. DHHS are a major contributor, which makes this statement even more ironic that there was no place for people to go when another arm of DHHS actually funded a facility that was called an Aboriginal youth healing facility. There is also additional funding provided through the federal government as well. It is set up primarily to provide an on-country cultural response to assist with mental health and drug, alcohol and substance abuse issues primarily, but it would not be a great leap of faith — —

In fact I spoke to the deputy CEO of Njernda Aboriginal Corporation, who are responsible for managing that facility, with regard to bail options, and they said they would be more than open to such an arrangement.

Ms CROZIER — Thank you all very much for being before us this afternoon; we do appreciate it, and thank you for that case study. I am interested in the solutions that you speak about, Mr Muir, because I think we have got a very complex situation, as you described, and I want to understand a little bit more about the elders-in-residence program that you speak about. If we look at that program, do you think that could be applied in other areas of child protection as well?

Ms WAIGHT — In terms of the elders-in-residence program, whilst we have primarily put our position forth in youth justice, we certainly believe this is something that needs to happen in child protection. As I am sure you are aware, a large number of Aboriginal children are in out-of-home care. They are separated — —

Ms CROZIER — Do you have the Victorian stats on all of this? I know that Mr Muir was relating to the Australian stats of — —

Mr MUIR — Child protection.

Ms CROZIER — Yes. If you could provide us with the latest stats you have for child protection and how that translates, that would be very helpful.

Mr MUIR — Child protection substantiations in the state of Victoria as of the last data that I have available to me, which is 2014–15 —

Ms CROZIER — Yes. I think that is public, isn't it?

Mr MUIR — is at 67.7 per cent. It is the highest substantiation rate in the country. Let us not talk about the NT or Queensland or New South Wales. The highest child protection substantiation rates exist here in the state of Victoria.

Ms WAIGHT — And the primary grounds of those applications are family violence. It is not physical abuse of a child or sexual abuse of a child. The majority of applications relating to Aboriginal children are about family violence within the home.

Mr MUIR — That was the work that Mr Jackomos did as the commissioner for Aboriginal children and young people. He identified, I think it was, something like about 88 per cent.

Ms WAIGHT — Yes, 80 to 90 per cent. They could not get an accurate read on it. Considering protection applications have dual — —

Ms CROZIER — And the work of Taskforce 1000 has assisted in those programs to reunify families. Have you got any comment on that and how that is perhaps working or not working, as we are talking about child protection-related matters?

Mr MUIR — Mr Jackomos makes no secret of the fact that he thinks the child protection system is failing our children in this state. His reviews found glaring gaps and holes in terms of service provision delivery. It goes back to a statement I made in the opening statement. It is one thing to say something exists; it is another thing to say it is actually being implemented. Part of Mr Jackomos's review found a number of those scenarios — for example, cultural care plans. Some did not even bother filling them out even though they were supposed to. For others a cultural care plan was, 'Well, I bought the kid a boomerang'. Like, really? So it is not just that sometimes they may exist in theory or in policy; it is then about the quality of the implementation and the regularity of that. Who is reviewing and monitoring those things to ensure we get the quality outcomes and change the systems? And this was a part of Mr Jackomos's work.

Ms WAIGHT — He also highlighted the issues with the Aboriginal child placement principle. I am not sure how familiar you are with that, but in the vast majority of cases the Department of Health and Human Services actually fails to adhere to that principle primarily because of issues of understanding it and also not understanding the mechanisms of inquiring into what Aboriginal family members are available and then also the issue of determining whether or not an Aboriginal carer is appropriate in the eyes of DHHS.

Ms CROZIER — What does that mean? Because you have just indicated 'appropriate'.

Ms WAIGHT — What we find with a lot of our families, and I am talking from my practice experience, is that our extended family members actually cannot take care of a child that might be their sister's child, because of the fact that they might have a criminal conviction that dates back to some 10 or 15 years ago. That might be minor offending such as theft or maybe an assault charge when it comes to some of the other minor offences, but because of that offending DHHS say, 'Well, you're not suitable, so therefore you shouldn't even put an application in to have the child, because you'll be knocked back'.

There is this whole rhetoric of, 'You're going to be rejected, why bother anyway?', which then disheartens families, so they decide, 'Well, how are we going to put forth our position? There is nobody to stand up for us'. So they walk away, and then they have little to no access to children when they are in out-of-home care, because when you talk about children being effectively removed from a parent, the visits between extended family members are not really considered. The primary concern is, 'Well, how is contact going to go between Mum and Dad and the child?', and not, 'What about those care relationships like Aunt or Uncle, or Nan and Pop or their cousin?'. Those relationships are not considered or accounted for.

Mr MUIR — Sometimes the caseworkers in fact just ignore the placement principles.

Ms CROZIER — So on that, a lot of the extended family could be interstate. They could be living in other areas of Victoria. Bringing them into that child's life as a point of contact — if they have got, for instance, both parents in jail — how do you see that working, functioning properly?

Mr MUIR — In the family law sense — for example, in New South Wales, there is grandparents against care. What they are on about is how do they in fact circumvent the child protection framework in that state by using grandparents being granted guardianship, for example. It is about who else in the extended family may be able to be granted guardianship or care of the child so there is a continued link with family, kin and culture, and it may not just be mum and dad.

Ms CROZIER — Sure. Is there any other jurisdiction that you believe is doing this better?

Mr MUIR — There are challenges in every jurisdiction.

Ms CROZIER — I understand that, but if you were — —

Mr MUIR — The grandparents against care model I think is a reasonable model to look at.

Ms CROZIER — The New South Wales model?

Mr MUIR — Yes.

Ms CROZIER — Okay. I have got more questions, but I will leave it to other committee members.

Ms SPRINGLE — Thank you for your presentation today. I am interested to hear if VALS has a view about the transfer of administration for youth justice from DHHS into Corrections, what your concerns might be and if you at all at any stage during or prior to that transfer were consulted.

Mr MUIR — We were not at the time supportive of such a decision. Philosophically we are still opposed to such a decision. Having said that, the decision has been made, and I cannot see anyone going back on that, so we have engaged in a mechanism to try to work with the authorities to inform things such as physical construct of new facilities and programmatical responses — some of the sorts of program responses we are talking about here, not just in terms of those who might be incarcerated but the other things we can do to try to reduce incarceration. So we were not supportive, and philosophically we are still opposed. My problem with just shifting it from there to there is no-one is actually dealing with the fundamental failure that existed over here — nobody. And it was a fundamental failure. Report upon report upon report has said so. So rather than own it, deal with it, fix it, we will shift it, and hopefully we will get it right. That is my view of what is going on.

Ms SPRINGLE — What do you think the chances of us getting it right in the department of justice are?

Mr MUIR — I have to be an optimist, because otherwise I dread what might come for those young people. I am a realist. I have been around too long in the justice arena. We have some young people that might need to have sanctions, but it is what you do once you have them to try to reduce the recidivism, what you do to try to reduce the likelihood of them coming back into contact with the justice system. Most of these kids have come from some form of traumatic episode. If you do not believe me, look at the royal commission into institutional responses to sexual abuse. Look at this Parliament's previous inquiry into the same. These kids come from traumatic experiences.

I dealt with a family personally. The father and mother were products of institutional care. It is a very loose term — seriously. The father had four siblings in the same institution. They were not allowed to engage with each other in the same institution. They had no family contact. When they come out, they not only do not know how to bond and form nurturing, caring and loving relationships but when they attempt to go into a relationship they struggle with that. That family has now broken down. The mother stabbed the father and nearly killed him. So these kids grow up in this non-nurturing, non-loving, non-caring violent environment and we wonder why the kids may become dysfunctional or antisocial and engage in antisocial conduct or behaviour. Then our answer to that is, 'We'll lock them up, and we will give them the harshest possible treatment we can'. Really?

I do not know about you, but I have got kids. If my kids act out, I sanction them, but I do not ring the police on them. Child protection tends to immediately reach for the phone. I can tell you this: I had Swan Hill police station a couple of years ago ringing me, begging me, 'Help us please, because DHHS and their agencies will not work with us and listen to us with regard to this young person who has a mental impairment. Anyone who knows the history between Victoria Police and the Aboriginal legal service would know that when the police ring us begging us for help there has got to be a problem. That is the reality. There are systemic issues that need to be confronted.

It is a longwinded way, but I worry that if we do not address the issues confronting us in the child protection space, if we merely move it from one agency to another to manage and to oversight, if we do not get the staffing matters correct, if we do not get the physical facilities correct, if we do not get the programmatical responses correct both in terms of prevention, whilst they may unfortunately have to be incarcerated, being incarcerated, and then what happens in the transition?

The other thing I will throw into this mix — not necessarily, I do not think, but I will say it anyway; it may not be in the purview of this part — is I think the idea that we still have the age of criminal responsibility in this state at 10 years of age is abhorrent. It is something that needs to be addressed.

Mrs PEULICH — What should it be?

Mr MUIR — If we have a look at international experiences, international experiences say it could be anywhere between 14 and 16 years of age. Politically I think we would struggle with that, but 12 would be reasonable.

Ms SPRINGLE — I do have one further question. I would appreciate it if you could unpack perhaps any specific cultural impacts that a more punitive model has on Aboriginal children, particularly things like lockdowns and solitary confinement and some of the issues that have been prevalent in coverage in recent court cases in relation to youth justice. I am looking for more of a cultural perspective in terms of Indigenous children specifically.

Mr MUIR — The challenge here is that in our 24-hour news cycle, Twittersphere, Facebook world everyone gets a bit nervous about what is next coming, and our world seems to be evolving that way and our responses to things. In our space you have got to look at history. You have got to look at the fact of intergenerational trauma, and we have just touched on it — institutionalisation being embedded across generations. There is the fear or the disconnect. I know old people still who do not see hospital as a place to go to heal; that is where you go to die.

The institutionalisation and views which exist in our communities are such that the trauma and grief has been handed over from generation to generation. So when you are dealing with a young Aboriginal person they are bringing a range of cognitive challenges to the fore, I would say as a multiplier of two to three times what you might be dealing with with another Aboriginal person, because of those intergenerational impacts. In the case of Daniel it is the continued being lost — what I call being lost — between two worlds, not knowing where you belong, not knowing how you connect, not knowing how you intersect with something.

In the recent independent report we commissioned from a psychologist, every one of our clients has significant mental health issues, which we say are not being adequately addressed by the department. If you put somebody in that situation who already has significant mental health or cognitive challenges, all the research says you just exacerbate it. You do not fix it; you do not heal it. So the increased use of lockdowns — or, if we use the creative language of our friends in the Northern Territory, behavioural management units or isolation; people get creative about what tags they give things so they can skirt around — and increased isolation from your culture, your people and human contact has a negative cognitive impact on an individual. If you bring a two to three-time multiplier effect to that from an Aboriginal perspective, you can start to get a bit of an understanding of why those things are extraordinarily punitive.

Ms WAIGHT — The frustration with that is that the use of isolation and separation when it comes to Aboriginal youth was warned against in the royal commission into Aboriginal deaths in custody. This is not an unknown; this is something that we have known about for a very long time. We know that if you place an Aboriginal youth who has mental health issues, who has got any difficulties in isolation or separation, they are likely going to have episodes of self-harm or suicide attempts. That is a disaster waiting to happen. At some stage, if this behaviour continues, we are going to have a death in custody. It is just the way it is going to go.

Mr MUIR — It is not a matter of if or when; we have already had two deaths in custody in the state of Victoria in the last 12 months. If you over-incarcerate people who have cognitive and mental health issues and challenges, it is not a matter of if something like this happens; it is merely a matter of when.

Ms WAIGHT — And the frequency of suicide attempts among Aboriginal children is a lot higher. Our independent psychiatrist who examined a number of our clients found that their suicide attempts were regular and consistent, and the department officials were well aware that should they place a child in isolation or separation, it was likely that that behaviour would occur.

Ms CROZIER — Regular and consistent, you said?

Ms WAIGHT — Yes.

Ms CROZIER — How regular, how consistent and what time frames are you talking about?

Ms WAIGHT — In one instance there was a child who reported self-harm and suicide attempts 20 times within a three-month period. To me that is quite regular and consistent.

Ms CROZIER — Is that recent?

Ms WAIGHT — Yes, within the last 12 months, and that child has not had adequate access to mental health services. There is no intensive psychiatric care. Any regular interaction is by a psych nurse versus the psychiatrist that is on staff.

Ms CROZIER — So when that individual has attempted self-harm not once or twice but 20 times — in how long a time? A couple of months?

Mr MUIR — Three months.

Ms CROZIER — In three months no appropriate counselling was provided. Is that what you are saying?

Ms WAIGHT — The problem with access to counselling is that you need to have staff in order to take the child to the counselling session. If you do not have staff to take the child, then they are not able to access it. So their primary ability to have some sort of care is through the psych nurse who can actually go and see them versus the psychiatrist who is stretched across three communities.

Mr MUIR — Sometimes what we see happen here in this space, which we also say is inappropriate, is that the increased use of pharmacological responses is applied, which in my mind equates to chemical isolation — my term, not anybody else's. If we have a situation where people's attentions are being drawn to self-harming behaviours or thoughts, if we have a situation where a well-meaning, overstretched and overworked psychology nurse somehow thinks that she can provide a better assessment than a psychiatrist or a psychologist, this is problematic in and of itself. That is the first point, and we have commentary to that.

The second point is to do with the staffing issue. If you have a lack of staff, then we cannot move people between places to get treatment, so therefore the treatment does not happen and the person spirals further and further out of control.

Ms SPRINGLE — Can I just confirm: when you were talking about the case of self-harm 20 times in three months, was that someone in detention or in out-of-home care?

Ms WAIGHT — No, we are talking purely about Aboriginal children in youth detention facilities.

Mr MUIR — This is a youth detention one.

Ms CROZIER — Could I just come to that point? Because there have been reports that young offenders have been accumulating their medication and because of staff shortages staff have been unable to watch the medication being taken and this also has a potential to cause self-harm issues. Is it your understanding that that has occurred in youth detention?

Mr MUIR — I do not have those reports.

Mr WARNER — These are physical attempts, not attempted overdoses using medication — so a young man putting his hand in a power socket, choking himself in another instance.

Ms WAIGHT — Usually it is ripping up sheets, ripping up towels, tying them together — you get the idea.

Mr WARNER — And in several of the cases it has been a real escalation in the intent, which has been noted by the psychiatrist that assessed them. So it is not a once-off; it is escalating over time, which is really concerning.

Ms WAIGHT — They basically plan their attempts. So they know where and when staff will not be checking in on them, and they can then work out when would be best to attempt a successful suicide attempt.

Mr MUIR — They look for an optimal opportunity to do it.

Ms CROZIER — There are a number of psychologists and counsellors in the youth justice system at the moment. They are obviously inadequate numbers. You are all nodding 'yes'.

Mr MUIR — If we had faith in the system, we would not have commissioned our own reports.

Mr WARNER — And just another point, to pick up on what Wayne was saying earlier, is that the chief psychiatrist of youth justice, [inaudible], is only one and she is spread incredibly thin, and then under her there are psych nurses and psychologists on some of the units in these facilities. But I suppose the glue that holds all that together is the non mental health related staff, your average departmental staff, whose job is to accommodate moving kids to see these people.

DHHS's response to us about the accessibility of those services never mentions how possible or impossible it is for kids to actually see those people. Yes, they are there, yes they have a presence there. We say the presence is limited and underresourced, but when we speak to our clients and say, 'DHHS are telling us that if you want to you can see a psychologist. Why aren't you accessing that service?', they tell us, 'I've been told that I have to wait 2 to 3 weeks' or 'Last time I was scheduled to see the psychiatrist there was no-one want to take me to that appointment'.

It goes back to Wayne's earlier point that the policy might be there, the best of intentions might be present and the staff might be there to provide a service, but the glue that holds it all together is this increasingly casualised workforce. People are calling in sick, and they are not there. There are very strict regimes about how many staff have to be on in any unit at a given time, so if they have to pull one out of that pool to get a kid to their psychiatrist appointment and they cannot do it, it can just paralyse all the other good intentions.

The CHAIR — Can I just — —

Mr MUIR — Sorry, just on that situation in terms of the staffing matter, if the kid is three weeks out to an appointment but then there is no staff and the kid then gets locked down for 24 hours or whatever, the kid is already in a traumatic position.

Ms CROZIER — How often is that happening?

Mr MUIR — I do not have the specifics in terms of the data. I am sure if we went and asked the question, we would get the answer. My point simply is that if there is a lack of staff and a lack of ability to move and transition people from left to right, if that happens to coincide with an appointment, then obviously that appointment does not happen. That is one of the comments that we got back from people in this case, or in our client's case, that: 'We haven't seen a psych for three weeks because there is not enough staff'. Sorry, Chair, I cut you off. My apologies.

The CHAIR — I just have a question. When you talk about the mechanics of going to see a psychiatrist or a similar medical practitioner, do you mean within the facility or do you mean that someone might need to be taken externally to somewhere?

Mr WARNER — Within the facility.

Mr MUIR — Yes.

The CHAIR — Right. So the situation that is happening is that someone may request to see a psychiatrist or be in obvious need of seeing one, they are assessed as being in need but it cannot happen and they have to stay in their existing program or in their room.

Mr MUIR — Yes.

The CHAIR — Because no-one can physically take them to a room in another part of the centre?

Ms WAIGHT — To the other unit, yes.

Mr WARNER — That is right.

The CHAIR — And that is because of — —

Mr WARNER — Logistical issues.

The CHAIR — a lack of staff to do it?

Mr WARNER — Yes, lack of resourcing.

The CHAIR — That was my understanding of it. I just wanted to clarify. The very unfortunate young man you were talking about before who had attempted self-harm 20 times over a three-month period, where was he?

Ms WAIGHT — In what facility?

The CHAIR — Yes.

Mr WARNER — Malmsbury.

Ms WAIGHT — Yes, Malmsbury Youth Justice Centre. All four children, the number of children that we had examined by independent psych, were housed within the Malmsbury Youth Justice Centre. The independent psych only looked at the practices that were used in that centre.

Mr WARNER — These were kids that were initially transferred to the Grevillea unit prior to the state government providing the settlement to remove all Koori kids from that unit, so there had been an initial contact with VALS as part of that case. Then we have ongoing concerns about conditions at Malmsbury, hence the psych assessment earlier this year, which has come back with some very concerning observations from the independent psychiatrist. We are now in a dialogue with the department around what they plan to do to improve the outcomes for these kids.

It just goes back to this dynamic that we have been talking about: we get a department response that says these programs are accessible, but we speak to the kids involved and they tell us that the logistical issues are preventing them from accessing these programs. It is very difficult. It is a very opaque system. The kids are an hour and a half from our office in Preston. It is hard for us to get quick, rapid-fire responses to whether you could do something on a particular day, but what we are getting from them when we do go out and visit them and contact them is that: 'No, I could not see that person I asked to see. I was told that there were not enough staff to take me out of my room to do it'.

We will continue to have the dialogue with the department, but I guess it is just worth conceiving of it that the glue that holds it all together is where there are major issues as well, not just in the number of psych nurses, psychiatrists and other staff there to provide the services.

Mrs PEULICH — I have two questions, if I may, quickly. You said earlier in regard to children in state care that if the state were a parent, the children would be removed.

Mr MUIR — Yes.

Mrs PEULICH — What three changes would you like to see most pertinent in order to improve the quality of care of children?

Mr MUIR — I have been on a bit of a crusade which not many people will agree with, but that is okay. Sometimes these things are about making statements that are not always popular. What I have said to the Australia and New Zealand School of Government leadership group and others that I have been presenting before over the last 12 months is that I would love to see politicians and bureaucrats with the backbone to implement a policy that says children cannot be removed. Before people hang me and say, 'What about the child abuse that we referred to?', this would be a phased-in approach over time, but if you had an approach that said, 'You cannot remove kids', then what I ask people to envision is what is the service system response, what is the public policy response in terms of early intervention and prevention investment. Because all know prevention is better than cure. We all know and the research tells us that prevention is actually cheaper than the alternative.

Mrs PEULICH — Unfortunately a lot of people are not aware and the triggers are not there to signal when that intervention is required. You still have not answered my question. I do not particularly agree with your position.

Mr MUIR — Sorry. Okay.

Mrs PEULICH — What three changes would substantially improve the lot of children in state care?

Mr MUIR — I think for me it is a bit like the youth justice stuff: better trained staff, more staff and improved facilities, and I would add a fourth — appropriate cultural connections.

Mrs PEULICH — Which leads me to the next one: you mentioned earlier the importance of elders being involved in the youth justice system, and I completely agree with you. Could you just elaborate a little on that and also explain how that can be transferred to other cultural groups? I mean, we heard this morning evidence

being provided that there is ample consultation with youth in a particular cultural group, but unless you actually understand the culture and the interface between parents and family, then you are really working with only half the team. So could you just elaborate on how that works and how it would be applied more broadly?

Mr MUIR — I think in essence what we were talking about and what Nerita covered earlier is something akin to, for want of a better term, an elders-in-residence-type program, where you will get, say, two or three Aboriginal elders, male or female, that are at a particular facility or might rotate around the facilities. I am not sure what the brave new world will look like in five or six years time. They are there to spend significant time with individuals getting to understand some of their challenges, their disconnect, and helping to give them some cultural guidance and mentoring and some knowledge — but also, and I think you touched on it, a very lovely point, acting in my mind as the interpreter between two different systems, being able to provide a linkage to those young people but also back to the system, if you like, and to family or loved ones.

It would take an easing and take some pressure out of the system but also increase that cultural understanding. And so the kids start to understand that in fact a good part of our culture is respect and not offending behaviours. We would deal with whatever the underlying issues might be for them, but offending behaviour is actually not a part of our culture. So it is part of that restorative justice approach almost, if you like.

The CHAIR — Earlier there were some references to deaths in custody, and there was a reference made to two deaths in custody.

Mr MUIR — Yes.

The CHAIR — Could you elaborate on which deaths you were referring to?

Mr MUIR — Two deaths in custody at adult corrections, both out of private facilities — privately run prisons — within the last 12 months, which is concerning given it is over 20-odd years since the Royal Commission into Aboriginal Deaths in Custody. The reason I make those comments is that if we see the numbers continually going up and we do not have the appropriate service responses, then sadly we see these sorts of outcomes, and I do not want to see this sort of outcome. I do not think anyone wants these outcomes in the youth space.

The CHAIR — And the private facilities were in which jurisdiction?

Mr MUIR — In Victoria, in Fulham and Port Phillip.

Ms CROZIER — Very quickly — I know we are running out of time — just in relation to the counselling issue, do you believe that having a full health and mental health assessment on entry to the justice system might prevent some of those delays or pick up some concerns for young offenders that come into youth justice?

Mr MUIR — Look, it certainly would not hurt. My concern would be that if we still find ourselves in the same position that Patrick was referring to before, the assessment might happen, but if the service response actually is not there, then the assessment is not worth the paper it is written on.

Ms CROZIER — I agree with that.

Mr MUIR — So it is the investment in the service response — —

Ms CROZIER — So they are being assessed, but in terms of what is actually happening with the follow-up — even drug and alcohol testing, for instance — I do not know how many young Indigenous offenders have drug and alcohol problems, but should they be tested on admission and regularly tested?

Mr MUIR — What programmatic responses are there to change that behaviour, or in fact how is that stuff even getting into those facilities in the first place? That would be another question, but then if we identify those issues and challenges, it goes back to the monitoring mechanisms — we referred to OPCAT earlier, which the federal attorney is talking about ratifying or signing off on — and you have got to have a mechanism which monitors and reports against what might be stated versus what is delivered. This is belated, but I hope that this government or future governments do not wait until next year after OPCAT is signed off. We can do something now.

Ms SYMES — You have provided some valuable insights today, so thanks for attending. I note the story of the young man in Malmsbury. I do not know how the timing matches up, but there are 10 new mental health practitioners that have been funded in recent times, and unfortunately it might be a response to that incident and lack of access — —

Ms WAIGHT — All of the children that we had assessed had had regular and consistent self-harm attempts, so whilst this one case does sound shocking, it is one of many when it comes to our kids in particular.

Ms SYMES — Yes.

Ms WAIGHT — And whether it is a suicide attempt or self-harm, they should both be treated with the seriousness that they deserve. Often enough when it comes to self-harm attempts, whether it be cutting, which is the most frequent use, that is usually not given the due concern it deserves. Rather, it is a suicide attempt and then it is dealt with by way of isolating or separating that child, which is not the way to deal with it.

Ms SYMES — No, and I certainly do not disagree with that. I am just noting that there are new mental health practitioners coming on board, and it might — —

Ms WAIGHT — But in the instance of what Patrick was referring to before, that child's feedback was quite recent.

Ms SYMES — Yes.

Mr WARNER — How recent? Do you know roughly how recently the new practitioners have come on board? It would be interesting.

Ms SYMES — They have been funded. I do not know they have been rolled out. So I am just — —

Mr MUIR — I guess the question will be that once it happens, we will be in a better position to assess, but we are not — —

Ms SYMES — Yes. Just marrying up, I guess what I am getting towards is that you are on the advisory panel for the review — is that right? The youth justice review?

Mr MUIR — No. What we are proposing is a way forward and also helping the Victorian Parliament understand its obligations under OPCAT when OPCAT goes forward. There will need to be an independent review mechanism of all correctional facilities, which are prison, youth detention and police cells, so what we are proposing is one mechanism which might assist in this space.

Ms SYMES — Okay. Sorry, I thought you were on the project advisory group of the current youth justice group.

Ms WAIGHT — No, we are not. Not at all.

Ms SYMES — Okay. Have you got capacity to feed into that review process?

Mr MUIR — In terms of — —

Ms SYMES — The departmental one.

Mr MUIR — The DHHS and — —

Ms SYMES — I guess what I am getting at —

Mr MUIR — Yes, we are. We have — —

Ms SYMES — is that there is a response to some of the issues you have raised, and it is just unfortunate that there is a lag. You guys seem to have your finger on the pulse of what is — —

Mr MUIR — We have put in a response to that review. We are participating in that review, but it is ironic that that review is happening and we are running a million miles ahead in the youth justice space, not knowing

what the outcome of the review is going to be and ignoring earlier reviews like the Peter Muir review. So I do not hang a lot of heart on a whole range of reviews. What I want to see is what drops out at the end and what actual implementation happens, and then I will be in a better place to make an assessment as to the impact that those things have had or have not had. But to answer your question, we have participated in that review.

Ms WAIGHT — But we have only had that very limited feedback opportunity, which was to provide a submission.

The CHAIR — I have one final question following on from that. There is discussion about the disconnect between the provision of new services and the feedback you are getting from people who say ‘I needed some assistance in terms of mental health’ or ‘It was deemed necessary but it didn’t happen’. Are you still hearing that? How recently have you been hearing that?

Mr WARNER — As early as 7 April. It is positive to hear that more resources are being invested, but we have got correspondence from the secretary in late March and I would have thought if those resources had been invested by that time, they would have been brought to our attention because we are very happy to hear that. But judging the facts as they are coming to me now I am probably of the view that those resources were rejected prior to these ongoing issues and have not made much of a difference on the ground. Again, because I think it is not just about the mental health staff, it is about all the other staff who make everything work and function.

I think, having read some of the other groups’ submissions, it is a bit of a theme in this space — the casualisation of the workforce, the lack of ongoing full-time employees just makes everything else go at half speed. When people are calling in sick and when they are not being replaced, everything slows down.

Mr MUIR — I will be happy to see them when they actually roll out. It is a good news story hopefully. But one of the challenges will be, as I said, the implementation. So they may be there, but who is taking the kids to and from appointments?

Ms SYMES — I think the department presented it as 38 new custodial people on board as well. So you are going to wait and see?

Mr MUIR — Sorry for being a bit sceptical, but I have to wait and see to make an assessment. It sounds good.

Ms WAIGHT — And how that assessment would work, because obviously we would want to make sure that those people are qualified in the fields of child psychology and psychiatry so that the mental health issues can be readily identified because disorders such as complex trauma disorder and post-traumatic stress disorder are quite common within our Aboriginal children.

The CHAIR — On that note I think we need to conclude. On behalf of the committee, thank you very much to each of you for coming today and for the contribution that you have made. It has been extremely useful. You will receive a copy of the transcript within a few weeks for proofreading.

Mr MUIR — Thanks very much.

Mr WARNER — Thanks very much.

Ms WAIGHT — Thank you.

Witnesses withdrew.