

TRANSCRIPT

STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES

Inquiry into youth justice centres in Victoria

Melbourne — 17 March 2017

Members

Ms Margaret Fitzherbert — Chair

Ms Nina Springle — Deputy Chair

Mr Daniel Mulino

Mr Edward O'Donohue

Ms Fiona Patten

Mrs Inga Peulich

Mr Adem Somyurek

Ms Jaclyn Symes

Participating Members

Ms Georgie Crozier

Mr Nazih

Ms Colleen Hartland

Mr Gordon Rich-Phillips

Witnesses

Judge Michael Bourke, chair, and

Dr Bernie Geary, board member, Youth Parole Board.

The CHAIR — I welcome everybody formally to the hearing this afternoon. The committee is hearing evidence today in relation to the inquiry into youth justice centres in Victoria and this evidence is being recorded. For witnesses, I remind you that all evidence taken at this hearing is protected by parliamentary privilege, therefore you are protected against 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.

Dr GEARY — Too late. I have already said them.

The CHAIR — That is noted. I invite you both to address the committee. We have suggested to other witnesses that they take 5 to 10 minutes, but we are starting a bit early, so we are in your hands really.

Judge BOURKE — Have you received our statements?

The CHAIR — We have received your statement and read it.

Ms SYMES — Yes. We have got them open on our devices.

Judge BOURKE — You do as you choose, but as I say in the first paragraph, I have got no problem if you want to interrupt me as I go through. I will just speak mainly to it. I have probably got a few things to add as we go.

Regarding the impact of increased remand numbers on the stability and structure of both youth justice centres, as I say here, for a considerable number of years the structure of both centres was stable and settled. I have been engaged in my job for 10 years, and for a good proportion of that time typically you had about 80 young people at each, fundamentally four settled units, all on sentence. Parkville contained those under 18, and Malmsbury 18 and over, classically called the Malmsbury dual-track system.

Malmsbury was mainly an open site. It had a small secure area called Ulabara. It still has it. As I state here, in my opinion, stability of placement, addressing such things as age — actual maturity rather than just age — culture and seriousness of offending and other things are critical needs for functional youth detention. That was the fact and pattern of things when I started and for several years after I started in my present job.

In approximately 2014 — I am not quite sure about the date — the additional, more secure facility at Malmsbury was established. To my understanding then it was not intended to house 15, 16 and 17-year-olds sentenced in the Children's Court. It is what you might call a secure centre; I do not know whether you have been to see it.

The CHAIR — Yes, we have.

Judge BOURKE — My response to first seeing it was that it was quite prison-like. This, I think, is particularly important. Both Parkville and Malmsbury have been and are purposed as sentence facilities. That has changed in a critical and damaging way, and people should not, in my view, underrate the impact of that change on the situation that has grown. When I started and for several years 10 to 20 per cent, probably less, were on remand or awaiting sentence in the Children's Court and therefore the younger group. That became, by about two years ago, 80 to 90 per cent. All at Parkville, all Children's Court remandees. Dual-track clients are not on remand. For want of a better term, they are at remand time in adult custody.

I see the causes of that growth in remand to include these things: more serious offending by that younger group — that became apparent to us anecdotally, for want of a better term, over time — and lack of stringent, heavily supervised and accordingly well-resourced bail programs. Bail reform in I think 2015 to 2016 did not address that problem, that lack of bail programs. After a short relief it failed emphatically to reduce remand numbers. They in fact seem to have increased. I think the fundamental problem is that no matter what the bail laws are, magistrates are loath to risk the community by granting bail to young people who they fear will not be properly supervised and who they fear will commit further offences, and so it was.

Ms SYMES — Just to explore that a little bit more, is it your view that a magistrate could view a young person as appropriate for bail but think that they would be better off on remand purely because —

Judge BOURKE — No, inappropriate for bail because the risk of reoffending was too high.

Ms SYMES — Right, so it is that risk, not the adequacy of the bail program that is in the magistrate's mind.

Judge BOURKE — No, it is the inadequacy of any bail program. I have been surprised for a number of years that in fact youths in the adult system have, it seems to me, been better served by supervised bail programs than young people in the youth system. I think it is called CISP, but I do not know. It has always surprised me, but of course it has become much more critical. Magistrates did not feel comfortable granting bail to young people they otherwise would have. They did not want to have them at 14, 15 or 16 in remand, but they felt uncomfortable about where they were going to live, be it at a youth residential place, and whether they were going to be controlled properly. They feared that they would reoffend and even perhaps in some cases harm themselves, so the remand numbers went up. In my view it was a classic failure of legislation. So the remand numbers increase again, to 80 to 90 per cent. It has been pretty consistently that high over the last, say, two years.

Dr GEARY — So that has turned on its head.

The CHAIR — Yes, that is understood.

Judge BOURKE — You do not want to underrate the significance of that. If you are building, staffing, managing and structuring an institution to be a sentence detention, it is not going to work well as a remand centre, and it is going to work even worse if you mix the two. I do not think that happens in the adult system. They are separated; they are not forced to be together.

Combined with those factors is that there have developed, in my view, very long delays in the Children's Court system. If you have a look at the first attachment, and can I just say that this document came to be at the parole board, not looking at my evidence here, but if you have a look at early January — —

Ms CROZIER — Of this year?

Judge BOURKE — Of this year. Looking at the second page there, you see we look in a preview way at everybody who arrives. We knew that the delays were getting long and that the pre-sentence detention periods were very long. Then in the early January meeting you have just got a massive number of young people, mainly from the Children's Court. You have got 260 days, 160 days et cetera. This document is just the 100-plus days. There would be plenty at 75 or 80 et cetera.

Ms CROZIER — Can I just interrupt there, Judge Bourke, and say those periods of time that you have just highlighted from January 2017, that has happened in terms of those large numbers. How long has it taken to get to that, do you think?

Judge BOURKE — One of the problems is that you can just say when you start to notice it. I reckon I have started to notice it and started to talk to our people about it for probably about a year, but that means it has probably been existing and developing. And when I say these things, I would hate to be seen as criticising the Children's Court and the Children's Court management and magistrates. I think they need support. I think they would say that too, probably.

Ms CROZIER — Just on that, if I may. You obviously understand the court system extremely well from your position and from observing what is happening in the Children's Court. Not trying to blame anyone, but in relation to the system and the systemic failures of perhaps what is happening through that period of time, have you got a view on that or an observation?

Judge BOURKE — Yes, I do have a view on how it has happened.

Ms CROZIER — Could you share it with us?

Judge BOURKE — I am prepared to do that. I was glad to hear that nothing I say in this room will be a cause of difficulty for me, and it is somewhat speculative.

Just before I get to that, I move to part c of paragraph 2. It is not just that the delays are very long in themselves. They are much worse given the ages of the young people involved — approximately 14 to 17 or 18. You can see there is one there of 373 days. There is an attached pattern, because of the difficulties magistrates had, of them being in and out. That young man was recently paroled, and he not only awaited his sentence for 370 days

but was fundamentally mainly in custody from late 14 to almost 17 — at that age. And I have got to say, he is a young man who behaved impeccably in custody. That is an unsatisfactory circumstance to exist if you want to then rehabilitate him, because what shrinks is the available period of parole.

Ms CROZIER — And he was aged 14, you said?

Judge BOURKE — When he first went into remand late 14, and we paroled him quite recently — well after his eligibility date because he was awaiting sentence. He was almost 17. That is an extraordinary proportion of a young person's life.

Ms SYMES — Was that because his case was delayed?

Judge BOURKE — Yes.

Ms SYMES — I note that in your possible factors — —

Judge BOURKE — Yes, I am getting to the controversial parts now. I will move on.

The CHAIR — Can I just ask about that young man, without identifying anybody, but what sort of case was it? Was there anything unusual about it?

Judge BOURKE — As often happens with young people, one offence was very seriously injuring a woman; in fact, in a motor vehicle collision. But, as often happens with dysfunctional young men, there were a lot of offences. I think is one of the problems: that they are failing to consolidate them in a sensible way.

My suggested factors are, with my repeated disclaimer, is that there is more serious offending. That has to be. So you are going to have longer periods if you are — —

Ms SPRINGLE — Have you got a theory as to why that is the case?

Judge BOURKE — Yes — over the page — I have got strong thoughts on that, and it has got to do the changing demographic of the young people in our system. I will get this off my chest: that there is more serious offending, there is a lack of support and resources to the Children's Court. But then (iii) is where I stick my neck out: I think there is a lack of urgency on the part of the legal profession and perhaps police informants and prosecutors. I have not been sitting there and watching it. But I do not think you can have consistent periods as high as 250 days, 270 days, 370 days, if there has been a culture of urgency, a culture driving it towards — —

Ms SYMES — By the time it gets to you, you see the entirety of the file, and sometimes what you see does not correlate with the time it should have taken.

Judge BOURKE — It is not so much that. We probably do not get as much of the material the Children's Court has, as you might think — there are difficulties with confidentiality and the like. I think it is in part a resource issue. For example, when they turn up to a remand hearing, it will be a different duty solicitor; they might have four or five different duty solicitors. There will be a different prosecutor.

The CHAIR — So no-one owns it.

Judge BOURKE — Yes. There is no mechanism, I suspect, for the Children's Court management to insist on movement forward. But you could have a sufficiently intensive bail program — 'Okay, he's on bail, but I want him back before me. I want to know that there's a good ratio of a competent, experienced workers looking after us; a finite number of young people on bail' — much as you try and do with parole, so that they know and can take action very quickly if the young person goes missing. That has not existed. Then the magistrate could have his or her hands on the file.

The CHAIR — I have got a couple of questions at this stage if you do not mind, and one is: the sorts of delays that you have spelt out here, how does that compare with the adult system?

Judge BOURKE — The adult system has always had delays. This is what took our notice — we noticed it became a bit worse in the Children's Court compared to the adult courts probably about a year ago. It was always much better. You did not have these pre-sentence detention periods in the Children's Court, so that is why we started to notice it. There is also another form of delay. It is this, and it is in young people getting

charged. It is not uncommon for us at all to have a young person coming up towards a parole expectancy date and all of a sudden you find out that he has been charged with offences that have occurred before he has been sentenced for this lot. Then the magistrate has to try and look at what the right total sentence is.

It is not just fair in any system to have somebody locked up for, say, 12 months and then you charge them again and they get another 12, so it gets compressed. And we are hamstrung in terms of parole because we do not know what the situation is going to be. There just seems to me to be insufficient coordination amongst police informants and possibly prosecutors whereby you can at the very least get everything that they are charged with heard at the same time and get a proper total sentence — they know where they are — and then you look at paroling them at the appropriate time during the course of it.

Ms SYMES — So they kind of go back on remand while they are waiting for — —

Judge BOURKE — That is right. We cannot parole them.

The CHAIR — So how would you address that in an ideal world?

Judge BOURKE — I think there needs to be some sort of concerted effort on the part of prosecutorial bodies, maybe the police, whereby they know. If a Ringwood informant has charged somebody back in 2015 and there is a pending or another investigation going on somewhere down the track, that they coordinate it so that they get charged at a similar time and they get heard in the same court.

Dr GEARY — And a magistrate should be well enough resourced to say, ‘I’m hearing this on Wednesday week. Bring it in here, and I’m hearing it’.

Ms SYMES — I am just curious as to is it something that if you looked at, you could find earlier? Why is the information coming so late?

Judge BOURKE — I think — look, it is easy for me to say, isn’t it? I am not the police informant and the like — there must be, mustn’t there? There are sophisticated electronic communications systems between parts of the police force. I suppose I can say no more than that. I think it should not happen. Then you become pretty speculative about why. But there it is. I will hold back from a really cynical explanation — you can guess on that. No, I will not: it may be that a particularly sceptical police officer thinks it is not a bad idea. If somebody thinks that the Children’s Court is not handing out long enough sentences, there is one way around it. That is a piece of utter speculation on my part, but I have often wondered about it because it happens so often. It is more likely to be that it is just not coordinated enough, whereby they just do not get onto it et cetera.

Dr GEARY — Or it may be that people are being lazy. He hates me saying that, I am sorry.

Judge BOURKE — Returning to members of the legal profession, about whom I can speak with more knowledge, it is a very stressful job. It is in the psyche of any overstretched legal aid duty solicitor that they do not have to do case 15 that day and it gets adjourned on to a month. It is a bit of a relief, isn’t it? They need to be supported as well so they can put some urgency into the system that does not compromise their wellbeing.

Dr GEARY — And I am not talking about lazy people in that; I am talking about a lazy system.

Judge BOURKE — So there it is. You have been careful about what I have said. I felt it would be helpful for me to put my speculation out there because I think it is worth examination; I think it is a legitimate thing to say. They are not allegations, but I think they are matters that should be considered.

Effects of delay and higher remand numbers upon centres — you have probably heard quite a bit about that, but it is important; it should not be underrated. To our eyes there has been a pattern of better, more settled behaviour by young offenders when sentenced. There is a compelling logic to it, because they know what the date is, they get some general idea of parole expectation.

Ms SYMES — Unless they are charged with something else.

Judge BOURKE — That is right. It has always been the case. As I stated earlier, neither centre was intended, set up or staffed to be a remand facility. And in fact the act itself states the need to separate those on remand from those sentenced. That has become an impossibility, given the high remand numbers that have

developed over the last few years. So in my opinion, as remand numbers grew and became set or worse, there became difficulties in placement, which is what I was talking about before. When you had a settled environment you could place the right sort of young people in the right sort of unit, related to how old they really were, how developed they really were, cultural et cetera. That became impossible. So the problem thereby became more serious and I think there developed a knock-on effect. Processes and then serious incidents created even less stability and of course a more pressing need for movement. So they got moved again, and movement of detainees counter to a necessary settled environment.

I would like to stop here and say that I think it is important that none of this is intended to be a criticism of centre staff or management. The people who have appeared before the board from the custodial centres, usually unit supervisors or managers, are an admirable group of people. They are competent, they are insightful and they care about the young people, and I think what has happened at the centres has had a highly distressing effect on them. We have seen it. And in fact the way many of them have still kept their eye on the ball and the need to try to help young people who are cooperating has, I think, been heroic in the face of what has been happening. They have still done it, so I just wanted to say that. We are all very conscious of the distress to them and very conscious of the honourable way in which they have battled on.

Returning to what I see as the important narrative — this instability — the need to move has led to the necessary use of that new, secure, more prison-like Malmsbury facility to house 15, 16 and 17-year-olds, something it was never intended to do. If you look at attachment B, which is a breakdown of those four most serious incidents that have occurred between October last year and late January this year, you can see how it is broken up. The first box there is done by age, and you can see how it centres on the ages of 15, 16 and 17.

If people were not alert to the change in the make-up of the centres, because three out of the four have occurred at the Malmsbury centre, it would look like the older ones have been doing it. But what I have been trying to develop here is that that is not the case at all. You have found the more problematic young ones up in this secure unit, behaving very badly. They have all occurred in the secure units, albeit one was adjacent or attached to the open site, but it was a secure unit. Not one of them from my eye or to my investigation has occurred in the open site. The very great majority are from the younger group. I think the important delineation here is not so much age, say, when you are dealing with the 18-year-olds, because you might look at the fact that there is an 18 or 18½-year-old young person involved in some incident and you might presume he is a dual-track client. Well, no, that is not the case. With the delays I am talking about you need to examine whether they are Children's Court-sentenced people or not. You will see in that final box — there it is — that you have got a total of 96, 89 of which are young people sentenced in the Children's Court.

Dr GEARY — And we wonder why they get angry. We all in this room need to know what time we are getting out of here and we need to know what we are doing on the weekend. We have all got our dates. These are young people who are wandering around for months and months without a date, and they are angry and frustrated.

Judge BOURKE — Even the sentenced ones came to be living in an environment that was so unsettled.

Ms CROZIER — Could I just interrupt and ask something on this. We had a presentation from the department a few weeks ago in relation to the cohorts and, Judge Bourke, you have identified a couple of groups. I am interested in terms of the numbers coming from child protection and how many are bouncing in and out of that system, how many you are seeing and the support that you talk about going back out into the community. Are they getting that support? How many are bouncing back in? Why are they bouncing back in? I know that you will both have a view on this.

Judge BOURKE — He would be better than me on the particular reasons, and I will — —

Ms CROZIER — Have you got figures on how many are coming from child protection?

Judge BOURKE — Yes, I have. I will get onto them. In paragraph 4 — I just want to repeat, I think it is important — that the present problems lie with the younger group sentenced in the Children's Court, not those sentenced in the adult courts. Then under the heading that there is more serious offending, we have turned our minds to why that might be. It is the case that they are committing more serious offences, but I think the most or the best that anybody can do is look at the patterns adjacent to the developing problems. So what you have got here is I think a changing demographic of young offenders, and I say this very respectfully to the cultural groups

involved because none of it is these kids' faults. What we have got, and it is a pretty good approximation within our system now, is Aboriginal young people, 15 to 17 per cent; Maori and Pacific Islander, 10 to 12 per cent; and East African young people, mainly Sudanese, 7 to 8 per cent. So you are moving to significantly over a third of the total youth detention and parole population being made up of those groups, and those groups are recognisably dislocated groups within our community and subject, in many cases, to early life trauma — very severe early life trauma — which is getting to what you are asking about. The relevant statistic for child protection or former child protection clients in our system has moved from approximately 30 per cent in 2007 to 45 per cent.

Ms CROZIER — That is what we heard — 45 per cent — which is a huge number.

Judge BOURKE — It is a huge increase, isn't it?

Ms CROZIER — And Bernie would agree. We are a bad parent; the state is a bad parent in looking after these very vulnerable kids who are ending up in this system. So out of those specific cohorts that you just highlighted — Aboriginal, Maori and East African — if I can just dig down a little bit further, are they in child protection or is there no correlation?

Judge BOURKE — What you have raised is an important thing, because I think there is an added factor. I do not think you just look at the 35 per cent and say, 'Oh look, there's an overlap here'. There is, but I would say to you that the Aboriginal young people component would be a lot of child protection. In the Maori and Pacific Islander, less than it you would think, and not many at all are East African. So then when you are looking at that increase of child protection, there is an added factor there. Do not just look at 35 per cent; look at what percentage of the other cultural groups are in child protection or ex-child protection. You are guessing a bit, but you have got a big part — a very big part — of our population coming from very disadvantaged, highly traumatic and damaging early lives. This is the real point. It is the proportion of things.

I could not dig it up but the Sentencing Advisory Council had a finding, I think not very long ago, that in fact the number of young people sentenced in the Children's Court has dropped quite dramatically — it may have even halved. So then you have got a drop in the overall number sentenced, you are presuming that it is the more functioning young people for whom diversion has helped, and then you have got a relatively small population of about 350 to 400 — this growing nucleus of young people — from very bad early lives. I have always described what we do as the sharp end because it is a last resort — locking up young people — but it has grown much bigger proportionally and in a very concerning way, and I think looking at what I have seen develop at the same time as the troubles, it requires a really close analysis.

Dr GEARY — And those statistics around child protection are two separate sets of statistics. Now, for those young people who are in the child protection system and those young people who have a history, my experience with the child protection system is that it closes cases within the blink of an eye.

Ms CROZIER — What do you mean? Can you just elaborate to the committee in terms of caseworkers closing cases too soon, too early and too fast?

Dr GEARY — If a notification is made to child protection there is a response per phone, and that response per phone can be checked on per phone and closed as a consequence of that phone call, so nobody is going around and looking. That is another story. But so many of these cases get closed and say they have become closed cases with a history of child protection and then there are those, as Judge Bourke says, who are still involved in the child protection system.

Judge BOURKE — Just to elaborate further on what Bernie is saying, I have this concern too. If you have a look at page 14, you will see our figures and you will see that the top two say that 45 per cent had been subject to a previous child protection order and that 19 per cent were subject to a current child protection order. It has always troubled me as to whether or not you add those two together, and it would seem to me to be a sensible — —

The CHAIR — [inaudible]

Judge BOURKE — Yes, and you get mixed messages back about whether you should. But in any event both of those figures have grown. I think that is a dramatic growth if you just take the 45. The 19 per cent figure

was not in our statistical data when I started, but the top one was. It was 29 per cent; it has become 45. What is that? Is that a 50 per cent growth? I have jotted down for reasons in the past the development, and it has been a consistent development over those 10 years.

Dr GEARY — And we are forced to grasp notional figures too. If anything comes out of this, I would beg you to ensure that the youth justice system is constantly and accurately depicting how many children in it are coming from that system that insists that we should be looking after children in a child protection and out-of-home care system as any good parent would.

Ms CROZIER — So if I can just go a little bit further if I may, we know that the numbers of unallocated cases are increasing within the child protection system. Are they showing up in — —

Dr GEARY — Who would know?

Ms CROZIER — We do not know.

Judge BOURKE — We reckon we could point to the ones that are.

Ms CROZIER — Yes, so that is also a massive issue.

Dr GEARY — I suspect it is like a funnel, these children from child protection and out-of-home care. We know that many of them are just tumbling into the youth justice system, and they are children that we are basically responsible for.

Judge BOURKE — You always hear your voice echoing a bit. You tend I think to see it in people's eyes. More often they think, 'You're making excuses for them'. But if we are going to have a real analysis of what the problems are, you have got to look at the real causes. This is data that does not lie.

Dr GEARY — I have said before that it is a race to the bottom. It is a political race to the bottom to see who can be meanest to these kids that we gave such a crappy start to, quite frankly. It really worries me that the community is guided by the *Herald Sun* and 3AW as to how bad these kids are, rather than what their history is. They have all had incredible journeys.

Judge BOURKE — While you looking at page 14, you get another sense of the demographic: 24 per cent presented with issues concerning their intellectual functioning and 11 per cent were registered with disability services. I think that probably you do not add those two, but the proportion beyond the registered people are real. You will find they have acquired brain injuries. These young people live chaotically — dangerous lives. They chrome; they are drinking and using drugs at 11 or 12. They are getting punched up by a passing parade of so-called stepfathers or by their mates or by their peers, so there is a lot of acquired brain injury in there that probably has not been diagnosed.

Ms CROZIER — I have had the privilege of sitting in on the decisions that the Youth Parole Board make in relation to assessing those young people that come before you. From my observation, in terms of some of those very well meaning caseworkers that come in, and you have just described the complexities of some of these people, do you believe that some of these caseworkers have the skills and ability to manage what is happening to prevent them from continuing on with their — —

Judge BOURKE — You mean what is happening now — the development of more serious offending and the like — or just generally?

Ms CROZIER — With the individuals, in terms of their recommitting crimes or their chroming or their drug use or any other issue.

Judge BOURKE — They are doing a lot of that damaging stuff before they arrive in the youth justice centres.

Ms CROZIER — Correct, but then they are going back out, aren't they?

Dr GEARY — Some do and some do not.

Judge BOURKE — Yes. I think people have got to be realistic. If you accept the proposition that maybe 50 per cent of the young people who end up getting locked up, bearing in mind it is a diversion system, they are in a tonne of trouble if they are locked up at 14 or 15. I think you have got to be realistic. I do not think you lock them up for 12 months and then parole them for six months and get terribly shocked if they fall over again, because they have arrived in pretty shabby nick. I think any system like that has to have some realistic patience about how it goes. You look at what happens a few years on, and that is what I think has been the success of the dual-track system, because at a point further down the track they are going better.

Ms CROZIER — How much parental involvement should be involved as well in this?

Dr GEARY — Sometimes we are very frustrated that — —

Judge BOURKE — What parents? They are not around.

Dr GEARY — Yes, there are just no parents around. In fact rather than put a 16-year-old into a transitional house in Brunswick on their own, of course they are going to need friends, but if we can have any sort of a family that they can return to and support them in that environment — support the family — it would mean an incredible turnaround in the way we do business. We have got to be supporting people in their community, rather than developing situations where people go. I am working at the moment a lot in the city with the homeless, so many of the kids are from our resi system.

Judge BOURKE — If you look at the third and fourth on the target, 63 per cent were victims of abuse, trauma or neglect — a lot of it is sexual abuse too — and 62 per cent had previously been suspended or expelled from school. You are not talking about a functional family in which kids are sitting around eating Rice Bubbles while their father is reading the *Australian* or the *Age*. You are talking about chaotic early lives, and parental involvement has usually been counterproductive.

Dr GEARY — One boy that we have got on our books for this parole board meeting we have got on Monday in Malmsbury lives in the residential care system, and he has been locked up as a consequence of sexually assaulting another resi person. We are paroling him back to the same resi unit.

Ms SYMES — Yes. I want to come back a little bit just to your view of the facilities and your criticism of the appropriateness of the detention centres, particularly Malmsbury, housing the younger ones.

Judge BOURKE — That is not a criticism of the people managing it, because they have to go somewhere, but that is how it ended it up.

Ms SYMES — No, no. Of course. You have mentioned that you are a supporter of separating remandees and sentenced offenders. In the developing of the new centre, apart from the separation of remandees and sentenced offenders, are there any other features of use given your experiences of the ones — —

Judge BOURKE — Look, it is not my expertise, but I will point this out — that you want to be very careful about building something that looks too much like a prison.

Dr GEARY — Yes, and sounds and smells and is because — —

Ms SYMES — For every cohort?

Judge BOURKE — That might be where the dual-track system fits in, because it tends to weed out the young people of that age who are not suited to the youth justice system. Either they are not immature enough, they are not violent enough or the offences they have committed are just too serious. There is a natural process in that. The figure that I showed you before — if there is one, I have not seen it yet — with a young person on the old-fashioned open site at Malmsbury, it tells you a story, doesn't it?

Dr GEARY — We are so hell-bent on security and jail-like structures that we forget we are dealing with kids — government over government. Six years ago when we decided to do a review, we brought in an ex-copper to do it, and then when we appointed a CEO, we appointed an ex-copper. Now, they were both good men, but where on earth can we consider that ex-police have got the expertise to develop a youth training system? It just beggars belief.

Judge BOURKE — You will have to, at least in the medium term, have something that addresses the present problems. All I am saying is: be very careful about the idea that high-security and prison-like management of young people is going to be the answer. I tend to doubt it.

Dr GEARY — Sadder, angrier, sicker. That is what it will do, and we will reap the benefits.

Judge BOURKE — There are other possible responses. At paragraph 6 there, I think there needs to be — and I think this can happen now — an organised, proactive system outreaching to these communities. Because I have met — not many — community members, particularly in the Sudanese community, who are knowledgeable, are respected and have insight into the problem. But it has just struck me that our system has not had a settled, organised, permanent process of getting out there and finding out who they are and linking up the youth justice system to them. They are out there willing to do it, but I think there needs to be something really settled, with good people and highly organised to make sure that you are out there speaking to the right people and listening to them and setting up the programs and assisting the programs, and using the programs that they have got there.

I came across a youth resource officer, a policeman in the Fitzroy area. Dare I say it, I only came across him not because of my work on the Youth Parole Board but because I met a bloke in a pub, otherwise I would not have known about the guy. He is a Fitzroy policeman who is linked into the East African Fitzroy and Collingwood community.

Dr GEARY — In the high-rise.

Judge BOURKE — Yes. Linked it to sport — namely, basketball. I remember saying to him, ‘How do you get them to come along to your basketball?’. He said, ‘No, no. We go out. We’re throwing a basketball at a ring down the bottom. We go out and get them involved’. I had never heard of it.

Dr GEARY — Proactive engagement.

Judge BOURKE — There needs to be some mechanism whereby you know about these things so that our system can exploit it.

Ms SPRINGLE — I think it is fair to say that there are a bevy of outreach programs that are being run across metro Melbourne at least. YSAS are renowned for doing very good work, and their model always starts with outreach. I suppose I would like to get your reflections because some of that stuff is already happening. Is it not enough? Is it that we do not have enough programs? What are we missing? Because it is not — —

Judge BOURKE — I suspect, without being an expert on it, that we have not got what I am suggesting. We have not got within the department people whose job it is, and their only job, to find out who they are, to make an assessment of them, to vet them and to then let bodies like us know about them. You are right about YSAS, but YSAS has been around forever, has it not — a long time — so we know about them. They do good work, but we have got new problems here in different communities.

Ms SPRINGLE — If you listened to people like Les Twentymen, people who are doing similar kinds of work, they will often say, ‘Everyone’s working independently; everyone’s working in silos’.

Judge BOURKE — I think that is right.

Dr GEARY — And they are not working cohesively.

Ms SPRINGLE — Correct.

Judge BOURKE — And I think that is where the department needs to play a role.

Dr GEARY — YSAS included.

Ms SPRINGLE — Yes, that is right. Another point I would like to just raise or I guess ask about is that these are self-confessed statistics. So these are the kids actually voluntarily in the youth — —

Judge BOURKE — Some are; some are not. If you are registered with an intellectual disability, you are registered with an intellectual disability. If you have got a cognitive or learning problem, that is very apparent;

you do not ask the kid. If a young person has been a child protection kid, there has been a reason, to some extent objectively assessed. But, yes, there are things that do rely on the — —

Ms SPRINGLE — In terms of the alcohol and drug use and what have you. So would be fair to say that some of this could be actually under-reporting?

Judge BOURKE — It could be under-reported rather than over-reported. I would say on sexual abuse, you classically get a 15 or 16-year-old dysfunctional young man, he is not going to readily tell you about what sexual abuse he has suffered at the hands of members of his family.

Dr GEARY — And if you are a mentally ill or an intellectually disabled person in our system, it is unusual that you would not be some sort of a gorger in terms of substance.

Ms SPRINGLE — Yes. And I would have thought that for some of the culturally and linguistically diverse kids there would be a fair amount of stigma attached to some of these questions and therefore there would — —

Judge BOURKE — Like being intellectually disabled?

Ms SPRINGLE — Or drug use, sexual abuse, stuff like that.

Judge BOURKE — Sexual abuse, certainly. I think they are quite happy to tell you that they use, and they are even happy to tell you that they are not going to stop.

Dr GEARY — Yes, they are.

Ms SPRINGLE — Yes, sure.

Judge BOURKE — But there are differences, depending on what you are talking about.

Dr GEARY — But, yes, intellectual disability — there is a fine line of the degree of intellectual disability where a person will say, ‘Yes, I’ll take on an IDS worker to help me, but that would mean I would have to admit to everybody else in in the resi that I’m a slow bowler’, as they say.

Judge BOURKE — Yes, they often reject the idea of assistance. They are not the severe and very often not even the moderately intellectually disabled; they are the mild, which I think is a strange word to use for someone who fits in the bottom 2 per cent of our community.

Dr GEARY — But it does impact when they are in somebody’s stuff — —

Judge BOURKE — It means they can sort of function on the look of it.

Dr GEARY — That is right.

Judge BOURKE — And they can persuade people that they do not have any trouble in this regard, therefore they do not get the help, they become dysfunctional in terms of their behaviour and these bodies do not want to touch them because they are bad news, and so it goes.

Dr GEARY — You want us to go, don’t you?

The CHAIR — No, I do not; in fact quite the opposite, but I am conscious that time is marching on. I have a couple of questions.

Judge BOURKE — I never get a chance to give a bit of a plug for the dual-track system.

The CHAIR — You did with me.

Judge BOURKE — You will read paragraph 7, won’t you?

The CHAIR — I have. I read it last night. I am totally on top of it.

Judge BOURKE — Good.

Dr GEARY — I am really concerned that what is happening in this state is going to signal the end of the dual-track system, which is scientifically acknowledged around the world as ahead of the pack and, as I said, because of the sorts of dramatic media that we are racing to the bottom, it will be gone before we know it.

Judge BOURKE — I will move quickly, I promise you. I can see you want me to go.

The CHAIR — No, it is not that. It is just that we have a number of extra questions to ask you. We would love to hear the answers, that is all.

Judge BOURKE — I will be very quick. Please look at part (c) of 7 because I fear an misconception of two things — one, the dual-track kids are causing it, because people read and see on the television that bad things are happening at Malmsbury. Secondly, what is underrated is the common sense of it and the protections in it. You cannot walk along to a court and demand to be sent to Malmsbury rather than Port Phillip. It depends on whether you are vulnerable enough and it also depends on whether you have committed a really serious offence. That gets weeded out there. Then if they end up being unsuitable, there are powers under the Youth Parole Board to transfer young people. Just so people do not get confused with the recent applications to us, which were turned down, it is a significantly less stringent test for somebody over 18, as it properly should be. And somebody said to me recently that there are a significant number of people in the dual-track system who want to get sent to prison. Well, we can do that if they want, but I am telling you that they do not really want to.

The CHAIR — We have heard that evidence as well. It is true.

Judge BOURKE — But they do not really want to. Do you know what the major reason was five years ago? They could smoke. That is what you are dealing with. These kids might look like big, strong boys, but they are very immature. That is why they wanted to get sent to prison — they could smoke.

Dr GEARY — Sometimes it is because their brother is over there or their dad is over there.

Judge BOURKE — But they usually do not want to go in the end.

Ms SPRINGLE — I do have a question for Bernie in particular. In your role as child commissioner you put on the record quite openly your thoughts about what needs to happen in the child protection system in the long term, but given so many of the kids in the youth justice system have come from child protection, what are your thoughts about what needs to happen in the immediate term to turn this cycle around?

Dr GEARY — I think we have got to turn our services around to connect our services to the community. If a young person is not coping in a family, it is usually because mum is not coping. It is usually because mum is on her own and not coping. It really needs services to go there. We will parole kids. Half of those kids who escaped from Malmsbury, where did the police find them? At home. They all went home. What we have got to do is whack services in and around families, and that really means turning our system upside down, because that is not the way it works at the moment.

Ms SPRINGLE — Thank you.

Judge BOURKE — That is the long-term challenge.

Dr GEARY — Yes.

Judge BOURKE — We can build another centre. We can even fix up the remand numbers with a bit of luck, but if this pattern of 45 per cent becomes more and more, this is not going to go away.

The CHAIR — I had a couple of questions about attachment A that you referred to earlier in your submission, just so that we fully understand. This is a working document used by your board when you are considering — —

Judge BOURKE — No, it is one-out. We decided we wanted to find out how bad it was, so we did.

The CHAIR — Okay. On page 9 of 10 there is circled ‘Supreme Court, County Court’ et cetera — —

Judge BOURKE — That is what I have done.

The CHAIR — So what does that mean?

Judge BOURKE — We were particularly interested in the percentage that were Children's Court delays, because, as I think I said before, it was the opposite in the past.

Dr GEARY — These are the remand kids.

Judge BOURKE — The longer delays were in the adult system, and it was looking to us as if it had changed. That is just breaking up the PSD total. That would be 36 young people, and then it is breaking it up. So a third of them are Children's Court PSDs.

The CHAIR — And the rest have come from the other three courts?

Judge BOURKE — Yes, the other three, so that gives you some indication of how it has turned around.

Dr GEARY — Two-thirds.

Judge BOURKE — Two-thirds, yes.

The CHAIR — So the ones that are in the Supreme Court and the County Court, and I guess the Magistrates Court as well, I assume they are dual track, older — —

Judge BOURKE — They would not necessarily be dual track. I would hazard a guess that some of the County Court and certainly the Supreme Court would be young people who have been sentenced to prison but because they are so young they have been transferred by the adult parole board to us.

The CHAIR — Right. What sort of age would they be?

Judge BOURKE — We could have people sent to us, say, a 15-year-old who has committed an offence as serious as murder, and he would be housed with us, for want of a better term, for quite some time. That is where that would lie. The County Court would be a mix. I would say a good County Court example of young people who have been sentenced to prison but because they are young or vulnerable are sent by the adult parole board to us would be culpable drivers. The sentencing has increased for most offending, and culpable drivers are a very good example. On the face of it a young man sentenced for culpable driving would not get youth justice. They would get six with a four, five with a three or something like that in adult, but the adult parole board may look at a particular case — someone aged 18 who is particularly vulnerable and may be intellectually disabled — and transfer them to us.

Sometimes they last the distance for us — if they are young enough and the minimum term is low enough, they get paroled into our system. We cannot parole them until they have served the minimum term. The adult sentence still stands, but if they get to the end of the minimum term and they can be paroled, they can be paroled in our system. But the ones with much longer sentences usually get sent back to prison when they get to, say, 21 or 22. That is what that all means. You would find that some of them would be dual track. All of the Magistrates Court would be. Two-thirds or half of the County Court would be, and the Supreme Court almost for sure, but the rest of it is Children's Court delays.

The CHAIR — I had a couple of other bits of information I wanted, and I am going to suggest you might take them on notice and come back to us if you are all right with that. One was that you referred earlier to the absence of a proper parole program. I might be paraphrasing you there — —

Judge BOURKE — A proper bail program.

The CHAIR — Sorry, bail program. Would you mind writing to us about what that looks like. I am just conscious of the time constraints now.

Judge BOURKE — I am no expert in the area, but I have got some thoughts on it.

The CHAIR — I would appreciate that.

Judge BOURKE — I think some work has been done on it too.

The CHAIR — The other thing is that both of you mentioned earlier that there were basically some figures that you would hope would come out as recommendations of this committee. We have not gone into much detail about what that sort of record keeping might look like, although I have got some sense of it from what you have said today. Would you care to put that in writing as well?

Judge BOURKE — I do not quite know what you mean. Are you talking about — —

Dr GEARY — I suppose it was when I was saying that I think those figures should always be on hand. How many young people in the youth justice system have histories or are current clients of the child protection system? Another statistic is how many of them are from the out-of-home care system.

The CHAIR — If there are any additional categories that you think of, feel free to write to us or come and talk to us again; you would be very welcome.

Dr GEARY — I would not ask too much of the department. I am not very good at doing statistics.

The CHAIR — We have two more questions, I think.

Ms SPRINGLE — Yes, sorry, I should have actually asked this first up. I would like to know your thoughts about the transfer of youth justice from DHHS to Corrections.

Judge BOURKE — I do not know enough about it. From what I have heard it is going to be moved across in an unaffected form. I do not know. I would be concerned if, as time goes on, Corrections take over the management of youthful offenders. I think it is really important that you have a separate organisation doing it and that it is kept separate from it. I am not good enough politically to say where this is going, but as long as — —

Ms SPRINGLE — I am not really asking for a political comment. I am really more asking for perhaps a comment on how the different culture in Corrections will potentially impact on the current practices within youth justice.

Judge BOURKE — It is a wait and see. I think the important bit is that you keep them utterly separate. Whether or not what you are talking about will compromise that, I am not good enough at how it works. Without knowing, I would reckon that what will come out of the new Northern Territory inquiry is that one of the problems was that the same mob were running both sorts of centres. And here we are moving towards that situation, potentially.

Ms SPRINGLE — Yes, thank you.

Ms CROZIER — Mine follows on slightly from that issue. I am really interested in the model of the facility or facilities and whether it should be multiple sites to cater for the dual track and to separate those that are much more violent or who have got serious issues to try and prevent the influence on others so that you can really get those support programs appropriate to age, appropriate to offence and appropriate to individual circumstance. I am wanting to know from you whether you think there should be multiple sites to separate these young offenders or whether there should be just one great big facility.

Judge BOURKE — I think you can separate them within one facility. When it was more stable, that is what happened. I just have not thought long enough about that proposition. There needs to be separation, and that is what happened up at Malmsbury. You get the open site, and they were able to do it because it was a more settled environment.

Ms CROZIER — But that has all broken down now. Have you got a view, Bernie?

Dr GEARY — Yes, I think a lot would depend on the expertise of those people who are running those shows. It is no use getting a lion tamer to run a chicken farm. It is like I said about the inordinate use of police knowledge: it has to be relevant to the situation. If we are going to continue with the dual-track system and we are going to acknowledge that children and young people are vulnerable, we have to develop a system that acknowledges that, and that would depend on the sorts of people who are running that system.

Judge BOURKE — But you are talking about division within that system, aren't you?

Dr GEARY — So does my answer not cover that?

The CHAIR — We are really going to have to cut things short slightly.

Ms CROZIER — I might come back to you offline.

Judge BOURKE — Thank you very much for listening to us.

The CHAIR — Gentlemen, thank you so much for coming and giving the evidence you have today. It has been enormously helpful.

Dr GEARY — A pleasure.

The CHAIR — I am very conscious we have had to cut this short slightly. We have gone overtime, but we could have spoken more. If there is anything further you think of that you would like to share with us, we would welcome it. Thank you for your time.

Judge BOURKE — So you are seeing somebody else now?

The CHAIR — Yes.

Dr GEARY — Thank you for your time. I know it is such an important area. Good luck with it.

Judge BOURKE — Could I endorse that. I have really relished the opportunity to be able say some things. I have felt concern that the public debate has tended to ignore important aspects of what is going on here, so thank you.

The CHAIR — Thank you. You will receive transcripts within a few weeks for review.

Witnesses withdrew.