

Premier Andrews
Minister Mikakos
Youth Justice Reviewers Penny Armytage, James Ogloff
Commissioner Liana Buchanan Commissioner for Children and Young People
Other interested parties

Re Youth Justice in Victoria

In the light of the highly publicised events at Parkville and Malmsbury, I would like to put forward some observations. I have had a long-standing interest in youth justice and youth and family wellbeing. This includes 25 years with the Victorian public service and close involvement in custodial institutions, as well as over 20 years in a variety of roles in non-government services plus academic teaching and researching in social work. I completed PhD work in 2007 concerning the search for good practice and optimal services with young people with complex needs who challenge the system. A summary of the findings is attached as appendix 1 and the full thesis can be accessed on my web site www.lloydowen.com.au I have had considerable face-to-face experience with troubled and challenging young people and a variety of managerial roles in institutions including Parkville, Malmsbury, and adult corrections. I am currently serving on the board of a non-government community service organisation and have just been appointed as an honorary fellow at Deakin University.

I am deeply concerned about the direction Youth Justice appears to be taking and I suspect that, as one of the main aims is to keep people safe, the reactive policies and legislation espoused by recent governments will have the opposite effect. If people in authority model aggression and violence in language and action, vulnerable youth will see that as justification for behaving likewise. If our media use derogatory language of difference and exclusion, the excluded will often translate this into an heroic status and thus justify their violence in reply.

Science tells us that emotional and behavioural regulation are, for many young people, works in progress until they reach mid 20s. These issues are likely to be amplified by abuse and trauma as well as the many physical and emotional traps which exist in society for young players. Some recognition of this, long understood by some practitioners in Victoria underlies the dual track system. I believe this is well worth preserving and enhancing. I also believe that there is substantial evidence that many aspects of frequently espoused punitive approaches become counter-productive. There is substantial evidence in favour of approaches built on honesty, positive relationships and firm, well negotiated limit setting. For the few young people at the extreme end of the continuum of immaturity and poor social responsibility this is even more important.

We now understand more about the benefits of prevention and early intervention and can see that political processes lag behind in this regard. It remains however crucial to do our best with those at the tertiary end and I have frequently observed system shortfall in spite of best intentions. I have also witnessed good outcomes for many young people who have turned themselves around and found positive life pathways beyond early difficulty and adversity.

More Specific Comments and Suggestions

These comments are far from exhaustive but as I see it in the time available today, some of the areas needing to be addressed are as follows:

Much more effort in prevention and early intervention is needed across the fields of family violence, child protection, mental health, substance abuse, youth welfare (housing, education, employment) and youth justice. There are some lessons to be taken on board from the experience of Headspace and also The Geelong Project which has established, through a community of schools services, an early intervention platform for vulnerable young people and their families.

Work within the police force on best practice for dealing with mental health issues, substance affected behavior, cultural concerns and children and youth at different developmental stages should be continued and extended. Police behavior should model protective authority and not aggressive stances. There are also many positive examples of police partnering with other agencies for effective outcomes. This is an approach worth pursuing while recognising some of the coordination challenges posed.

Court processes should be changed to achieve more timely responses and rapid attention to individual, family and community needs. Justice delayed is often justice denied. Much more use should be made of restorative justice options including victim offender mediation, family group conferences and alternatives to adversarial process. There have been examples in Victoria, elsewhere in Australia and in quite a few overseas jurisdictions.

Much more creative approaches should be applied to remand and safe custody care. There appears to be room for serious examination of both the law and conventions applying to the management and treatment of young people on remand. There are many problems associated with keeping young people in secure environments for long periods of time. It seems however that time periods are often extended as a result of overloaded systems in addition to the strategies applied by prosecution or defence. Suitable accommodation and suitable well trained staff are imperatives. The population in remand facilities often contains many unknowns and unpredictable elements. Ideally management should occur in small group settings or individualized contexts. Facilities need to enable attention to legal requirements, individual psychosocial issues, family, education, employment and other social concerns. Ideally activities should be available to enable remandees to use the time productively. Time in remand provides a good opportunity for young people to be informed about managing possible dispositions as well as options and sources of help for personal difficulties.

Post sentencing activity should ensure that dispositions are administered in accordance with their purpose and the court's intention. For many convicted young people substantial adjustment is necessary to accepting and dealing with the consequences of the particular sentence. Staff support and active efforts are necessary to mitigate harm and deal with the sentence requirements.

Custodial regimes and programs have an overarching goal of keeping the community safe and facilitating restitution, reparation and rehabilitation to the greatest possible extent. It is crucial for staff to have a fundamental understanding of the way people will learn from and adapt to their environmental circumstances. Learning is a continuous process through opportunity and encouragement of insight, operant and classical conditioning, imitation, modeling and introjection. Each moment on the developmental path, alone or in the presence of others, leaves an impact of some kind .

There is quite a bit of useful academic work available which bears on the subject in the study areas of out of home care, work with involuntary clients, therapeutic crisis intervention, impact of trauma, neurophysiology and neuropsychology.

Fundamental concerns relate to the structure and culture of programs and the recruitment, selection, training and support of staff. At a minimum staff should have initial and continuing training in Therapeutic Crisis Intervention. There are also many issues to consider in respect to approaches to security, staffing models, specialist resources, rosters etc.

Although we are never likely to be able to say that we have all the answers there is a wealth of information and evidence to take on board but who is listening and what assumptions are in play when events are being judged. Recent articles by Julie Edwards and Paul McDonald (appendix 2 and 3) resonate well with my experience as do many of the viewpoints expressed over years by Bernie Geary and Arie Freiberg. The announcement today concerning a new facility is welcome but I hope the premises on which it is established will reflect good evidence and wise counsel. The editorial in yesterday's Herald Sun is more likely to influence popular viewpoints but leaves me with less confidence.

Lloyd Owen PhD
1 February 2017

Appendix 1

Grounded theory PhD research was undertaken in relation good practice with vulnerable youth with complex needs who also challenge the service system. This research also looked at optimal service requirements to support good practice. In depth interviews with fourteen very experienced practitioners resulted in major findings summarised as –

Proposing a view of good practice giving emphasis to the accessible and assertive presence of a responsible adult to “be there” fostering relationships and skilled purposive intervention. Intervention should be planned, holistic, sensitive and responsive to particular needs. It provides active unconditional care. It attends to attachment and trauma concerns and works with short run goals and a long term perspective. Intervention is sustained until constructive disengagement can occur. The complexity and challenge in the task of helping hurt youth warrants the support, strength and guidance of a multi-skilled team. Ideally the team will be described using normative terms. Optimal services are timely, congruent, seamless and robust in capacity to nurture, establish boundaries and meet developmental and therapeutic requirements. They should be connected to a community and there for as long as it takes, with ready access to suitable accommodation, purchasing power and flexibility of operation. To the greatest extent possible solutions are generated in the place where help is sought. Voluntary service commitment lasts till personal capacity and natural networks take over (Owen 2007).

Appendix 2

JULIE EDWARDS

Dealing with youthful offenders may be difficult, but it is not impossible.

The recent violence at Parkville youth detention centre has rightly put the public spotlight on youth justice. Unfortunately, this has resulted in some knee-jerk commentary and responses, including the government's disappointing move to incarcerate children in an adult facility and hysterical and illinformed debate about the "need" to get tougher on crime.

Ironically, by seeking to placate a concerned public, the government risks making our community less safe, rather than more so.

Its announcement yesterday that Indigenous children will not be detained at Barwon Prison is welcome, but only partially addresses concerns about the prevailing policy-on-the-run, as the research is clear that NO children should ever be incarcerated in a correctional environment designed for adults.

Contrary to the current rhetoric, youth offending has been on a downward trend for at least the past five years, and in recent years this state has led the nation with successful youth justice programs. It is true we have a serious problem with a small group of troubled young people committing violent crimes – some of these young people don't seem remorseful, are frightening the community and having a profound impact on victims. We have to invest in changing the behaviour of these problematic children and prevent others following the same path.

Crime statistics show us that young offenders can be divided into four groups. The first two groups offer the best chances of rehabilitation – those who are first-time offenders, and those who offend for a short time as they push boundaries during teenage years before settling down. The third group tend to have been dealing with complex disadvantage from a young age. Early contact with child protection, a parent in prison, exposure to family violence, community disengagement and poor education are common with this group. These children are well known to those of us who work in the community sector, as well as to the police and justice authorities.

The final group are the "late onset offenders" who mostly only begin offending about the age of 15 but rapidly become involved in more serious offending. They may not have the same child protection history and possibly remain engaged at school, but these young people still largely come from the most disadvantaged postcodes. Our experience working with such children tells us their family and school situations are often precarious – they are hanging on to what most of us call "normal" by the skin of their teeth. A number of them left "normal" behind a while ago. And without intervention they will continue to cause trouble.

So, what to do? The “lock them up and throw away the key” approach is about the worst thing we can do. This entrenches disadvantage, heightens disengagement from the community, and embeds impressionable young people within a community of offenders. Research on brain development shows that the second decade of life is a period of rapid change, particularly in relation to impulse control. While this is reflected in behaviour, it also presents a window of opportunity for rehabilitation.

A strong society invests its efforts first and foremost in preventing crime. Once someone is going off the track, we must take steps to divert them from the criminal justice system or rehabilitate them through appropriate supports and programs that extend to their family and community environment.

For those who have seriously gone off track we need to create a strong net that will hold them while they face up to their situation and reset their lives in a positive direction. There is a place for custody but the goal must be rehabilitation.

A comprehensive approach must balance supervision, monitoring and accountability with tailored programs that change their behaviour and build solid skills, offering hope and a chance to build a healthy identity. The work must not cease until that behaviour change occurs and the young person is on a pathway to a positive and contributing future. These programs may be expensive on an individual basis, but far less costly – both in financial terms and community grief – than the current inadequate, piecemeal approach or resort to imprisonment.

There are a few models we can draw on, including Scotland’s successful Violence Reduction Unit, which combines a standard justice approach with education and supports that give elements of choice and control to young people, so they cease seeking power through involvement in gangs.

Avoiding institutionalisation is important – we want these young people to develop positive social skills and reform their behaviour, so the emphasis must be on building relationships in a safe, secure and therapeutic environment where staff are skilled and appropriately trained.

We are talking about a small number of young people whom we need to pursue in this way. If we commit, persevere and invest appropriate resources to tackle this problem we can be very confident of success.

And we cannot stand by while ill-informed, dangerous proposals are put forward that will make the community less safe in the future, and relegate a number of young lives to the scrap heap.

Julie Edwards is CEO of Jesuit Social Services.

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JULIE EDWARDS

Our broken youth justice system was once the nation's most progressive.

The problem we face with the youth justice system – demonstrated as recently as the weekend's events at Parkville – has been some years in the making. But how did we get here, from once having led the country with our more progressive approach?

It has been argued that this crisis is not, or not only, due to negligence but governments actively pursuing the wrong approach.

Over a number of years, the youth justice system has not received the attention it deserves – and the cost of that neglect is now apparent. The youth justice system sits between two much larger systems – those of child protection and adult corrections. Sadly, the child protection system is a feeder for youth justice; about two-thirds of children in the youth justice system have a child protection history.

The youth justice system is also a feeder for adult corrections, with many people in jail having been transported along the conveyor belt from child protection to youth justice to adult corrections. The broader system is, at best, under severe pressure; at worst, badly broken. Until recently, about 80 per cent of young people in custody at Parkville were on remand, meaning they had not been convicted of an offence. Filling up youth detention centres with unsentenced people creates a vicious circle. There is the direct negative effect on the young people themselves – and remember that when the cases go to court, most young people either do not receive a sentence or get a community sentence.

Further, having so many young people on remand blocks up the system, causing under-servicing and delays in processes regarding court appearances and resolution of cases. This in turn leads to further overcrowding.

Victoria's progressive approach to youth justice was demonstrated by lower rates of youth offending, imprisonment and recidivism. This was a result of an "informal compact" that saw both sides of politics, the police, the judiciary, the department and the community sector more or less aligned in an effort to prevent youth offending, divert young people from the criminal justice system where possible, and rehabilitate those caught up in a cycle of offending.

There was strong leadership; an understanding that this was the best way to turn around precarious lives and keep the community safe in the long run; and experienced staff employed at both policy and program levels. And there was still room for improvement.

So what happened? It's hard to say what occurred first, but over recent years politicians of both persuasions have competed with each other to demonstrate their "tough on crime"

credentials. An irresponsible and sensationalist media is intent on creating fear in the broader community, ignoring the facts and the evidence about what works, creating a pressure cooker environment that politicians are tuned in to. They respond by increasing their tough rhetoric.

The previous government also made hefty cuts to the public service , resulting in the loss of expertise and skill and severely curtailing its capacity to lead and advise in the areas of policy development and program implementation.

Youth justice is a pivotal part of a larger system. Of course we should invest earlier down the conveyor belt to prevent disadvantage and criminal behaviour occurring. But once young people start behaving badly we should do all we can to divert them from further penetration of the criminal justice system not draw them into the seemingly bottomless pit of a life of offending. So when a child hits the youth justice system, we are presented with an opportunity.

That opportunity looks something like this – getting to the bottom of what is going on in the young person’s life and tackling the specific factors that lie at the heart of the offending. This means forming a relationship, listening and learning.

There is nothing soft about this approach. It’s challenging because it’s personal and it’s real. It involves working with the young person to face up to facts about where his (and it is usually “ his”) life is going, about who he is and who he wants to be. This is not a one-size-fits-all intervention; it’s targeted to the real issues the young person needs to tackle, and the behaviour he needs to step away from.

This approach needs to underpin our interventions with young people both in the community and in custody. In custody, it means ensuring the environment is safe; that staff are appropriately qualified , resourced and supported to help young people tackle the underlying causes of their offending and that this happens in a consistent way; that young people remain connected to family and community and are supported to successfully transition out of custody.

The present situation is not of this government’s making. But it is its responsibility to rectify it, not exacerbate it. The government has instigated a review of youth justice, and its findings should be released by April. We expect the government will commit appropriate resources to get the youth justice system back on track.

Julie Edwards is the chief executive of Jesuit Social Services.

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Appendix 3

PAUL McDONALD

Rioters are sending the message that the juvenile justice system is broken.

The crisis in Victoria's juvenile justice system has unfolded slowly. It has been a long time coming, but in the past six months the situation has boiled over.

A decade or so ago, Victoria was regarded as the leader in juvenile justice. It had effective programs; a low and sensible sentencing culture ; effective dual track sentencing whereby magistrates could send older offenders to youth justice centres instead of adult jail; and recidivism rates of youth offenders were falling. Victoria juvenile justice led national directions in victim conferencing and youth koori courts. Magistrates of the Childrens Court criminal division were effusive in their praise of the system. So what happened? How did we get into this awful mess?

First, there was a cavalier approach to public service staffing cuts several years ago that saw decades of experience walk out the door. Cuts in the Department of Human Services crippled the crucial advisory and policy arms.

Second, over the past decade governments have started looking the other way on increasing numbers of offenders being remanded. Despite the rising trend, they ignored repeated requests from bureaucrats for bail and judicial resources to match demand.

Simultaneously bail judges were seemingly giving scant regard to crowded conditions at Parkville and continued to remand at whim.

The court system became clogged and frustrated young people on remand waited too long for their case to be heard.

Third, despite the Juvenile Justice Program's national reputation , it did not adapt to the changing profile of youth offenders. The changing demographics – age, ethnic origin, circumstance – are no more challenging than past trends. But different groups need different solutions and the program has been caught napping.

Fourth, the press is increasingly shrill in today's look-at-me environment . And journalists and editors know state governments are sensitive to law and order campaigns. The media stoke community fear, regardless of the consequences.

Fifth is the largely overlooked issue of the unprecedented prevalence of ice, which fuels impulsive violent acts. I hear the call " don't blame the drug" . Meanwhile, our other " aggro drug" ' – alcohol – is putting a lot of people in jail. Drug experts now talk about wanting to return to the old days of heroin usage , which never produced this level of sociopathic behaviour.

Sixth, and perhaps the most salient point regarding the detention centre riots, is the breakdown in the all-important relationship between young people and the youth officers inside. Over many years, difficult young offenders would say to me how highly they thought of individual staff. They would say “ Mr Suchand-such was good to me’ ’ or “ Mr Such-and-such told me a few things’ ’ . Today’s offenders no longer speak in these terms. The relationship between a young person and their detention has broken down and the result is, incredibly, a crisis in the juvenile justice culture of youth engagement.

Like all youth behave when in trouble or stressed, the rioters are acting up. In doing so, they are sending us a message that they want a better system. The message may not be put coherently or sent in an appropriate way but it is a message all the same. They do not respect the current system. And they have some cause for this feeling.

The unprecedented period of riots and breakouts over the past six months has been a slow train coming and the public need to understand it will take time to turn it around. Change needs to happen, particularly from the inside. The Department of Health and Human Services’ Juvenile Justice Program has to be given more policy priority. For too long it has been the poor cousin of child protection issues and left to languish.

The program also doesn’t need to be transferred to the Department of Corrections, as has been suggested . It simply needs to be prioritised and resourced by its parent department , thus helping to attract the best thinkers and reformers.

Calls for the minister’s head are also not the solution. Jenny Mikakos has a track record in reforming child protection and is the first minister in many decades to reduce by 30 per cent the number of children in the difficult and problem-plagued area of residential care.

She has the mindset to reform the system, but needs support from Cabinet and a better-resourced department . Moving juvenile justice to the Corrections Department would be a disaster, especially for the young people involved. It would also be an abandonment of the special responsibility we have for these young people, who are not the drugaddled violent criminals we may think they are.

It is time for cool heads in this overheated environment. The current review by the former secretary of the Department of Justice Penny Armytage and renowned forensic psychologist Professor James Ogloff is a smart move by the government and offers a way out. We should not pre-empt the outcome by calling for quick fixes .

Paul McDonald was the former executive director of the Children Youth and Family Division of the Department of Human Services, which included responsibility for the Victorian juvenile justice and child protection system. He is the CEO of Anglicare Victoria.

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