

Submission from the *What Can Be Done* Steering Committee to the Youth Justice Review March 2017

Introduction

In 2017 in Victoria, we continue to be confronted with the serious question of how to structure our youth justice system to best balance keeping the community safe and to preserve, wherever possible, a young person's potential to lead a healthy and productive life. This complex analysis is discussed in the *Government's Community Safety Plan 2017*¹ whereby community safety is addressed through both 'holding offenders to account' but also in 'reducing harm' especially in the context of supporting youth offenders to break the cycle of recidivism and avoid being entrenched within the criminal justice system.

Our Victorian youth justice system is also grappling with how best to deal with serious criminal offending, committed by our young people both in the community and in detention. Our youth justice system is further challenged in dealing with young people who experience serious substance abuse issues (many of these young people are vulnerable and are suffering from abuse, neglect or trauma) and then offend.

Within the current youth justice system, there are varying cohorts of young people and it is important to recognise that a homogenous, 'one size fits all' approach will never provide an effective solution for young people in terms of rehabilitation and avoidance of recidivism. This is especially the case for those with substance use issues, which is commonly aggravated by mental health issues, disabilities and disadvantage².

Overall, it is clear that serious recalibration of our youth justice system is urgently needed to avoid the significant compounding economic and social costs to the community, which will continue to escalate unless alternative, but significant interventions are employed.

Magistrate Bowles' Churchill Fellowship Report ('the Report')

In 2014, Magistrate Jennifer Bowles³ undertook a Churchill Fellowship to ascertain whether mandated treatment could be effective in assisting vulnerable children with significant substance dependency/related mental health issues who were in the youth justice and/or child protection systems and not engaging in treatment services. She travelled overseas and conducted extensive research and observed a variety of treatment services. As a result of such research and analysis, Magistrate Jennifer Bowles developed a model of a mandated therapeutic residential service for troubled young people in Victoria.

As Magistrate Bowles summarises *"The advice I received from numerous experts and practitioners in all countries was that, for some young people, compulsory orders to attend therapeutic facilities are necessary in order to ensure these young people are safe and secure, to deal with the addiction, to commence the process of improving their physical and mental health and wellbeing and to reconnect*

¹ Victorian Government, 'Community Safety Statement 2017' released December 2016.

² It is important to note that 78% of young people in detention had alcohol and/or drug use related to their offending, 60% were victims of abuse, trauma or neglect and 27% had mental health issues. Bowles J. *What Can Be Done* February 2015, p. 14

³ Currently a Magistrate in the Melbourne Children's Court, but it is noted that the Fellowship is prepared outside her capacity as a judicial officer.

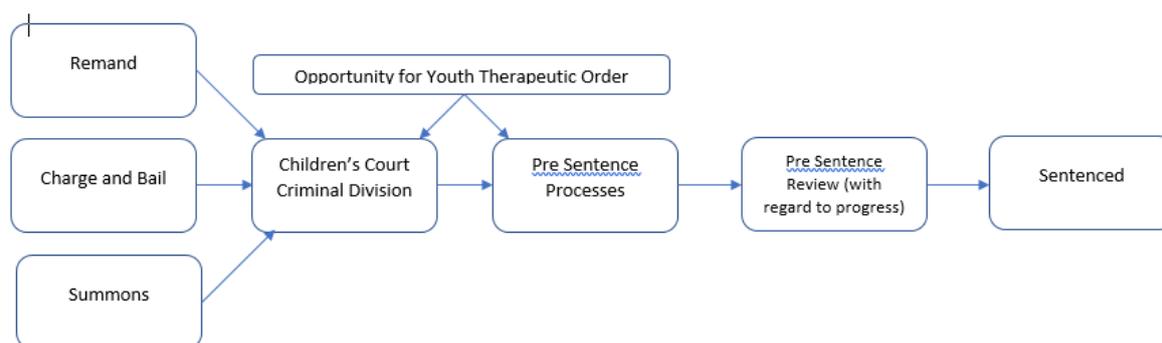
them with education and training. I spoke with some young people who admitted they did not wish to attend such a facility, but having been there, they believed it was essential for them.”⁴

In 2015, a Steering Committee was established to undertake further development of the model. The Steering Committee meets regularly and comprises 25 professionals who have varied involvements in the field. This includes the CEOs of YSAS, Windana and Odyssey House, senior medical/addiction specialists from St Vincent’s Hospital, the Director of the Children’s Court Clinic, alcohol and other drug clinical specialists, clinical and forensic psychiatrists, the community service agency sector, education/training, lawyers and advocacy groups. The seniority and breadth of involvement demonstrates the importance we all place in seeing the Report’s recommendations implemented.

The Steering Committee fully supports the findings and recommendations of the Churchill Fellowship Report written by Magistrate Bowles – (Attached).⁵

The Model

The Steering Committee has endorsed the Proposed Model outlined in the Report.⁶ However, given the recent crisis in relation to youth justice and the reviews currently underway, the Steering Committee has given priority to securing an immediate response for young people who are before the Criminal Division of the Children’s Court. The various proposed entry points are demonstrated as follows:



In order for a Youth Therapeutic Order (YTO) to be made, the Court would require a detailed assessment to be undertaken of the young person. Significantly, the YTO is not a sentencing order, but rather an opportunity to provide therapeutic treatment. Progress on the YTO could be relied upon to seek a reduced sentence due to the greater prospects for rehabilitation.

The Report⁷ details critical elements for the proposed ‘Therapeutic Treatment Facility’ under the headings of: committed and high quality staff; assessment; location of the facilities; the nature of the onsite buildings (both secure and open elements); a therapeutic community model; a ‘step-down’ facility as part of the transition; support for the young person after leaving the residential facilities; democratic principles; culture; education; professional development and support for staff; and external scrutiny.

⁴ Bowles J. *What Can Be Done* February 2015 (The Report) p. 6

⁵ Refer Attachment: Bowles, J *What Can Be Done? – Residential therapeutic treatment options for young people suffering substance abuse/mental illness* February 2015 (The Report)

⁶ The Report Section 8, p. 40

⁷ The Report, Section 10, p. 43-54

The therapeutic program is proposed to operate within a 36 bed facility that is structured into 5 units.

The first stage of entry (first unit) into this program is where a child is assessed in what could be called the 'Foundation Program'. This will be conducted in a unit that is purpose built to accommodate young people entering the service. The Foundation Program will be conducted in a six bed facility with an additional two emergency beds available. During the foundation stage, the conditions will be created in which young people can stabilise, undergo a comprehensive assessment and develop a therapeutic program plan. Where required, medically supervised drug withdrawal will be provided. The Foundation Program will also include a range of therapeutic activities that prepare each young person for either transition into the more intensive program within the facility (according to their plan) or assist and support them to transition effectively back to the community.

If the latter is considered the best option, the Court will be advised and a properly resourced transition plan will be enacted. The six available beds would allow for sufficient throughput to ensure that the intensive therapeutic program is constantly populated. The additional two beds increase the capacity of the unit to bring more young people through the Foundation Program where necessary. These beds can also be used as a 'step up' option for young people in the other units who may require more acute and contained care for a short period.

The other four units will each have 7 beds. The intensive therapeutic program would be delivered in blocks of 4 months each (e.g the first block would be inclusive of the four weeks spent in the 'foundation unit'). Young peoples' progress will be closely monitored through regular reviews by the unit, and progress reports to the Court. Where clinical assessment determines that transition to the community before completion of a therapeutic block is most appropriate, it will be an option open to the Court. However, it is expected that most young people will complete the 'foundation block' and progress into the next units/phases at the facility. At this stage a young person might transition to the community or undertake another 'therapeutic block' at one of the other 4 units at the facility. Young people will have access to up to 3 therapeutic blocks. The focus will always be on preparing each young person to live healthy and fulfilling lives, with an emphasis on successful transition and aftercare services back in the community.

Our modeling indicates that 47 young people per annum can be expected to complete an 'Intensive Therapeutic Program'. An additional 13 young people are expected to complete the 'Foundation Program' and make the transition back to the community, well supported and assisted.

The Service will be staffed by properly trained residential therapists, a consultant psychiatrist, medical practitioner/s, nurses, transition workers with family therapy training and a range of allied health professionals. Careful attention will also be paid to clinical governance. An education program will be provided and staffed and appropriate security will be provided.

The culture and values of all staff would support optimism for the young people. All staff would be active members of the care team; education/training would foster self-esteem and employability skills; and a biopsychosocial model of care/treatment would be implemented. This will be designed to create a life altering, nourishing environment in which to re-orientate and to much better equip the young people to be healthy and productive in the community.

The Steering Committee refers to the 2016 KPMG report to the Department of Health and Human Services entitled “*A proposed contained therapeutic treatment and care service*”⁸ (CTTCS). The KPMG report provides very similar recommendations to those contained in Magistrate Bowles’ Churchill Fellowship Report and such reports demonstrate the failings of the current system and the likely long-term cost savings if such suggested ‘Therapeutic Treatment Facility/Units’ were implemented.

Costs

The Steering Committee is currently reviewing costs for the provision of the proposed service. It is to be noted, however, that the current cost to detain a young person per day is \$1,495, whilst the cost for the KPMG preferred model⁹ is \$1,420 per day.

If such a model is implemented, there will be significant overall (further) savings to the criminal justice system, by the reduction of recidivism, reduction in societal costs, reduction in the number of victims of crime and a reduction in compounded costs in the youth and thereafter adult criminal justice systems.

Human Rights

Section 9 of the Report¹⁰ addresses human rights considerations and Appendices III and IV provide relevant extracts from the *United Nations Convention on the Rights of the Child* and the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*.¹¹ Provided the safeguards referred to in the Report are in place, children have clear rights to be protected from drugs and harm and to be able to live healthy lives.

Conclusion

The Steering Committee believes Magistrate Bowles’ proposal of a therapeutic residential unit incorporating ‘step-down’ facilities is one significant answer to a myriad of urgent issues within Victoria’s youth justice system. It is naïve to expect many of the most troubled young people in our community to make informed, rational choices for treatment. Even if they identify the need, few have the capacity, whilst substance dependent, to voluntarily remain at treatment facilities. If the Steering Committee’s model is implemented, such a unit would provide much needed secure therapeutic intervention for many vulnerable, complex young people. The establishment of such a therapeutic service would reflect international best practice and would enable Victoria to continue its fine tradition of leading the way in its approaches to youth justice.

⁸ KPMG (for the Department of Health and Human Services) *A proposed contained therapeutic treatment and care service* April 2016, (released under FOI)

⁹ Ibid, p. 40

¹⁰ The Report, Section 9 p.41-42

¹¹ The Report, p. 71-72