

Churchill Fellowship Report

What Can be Done?

Human Rights of Children and Young People

The recommendations in the Report '*What can be done? – Residential therapeutic treatment options for young people suffering substance abuse/mental illness*' (the Report) are not only consistent with the human rights of children and young people, but promote their human rights. The human rights implications are discussed at pages 41 and 42 and Appendices III and IV of the Report.

The placement of a child or young person in a secure facility involves a restraint on a person's liberty. There are fundamental human rights as detailed in the *UN Convention on the Rights of the Child*¹ and the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*.

The Convention includes

- the right for children to have their opinions taken into account when adults are making decisions which affect them² and
- children have the right to privacy and for the law to protect them from attacks against their way of life, good name, their family and their home.³

The Convention also includes the following Articles which are directly referable to the harm being addressed in the Report's recommendations –

- children have the right to live a full life and governments should ensure that children survive and develop healthily;⁴
- governments should provide ways of protecting children from dangerous drugs;⁵
- children should be protected from any activities that could harm their development.⁶

The Charter includes the following provisions:-

- every person has the right to enjoy his/her human rights without discrimination;⁷
- every person is equal before the law and is entitled to equal protection without discrimination;⁸

¹ Ratified by Australia 17/12/1990.

² Article 12

³ Article 16

⁴ Article 6

⁵ Article 33

⁶ Article 36

⁷ Section 8(2)

⁸ Section 8(3)

- a person must not be subjected to medical treatment without his/her full, free and informed consent;⁹
- families are the fundamental group unit of society and entitled to be protected by society and the State;¹⁰
- every person has the right to liberty and security.¹¹

However, it also includes the following provisions:-

- every child has the right without discrimination to such protection as is in his/her best interests and is needed by reason of being a child;¹²
- a person must not be deprived of his/her liberty except on grounds and in accordance with procedures established by law;¹³
- all persons deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person;¹⁴
- a child charged with a criminal offence has the right to a procedure that takes account of his/her age and the desirability of promoting the child's rehabilitation.¹⁵

The children and young people who would be eligible to be placed on a Youth Therapeutic Order are suffering from serious substance abuse/mental health issues which are impacting adversely on their health. For those young people taking crystal methamphetamine, the health implications can be life long, eg the taking of stimulants, including crystal methamphetamine depletes dopamine, a chemical in the brain which does not replenish itself. In long term use the depletion of dopamine presents as a syndrome similar to Parkinson's Disease. For young people who use methamphetamine, their rate of psychosis is 11 times the rate of contact with psychiatric services with a diagnosis of drug psychosis, a psychosis or schizophrenia as those young people not using methamphetamine.¹⁶ For some young people, the health impacts are already evident and yet treatment is not being accessed, for example, a 14 year old girl chomping every day and functioning at the level of a 7 year old and a 15 year old boy with pancreatitis due to alcohol abuse.

The opportunity for the child or young person to access voluntary treatment services would be provided prior to the Youth Therapeutic Order being made. The Order is providing treatment for those not otherwise receiving any treatment. The placement in the secure unit would be for the shortest time possible (informed by the clinicians) and the young person would transition to the step down facility on site. In order to effect change, the average length of total stay would be approximately 4 months to 6 months and there would be a staged transition to supported accommodation in the community.

Significantly, the Order places the child or young person in a therapeutic environment which is homely. It is not a draconian prison environment. There are committed qualified

⁹ Section 10(c)

¹⁰ Section 17(1)

¹¹ Section 21(1)

¹² Section 17(2)

¹³ Section 17(3)

¹⁴ Section 22(1)

¹⁵ Section 25(3)

¹⁶ Page 20 of the Report

clinicians working with and assisting the young people by providing intensive therapeutic counselling and treatment. It is an opportunity for rehabilitation. It is not a sentence. The court will have regard to progress in treatment when determining the appropriate sentence. For a young person in the child protection system, it may result in DHHS (child protection) no longer being involved and instead the young person transitioning to live independently.

Further opportunities for rehabilitation are included by the provision of education and training facilities on site.

It is critical that independent oversight is provided, eg by the Court and other external agencies. Such external agencies overseas include the Ombudsman for Children in Sweden, the Care Quality Commission in England and the Mental Welfare Commission in Scotland. Scrutiny could include un/announced visits by such agencies. Regular progress reports would be provided to the Court.

The proposed Order would provide a circuit breaker for some of the most vulnerable children and young people in our community who are leading chaotic lives in which their substance abuse and mental health issues are not otherwise being addressed. One mother stated in Court to the presiding magistrate – *‘What can you do? I am watching my son die before my eyes.’*¹⁷

For children who are drug dependent and living sad, chaotic lives, Dr Dickon Bevington, consultant child and adolescent psychiatrist and international expert on treatment for substance use in young people, succinctly stated the position many of the young people find themselves -

*‘Nearly all have terrible histories of trauma, neglect, bereavement, maybe major anxiety, emerging psychotic illnesses. The problem for these kids if they had one of those, for example, we know how to treat trauma, bereavement, drugs but the cumulative burden of all of that rubble pushes the flight path down - so it will inevitably hit the trees at the end of the runway. These children very often struggle the most to make helpful relationships, **they least know how to say ‘help me’ and they don’t have the expectation they will receive treatment.**’ (emphasis added)*

Conclusion

The Youth Drug Court judge in Christchurch, New Zealand, Her Honour Judge McMeeken stated - *‘I can always lock people away, but I can’t always put them in rehab.’* It must be remembered we are dealing with children and young people. As one young person in a residential facility in New Zealand said - *‘We’re just kids - isn’t it up to you to know what’s best for us?’* Sufficient resources, independent oversight and the critical features of the facilities as detailed in the Report¹⁸ will ensure that the human rights of children and young people are respected and advanced.

¹⁷ Page 12 of the Report

¹⁸ Page 43 of the Report