

1. Purpose of this Submission

The perceived crisis in Victorian youth justice has two distinct elements in different spheres of activity.

- Concern about violent offences in the community, including home invasions and car-jacking, committed by young people and the non-existent Apex gang.
- The loss of control in youth justice facilities leading to significant damage to property and, in the case of Malmsbury, escapes into the community.

These elements are essentially unrelated and could have occurred separately at different times, but arising simultaneously they have created the perfect storm of public concern. The risk is that the two spheres become conflated and universal cures are applied across the entire youth justice system rather than targeted responses to the specific issues. The worst case is drawing the conclusion that “young people have changed” and community and institutional systems need to change to reflect a new perception of young offenders.

This submission is only concerned with the second element causing community concern, the loss of control in youth justice facilities, and has two purposes:

- To provide some context and understanding of the reasons that youth justice facilities in Victoria have gone from recognised best practice to a system in crisis. In doing this it addresses the following criteria in the Committee’s Terms of Reference:
 2. *the security and safety of staff, employees and young offenders at both facilities;*
 3. *reasons for, and effects of, the increase in the numbers of young people on remand in the last 10 years;*
 7. *the role of the Department of Health and Human Services in overseeing practices at the centres; and*
 8. *any other issues the Committee consider relevant.*
- To identify some of the lessons that can be learned from the poor performance of youth justice facilities and ensure that the incorporation of youth justice into the Department of Justice and

Regulation (DJR) is managed in the best interests of the community and young people.

2. Submitter

The submission is based on:

- Experience as a youth justice worker in probation, parole and hostels in Victoria
- Experience as an Assistant Superintendent at Malmsbury
- Diploma in Criminology
- Youth justice program development for Victorian government
- Leadership role in the redefinition of the role of youth justice facilities in Victoria through the Statewide Services Redevelopment program of the 1980s
- Youth justice representative for DHHS's predecessor in the development of the Children and Young Person's Act
- Preparing the first Functional Brief for Parkville's redevelopment in 1993
- Experience as (Acting) Manager of the state's youth justice program for an extended period

3. Issues Affecting the Performance of Youth justice Facilities

The crisis in youth justice facilities has arisen as the result of number of factors, including changes in three critical areas:

- Program Structure and Expertise
- Functional Role of Facilities
- Operational Culture in Youth Justice Facilities

3.1. Program Structure and Expertise

The state's youth justice program once had a well-developed organisational structure for the management of facilities and the development of the youth justice program. This included:

- A central structure, staffed by people experienced in the management of youth justice facilities, that had direct operational control of the facilities,
- Centralised control of decisions regarding the classification of young people to individual facilities and oversight of services delivered within facilities,

- A training program for the development of future institutional managers,
- A purpose designed and operated program for the screening, training and development of facility staff.

Collectively these elements were able to establish a coherent set of beliefs and practices and train staff to deliver a consistent, targeted set of services. While never perfectly delivered, the nature of best practice was well understood and the goals clear.

These elements have been successively dismantled. Training for future managers was reduced or ceased, training for facility staff was outsourced into generic training programs. Most significantly, regionalisation of service management in the predecessors of DHHS led, for a period, to youth justice facilities being placed under the control of generic regional managers. Head office was reduced to a policy and administrative function and the accumulated experience was dissipated.

Management of youth justice facilities was recentralised, though divorced from policy, but has not recovered all its former capacities. It remained a tiny program that was neglected because of its size and the never ending stream of urgent and competing priorities in far larger program areas such as child protection and out of home care.

The collective cost of these changes to the program structure was the loss of a clear guiding philosophy and coherence within the system. Evidence of this came in external reviews of performance issues at Parkville that, in effect, assessed Parkville's facilities against adult correctional benchmarks and not youth justice goals and philosophies.

3.2. Functional Role of Facilities

3.2.1. Malmsbury

Malmsbury was established as an alternative to imprisonment in adult prisons. Its target population was young people who had committed serious offences but had high prospects of rehabilitation and could reasonably be expected to be able to complete their sentence in an open facility with a high emphasis on maintaining community engagement, including week-end leave programs. Young people who met these criteria were frequently also considered to be physically at risk in an adult prison.

This initial Malmsbury program had, and required, scant security. The weekly intake was "secured" for a few days after arrival by locking the

doors - but internally the building standards were domestic in appearance with domestic glass windows the only barrier. After “settling”, young people freely walked around an unsecured and unfenced site. Young people did abscond, but rarely committed very serious offences, and there was a recognised balancing of risk with the program’s rehabilitative benefits.

Preserving the boutique role of Malmsbury was always problematic. Conditions in adult prisons were such that there was always a strong interest in sentencing young adults to Malmsbury instead. For courts it was shielding them from the risk of abuse in prisons, for defence lawyers it was also a soft option. DHHS, and its predecessors had no presence in adult courts and little capacity to influence these sentencing decisions.

The core of the current Malmsbury facility was designed and built when these were the dominant program considerations. Overcrowding in adult prisons added to the pressure to use Malmsbury, despite improvements in adult prisons themselves, increasing community concern about absconding and curtailing of leave programs. Additional security has been progressively added; fencing was built around the Intake unit in a 1990s redevelopment, existing units have been retrofitted to operate securely. A separate secure facility, to manage the more difficult young people at Parkville, was co-located last year on the site.

3.2.2. Parkville

The original, 4-unit, Melbourne Juvenile Justice Centre was designed in the late 1980s as a facility for 45-60 sentenced 15 to 16 year olds, to replace the former Turana centre. This original facility had a secured perimeter, which has proved completely adequate without the need for electronic detection and CCTV systems used in adult facilities. Within the perimeter the facility was laid out as open campus to normalise the environment as much as possible. Buildings were secure in themselves but there was no additional security between buildings. One building had a higher level of security.

When Parkville was established there was no plan to accommodate remandees within the perimeter. This was intentional. The department’s position, properly informed by human rights considerations, was that remandees should be held separately; both in recognition of their legal status and the different, more controlled, regime they required during a very unsettled phase in their lives. A separate remand centre continued to function outside the new facility

and the department believed it should be replaced with a separate new facility.

After MJJC was commissioned the state's community youth justice programs were so successful in managing young offenders in the community that Parkville was underutilised. The external remand facility was closed and remandees brought within the perimeter. What was originally a small number, ten or so, has continually grown.

The next change to Parkville's functional role was changing the age of the Children's Court jurisdiction from up to 17 years of age to up to 18 years of age. Whilst a necessary and important change that brought Victoria into line with other States, the facilities had not been specifically designed for this cohort. An older and potentially more sophisticated group of young offenders came into Parkville. Less obviously it created an undesirable mix of young people within an enclosed space. The numbers in youth justice facilities are very small and facilities can't offer a range of options matched to the range of age, experience, social and psychological maturity and community risk of the young offenders they house. Inevitably the range and mix of young people within buildings was more problematic.

Both Malmsbury and Parkville were increasingly providing custodial services for groups that the facilities were not designed to accommodate.

3.3. Operational Culture in Youth Justice Facilities

Operational culture in a youth justice facility can be understood as:

- the behaviours of staff within the facility, and
- the belief systems that shape those behaviours

A positive rehabilitative culture is founded on a number of beliefs including:

- that young people in custody are in a developmental stage of their life that may see them "grow out of crime"
- that all young people need support, usually from parents and schools, to successfully transition adolescence
- that young people in custody may be in crisis and in need of additional supports to address a range of life deficits
- that youth justice facilities have the capacity to positively affect the trajectories of young people's lives and the safety of the community

- that to be able to re-enter the community successfully young people in custody need the same opportunities for growth and skills development as young people in the community

These beliefs are then demonstrated in a series of behaviours by staff within the facilities. One Malmsbury CEO had a sign permanently on his desk that read, “I operate a salvage business not a junk yard.”

More specifically positive beliefs lead to:

- a pervasive attitude of concern for young people’s circumstances,
- a willingness to fill the role of absent parents and provide advice and support,
- a capacity to accept young people’s failures as an unfortunate part of their growth and not abandon them (as any parent does)
- an understanding of the volatility of all young people’s behaviour and its ability to change positively again if given the space
- a desire to offer young people in custody as many normalising experiences as possible (and resist dehumanising regimes)

Operating at its best, a positive rehabilitative culture creates relationships of respect and trust that minimise conflict and allow a facility to operate in the best interests of young people. As portrayed in publicly released material, Don Dale was operating on a poor operational culture that lacked respect for young people, had no optimism about their future, and saw young people as a challenge that had to overcome by a command and control structure. In these circumstances young people become afraid and behave out of fear. Winning command and control battles achieves nothing beyond establishing the basis for future battles.

Also looking from the outside, it appears that by 2016 Victorian youth justice facilities were operating in a deteriorating culture. The exception was the education program, but funnelling resources to that program may have, paradoxically, weakened other programs. Some parts of Parkville and some staff appear to have descended even further into a command and control culture; punitive lockdowns, control battles, increased use of and reliance on constraints, etc. which young people reacted to. Transfer to Grevillea was the ultimate expression of fighting a command and control battle.

4. So what happened in 2016/17?

It is possible to understand the events that happened in 2016/17 as failures in the systems to manage young offenders and not the young people themselves.

The three issues discussed above interacted with each other, and reinforced the negative potentials in each, and sent the centres cycling downwards into an inevitable confrontation.

- Loss of program structure and a guiding philosophy of youth justice management had contributed to a weakening of the role and purpose of the facilities. Loss of management and staff training programs had contributed to a weakening of the positive rehabilitative culture.
- Changes in the role of facilities had created unstable environments. Parkville had effectively become a remand centre (at times 70-80% of residents were on remand) – a role for which it was not designed and very unsuited. This placed pressure on the facilities and the organisational culture.
- The positive rehabilitative culture, weakened in its basis and operating in facilities not designed for purpose, had sunk towards a command and control approach.
- Young people, feeling unsafe and unsure that staff are able to protect them as staff withdraw, could have turned even more to their peers for protection
- Young people, feeling that they were not treated with respect, attacked systems they didn't respect. The education program that young people felt respected them was not attacked.
- The facilities, designed and perfectly suitable for different populations and, just as importantly, designed to facilitate and function within a positive operational culture, were unsuited to supporting a command and control culture and failed.

5. The Lessons

The events of 2106/17 have led to an expectation that significant changes will be made to the administration of youth justice institutional facilities. Before wide ranging and holistic changes are made to all aspects of the program it is important to consider:

- The goals that the community would expect youth justice programs to achieve
- The demonstrated best practice for achieving those goals
- The causes, as discussed above, for the current situation

- The youth justice programs that have functioned well. Programs for under 15 year olds and young women are not a reason for concern and there is no evidence they need to be dismantled. Parkville's program for sentenced 15-16 year olds operated successfully for years in the role it was designed for.

Much of the current debate suggests Victoria is facing a stark choice in the approach it adopts to future management of youth justice facilities.

On the one hand it can pursue a command and control model based on facilities designed to support that approach. The cost of this will inevitably be the severe limiting of the rehabilitative capacity of the facilities and fostering future risk to the community. Some existing successful programs may be compromised.

On the other hand it can decide to recover the regimes that have operated successfully in the past and led to better individual and social outcomes.

Inevitably the path chosen will have a mix of both. It is the balance of that mix that needs to be determined.

In assuming responsibility for youth justice facilities DJR should:

- Establish a clear set of program principles and guidelines that include operational procedures and performance standards, that don't rely on coercion
- Specifically identify program guidelines for young women, Aboriginal young people and young people with mental health and physical disabilities - not one program model for all
- Re-establish central expertise and senior managers that have a prime responsibility and accountability for youth justice rather than a more diffuse general management role with other competing demands
- Place youth justice facilities under the direct operational control of that central management
- Research and adopt a remand strategy. Determine why remand numbers have risen exponentially, examine alternatives to institutional remand and prepare a functional brief for institutional remand.
- Design facilities to meet the current purposes and demands. This would include:
 - A purpose built remand facility separate from facilities for those under sentence,

- The capacity to separate younger/older, immature/sophisticated sentenced young people, with a limited high security capacity,
- Within this system redesign there is no reason why a refurbished Parkville could not successfully return to the role for which it was built and was able to successfully operate. Nothing has emerged that suggests 15-16 year olds need to be managed in a command and control model by staff trained and armed to undertake a security role.
- Revitalise the dual track option by limiting the role of Malmsbury once again to young offenders it is suitable to manage.
- Review staff recruitment and training with a view to training staff specifically for roles within youth justice facilities. The current high level of casualisation of the workforce is not consistent with a positive rehabilitation culture.