

THE SEGREGATION AND ISOLATION OF CHILDREN AND YOUNG PEOPLE IN VICTORIAN JUVENILE JUSTICE: RETHINKING A FLAWED SYSTEM

Submission to Inquiry into Youth Justice Centres in Victoria

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DISCLAIMER

This report draws on a review of research conducted by the authors using publically available information. The authors have relied on that information being accurate. An audit to verify the accuracy or completeness of the information has not been conducted and accordingly the authors cannot accept responsibility for any errors or omissions in the information.

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Inquiry into Youth Justice Centres in Victoria: Terms of Reference

That, pursuant to Sessional Order 6, this House requires the Legal and Social Issues Committee to inquire into and report on, no later than Tuesday, 1st August 2017, issues at both Parkville and Malmsbury Youth Justice Centres including, but not limited to:

1. Matters relating to incidents including definitions, numbers and any changes to the reporting of incidents;
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 ten years;
4. Implications of incarcerating young people who have significant exposure to trauma, alcohol and/or other drug misuse and/or the child protection system, or who have issues associated with mental health or intellectual functioning, in relation to:
 - a. the likelihood of reoffending;
 - b. the implications of separating young people from their communities and cultures;
 - c. additional options for keeping young people out of youth justice centres;
 - d. the culture, policies, practices and reporting of management at the centres;
 - e. the role of the Department of Health and Human Services in overseeing practices at the centres; and
5. Any other issues the Committee consider relevant.

Background

The Victorian Youth Justice system has experienced a number of riots and other serious critical incidents over the past few years. Various reports, including those of the Victorian Ombudsman (2010; 2013) have highlighted issues including inadequate and inappropriate facilities and infrastructure, staff shortages, staffing training and management practices. Most recently the Victorian Ombudsman reported on the placement of young people at the Grevillea unit of Barwon Prison, a repurposed adult prison (February 2017) and the Commission for Children and Young People (CCYP) reviewed the management of youth justice centres over the past 18 months, focussed specifically on the use of isolation, separation and lockdowns (CCYP 2017).

At the same time, reports of the mistreatment of and assaults on young people, increasing self-harming behaviours and other critical incidents and the routine use of segregation as a behaviour management tool in the Northern Territory's youth detention system has led to the establishment of the Royal Commission into the Child Protection and Youth Detention Systems of the Northern Territory (Prime Minister of Australia 2016). In Queensland, serious allegations were levelled against youth detention centre staff for the use of excessive force, alleged assaults and the routine use of segregation which has led the Queensland Government to address the practices, operation and oversight of facilities for juvenile detainees through an official inquiry (August 2016). New South Wales also established an inquiry into practices concerning the detention of children in October 2016.

It is obvious that serious and concerning issues exist across Australia as to the manner in which young people sentenced by the courts to safe and secure custody are being treated. Young people held in Victoria's youth detention system are displaying extreme and life threatening behaviours. In response, segregation and isolation have been used to 'manage' such behaviours. The Commission for Children and Young People (2017) found that the Victorian youth detention system was over-reliant on isolation and segregation as behaviour management tools. The authors see this as a flawed approach likely to have significant consequences for the young people in detention.

This submission does not revisit the 2017 findings of the Commission for Children and Young People. It makes the case for a complete rethink of the use of segregation and solitary confinement in youth detention. It outlines the literature on detainee responses to imprisonment and on the use of segregation to explain the progressively degenerating behaviour of children in custody and the likely negative physical and psychological impacts to the young people involved. This submission draws on the abundant research in the area, recent submissions to other government inquiries (see Grant 2016; Designing Out Crime Research Centre, 2017) and other work that the authors have been conducting on the topic (see for example, Grant et al. 2017 forthcoming). The submission argues that a paradigm shift is needed in the youth detention system to a model prioritising non-institutional care, with trauma-informed practice and, in the small number of cases requiring detention, a prohibition on segregation.

Responses to imprisonment

Over the last two years, the Victorian youth detention system has seen escapes, staff assaults, prisoner to prisoner violence and riots. Critical incidents have occurred with alarming regularity. For example, in March 2016, young people conducted a rooftop protest at Parkville Justice Centre, in October 2016 young people in the Malmsbury Detention Centre allegedly armed themselves, in September and November of 2016 young people rioted again at Parkville Justice Centre, and in January 2017, 15 young people escaped from Malmsbury Detention Centre. The underlying issues however have been evident for some time. It has been stated that the Victorian youth justice system has flagged issues with successive governments for more than a decade, such that recent dysfunction and critical incidents are the result of years of inaction with ‘appalling conditions not suitable for juveniles’ (Taylor quoted in Florance & Longbottom 2017). The Ombudsman noted the situation was aggravated by long-standing staff shortages ‘...with the predictable effect that young people are kept in lockdown for longer periods, creating further unrest’ (Victorian Ombudsman 2017: 3).

Applying the theory of responses to imprisonment to understand the desperate behaviours of youth detainees in Parkville and Malmsbury Youth Justice Centres and in other sites, it becomes apparent that actions of the detainees may have been predictable. It is somewhat surprising that such behaviours did not occur more frequently.

The impacts of imprisonment on the individual have been well documented. The unique environmental experiences of prison may evoke extreme and complex responses with individuals responding to the loss of liberty, autonomy, goods, services, heterosexual relationships and personal security (Sykes 1958) with a range of emotions and behaviours (Zamble and Porporino 1990; Zamble 1992). Taylor and Cohen’s studies of long-term maximum-security prisoners identified five types of behaviours occurring in response to the prison environment, defined as self-protecting, campaigning, escaping, striking, and confronting behaviours (Taylor and Cohen 1972).

The researchers termed these ‘resistance behaviours’ noting that the behaviours were not exclusive or sequential and could occur as individual or group actions. For example, a prisoner could individually campaign whilst being involved in a collective action to escape. Self-protecting behaviours were noted to include behaviours such as situational withdrawal (e.g. retreating to sleep, reverting to the foetal position). Campaigning behaviours included actions such as seeking moves to alternative accommodation or appealing sentences, attempting negotiation, setting up grievance committees, and submitting personal grievances and appeals. Escaping behaviours included attempting to physically escape, self-harming behaviours or suicide, or retreating to ‘safe’ areas of the prison or isolating oneself. Striking behaviours included refusal to adhere to situational demands, and confrontational behaviours included taking part in riots, disturbances, hostage taking, and suicide (Taylor and Cohen 1981). A diverse range of emotions and behaviours therefore arises in response to custodial environments.

Researchers view these resistance behaviours as a continuum of behaviours rather than singular acts. The people-environment interaction is dependent on a complex interplay of

factors as the prisoner attempts to regain control of their environment. The consequences of resistance behaviours in the custodial environment can be life threatening, costly and politically sensitive. Poor or inappropriate accommodation has been identified as a catalyst for critical incidents, riots and disturbances in prisons (Toch 1992), and may lead to individual self-harming or suicidal or other non-compliant behaviours among prisoners (Reser 1989) contributing to a variety of other poor outcomes for prison communities and prisoners (including diminishing mental health) (Krauth and Clem 1987).

Providing a 'normalised' custodial environment which fits the environmental and cultural needs of the user group is paramount in reducing the impact of the prison environment on the individual.¹ The designed environment should mirror and promote activities and routines which may occur in the outside society. Levels of security in prison environments should be proportional to the 'risk' a person presents to society and provide the prisoner with the highest achievable level of personal control over their environment (Grant 2008).

In contrast to such approaches, the regime of juvenile detention in Victoria described by the Commission for Children and Young People and the Victorian Ombudsman was one of 'widespread use of restrictive practices that led to the confinement and isolation of young people, despite evidence suggesting that such practices can exacerbate harm and hinder rehabilitation' where 'decisions to isolate, separate or initiate lockdown were not made or recorded in accordance with relevant legislative and policy requirements' (CCYP 2017: 13).

Under the relevant Victorian legislation, a young person (child) may be segregated, or in a form of solitary confinement, under at least two schemes, 'isolation' and 'separation'. Isolation involves placing the child 'in a locked room separate from others and from the normal routine of the centre' as an emergency response (*Children, Youth and Families Act 2005*, s.488(1)).² From this, it becomes clear that isolation cannot be used as a form of punishment. 'Separation' is intended to be less onerous, to 'manage [the child's] behaviour and ensure others' safety' (CCYP 2017, 15). The relevant policy requires that the separation 'allow for continued access to education, programs and visits' and that it should not 'involve confinement in a locked room' (CCYP 2017: 15).

The Commission for Children and Young People observed that isolation and separation are however closely related and that 'in many instances, young people on separation plans were

¹ Understandings of what constitutes a 'best practice' juvenile detention centre are limited. As Grant notes '...it is evident that the intricacies of designing custodial environments for young offenders are not fully understood' (2013:54). However research indicates that it is preferable for children to be housed in non-institutional environments and there are likely to be negative impacts for children placed in institutional environments (for example, see, Quinton et al 1984; 1984; Hodges and Tizard 1989; Rutter et al. 1990).

² *Children, Youth and Families Act 2005* (Vic) states: s.488(2) Isolation may only be authorised under subsection (1) if;

- (a) all other reasonable steps have been taken to prevent the person from harming himself or herself or any other person or from damaging property; and
- (b) the person's behaviour presents an immediate threat to his or her safety or the safety of any other person or to property.

A wider emergency power is also provided under s.488(7):

- (7) In addition to his or her powers under this section, the officer in charge of a remand centre, youth residential centre or youth justice centre may cause a person detained in the centre to be isolated in the interests of the security of the centre.

effectively held in isolation [better known in the literature as segregation] and are confined in a locked room for extended periods without access to peers or the broader routines of the youth justice centre' (CCYP 2017: 15). The Commission for Children and Young People concluded:

We found isolation is used as a core element of managing behaviour in Victoria's youth justice centres (CCYP 2017: 15).

This can be seen to be counterproductive to the aims of behavioural management. There is also evidence that the mere presence of segregation cells in detention centres sends an incorrect message about the nature of youth detention to staff (Committee on the Judiciary United States Senate 2012). Staff who have the capacity to use segregation as a behaviour management 'tool' may choose to use this regularly instead of developing the human relationship skills that are identified as fundamental to any effective behaviour management (Roush, 2004). Cohen noted that 'segregation is an easy response and requires no thinking or planning; no work at changing offenders' behaviors. For some officers, it is an ideal assignment: no real interaction with inmates, nothing but control is on the daily menu' (Committee on the Judiciary United States Senate 2012: 308).

What is segregation?

In this context of this discussion, it is important to note what segregation is more generally, and what the conditions of segregation look like. Segregation is the practice of holding people in solitary confinement, generally isolated from human contact (apart from prison staff). In some instances, segregation is employed as a form of punishment, beyond the mere incarceration of a prisoner, usually for violations of the institution's regulations. Segregation is also commonly used in Australia where a prisoner is being investigated for infractions or at 'high risk' and 'unable to be housed' in the mainstream population of an institution for a variety of reasons. Where prison systems are overcrowded, prisoners on transfer (i.e. prisoners being transferred between prisons for court appearances, medical appointments, etc.) are commonly housed in segregation in the short term due to bed shortages in other types of accommodation (Bilby 2015). However, people deemed 'at risk' of suicide or self-harming are routinely held in segregation.

Most prisons and detention centres have segregation units. These are generally separate from other housing units and are fitted with maximum security features. Within such units there are likely to be several types of cells. The majority of cells in segregation units have minimal facilities, limited to a toilet/basin, concrete bed base and mattress. Prisoners often spend most of the day locked up with little meaningful activity or human interactions. Exercise usually takes place alone in an exercise room or a fenced or walled run (Birckhead 2015).

A different form of segregation involves what are referred to as 'assessment cells',³ which are used to house inmates who are 'at risk' of self-harm. In Australian prisons and detention

³ The terminology for such cells varies. Camilleri et al. (1999) use the term 'strip cells' with other sources using a variety of names including 'isolation cells' (Australian Law Reform Commission 1997), 'Muirhead cells',

centres, these cells are again located within segregation units and generally are fitted with CCTV for observing the prisoner from a separate place. Fittings in such cells are limited; in some locations, the cell only contains a drain and the prisoner is ‘...stripped of all clothing and possessions in an effort to reduce the chances of harmful behavior’ (McArthur et al. 1999:3). The most extreme regime involves the prisoner being stripped of all clothing and given a smock and bedding made of tear-proof material and being observed continuously (generally via CCTV and/or an officer placed outside the cell).

The evolution of segregation cells and units in Australia

Major prison reform and the rebuilding of the Australian penal estate occurred across Australia in the 1970s and 80s following the critical report of the Nagle Royal Commission. Separate units which segregated recalcitrant prisoners for the good order of the institution and their own protection were developed.

The development of a separate observation cell with minimal fittings for ‘at risk’ prisoners occurred upon the release of interim findings of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) (Commonwealth of Australia 1988). The interim report suggested:

A task force should be established among the Police Departments, in consultation with the Australian Institute of Criminology, to establish a standard and program for the upgrading of police cells to a level where the opportunity for death by suicide is substantially reduced by appropriate cell design and equipment (Commonwealth of Australia 1988:40-41).

While the recommendations were focused on police stations and watch houses, correctional administrations around Australia raced to install observation cells. Typically, the fit outs varied from padded sensory deprivation chambers to cells where all hanging points had been removed leaving an environment with little more than a drainage point.

By the time of the release of the final report of RCIADIC, there was condemnation of the use of observation or segregation cells. However, despite extensive evidence indicating that such cells are detrimental to the health of prisoners (see below), segregation continues to be used as a ‘suicide prevention’ strategy and behavioural management tool across most Australian custodial and detention settings (including juvenile justice and immigration detention).

The impact of segregation on the individual

A number of scholars have used the theoretical understandings of stress reactions to propose that being imprisoned in segregation undermines personal coping mechanisms. Studies on sensory deprivation and social isolation have found that extreme anxiety and

‘segregation cells’, ‘wet cells’ (Victorian Correctional Services Taskforce 1999), ‘segregation or isolated detention’ (Commonwealth of Australia 1991) and ‘observation cells’ (Commonwealth of Australia 1991).

heightened suggestibility occurs in individuals, even after short periods in isolation (Suedfeld 1974; Suedfeld 1980; Fisher 1994). Further symptoms include hypersensitivity to external stimuli, hallucinations, panic attacks, cognitive deficits, obsessive thinking, paranoia, and a litany of other physical and psychological problems (Grassian 2006). Psychological assessments of prisoners in solitary confinement have indicated high rates of anxiety, nervousness, obsessive rumination, anger, violent fantasies, nightmares, trouble sleeping, as well as dizziness, unduly perspiring hands and heart palpitations attributable to being placed in segregation (Shalev 2008).

Although psychological effects are most common, and most significant, physiological effects are nevertheless commonly reported. Some of these may be physical manifestations of psychological stress, but the lack of access to fresh air and sunlight and long periods of inactivity are likely also to have physical consequences. Grassian and Friedman (1986) list problems such as gastro-intestinal, cardiovascular and genito-urinary problems, migraine headaches and profound fatigue. Shalev notes that other signs and symptoms recorded by some of the studies reviewed include, 'heart palpitations (awareness of strong and/or rapid heartbeat while at rest), diaphoresis (sudden excessive sweating), insomnia, back and other joint pains, deterioration of eyesight, poor appetite, weight loss and sometimes diarrhoea, lethargy, weakness, tremulousness (shaking), feeling cold and aggravation of pre-existing medical problems' (2008: 15).

Segregation is therefore fundamentally damaging, whatever its purpose. Unsurprisingly, the use of segregation for people displaying 'at-risk' behaviours has been universally condemned (Reser 1989; Howard League for Penal Reform 1991; Commonwealth of Australia 1991; Hayes 1995; Eylandt et al. 1997; Dear et al. 1998; Camilleri et al. 1999; Dear 1999; Howells et al. 1999; Cohen 2011). Prisoners housed in segregation are compelled to ruminate on events that they are unable to deal with due to their situation, thus increasing their distress and increasing the risk of suicide and self-harm. The literature notes that the majority of prison suicides occur whilst the prisoner is alone, most commonly when the person is in isolation or segregation (Hayes 1983; Home Office 1984; 1990; Scott-Denoon 1997). This indicates that a potentially suicidal prisoner should not be removed from the general population in the first place (Victorian Correctional Services Taskforce 1999; Cohen 2011). Howells et al further point out that in an 'integrated punishment environment', prisoners regarded as 'at risk' may be confused and unclear as to whether they are being treated or punished when they are placed in an observation cell. The environment itself may be hostile, often housing prisoners who are 'acting out' with officers consequently being required to exert physical control. The presence of groups of prisoners undergoing punishment results in an atmosphere that is punitive and coercive rather than therapeutic. Observation, for the 'at risk' person, is an isolating experience that is likely to exacerbate the level of distress and suicidal rumination (Howells et al. 1999:161).

Across Australian jurisdictions, young Aboriginal people are significantly over-represented in the juvenile detention population. They comprise over a 54% of young people detained (AIHW 2015: 9) despite Aboriginal people representing only 2% of the general Australian population. Young Aboriginal people aged 10 - 17 were 26 times as likely as non-Aboriginal young people to be in detention (AIHW 2015: 11). Over the four year period 2011-2015, across Australia, the level of over-representation of Aboriginal young people aged 10-17 in

detention increased from 19 to 26 times the rate of non-Aboriginal young people. One in six young people held in Victorian Youth Justice Centres is of Aboriginal descent (CCYP 2017: 6) despite only representing 0.9 percent of the Victorian population (ABS 2013). Psychological and physiological issues in segregation are amplified for Aboriginal prisoners due to specific sociospatial and cultural needs. Family and kin is the core of Aboriginal life and often the only constant in the lives of Aboriginal people (Berndt and Berndt 1992: 412). Aboriginal prisoners separated from family and kin suffer emotional and spiritual distress beyond that imposed upon non-Aboriginal prisoners (Office of the Inspector of Custodial Services (WA) 2008; Grant 2014). Given this, RCIADIC suggested ‘...that it is undesirable in the highest degree that an Aboriginal prisoner should be placed in segregation or isolated detention’ (Commonwealth of Australia 1991: 334). It was noted ‘that attempts to reduce opportunities for suicide [i.e. housing an Aboriginal prisoner in segregation to reduce the risk of self-harming] may increase alienation and disorientation and thus increase the probability that detainees may engage in self-destructive behaviour’ (Reser 1989: vi).

The issues in using segregation on Aboriginal people are compounded when consideration is given to the number of Aboriginal prisoners living with physical and psychosocial disability. Levels of disability in the Indigenous population are underreported and there are many reasons why Aboriginal people do not identify as having a disability. At the same time, it is known that Indigenous people with profound or severe physical, intellectual and cognitive disabilities are being imprisoned at alarming rates (Baldry et al. 2012; MacGillivray et al. 2014; Grant 2016: 24).

There are also specific concerns regarding the use of segregation for juveniles – experts agree that the harms already identified may be more pronounced. In relation to Victorian Youth detention, the extraordinary levels of vulnerability of young detainees was highlighted by the Commission for Children and Young People, which reported that 63% of children had been victims of abuse, trauma or neglect, 45% had been subject to a child protection (welfare) order, and 30% had mental health issues (CCYP 2017: 35).

Solitary confinement ‘...has a distinct and particularly profound impact on young people, often doing serious damage to their development and psychological and physical well-being. Because of the special vulnerability and needs of adolescents, solitary confinement can be a particularly cruel and harmful practice when applied to them’ (Human Rights Watch and the American Civil Liberties Union 2012: 22). While there are no studies that ‘look specifically at the effects of prolonged solitary confinement on adolescents, many experts on child and adolescent psychology [contend that solitary confinement] can cause or exacerbate mental disabilities or other serious mental health problems’ (Human Rights Watch & the American Civil Liberties Union 2012: 24).

The Victorian Ombudsman highlighted the high rate of lockdowns across youth services during November and December 2016. She observed that lockdowns were:

...affected by a toxic combination of staff shortages and increasing overcrowding. It is predictable that a regime of lockdowns for young people will create unrest, and equally predictable that more lockdowns will follow any unrest (2017: 41).

One can expect therefore that the cumulative harm to young people of the use of segregation, especially to Aboriginal children who may be demonstrating self-harming and other extreme behaviours, can be life-threatening.

Victorian Youth Justice Centres require specific practices, including formal authorisation, close observation while isolated, and access to a cultural support worker, where an Aboriginal young person is to be placed in isolation (as outlined in CCYP 2017: 56). However the Commission for Children and Young People found that isolation was used more frequently for Aboriginal young people than for non-Aboriginal young people; it also found that the policies were not always complied with (Ibid).

The Commission for Children and Young People cited the submission of the Victorian Aboriginal Legal Service (VALS) to the effect that ‘isolation, separation and lockdowns re-traumatise Koori children and young people’ and is ‘completely adverse to the nature of Aboriginal and Torres Strait Islander cultural practices’ (CCYP 2017: 57). Cultural support workers observed the Aboriginal children and young people found isolation particularly difficult:

They are removed from country, removed from family – their families struggle to get enough money to come to visit. Community is everything for them ... family – it’s everything (CCYP 2017: 57).

Human Rights Legislation and the use of segregation for children and young people

The solitary confinement of children has been found to breach international and domestic human rights laws. Key rights include protection from ‘torture and cruel, inhuman or degrading treatment’ under the International Covenant on Civil and Political Rights (ICCPR) (article 7) and the Convention against Torture, and equivalent documents, the right to humane treatment while detained (ICCPR article 10) and the protection of the rights of the child under the UN Convention on the Rights of the Child (CRoC) and equivalent local instruments. The prohibition on torture and cruel, inhuman or degrading treatment is one of the few ‘absolute’ (that is, non-derogable) international human rights standards.

The UN position is that, in light of the requirements of the CRoC, and of the UN Rules for the Protection of Juveniles Deprived of their Liberty (the ‘Havana Rules’), the vulnerability of children and the recognized harm caused by solitary confinement means that ‘the imposition of solitary confinement, of any duration, on juveniles is cruel, inhuman or degrading treatment’ and should be prohibited (United Nations 2011: 77, 86; 2015: 44, 86).

In the Australian context, the UN Human Rights Committee found a violation of the right to humane treatment (ICCPR art 10) and of the rights of the child (ICCPR art 24(1)) where a 16 year old Aboriginal boy with an intellectual disability was held in a New South Wales adult prison in isolation, under 24 hour lighting, with little clothing despite low temperatures (*Brough v Australia*).

The Committee observed:

In the circumstances, the author's extended confinement to an isolated cell without any possibility of communication, combined with his exposure to artificial light for prolonged periods and the removal of his clothes and blanket, was not commensurate with his status as a juvenile person in a particularly vulnerable position because of his disability and his status as an Aboriginal [person] ([9.4]).

In Victoria, in 2013, the Ombudsman, exercising powers which include investigating the compatibility of administrative actions with the Victorian *Charter of Human Rights and Responsibilities Act 2006* (the Charter), which parallels the ICCPR, carried out a review of the transfer of a number of children from youth detention to an adult prison. The children, some of whom were of Aboriginal descent, had been held in solitary confinement in the adult prison for a number of months. They were locked in their single cells for 23 hours per day, and had one hour a day for exercise, on their own and in handcuffs, with no access to education or programs (Ombudsman 2013: 12). The Ombudsman concluded that Corrections Victoria had breached Charter rights including the right to protection of families and children (Charter s.17), the right to humane treatment when deprived of liberty (Charter s.22) and the rights of children in the criminal process (Charter s.23).

The Victorian Equal Opportunity and Human Rights Commission (VEOHRC) had conducted a review of Corrections Victoria's policies on this topic and had advised that the solitary confinement of children was likely to be considered degrading treatment and that '[a]s a principle, solitary confinement should never be used for prisoners under 18 years' (cited in Ombudsman 2013: 27).⁴

More recently, the Victorian Supreme Court (upheld on appeal 28 December 2016) has found that the transfer of several children to a facility previously used for high security adult prisoners, and their detention there in circumstances which included 'very long periods of solitary and prolonged confinement', was unlawful. The Supreme Court also concluded that the Government's actions breached the right not to be treated in a 'cruel, inhuman or degrading way' (Charter s.10(b)), the right to treatment in the 'best interests' of the child (Charter s.17(2)) and the right to be treated with humanity and respect (Charter s.22(1)) (*Certain Children by their Litigation Guardian Sister Marie Brigid Arthur v Minister for Families and Children and Others* [2016] VSC 796).

The Inter-American Court of Human Rights has also held that solitary confinement can amount to 'cruel, inhuman and degrading treatment', and can result in suffering to an extent that the treatment may constitute torture (see case law summarized at UN 2011 A/66/268 [37] and [38]).

Prohibiting the use of segregation for children

Given the overwhelming evidence of the potential harms of segregation, and the strong human rights findings, some countries have revised their use of penal segregation, especially in regard to juveniles.

⁴ Both the VEOHRC recommendation and the Ombudsman's draft findings were subsequently rejected by Corrections Victoria (Ombudsman 2013: 27).

The United States began to reconsider the human rights, fiscal, and public safety implications of the use of penal segregation post 2012 (see, for example, Committee on the Judiciary United States Senate 2012). In a submission to the Senate Committee, Professor Emeritus of Yale Law School, Fred Cohen noted that:

...the contemporary use of penal isolation is one of the most psychologically damaging, penologically unnecessary, and needlessly expensive correctional measures currently in use. Whether analyzed from a human rights or an empirical perspective, our current practices with penal isolation are properly subject to condemnation and candidates for early reform (Committee on the Judiciary United States Senate 2012: 308).

In 2012, the American Academy of Child and Adolescent Psychiatry released a policy statement opposing the use of solitary confinement in correctional facilities for juveniles, stating:

The potential psychiatric consequences of prolonged solitary confinement are well recognized and include depression, anxiety and psychosis. Due to their developmental vulnerability, juvenile offenders are at particular risk of such adverse reactions. Furthermore, the majority of suicides in juvenile correctional facilities occur when the individual is isolated or in solitary confinement (Juvenile Justice Reform Committee, American Academy of Child and Adolescent Psychiatry 2012).

The Academy called for an evaluation by a mental health professional of any child or youth confined for more than 24 hours. In 2013, the United Nations Special Rapporteur on Torture stated that the effect that a prolonged period in isolation can have on a child's mental health is so severe that countries should implement 'an absolute ban' on solitary confinement and seclusion of any duration for children as well as people with psychosocial disabilities. Similarly, in 2014, the American Medical Association approved a resolution saying solitary confinement is detrimental to adolescent health and should be prohibited, except for extraordinary circumstances, such as those that involve protection of the juvenile, staff, or other detainees (Moran 2014).

In 2015, then President Obama announced a review of 'the overuse of solitary confinement across American prisons' (US Department of Justice 2016: 1) and bipartisan legislation was introduced into Congress banning punitive solitary confinement for juveniles in federal custody (Kraner et al. 2016: 3). A year later, the US Justice Department released its Final Report and Recommendations concerning the use of Restrictive Housing. The report outlines principles to reduce the use of segregation, in particular reforms for special needs groups (including people with a serious mental illness and juveniles), which include reforms to prevent disruptive behaviour, development of specialized housing units, and stricter rules for use of restrictive placements:

Prevention

These reforms are designed to prevent the type of disruptive behavior that often results in segregation. The policies make it easier for correctional staff to identify inmates who are prone to violence, victimization, and/or mental health issues,

facilitating early intervention. Among other things, these policies include behavioral and contingency management tools, as well as risk assessment programs.

Specialized, or ‘mission-specific’ housing units

These reforms involve the creation of specialized housing units for those inmates who require removal from the general population, but typically do not require the type of restrictions typically found in a ‘traditional’ segregation unit. These mission-specific programs include units for inmates with serious mental illness and those requiring protective custody.

Stricter rules for placement and length of stay

These reforms limit when, why, and for how long an inmate can be placed in restrictive housing, especially in cases involving disciplinary or preventative segregation. Some jurisdictions have narrowed the list of offenses that are punishable by restrictive housing. Some have also imposed limits on the amount of time inmates can be held in restrictive housing, which can apply to specific categories of inmates (e.g., juveniles and inmates with serious mental illness), or to certain types of segregation (such as maximum penalties for disciplinary violations). Some jurisdictions have effectively eliminated restrictive housing for certain populations, such as juveniles (US Department of Justice 2016: 72-73).

Kraner et al. (2016) reviewed correctional practice across the US and reported that 29 jurisdictions prohibit the use of punitive solitary confinement in juvenile correctional facilities by law or practice due to growing understanding of the ill-effects and overuse of segregation.

Despite the overwhelming evidence to the contrary, the majority of Australian jurisdictions⁵ still allow the segregation of children in detention. The Australian Children's Commissioners and Guardians in a recent review distinguished between isolation/ segregation and ‘solitary confinement’, and reported that ‘[s]egregation can be used as a legitimate behaviour management tool or an emergency safety measure provided it does not place restrictions on a child’s access to education, physical activity or family contact’ (2016: 63). Solitary confinement was however recognised as entirely unacceptable:

Solitary confinement constitutes cruel, inhuman or degrading treatment and is a violation of international human rights norms and standards. Children should never be subjected to solitary confinement (Australian Children's Commissioners and Guardians, 2016).

When a young person is held in what is effectively solitary confinement, including 22 and 23 hour lockdowns and when they are placed in segregation cells, which are generally located well away from visitation, association and program areas, it is surely wishful thinking to

⁵ Note recent legislative changes to the *Youth Justice Administration Act* (South Australia) (2016), have prohibited children under 12 years being held in segregation (see Sect. 28).

propose that segregation can be combined with rehabilitative programs and substantial family contact.

Ceasing the use of segregation in practice

This submission makes the argument for banning the use of segregation for children in detention in Australia. The evidence is clear that segregation is profoundly harmful to young people. Relying on segregation as a behaviour management tool brutalizes the role of custodial officers and case workers.⁶ Studies show that staff placed in such situations apply authoritarian measures and may resort to psychological or physical torture resulting in serious systemic dysfunction across an institution. In short, the use of segregation is counterproductive for all parties. Organisational, philosophical and cultural changes are required for agencies to move beyond the use of segregation as a practice under any circumstance. In this regard Jones and Timbers (2003) suggest minimising the need for physical restraint and seclusion in residential youth care through skill-based treatment. More recently Rademacher (2016) describes the North American experience in Ohio, suggesting it as a statutory model for eliminating juvenile solitary confinement in other jurisdictions.

The most commonly cited 'best practice' guidelines for eliminating the use of segregation in juvenile detention originate from the United States Council of Juvenile Correctional Administrators. They outline five components of 'best practice' to reduce the use of segregation. These are:

1. Adopt a mission statement and philosophy that reflects rehabilitative goals;
2. Develop policies and procedures for use and monitoring of isolation;
3. Identify data to manage, monitor and be accountable for use of isolation;
4. Develop alternative behavior management options and responses; and,
5. Train and develop staff in agency mission, values, standards, goals, policies and procedures (Chinn 2015).

There are additional guidelines and literature relevant to ceasing the use of segregation within other closed institutions (i.e. mental health, disability and adult corrections). Particularly relevant in the mental health literature is the emphasis on adopting a trauma-informed interpersonal and organisational approach to eliminating the use of segregation and restrictive practices in managing difficult situations. A trauma-informed approach employs principles of physical and emotional safety, collaboration, trustworthiness, choice and control, and skill building with the aim of empowering the client to resolve previous traumatic experiences (see, for example, Hodas 2006). A trauma-informed approach to youth detention would seek to eliminate the feelings of fear, distress, helplessness or humiliation typically felt by young people that may be re-traumatising (Robins et al. 2005) and may produce the types of behaviour which lead to the use of segregation. In so doing, a trauma-informed approach would endeavour to reduce and prevent many of the actual behaviours that currently lead to the use of segregation.

⁶ For discussions of how prison environments can define the role and behaviour of staff see literature on the Stanford Prison Experiment (for example, see, Haney et al. 1973; Zimbardo 2007).

In mental health contexts, a trauma-informed approach is identified as fundamental to reducing and ultimately eliminating the use of segregation. Its value lies in the prevention, management and recovery of individuals experiencing negative consequences related to past trauma. For children, trauma leads to difficulties in controlling emotions, forming relationships, showing empathy towards others, concentration and learning (Anderson 2012).

There is some advocacy for, and use of, trauma-informed care generally in juvenile detention (Griffin et al, 2012), and particularly with Indigenous peoples (Healing Foundation 2013), but it is rarely explicitly addressed towards eliminating the use of segregation.

Considering juveniles in detention are potentially the most traumatized individuals in our society, and that detention is traumatizing in itself, it needs to be a priority. In this regard it was concerning to read that the CCYP reported that DHHS had indicated that ‘a trauma-informed model was being developed in 2016’ with plans for implementation in March 2017 but that ‘...[a]fter the events at Parkville in November 2016, this work was put on hold’ (CCYP 2017: 38).

Conclusion

In conclusion, we make three broad recommendations for juvenile justice systems, and specifically for the Victorian Youth Justice system.

1. Create alternatives to detention based orders for young people

This submission has focussed on the use of segregation, but given the evidence of the high levels of vulnerability of young people in detention, and of the harm done by detaining young people in itself, we argue first for a radical reduction in the use of detention for young people. We must respond to the clear evidence that custodial sentences are not in the best interests of society or young offenders.

Thus there is a need to examine and introduce alternatives to detention based orders for young people with adequate associated resourcing. Tolfree (2003) and other research provides compelling evidence that institutionalized forms of care have ‘...serious and negative impacts on children’s development and on children’s rights’ (2003:5). Home based care with children within a family setting is almost always preferable to institutional care. For some children, unable to stay in the family setting, community based care may provide an alternative. Within this model, a range of approaches can be designed to enable children either to remain with their own (or extended) families to prevent the need for separation, or to be placed with an alternative family, if possible within their own community. Other alternative care approaches could include options such as small group homes, drug and alcohol residential units, and youth rehabilitation camps (as per recommendation of the Northern Territory Government 2010 and the Coroner of South Australia 2005: 10.18). Any such systems must have regular mandated checks and reporting mechanisms to preserve the child’s human rights and prevent abuse.

2. Removal of segregation as a behaviour management option in juvenile detention

In the small number of cases where detention is nonetheless required, the use of segregation must be re-evaluated and removed as an option, with alternative approaches developed for those scenarios previously regarded as requiring segregation.

First, consideration must be given to the design and location of facilities. Given that little is known about designing custodial environments for young offenders it is vital that evidence-based research is conducted into the type and design of humane and safe custodial environments appropriate for young children.

Second, trauma-informed practice should be established as part of alternative behaviour management options to pre-empt behaviours which otherwise may lead to the use of segregation. Staff will need to be recruited and trained in the use of trauma-informed screening, assessment and care approaches. A trauma-informed approach needs to be central to practices of the organisation, its staff practices and the physical design of the facility where young people under their care are housed.

3. Make trauma-informed screening, assessment and care the standard in juvenile justice services

Children who enter juvenile justice systems are likely to have highly complex unmet social, emotional, cultural and physical needs. A great number of children will have experienced emotional, sexual and physical abuse. Many will have been living chaotic lifestyles and present with a complexity of issues (for example, some will be parents, a primary caregiver for another and/or have alcohol/substance use issues). Australian research (Indig et al. 2010) indicates it is likely that more than half will have a disability and/or significant trauma history, and this is borne out by the statistical picture cited by the CCYP (2017) above.

We must abandon juvenile justice correctional practices that traumatize children and further reduce their opportunities to become productive members of society. Trauma-informed screening, assessment and care should become the standard across all juvenile justice services. Juvenile justice services must be delivered that are appropriate and responsive to each child's ethno-cultural background and based on an assessment of each violence-exposed child's individual needs. In addition, the special circumstances and needs of girls and LGBTIQ (lesbian/gay/bisexual/transsexual/intersex/questioning) youth need to be addressed (Ford 2016). Young people who exhibit 'at risk' behaviours should be treated in a rehabilitative setting such as a hospital or mental health facility.

4. The monitoring of conditions of juvenile detention

A significant incidental effect of the recent events and the current inquiry has been recognition of the need for effective independent oversight and monitoring of places where young offenders are detained (see Naylor 2016). The Commonwealth Attorney General announced in February 2017 that Australia would ratify the UN Optional Protocol to the Convention against Torture (OPCAT), embodying a commitment to establishing comprehensive independent monitoring of all places of detention in Australia. This

submission endorses the importance of this step and sees the on-going oversight and monitoring of the places of detention of young people as essential.

The overuse of detention as a sanction for young people, the use of segregation as a behaviour management practice and the prevalence of traumatic histories among the young people is a feature of too many juvenile justice systems across Australia and internationally. Systems that allow vulnerable children to be imprisoned, segregated and abused need urgent radical rethinking and reform.

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Appendix 1: Author Biographies

Professor Bronwyn Naylor is Professor of Law at RMIT University, Melbourne, in the Graduate School of Business and Law. She has degrees in Law from Monash University, and in Criminology from Cambridge University, where she received her PhD in Criminology. She teaches, researches and publishes extensively in criminal law, corrections, regulation, and criminal justice and gender. Dr Naylor was the lead Investigator on an Australian Research Council-funded project on human rights in prisons and other places of detention, and co-edited the Federation Press publication *Human Rights in Closed Environments* (2014) based on this research. She continues to research and publish on these issues. She was also a co-investigator on the ARC-funded project 'The Impact of Incarceration on Children's Care: A Strategic Framework for Good Care Planning', and lead Investigator on the ARC-funded project 'Living Down the Past: Criminal Record Checks and Access to Employment for Ex-offenders'. Her current research includes analysis of the impact of criminal records, and of contact with the criminal justice system, for Aboriginal people in employment and other areas of civil society.

Dr Elizabeth Grant is an architectural anthropologist and senior research fellow working in the field of Indigenous Architecture within the Office of the Deputy Vice Chancellor and Vice President (Academic) at the University of Adelaide.

In 2000, Dr Grant had been researching in the field of Indigenous architecture for two decades, when she was approached by the Aboriginal Legal Rights Movement of South Australia to accompany an Aboriginal mother to the inquest into her son's death in prison. The inquest triggered Dr Grant's interest in the cultural suitability, safety and appropriateness of the prison environments for Aboriginal people. She concluded at the time that the conditions of prisons breached the recommendations laid down by the Royal Commission into Aboriginal Deaths in Custody. The lack of understanding of the environmental needs of Indigenous people and the impact that could have on an individual's prison experience was very apparent to her. Given the massive over-representation of Aboriginal people in Australia's prison system, Dr Grant commenced research into this area working under the premise that if there must be prisons, they should be culturally, emotionally and physically safe environments which recognise and value Aboriginal people's diverse experiences of the world.

Dr Grant's PhD research entitled *Towards Safer and more Congruent Prison Environments for Male Aboriginal Prisoners. A South Australian Study* (2008) was the first empirical study of its type and examined Aboriginal people's preference for particular kinds of prison environments as a mechanism to reduce negative behaviour including deaths in custody and self-harm in prison environments. In her research she interviewed over 100 prisoners and visited every prison in Australia.

Since that time, Dr Grant has spent over a decade conducting evidence based research and her work has led to major changes in the way prisons are designed for Indigenous peoples nationally and internationally. Dr Grant has published extensively on the topic of prison environments for Indigenous prisoners, while tackling issues confronting correctional agencies such as overcrowding, temperature control, ligature points, conditions for women prisoners, human rights and other factors affecting the prison experience.

The application of her evidence-based research has led to greater understandings of the needs of Indigenous prisoners and the development and adoption of documents such as the *Minimum Standards for Aboriginal Prisoners Western Australia* and the conceptualisation and design of the West Kimberley Regional Prison Project. Dr Grant also works with correctional agencies, government departments, other academics, the legal fraternity, the judiciary, coroners and the Aboriginal

community to improve outcomes for Indigenous prisoners, the staff who work with them, prisoners' families and communities.

Dr Grant has also been engaged by architectural firms to work with architects and design teams on prison projects including: the New Grafton Prison, Victorian Prison Projects, Eastern Goldfields Regional Prison Project, Acacia Prison Expansion Project, Northern Territory Secure Facilities Project, Eastern Goldfields Regional Prison Project, South Australian Prison Project and the master planning of the Future Prison Projects in the Northern Territory.

Dr Grant has received numerous awards for her work including been named as a Sir Winston Churchill Fellow and being awarded the International Prisons and Correctional Association's (ICPA) Excellence in Research Award in 2015 for her pioneering work.

Dr Rohan Lulham

Dr Rohan Lulham is a research fellow at the Designing Out Crime Research Centre (DOC) at the University of Technology Sydney. His research covers the areas of design, environmental psychology and criminology, with particular research interests in affect and design, correctional design practice, and social innovation. He is currently leading a program of design research that seeks to bring innovation to correctional design practice. Rohan's background reflects his research interests. Rohan studied psychology and practiced as a psychologist within the juvenile justice system for over ten years before completing a PhD in Architecture at the University of Sydney. His PhD research investigated the impact of differences in physical design on staff-detainee interaction in juvenile detention centres.