

TRANSCRIPT

STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES

Inquiry into youth justice centres in Victoria

Melbourne — 17 March 2017

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Witness

Ms Liana Buchanan, commissioner for children and young people.

The CHAIR — Ms Buchanan, thank you very much for joining us this morning. We are hearing evidence in relation to the inquiry into youth justice centres in Victoria, and the evidence is being recorded. Welcome to the public hearings. All evidence taken at this hearing is protected by parliamentary privilege. Therefore you are protected against any action for what you say here today, but if you go outside and repeat the same things, those comments may not be protected by that privilege.

I invite you to address the committee and ask that you please keep your comments to 5 to 10 minutes, and then we will open up for questions. I will hand over to you.

Ms BUCHANAN — Thank you to the committee for inviting me to participate in what I obviously think is an incredibly important inquiry. We at the Commission for Children and Young People have not yet made a written submission. Primarily that is because we are proposing to table next week a fairly significant inquiry into some elements of practice in youth justice and a lot of the issues that we will deal with in that inquiry report intersect with your terms of reference. So I thought it not appropriate to provide a written submission until that material is in the public domain and tabled.

Given that you do not have a written submission to refer to, I will use a little bit of time just to make sure that you clearly understand not so much the role of the commission, because I am sure you are all across that, but the kinds of activities that we undertake in relation to the youth justice centres, because that might inform the kinds of questions that you direct to me.

As you all know, we have a range of statutory functions. They are really around monitoring and providing advice on services to children. We have a focus at the commission on vulnerable children. That is defined in our legislation to expressly include children and young people who are in the youth justice system. So this is clearly a part of the work that we do, and indeed fairly early in my term as commissioner — I have been in the role for almost one year — we made a decision to increase some of our oversight into youth justice centres.

Amongst the activities that we do, we run an independent visitor program, where we have around 15 volunteers who go into each of the youth justice centres once a month as a group and speak with children and young people, hear about their issues, their experiences, raise those, resolve them if that is possible, and report through to us at the commission. We also conduct client exit interviews with young people and children prior to them leaving the facilities, and we share the information from that with the department.

Since March last year, when some amendments took effect to the Commission for Children and Young People Act, we receive all reports of category 1 incidents, which you will be aware are the most serious categorisation of incidents in youth justice. We review those reports when they come through to us. We conduct follow-up. In the current financial year we have received around 45 of those reports. When I looked at how many incidents we have followed up with requests for footage or information or some further detail, it is just over half of those — about 24.

We have the power under our legislation to conduct inquiries, both inquiries into services to individual children and what we call systemic inquiries. We have in the past year initiated two inquiries that are individual inquiries; one in relation to restraint against a child at one of the facilities — or indeed two incidents of restraint — and the other was initiated very recently, and that relates to a number of allegations raised by approximately nine children and young people about allegations of assault at the Grevillea unit allegedly committed by Corrections Victoria SESG staff in February.

The report that we are tabling next week is a report of the only systemic inquiry we have done into youth justice. It looks at the practices of isolation and separation, whether they are conducted in a way that meets the requirements of the legislation and policy and practice. We are also looking in that inquiry at the issue of lockdowns, the extent of lockdowns and the causes of those lockdowns.

Then, in addition, particularly I have to say since November, we have sent commission staff out to conduct monitoring visits at the centres. We have been at the Grevillea unit. We went initially twice a week and have been there at least once a week since that unit was gazetted. At around the same time we started to conduct some monitoring visits to the other two centres with staff as well as visitors, really just in recognition that the system is fairly unsettled and we thought it appropriate in the case of Parkville and Malmsbury to make sure we had some contact there at least fortnightly. So that has been in train.

I want to use the rest of my opening statement to try and cover two points, and I will be very brief because really we can get to the detail in the discussion afterwards. I thought that it might be useful to really share with you at a very high level some of the issues that we think — the areas that we think — based on those activities, warrant attention in the youth justice system. It is the nature of an oversight and monitoring body to look for areas for improvement. I do think it is important for me at least to acknowledge that we have had a really strong reputation as having quite a solid and sound youth justice system in Victoria.

Even in May last year when I first met with my counterparts from around the country they spoke very highly and with some envy about the state of the youth justice system in Victoria. I think that is worth remembering because given what has been happening more recently and with some of the issues I am about to talk about it is easy to forget that. It is also easy to risk abandoning the parts of the system that work well. There are a number of those — aspects like the Parkville College and like our dual-track system. They are just a few. But I do think it is important to remember that we have had a fairly good track record in Victoria, and whatever we need to do we need to get back to having a really strong, effective youth justice system.

Having said that, there are clearly some areas of concern. The broad areas that I will talk to are staff shortages. These have been being raised with the commission by their independent visitors since at least 2013. There are clearly some fairly longstanding problems with retention, recruitment and absenteeism. My view is that the current instability in the system is not going to be able to be addressed unless those staffing issues are resolved.

Associated with staff shortages — and this prompted our inquiry, and the detail of our findings will be available next week — is the use of lockdowns. From young people's perspectives these are arbitrary lockdowns. They apply to whole units or potentially multiple units across the centre. Lockdowns can be imposed for a whole raft of reasons, but certainly it is my view, based on some of the work we have done, that staff shortages and staffing issues are the predominant reason for lockdowns. These are extensive, they are frequent and they are having a very significant impact on the system.

I think in terms of an area to look at, there is no clear, consistently understood approach to the way staff at Parkville work with young people. Again speaking from the perspective of the children and young people we meet and we talk to, their experience at Parkville College and the way they are treated there is very different to when they go back to the units. Their experience in the units is very, very varied depending on who happens to be on and what combination of staff are on. I understand that there was some work in train from 2015 and early 2016 towards a trauma-informed approach. I understand that was put on hold last year. Whatever the approach is, and clearly I think it should be evidence based and good practice, I think if you do not have good, clear, consistent models of working with children and young people, for starters you lose the capacity to work effectively with those young people and you lose the capacity to run effective dynamics, and that is really important in terms of the incidents and the instability we see.

I see that we have largely an underdeveloped behaviour management system. In part I say that because again some of our findings suggest that isolation, whether for short periods or for longer periods as part of separation plans, is used as sometimes the key behaviour management tool on its own rather than being accompanied by a range of interventions that are about understanding the causes of why a young person is behaving badly and violently in some cases and trying to address those in the longer term. That is an area for me that is of great concern. Clearly there is research and evidence about the impact of isolation, how effective it is. In some cases it can be counterproductive because the young person or the child leaves isolation more frustrated and angry, and of course in a context where large numbers of the children and young people in our system have mental health issues and a very high proportion have a history of trauma there is clearly potential for damage to children from excessive use of those practices.

There are other issues that will be, I suspect, well known to you. They have been well covered elsewhere and in the media — issues around remand, issues around the infrastructure. I do not understate these by not talking about them in any detail, because they are clearly very, very significant. I simply imagine that you are well across some of those details. As I say, many of these issues have been identified for some time. Some of them have clearly been getting worse.

I suppose one of the things that I want to say is that I think it is really important to understand some of the events of recent months in the context of those issues. We all know, anyone who is involved in the policymaking or critiquing process knows, that the way you characterise a problem determines the solutions that you choose. If we characterise the problems in youth justice as just being about the infrastructure and the

changing cohort of more violent children, then I do not think we will get the solutions that will get us the youth justice system that we need for staff, for children and young people, and for community safety.

I am conscious of time. The last thing I really want to do is to share just a couple of very, very brief stories of children. We have heard in recent months a great deal about some of the terrible behaviour, terrible acts, committed by children and young people in and outside youth justice and we have heard from staff about some of the unacceptable violence committed against them in the youth justice centres and the threats and so on, and we need to hear those. Clearly that kind of behaviour needs to be stopped. But what we have not heard so much of are some of the experiences of children that I see and that my staff and the visitors of the commission see, and I want you to make sure that you know that there are other stories out there.

There is the story of the child, who one of our visitors saw, who had blood on the back of their top, and when we looked into it, it is because that child has wounds from self-harming on their wrists. When that child, like all children in the particular unit, is handcuffed whenever they are removed from the unit to go to programs or to exercise or for some other reason, the cuffs open up those wounds. There is the story of the children, plural, who have had limbs broken through restraints, that I have seen the footage of, that I can best characterise as clumsy — and that is not to blame the staff — and in at least one case absolutely unnecessary.

There is the story of the young man who describes his tipping point towards getting involved in an incident as the day that he had been ready and was waiting, dressed and ready to go and see his newborn baby for the first time — a visit that had been arranged — when he was told, half an hour before, that he could not go, he could not proceed because there were staff shortages. There is the child, whose face is very clearly in my mind, who describes what it does to his thought process, his anxiety levels and his motivation when he wakes up in the morning and he does not know whether due to the lockdowns that are so frequent he will be allowed out of his room that morning or potentially even that day.

None of these stories is intended to blame staff or management. None of these stories, nor my perspective, is about excusing the behaviour of children who end up in youth justice or excusing their behaviour necessarily; nor it is about understating the impact of violence against staff in youth justice centres. But I do mention these children — and could go on for far longer — merely because at this early point in your public hearings I want to encourage you to remember that there are many stories and to encourage you to seek out those stories, including the stories, to the extent that you can, from children and young people, and of course to encourage you to heed the evidence and the experts. Hearing those stories and paying attention to the experts, I think we will genuinely be able to rebuild Victoria's youth justice system into an age-appropriate system, with a focus on rehabilitation, that is safe both for children and young people and for staff, and ultimately that works to rehabilitate these kids to improve community safety. I think that it is possible, but the path lies with getting some really sensible heads involved.

The CHAIR — Thank you, Ms Buchanan, for that very thoughtful contribution. I am sure everyone has lots of questions as a result of that. I might start briefly if I may — there are many questions I could ask you; I am just starting with one — a trauma-based approach that was introduced in 2014–15 which has been put on hold. Could you elaborate on that a little?

Ms BUCHANAN — I will share what I know. As I understand it, senior management involved in the running of the youth justice centres reached a point of understanding that there would be value in rolling out, embedding, a different approach, a more consistent approach among staff. It is an approach that really takes on board what much of the evidence suggests, which is the most effective way to work with children and young people, particularly children and young people with the kinds of backgrounds and of the kinds of demographics that we find in youth justice centres. There was some work, and I think someone was employed to begin that work, to develop up what a trauma-informed approach might look like. There have been, I understand, some practice leaders involved, but the real rollout was not planned until, from memory, the beginning of this year.

We have been following that — in part because we are interested, in part because behaviour management issues are so integral to the inquiries that we have been conducting into isolation and separations — and we were advised, I think in around November last year, December last year, that that work had been put on hold. I do not know the reason for that, and that would be a question for the department.

The CHAIR — Also, if I heard you correctly when you gave evidence at the start, you referred to a point some time ago when your office decided to increase your oversight into youth justice. What was the trigger for that?

Ms BUCHANAN — Some of the members of the committee may know this, but many would have no reason to — one of the roles that I have conducted in the past is a role within the justice department overseeing and heading up the oversight of the corrections system. One of the things that really struck me when I came into this role was that there were some signs that the youth justice centres were unaccustomed to a very rigorous level of external scrutiny. That was part of the reason, and that was based simply on initial visits and initial advice about, for example, the level of compliance with the requirements to record when children are placed in isolation — so early indicators for me that some of the procedures that I would expect would be taken very seriously had not been in the past, and it made me form the view, in consultation with Andrew Jackomos, my colleague commissioner, and the rest of the staff, that it was appropriate that we increase oversight.

The other enabler to that were the amendments that I referenced earlier on, which mean that, for the first time, since March 2016 we have visibility of serious incidents occurring in youth justice in a timely way and a more complete visibility of those. Up until the amendments that were made to the commission's legislation last year, we did not receive those. So we were able to play a greater role, that greater role seemed entirely consistent with our mandate and there were some early signs for me that it was appropriate that we increase our oversight.

Ms CROZIER — Thank you, Ms Buchanan, for that very extensive and thorough presentation. I appreciate that. Before I go to the 45 reports that you mentioned, in relation to the category 1 incidents that are occurring, and you mentioned staff shortages, clearly there is a discrepancy in relation to the category 1 incidents that are being reported — you would be well aware of the definition from the department in relation to category 1 — and what is being made available. I am just wondering, before I go to the 45 reports, do you believe that the staff shortages have contributed to that discrepancy in the number of category 1 reports actually being reported as they are defined in the department's definition?

Ms BUCHANAN — I have not seen any evidence of that. I have not seen evidence of reports that fit the category 1 definition that do not come through. Sometimes we receive them late and later than —

Ms CROZIER — How long is late?

Ms BUCHANAN — Sometimes it is, and there are only a couple of examples of this that I can think of, several weeks after. We have an agreement with the Department of Health and Human Services whereby we are to receive them two working days after the incident report has been signed off, and that is not always met, which is an issue that I have raised with the department.

Ms CROZIER — Is that because of the riots, the number of serious incidents that have occurred over the last year or so, do you think?

Ms BUCHANAN — I do not know the answer. The number of serious incidents has increased, but perhaps not as much as you might expect from reading the media and from the extent of incidents that we have had. I looked at it and if the current numbers were to continue, it is on average just over five category 1 incident reports that come through to the commission a month. If that continues for the current financial year, that will be an increase on last year.

Ms CROZIER — Five category 1 with all those riots, all those assaults, and you described even what is occurring to the offenders — you described broken limbs — and the footage you see in relation to those reports, you are saying that only five a month are coming to you?

Ms BUCHANAN — Yes. The question for me is whether there is an under-reporting, and part of the challenge for me is I would not necessarily know if there is. That is one of the issues. The other issue is the definition. The department has been conducting a review of the incident definitions and indeed the whole incident management system that it uses across youth justice and other areas. It has been reviewing those definitions. We have given feedback about those definitions. Some of the new definitions will increase the scope of what is reported through to us, and I have said I strongly support that and indeed have given some detailed feedback about where I think the proposed definitions needed to be changed to make sure that we in the

commission receive the right level of incident and essentially we do not miss incidents that are very serious in nature.

Ms CROZIER — If I may, Chair, just to go to the question about the 45 reports that you said you have received, 24 of those had footage?

Ms BUCHANAN — Not all footage. Twenty-four of those were incidents that we followed up in some way. Certainly if it was an alleged assault or a restraint resulting in injury and there would be footage that would tell us some information, then we will request footage but sometimes it might be other information.

Ms CROZIER — Okay. It was not a factor that you were denied footage; it was just in relation to the incident and what follow-up you wanted.

Ms BUCHANAN — Yes.

Mrs PEULICH — In relation to categories of incidents, there has clearly been a change in the definition.

Ms BUCHANAN — It has not occurred yet. The review that has been underway has been underway for some months. It was late last year or perhaps not even towards the end of last year that we were consulted on those new proposed definitions and gave feedback. My understanding is that the changes are meant to take effect from 1 July, but I do not have a current status update on that. We have asked for a briefing as to where that work is at, because as you might imagine I have got a very strong interest in that, and that is in train.

Mrs PEULICH — Are you able to give us a definition of category 1 incidents as it stands now?

Ms BUCHANAN — There are a great many different definitions because it covers, as you might imagine, all different kinds of incidents that occur. One of the areas that I am particularly interested in is that we will only receive, because the definition only requires us to receive, information about client-to-client assaults or about harm to a client where the client is injured and hospitalised.

Mrs PEULICH — So not a staff member?

Ms BUCHANAN — Not a staff member. That is absolutely right.

Mrs PEULICH — If there is an incident involving a staff member and a client, that would not be captured by the category 1 report?

Ms BUCHANAN — It depends. If there is an incident where a staff member is alleged to have assaulted a client, we will receive all of those — we do receive all of those. If there is an incident involving a client assault against a staff member, we will not necessarily receive that. That will not necessarily meet that definition of category 1 incidents. It does mean that some of the incidents that we have all read about in the media involving assaults against staff have certainly met the definition of category 1 incidents, but not all.

Mrs PEULICH — Should they all?

Ms BUCHANAN — I have not formed a view on that, so I will not do it here and now. I am interested in looking at that. There was certainly no question that when I saw some of the nature of the allegations and accounts that have featured in the media, I was concerned about that. The safety of staff and children and young people are absolutely interconnected so I can understand the rationale for not including those incidents as a requirement to come to the commission. But as we have seen play out more in recent months, I am more inclined than I have been previously to think that we should receive those.

Mrs PEULICH — Would that information on the assault of staff be captured in occupational health and safety processes?

Ms BUCHANAN — Yes, absolutely. Again, I am only talking about the parts of the incident reporting system that come to the commission. Just because something does not meet the category 1 definition, it will be categorised in another way and the department will have all of that information but it will not necessarily come to the commission.

Mrs PEULICH — And other categories?

Ms BUCHANAN — Yes.

Mrs PEULICH — Category 1, category — —

Ms BUCHANAN — Category 2, yes.

Mrs PEULICH — And that is it?

Ms BUCHANAN — Yes.

Mrs PEULICH — Could you just speak to category 2 incidents and how they are managed?

Ms BUCHANAN — Again, it is probably not an area for me to speak to how the category 2 incidents are managed, because that is conducted within the department.

Mrs PEULICH — What do they capture?

Ms BUCHANAN — Again, they capture the whole gamut of different incidents in youth justice, so in the example that I was talking to before, for example, they would capture incidents where a child or young person was injured or harmed, not through alleged staff assault or restraint, where they did not have to go to hospital. Again, I imagine that the department might be able to inform the committee about this. There is a very detailed schedule of all of the different types of incidents — physical assault, sexual assault, harm, self-harm, suicide, client-to-client assault et cetera — a whole range with detailed definitions of what meets category 1 and category 2 and 3.

Mrs PEULICH — A clumsy breaking of a bone, is that an accident or are you using some more nuances that we are not picking up? I cannot understand how someone can break a bone as a result of a clumsy action unless it is accidental.

Ms BUCHANAN — Yes. The two words I think I used were ‘clumsy restraint’. What I am speaking to there is my observation in these kinds of incidents — and the incidents I have in mind certainly meet what I am about to say — they are clear evidence of staff who, if they have been properly trained in how to de-escalate a situation and then how to safely intervene and restrain using physical force, it is not obvious.

So it has certainly led us to question something that again has been raised in reviews, public and not public, for some years — the need to improve the training for the staff in the youth justice centres in incident response. Again, that should run, in my view, the gamut of how to make sure that staff are confident and competent to intervene when they see an incident might start to arise, right through to if an incident does arise, if there is violence between children and young people or just on the part of one child, how to safely intervene and use physical force.

When I use the term ‘clumsy restraint’, there are different terms I could use, but the incidents that I have in my mind — the footage that I have in my mind where the consequence has been broken limbs — are incidents where the restraint techniques have not met any training standard that I have come across. They have been well and truly outside anything that I imagine is trained, either in youth justice or other custodial facilities.

Mrs PEULICH — Thank you.

Ms SYMES — A gap for me was the definitions of the categories came in when?

Ms BUCHANAN — I cannot tell you when they came in in their current form. They are the department’s own categories that the department has established and uses for its own internal reporting and accountability purposes. What happened for the commission in March 2016 is that, because some amendments were passed that introduced section 60A of our legislation, we then were receiving the category 1 incident reports from youth justice where we had not previously.

Ms SYMES — They would have just been within the department.

Ms BUCHANAN — Indeed. So, we have agreed to rely upon the existing categorisation. The intent of that legislation was clearly that we would receive information about serious incidents. It was timely that not long after I began as commissioner the department was conducting a review of those definitions and we had the

opportunity to make some comment about how we thought they might be improved so that we make sure we get visibility of all of the serious incidents.

Ms SPRINGLE — Thank you for your insightful presentation so far. I do not even know where to begin, to be perfectly honest. I want to pick up just on where you have left off with the conversation about restraints and what I would consider to be excessive use of restraints in relation to your comments earlier, which I would largely agree with, around us having traditionally a very well-respected youth justice system. Is this practice of problematic use of force a new thing, in your view? There has been a lot of media in other states, and there is a royal commission going on in the Northern Territory, that is showing evidence of what is sounding to be very similar practices in other jurisdictions. If we are talking about Victoria being the benchmark traditionally, is that the benchmark?

Ms BUCHANAN — I will answer the question about whether I think that it is new. In terms of my own observations, clearly I cannot say. But I do have in mind that I think it was the 2010 investigation by the Ombudsman into a number of complaints that I think initially came to the previous Ombudsman as whistleblower complaints, and they involved a range of allegations of staff assaulting clients, of staff inciting clients to fight or to assault one another and a whole raft of other deeply inappropriate practices. Certainly that investigation found — and I am relying on the report, not on any inside information — that at that time there were elements of a very poor organisational culture. That suggests to me that some of these issues are not new.

In terms of how we compare relatively to other jurisdictions, it has dismayed me that the extent of problems has emerged so quickly in Victoria. I was really conscious of this a few weeks ago or last month when the footage of Don Dale emerged. I remember being interviewed a number of times at that time. I talked about some of the concerns that I had about some issues in youth justice, but I said really clearly I do not think we have concerns of that nature. I could say really categorically we do not have, for example, tear gas and CS spray in our youth justice centres. Of course some of that has changed just in the last month, and we do now have the introduction of certain weapons into our youth justice centres.

My comment on that is really just to be cautious about focusing excessively on physical security. I do not for a second dispute or understate the extent to which the youth justice centres have been unstable and unsettled and in large part at times unsafe, and there is absolutely a responsibility on the part of the department to respond to that and to make sure that everyone in those centres is safe.

But I do want to make sure that we are having the right level of focus on training staff — making sure that they understand good incident response, making sure that we are focusing on dynamic security, which is about making sure that you have got good intelligence systems, that you have got good relationships between those who are detained and the staff who work there so that people can understand what is happening well in advance of incidents arising. I want to make sure that we have the right focus on some of those issues as well as the physical security matters.

Ms SPRINGLE — On staffing you talked about how there needs to be better training or different training. I suppose in my time looking at this issue I have seen almost the gamut of what people think should be happening. It is almost from no training, just nothing — just people who are may be well intentioned or need a job — to other models that we see work overseas where the staff are highly, highly trained and experts in their field in terms of behavioural management or the responses that trauma-informed therapies require and everywhere in between. So when you talk about a need for a change in approach to training, what do you mean by that?

Ms BUCHANAN — I do not have a definitive answer to that, primarily because our focus has been on monitoring the conditions. We as the commission have a not completely unique but fairly unusual level of access and role in terms of monitoring what is happening here and now for children and young people in the youth justice centres. I have to say that has been consuming most of our efforts in this. Although I would have liked to, we have not done the extensive research, nor have we done an investigation precisely into what the training should look like, whether the remuneration for youth justice staff is appropriate and whether the required qualifications, such as they are or not, are appropriate. Those are all issues that I absolutely think need attention, but I am not in a position to give you a very well-informed view.

Ms SYMES — Thank you, Ms Buchanan. Just coming right back to your introduction — and it might be something that you do not want to spend too much time on now and maybe can follow up later — you

mentioned the dual-track system. When I visited Malmsbury there seemed to be a level of concern amongst the staff and the clients that, given our review, it might be an easy target. You are looking at technically adults that are in youth detention, and they seemed to be very concerned about the fact that that might be a target. I think it is incumbent on me to make sure that we explore the success of that program to give it credence in our inquiry as well, because they were concerned that it might be something that might be targeted.

Ms BUCHANAN — I too have heard that, including from staff actually more than young people. I would say a few things. It is now such a well-established part of our youth justice system. It really does give the young people who get access to that dual-track system the opportunity not to be entrenched in the corrections system. It seems very clear to me, having watched individual young people move through and from the broader literature, that when young people enter the adult prison system, the prospect of them being fully rehabilitated is reduced and the prospect of them becoming more entrenched in criminal activity at a different level and in a more long-term way increases. So of course it is in everyone's interests to make the most of any opportunity we have to prevent that.

In terms of the way that operates in the youth justice centre setting, I would say that whilst there have been incidents at Malmsbury, they have almost all been at the secure site, in the secure parts of Malmsbury. The parts of Malmsbury that are open where the dual-track clients predominately are have been settled. Certainly the feedback from the commission visitors who go to those parts of Malmsbury is that they are engaging with young people who are reflective, who are thoughtful, who are engaged and who are very settled. Those are safe, settled units.

The one exception to my statement that there have not been many incidents there was the escape. That is the subject of a very particular inquiry by Neil Comrie. He will look at exactly how that came about, but I think it would be very flawed to draw any great conclusions from that individual incident, because by and large what we see is that the dual-track clients are operating in a really stable way.

Ms SYMES — Thank you.

Mr MULINO — I have just a couple of questions. Just to follow up on some of the discussion around the definition of incidents that are reported, without getting into all of that I just wanted to ask a question around the fact that reports are now being provided. Do you think it is a step forward that there is a legislative requirement that serious incidents are now reported to your organisation, and has it helped you undertake your work?

Ms BUCHANAN — There is no question. I was not in the role prior to the amendments taking effect, but really what it has meant for us, as I said before, is that we have visibility of serious incidents that are occurring in youth justice, which we simply would not have had unless a young person or child raised some concern with an independent visitor or a commission staff member. So it has absolutely enhanced our capacity to monitor the services in youth justice in a very different way and in my mind a very appropriate way.

I think in any closed environment, but particularly closed environments where we are housing children and young people, many of whom are vulnerable in particular ways — I mentioned before that very high numbers have mental health issues and very high numbers have cognitive impairment and almost two-thirds either have a current child protection order or have had past involvement with child protection, so about two-thirds of these children and young people have themselves been the victims of abuse or neglect. When you are considering closed environments with that cohort of people, it is completely appropriate and incredibly important to have external scrutiny. Yes, those amendments really facilitated us performing that oversight role in a very different way and a far more sophisticated way.

Mr MULINO — My second question is a broader question. It struck me from your evidence today — and thank you for your evidence — that we are dealing with a highly nuanced set of issues here. Ms Glass, in her evidence before you, described it as a multifaceted set of challenges, which I suppose is another way of saying the same thing. That is backed up by a lot of the written submissions that we are receiving. Do you think it would be fair to say that some of the underlying causes of what we are dealing with here — for example, the rising proportion of clients on remand and the rising severity of crimes being committed by that small cohort that are committing an increasing proportion in the face of overall declines in youth crime in many areas — have been emerging for some time now, five years or more in many cases?

Ms BUCHANAN — I think that is a given. When you are looking at the range of issues and causes that result in individual children and young people in the youth justice system, whether in greater numbers or whether in the youth justice system for different types of offences or with different patterns of offences, you always have to look at what the early aspects of these young people's lives involved and what opportunities there were to intervene and intervene differently on those children's path to offending. So I would encourage anyone who is looking at the youth justice system to be looking very broadly at the whole range of drivers that cause children and young people to offend.

In terms of some of the specifics, though, you talked about remand. Yes, there is no question. I am sure you will have data yourselves to show this. The increase in the numbers of children and young people on remand really started to increase or spike in around 2013. That has continued. That has not abated, to my knowledge, despite changes to the bail provisions. So that is a part of the dynamic that we are seeing playing out in the youth justice system.

When you have high numbers of children and young people on remand — at the Parkville precinct it is around 80 per cent of the children and young people there; it is very high — again I do not think you need a custodial background to imagine how unsettled that makes the entire environment and how challenging that is for the staff to manage. The children and young people do not know what is happening. They are not invested in behaving in a particular way because they really have no sense about whether they are going to be in for a long time or not. It adds to the pressures, and I think that is part of what we have to look at: both how we can best support and manage those children and young people on remand and ideally whether there are any appropriate ways to reduce those numbers, because they have climbed very high very fast.

Mr MULINO — Thanks.

Ms PATTEN — Thank you, Ms Buchanan. I just have a couple of questions. You touched on an independent oversight body, and obviously it seems that the commission's role is meeting that to a degree. What else would you see from an oversight body? I note you are not the only one to recommend such an independent body.

Ms BUCHANAN — You ask this question in the context where there seems to be an intention on behalf of the Australian government to ratify the Optional Protocol to the Convention against Torture, which indeed will require that oversight bodies be in place for all places of detention, including youth justice centres. So perhaps the best way that I can answer your question is to reflect on the analysis that we conducted in the commission about what extra functions or powers we might need to be able to meet the requirements of the national preventative mechanism — I think it is called — under OPCAT. Many of those requirements are in place already. We meet those already, we have those powers already.

From memory, the main additional specific powers we might need in legislation would be the power to conduct unannounced inspections, and the power, from memory, to require a broader range of information from the department even when we are not conducting an inquiry. So, from memory, those were the main areas where our current capacity and powers fell short of meeting what might be required under OPCAT.

Ms PATTEN — I also noted in some of your letters to the minister that were in the Ombudsman's report that you had considerable concern about the mental health and wellbeing of the children at Grevillea and you were asking for mental health assessments of those children. Was that forthcoming?

Ms BUCHANAN — The response that I received from the department was to give me some reassurance in general terms that those children and youth people receive assessments and services from the YHaRS service and clinicians connected to that service. I remained interested in making sure that there were specific assessments of the children ideally prior to transfer and certainly once they were transferred if they remained at Grevillea for some time. That was not initially forthcoming, but I am pleased to say that that has been done since. Another external provider has been commissioned by the department to conduct mental health assessments — clinical assessments — of the children and young people in Grevillea. So I am pleased to say that happened.

Ms PATTEN — That just follows on, because I notice in the submission from Youthlaw that they make a recommendation that each person coming into a youth justice centre undergo a comprehensive primary health and mental health assessment. I was surprised that does not already happen.

Ms BUCHANAN — I think, and again I will not try to talk to the detail of the assessments, there certainly are health assessments that are conducted when children and young people come in, that are initially admitted, and mental health assessments. I do think, amongst my list of areas that I think warrant attention, there is scope to look at whether within the system there is a need for a more sophisticated assessment generally of children and young people when they come in that is then carried through in a more consistent way into what kind of treatment and interventions they are then provided with when they are in the system, as well as how they are managed and where they are managed and with whom they mix et cetera. So I do think there is scope, absolutely, to look at that.

Ms PATTEN — To expand that initial assessment when they come in.

Ms BUCHANAN — Indeed.

Ms PATTEN — One final quick question: you have told us some stories of children, and certainly in visiting the centres we are very interested in speaking to the children. I think it is really important in coming up with recommendations and coming up with solutions that those children are very much part of that conversation. I am wondering if there are ways that you can help facilitate that.

Ms BUCHANAN — I am very happy to think about that. There is another method as well that you might want to explore, in part because I know this particular group of children and young people in Parkville are very engaged and quite accustomed to dealing with fairly high-level visitors. The Parkville College has a student leadership council, and I think, through me — I am happy to speak with Parkville College — or indeed separately. It might be worth having that as a starting point.

Ms PATTEN — I think we have already made that.

Ms CROZIER — Just a point of clarification if I can. In one of your answers you were speaking about the footage you saw at Don Dale and the use of OC spray, and you also mentioned that that has just been happening in the last month or so. Was that correct? Could you clarify for me, is that since the changes were made since the announcement by the Premier and minister in relation to Corrections taking over that the OC spray has been used?

Ms BUCHANAN — The introduction of those weapons, from memory, was shortly prior to the announcement of the transfer to the Department of Justice and Regulation — but prior. I am relying on my memory; I think it was about two weeks prior. It was an announcement that was made after the fairly serious incident and escapes from Malmsbury. What was decided and then implemented was that Corrections Victoria staff, both — —

Ms CROZIER — On 27 January?

Ms BUCHANAN — Yes, that would be right, on the Friday — that Corrections Victoria staff, SESG staff, so the highly trained incident response group from Corrections Victoria, would be placed in both Parkville and Malmsbury. They are already at Barwon Prison but they would have a greater role or a more easily facilitated role with Grevillea. Of course when SESG were deployed to those centres, and are now in there on an ongoing basis I understand, they take in with them batons and CS gas and OC spray. In addition to that, I understand ERG members, so emergency response group members — also Corrections Victoria particularly trained staff — are on the floor at the Grevillea unit, and they have access to, in terms of their accoutrements, batons and spray but not the gas.

Ms CROZIER — And how many times have spray, gas or batons been used in any of the three facilities — Grevillea, Parkville or Malmsbury — since that introduction?

Ms BUCHANAN — To my knowledge there has been one use of spray.

Ms CROZIER — Not at Malmsbury recently?

Ms BUCHANAN — I would need to check that. I am very clear there is one, because it was part of an incident that we are investigating, but I cannot recall the other. You might be right.

Ms CROZIER — I might be wrong.

Ms SPRINGLE — My understanding was that that there were some incidents in late December and over the Christmas period that came out through the trial. So my question would be: are you aware of that happening before Corrections was mooted as an option in Grevillea in particular, but are you aware of that sort of that practice in some of the other centres as well?

Ms BUCHANAN — I am not aware of the use of weapons in the other centres. To my knowledge, up until the change that was announced at the end of January, the only capacity for those weapons to be used in the other two centres was when Victoria Police were brought in and played a role in an emergency response situation. In the initial stages at Grevillea, and I raised some concerns about this through December, there was certainly potential for the SESG officers to be brought into Grevillea, and I understand but have not confirmed that there was at least one occasion when SESG officers and their canines were deployed in the Grevillea unit. So that is absolutely the case.

I was then involved in seeing and providing some feedback on the terms of an agreement whereby SESG could then only be brought into Grevillea on the basis that they were asked by the director of secure services, which is the same level and on the same basis as the Victoria Police could be brought into the other two centres. After that there were some changes, and to my knowledge after that — up until January — SESG were not deployed.

Ms SPRINGLE — You have gone on the record as saying that it is hard to imagine Grevillea would ever be safe for children.

Ms BUCHANAN — Forty children.

Ms SPRINGLE — Forty children, yes, that is right. Does that remain your view?

Ms BUCHANAN — Yes. You are absolutely right that I have been asked a question, and have said on record, can I imagine it would be safe if it were full, which is essentially what that is about.

Ms SPRINGLE — Yes. That is right.

Ms BUCHANAN — What we have seen is, I think, at most around 23 children and young people in Grevillea. My view is that, even with 23 children and young people, it is a very closed, very small, very contained environment. There are really not many options in terms of places for children and young people to go or to move to. I absolutely still hold the view that I think 40 children and young people in that environment would create risks for both other clients and for staff. Of course that depends on the nature of the children and young people, but certainly from what I have seen so far I do not think it is ideal to fill Grevillea.

Ms SPRINGLE — Last question, I promise. The UN are very categorical in their view that extended lockdowns and isolation can do irreparable damage to young people and children when they are used at all. In your view, how do we rectify that damage that is being done currently to those young people?

Ms BUCHANAN — My primary interest is to make sure that we stop doing that damage.

Ms SPRINGLE — And then?

Ms BUCHANAN — And then, just as I think these children and young people in large part need access to very high-quality support and intervention to address a whole raft of issues, including the issues that drive their offending behaviour, I think similarly they will need access to that level of support and intervention to help them to deal with whatever they have experienced in custody. The very fact of going into custody for a child with a neglect or abuse background can be fairly traumatic and can compound some of what they already carry in terms of damage, so I think that is part of what we need it to take into account.

I do want to be clear. My understanding is the UN has said solitary confinement for any period for young people is tantamount to torture. The definition of solitary confinement is to isolate anyone between 22 and 24 hours. That certainly does not cover a lot of what is happening in youth justice. A lot of the isolation is short, for short periods, but we have certainly seen instances — and some of this will be detailed far more in the report that is tabled next week; we have absolutely seen instances — where children have been locked down for 23 hours a day for a number of days. Some of that was in the context of immediately after the November riot at Parkville and the system being under incredible pressure, but it has not only occurred post-November, so I am very interested to make sure that we alleviate those issues.

Mrs PEULICH — Was that individual children or the entire group?

Mrs BUCHANAN — After November it has been the entire group at a number of locations.

Mrs PEULICH — Given the emphasis on fortification rather than, I guess, appropriate facilities and safety measures but also the necessary therapeutic intervention and appropriate staff training, and given the increasing likelihood now of the use of some of those weapons — capsicum spray, batons and so forth, and it is early days, so I do not expect you to respond positively — the guidelines for the use of those will vary from agency to agency. So police will have a set of guidelines in relation to the use of capsicum spray, and perhaps Corrections Victoria. Do you see that as part of your role to have a look at the guidelines that apply and whether they are actually relevant or suitable in principle but also in terms of application to youth facilities?

Ms BUCHANAN — Very much so. When I was advised about those Corrections Victoria staff and those accoutrements being brought into youth justice centres, I asked questions about what training the Corrections Victoria staff would have and had had prior to them going in, because I think there are differences when working with children and young people and I would want all staff operating in the youth justice environment to be appraised of those. The next step is absolutely then what ongoing guidelines might look like for how those different types of weapons might be used. It is part of — —

Mrs PEULICH — There are international guidelines that are —

Ms BUCHANAN — Yes, absolutely.

Mrs PEULICH — very narrow.

Ms BUCHANAN — Yes, indeed. Again, I recognise that there has been a level of instability in the system that has been hard to manage and that the focus has been on trying to settle the system so that it is safe. I accept, albeit I do not always like, the decisions that are made to try and do that. What I think is really important is that from there, having responded to the crisis and trying to settle the centres, we then look at what good evidence tells us, what the expertise tells us, what existing guidelines tell us, about how to best use weapons in these environments if we must — about what kind of training staff need so that they do not have to use the weapons and the much broader range of issues that I have already spoken to.

The CHAIR — Ms Buchanan, just briefly on that, the Children's Services Act, as I understand it, bans use of force against children except in highly prescribed situations. Are you satisfied that that has been complied with during the last few months?

Ms BUCHANAN — You are right. That provision is in the Children, Youth and Families Act. I will speak not specific to the last few months but when I was referencing some of the inappropriate restraints that I referenced before there is clear evidence that those provisions in the act are not always met. Now I am not able to say whether that is a broad problem and concern; I simply do not have the evidence to do that. But the reality is that use of force is permitted by the legislation in youth justice centres provided it is necessary to keep people — staff, children, young people — safe or to maintain good order. I want to make sure that the work is done so that that is the only time force is being used, and that when it is used, it is being used safely. I have seen enough evidence to tell me that we need it to do quite a lot of work to make sure that that is the case.

The CHAIR — Thank you. I think we have gone well over time. It is unfortunate that your report is out next week and that we are seeing you this week. Would you be willing to come back on another occasion?

Ms BUCHANAN — Yes, certainly. I am happy to do that.

Ms CROZIER — With Mr Jackomos.

Ms BUCHANAN — Yes, I am happy to do that.

The CHAIR — That would be great, thank you. One other thing I wanted to ask is: you referred earlier to some footage you had seen of incidents. Is it possible for you to share that with the committee if the individuals are de-identified?

Ms BUCHANAN — I will need to seek advice about that. In part because there are some very strict and appropriate restrictions in my legislation about what I can share by way of information that I obtain through the performance of my functions. So I am not sure is the short answer, but I am very happy to take that on notice and look at it.

The CHAIR — Thank you very much. It would be good to hear back from you on that front.

Ms BUCHANAN — Good.

The CHAIR — I think I can speak on behalf of everybody and say that we are very grateful for the contribution that you have made today. Thank you for your time.

Ms BUCHANAN — Thank you.

The CHAIR — You will receive a copy of the transcript in a few weeks for proofreading. Thank you.

Ms BUCHANAN — Good, thank you. Good luck with your work.

The CHAIR — Thank you.

Witness withdrew.