

TRANSCRIPT

STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES

Inquiry into youth justice centres in Victoria

Melbourne — 14 June 2017

Members

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Ms Nina Springle — Deputy Chair

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Witness

Ms Kym Peake, Secretary, Department of Health and Human Services.

The CHAIR — We will open proceedings. I want to welcome everyone who is here, including those who are in the gallery. The committee is hearing evidence today in relation to the inquiry into youth justice centres in Victoria, and the evidence is being recorded. To our witness I say that 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 this privilege.

Thank you very much for coming today, Ms Peake. I invite you, if you wish, to make a few brief comments to the committee, which is the standard advice we have given to all witnesses. If I could ask you to keep that to no more than about 5 minutes, that would be appreciated.

Ms PEAKE — Thank you, Chair, and thank you for the opportunity to present to the committee today. I would like to start by acknowledging the traditional custodians of the land on which we meet and pay my respects to their elders, past and present. The committee would be aware that, as the Secretary of the Department of Health and Human Services, I have responsibilities for child and family services and child protection under chapters 3 and 4 of the Children, Youth and Families Act. Under part 5 of the act I was responsible for youth justice, including determining the form of care, custody and treatment in the best interests of each young person in detention, as well as maintaining their entitlements.

As the committee would also be aware, on 3 April this year responsibility under that part of the act for youth justice moved from DHHS to the Department of Justice and Regulation. As a result of that machinery of government change, the Secretary of the Department of Justice and Regulation, Mr Greg Wilson, assumed the responsibilities I have just outlined under chapter 5.

During the time that we were responsible for youth justice the department faced a number of challenges within the youth justice system. These included high rates of remand, a changing cohort of young people in our care and increasingly challenging behaviours, inappropriate infrastructure and staffing — issues that were often interrelated. We certainly saw over the period that I have been secretary more young people on remand than ever before. Three years ago 20 per cent of young people in custody were on remand. By September 2016 close to 80 per cent of young people in custody at Parkville Youth Justice Precinct were remandees, and in 15–16, 80 per cent of remandees were admitted to YJ facilities after hours.

Accommodating young people on remand is a significant challenge, because the cohort is constantly changing: any young person on remand could get bail at any time or they could be released after being sentenced, and with more young people being remanded, new offenders are frequently arriving, which makes it difficult to establish a routine for these young people. It also means there is constant turnover, leading to further instability in the cohort, and young people on remand pose some of the highest risks to themselves, to other clients and to staff because they tend to be more volatile, impulsive and more difficult to engage with.

To add to those challenges there are now young people coming into contact with the youth justice system for the first time when they are older and for much more serious offences. In September 2016 the crime stats agency released a research paper titled *Patterns of Recorded Offending Behaviour amongst Young Victorian Offenders*. That research showed that while the overall number of young offenders in Victoria has continued to decrease since 2010, there were a very small number of young people — 1.6 per cent of offenders — who were responsible for 21 per cent of crime. The data also showed that this cohort of young offenders commenced offending early and continued to offend at higher frequency, peaking at the age of 15. The CSA also identified a second high-rate offender group — a late-developing group which comprised 3.4 per cent of offenders, with a pattern of offending escalating from the age of 15 and continuing to increase until age 17. This group were statistically more likely than any other group to have a crime recorded as their first offence when compared to others.

We had a major challenge that we faced in relation to infrastructure. Housing young people in the criminal justice system safely and securely is a complex exercise, and dynamics need to be managed carefully. In particular remandees display frequent aggression and violence towards each other and staff. To place these young people in the safest setting, youth justice staff have to consider their offending history, behaviours in custody, health needs and vulnerabilities. They also have to consider their community affiliations and proximity to co-offenders, and cultural, religious, ideological and ethnic considerations. So as you can see it is constantly a dynamic and volatile environment. Each time a new client is introduced to a unit the established order is challenged, which may result in further difficult behaviour. Managing these requirements in the existing

facilities in view of that changing cohort and increased remand numbers was certainly more challenging due to the design and configuration limitations of the infrastructure, which I am sure we will talk more about today.

There have also been challenges in maintaining stable staffing at Parkville and Malmsbury. We encountered particular challenges in attracting and retaining sufficient numbers of qualified staff to ensure stable staffing for each shift at Malmsbury following the opening of the secure site in July 2015. To give the committee a bit of a sense of that: in December last year 4 per cent of staff at Parkville were agency staff compared with 22 per cent at Malmsbury. Consequently, particularly at Malmsbury, we were reliant on high numbers of agency staff to fill rosters, or staff needed to work with reduced staffing numbers.

In October 2015 and March 2016 we saw young people scale the exterior of Parkville units to gain access to the roof. Following each incident, an independent review of security arrangements was conducted by Muir consulting. Then in April 2016 anti-climb fencing was completed, with a security review following the March incident noting that even with anti-climb fencing such opportunistic behaviours were likely to continue to occur because the failing infrastructure was not suitable to contain young people who exhibited these behaviours.

Following receipt of the second security review in July 2016 the Minister for Families and Children directed the department to prepare a business case for the fortification and rebuilding of the Parkville Youth Justice Precinct. Then in August of that year the minister commissioned a comprehensive review of the youth justice system by Professor James Ogloff and Penny Armytage. Between 12 and 14 November it has been well documented that a youth again accessed roofs, but this time rather than climbing outside the building, which had occurred in the previous incidents, access to roofs was caused by breaking through internal ceilings. In the course of these incidents widespread damage was caused to the units, and as a result none of the secure rooms at Melbourne Youth Justice Centre were fit to accommodate young people in my custody, effectively reducing capacity at Parkville by approximately half. So of the 123 beds normally available, 60 secure beds were rendered unusable.

Immediately following the November incident some youth were temporarily placed in Mill Park police cells, while others were placed in accommodation still available at Parkville and Malmsbury. As the then director of secure services testified at the Supreme Court, this meant some young people were required to share rooms with others involuntarily, which is not the preferred option for their physical security and emotional wellbeing. Some had to sleep in isolation rooms and holding cells, which are bare rooms without a toilet, shower or television, mostly. Furthermore, it meant that those rooms could not be used for their intended purposes. It was immediately apparent that the extent of the damage to those Parkville units would require extensive remediation.

In preparing advice to the minister on options to provide capacity I was conscious of my obligations and requirements under the Children, Youth and Families Act and the Charter of Human Rights and Responsibilities. It is necessary for every high-risk young person in a youth justice facility to be accommodated in a secure bed and in a room that can be locked and that is contained with secure perimeters. The rooms must be safe and secure and must be ligature proof, due to the risk of self-harm being a constant in this environment for this cohort, and it must be possible for staff to observe all parts of the room. Available capacity on the Malmsbury open site did not meet these requirements, so moving dual-track clients from this would not have created secure capacity for remandees in overcrowded conditions at Parkville.

Based on the advice I received from my operational staff, I considered that moving sentenced older dual-track clients, who were settled and in secure accommodation at Malmsbury, would have further destabilised the whole system, especially given the staffing challenges, as I have outlined, in securing stable staffing at Malmsbury. Further to this, the act prohibits me from placing a young person in detention in secure welfare services or transferring them to an interstate facility. I had no choice but to detain any young person committed to my custody who was required to be detained by an order of a court. Only sentenced youth over the age of 16 could be transferred to an adult facility by the Youth Parole Board and only if the parole board formed the view that the young person had threatened the good order and safe operation of the centre and could not be properly managed in the youth facility. The vast majority of young people at Parkville that I needed to securely contain were of course on remand.

Recognising the lack of secure capacity within youth justice custodial services and the constraints under the act, my staff consulted with senior staff from the Department of Justice and Regulation on the availability of alternative facilities within Corrections Victoria. To meet my legislative obligations on the availability and in looking at those alternative facilities, I was conscious that we needed to include a separate visitors area for

professional appointments and family visits and to enable young people on remand to be separated from young people on sentenced orders. I was also concerned to ensure that young people in my custody would not be placed in an environment where they would interact with adult prisoners, as required under Victoria's Charter of Human Rights and Responsibilities. The Grevillea unit at Barwon Prison was identified by the Department of Justice and Regulation as the only facility able to meet that criteria.

In the absence of seeking gazettal of Grevillea as a youth justice facility the only alternative would have been to maintain young people in overcrowded facilities for a number of months, which would have led to a significant compromise of the human rights of all young people in the system and dangerously exacerbated the risk of physical, sexual and emotional harm to both detainees and staff. I was also concerned that education and other services would have been severely compromised, because managing accommodation pressures would have meant containing and separating groups of detainees in a way that limited their access to these services.

I would note that during the period of operation of Grevillea we continuously reviewed the care and custody arrangements of young people, including taking feedback from them and their families and taking recommendations from the commissioner for children and young people, who visited regularly. Operational staff worked closely with educational and health services to provide a structured day, with regular access to visitors and legal support and reasonable time spent outside of cells. Of course, as the committee would be aware, the Grevillea unit is no longer being used as a youth justice facility. I understand that the Department of Justice and Regulation, having been advised of the Supreme Court's decision on 11 May, moved young people by 12 May back to Parkville Youth Justice Precinct, where one of the units that had been damaged in November had by then been fully repaired, fortified and strengthened, albeit ongoing work continues at that site.

I am conscious of the committee's time, so just very quickly in the last minute I do want to note a couple of things that we undertook over the period to really improve or address the challenges I have outlined. In October last year we moved the management of secure services back from the north division, where it had been devolved in 2012, to the central office so that we could leverage all of the central resources to look at things like recruitment pipelines and approaches to training staff and to look at having a rostering system that was not manual but that was actually automated so we could make sure we had more staff available for each shift. We worked with labour hire firms to make sure that we had an on-call capacity to try and fill shifts more effectively as well as a consistent supply of casual staff who were inducted and aware of their obligations under the act.

We also did a lot of work with the CPSU and our staff around a new client behaviour management model, which was really designed to enable young people to have a consistent understanding of expectations of them and take responsibility for their behaviour and to have staff empowered to provide feedback on that behaviour. At the time of the machinery of government change on 3 April that model was being finalised, and I understand youth justice staff have continued to work on this at DJR as a matter of priority.

Finally, in relation to infrastructure, a preliminary business case for fortifying and rebuilding the Parkville precinct was finalised in October 2016 but then accelerated after the November incidents, leading to the announcement on 6 February of a new facility that would be built and an investment of \$288.7 million for that purpose. DHHS staff worked closely with DJR on the early stages of the new Cherry Creek facility, which will now be overseen by our colleagues at DJR. Work commenced in the first week of December on fortifying and strengthening facilities at Parkville and subsequently at Malmsbury, which is work that continues. It included the rebuilding of damaged units; the installation of custodial-grade doors; the extension of anti-climb material on roofs; and the strengthening of walls, ceilings and windows.

Today we continue, of course, to have responsibility for children who are in my custody or guardianship and placed in a youth justice facility, and we work closely with the department of justice on their care arrangements. I am very committed to continuing to work closely with the Department of Justice and Regulation on the intersection of youth justice responsibilities and our responsibilities in health, mental health, housing, and alcohol and drug services. Again I thank the committee for its time today, and I look forward to your questions.

The CHAIR — Thank you, Ms Peake. I might start off. You mentioned in your comments that in December at Malmsbury 22 per cent of staff were agency staff. I am interested that you chose December as the figure to give, given that it is now June. Has the proportion of agency staff been higher than that at any time?

Ms PEAKE — I chose December as it is the point in time immediately following the November incidents, when we were looking at the decision-making around capacity and what were suitable care arrangements for

young people who I could not house securely in the damaged units at Parkville. There have been different levels of agency staff at different times. I am not sure what the current numbers are. I am aware that at the point of transfer in April it was about 8 per cent agency staff at Parkville and just under 40 per cent at Malmsbury. My understanding is that during the period I was responsible that was about as high as it had got at Malmsbury.

The CHAIR — So 40 per cent agency staff — —

Ms PEAKE — In April this year, at the point of handover.

The CHAIR — We heard from some former staff at a recent hearing who told us that there were occasions when the majority of staff at Malmsbury on some shifts were agency staff. Is that right?

Ms PEAKE — No. For the period that I was responsible, 40 per cent at Malmsbury was the highest I was aware of, and 8 per cent was the highest at Parkville.

The CHAIR — I asked about per shift, not overall. Is it the case that there would have been a majority of agency staff on some shifts?

Ms PEAKE — I am certainly happy to take that back and give you further information.

The CHAIR — Thank you. Just further on that, something else that former staff raised is that there were occasions when people called in sick at Malmsbury in the morning — and you have mentioned the repeated absenteeism that went on. They told us that what would happen is that night staff would stay longer out of concern and that the unit would be understaffed on the day. It was not called lockdown, but no-one actually got the kids up.

Ms PEAKE — Certainly there were challenges, I think, as I outlined in relation to staffing, particularly at Malmsbury. Being that bit further away, it was difficult to staff. As I indicated, one of the things that we worked very hard on when we recentralised the oversight of management at both secure facilities was looking at over-rostering — taking account of our lived experience of there being people who call in sick — but also having on-call arrangements put in place with labour hire companies with a stable group of casual staff who were inducted and trained in their responsibilities under the act. So there were occasions where there were staffing challenges, no question, and we were working very hard at looking at what the solutions to that were. And of course from January we were very appreciative of the support we received from the Department of Justice and Regulation to provide additional capacity of both specialist corrections staff as well as others.

The CHAIR — If I could just take you back to my question, which is: did the practice that I just outlined to you happen? I am just testing what we were told by the staff. Was there a practice of not actually going into lockdown but not actually getting the kids up in the morning because of absenteeism — but avoiding the lockdown?

Ms PEAKE — I am not aware of the practice of simply not getting young people out of bed. I am aware that where there were staff shortages there have been occasions when it has been necessary for the safety of young people and for staff for there to be lockdowns at both Malmsbury and Parkville.

The CHAIR — In terms of the worrying trend of absenteeism among staff that you have referred to, when did this start? When did things begin to get so difficult?

Ms PEAKE — I can only talk to the period of time that I have been secretary, which is since I was appointed in November 2015. In the context of the increasing number of remandees, the opening of the secure unit in 2015 at Malmsbury and so therefore having more capacity out at Malmsbury and the changing cohort, during the period that I have been secretary we have been confronted by staffing challenges.

Ms CROZIER — Thank you very much, Ms Peake, for appearing before us. I have got a number of questions, but in the interests of time — could you tell the committee how many of those that were moved to Grevillea were actually involved in the riots at Parkville?

Ms PEAKE — I do not have a number with me, Ms Crozier, but what I can outline to the committee is that consistent with our obligations under the charter and under the Children, Youth and Families Act — —

Ms CROZIER — Sorry to interrupt you. Surely you must know if those children and young offenders who were moved from Parkville following the riots to Grevillea were involved in the riots.

Ms PEAKE — If you do not mind just letting me step through, the decision-making on who was selected to be moved down to Grevillea was not simply based on participation in the riots. As I indicated in my opening statement, we are always looking at what is the mix of clients so that we can have a stable client group. So the considerations we went to, consistent with our obligations under the act, were looking at the emotional and mental health history of young people, their behaviours, their associations and their access to specialist services. It was on the basis of looking at all of those factors that we determined what the appropriate mix of young people would be in each of the facilities.

Ms CROZIER — The committee has heard evidence that none of those offenders that were moved to Grevillea were involved in the riots. Is that correct?

Ms PEAKE — I am happy to take that on notice, but it was not the primary consideration in determining the mix.

Ms CROZIER — You mean you do not know if those people that were removed under your care, that were moved to Grevillea, were or were not involved in the riots?

Ms PEAKE — Certainly over the period of time that there were young people at Grevillea, some were involved. There were a number who had a history of being involved in serious incidents, but as I have indicated, it was not the only consideration and it was not the primary consideration.

Ms CROZIER — If you could provide that to the committee, that would be most helpful. Chair, I know that time is against us. In relation to the escape that occurred at Malmsbury on 25 January, could you outline the protocol in relation to the text messaging that was undertaken? Jodi Henderson said that it was her understanding that the minister's office would have been notified as a matter of priority. Were you involved and were notified of that event?

Ms PEAKE — I certainly was. I was actually at Malmsbury at the beginning of that event, so I was alerted immediately. I was then in constant contact with both the acting director of secure services, but recognising that she had very important obligations to her staff and obligations in ensuring the operational response. We also deployed our deputy secretary of operations and our communications adviser to go up to provide support for that communication to occur. I was in close communication with the minister and the minister's office and also with the deputy commissioner of police over the next 24 hours.

Ms CROZIER — From my recollection, that escape occurred — —

Ms PEAKE — On the 25th.

Ms CROZIER — On the 25th just after 2.00 p.m.?

Ms PEAKE — Correct.

Ms CROZIER — So the minister was notified almost immediately because you were on site at that time. Is that correct?

Ms PEAKE — Correct. You might be aware that the minister was actually in hospital on that day. She left hospital that day, so she returned home from hospital and was very unwell, so I was in phone contact with her.

Ms CROZIER — I was not aware of that, but nevertheless. Just to clarify, the deputy police commissioner was involved in your text messaging — —

Ms PEAKE — Certainly in phone conversations, particularly over the evening.

Ms CROZIER — Thank you. I will come back. I have got more questions. Thank you very much.

Mr MORRIS — Thank you, Ms Peake. I was hoping to ask about the last time you were before the committee. I believe Ian Lanyon was also supposed to attend; however, a short time after he did not attend the

hearing and a short time later it emerged that he had left his position as the head of Parkville and Malmsbury. Are you aware of whether or not Mr Lanyon was still in his position at the time of the last hearing?

Ms PEAKE — Certainly the last time I appeared before this committee Mr Lanyon did accompany me. I think you might be talking about the parliamentary accounts and estimates committee.

Mr MORRIS — My apologies. Sorry, yes, I was indeed. At the time of PAEC was Mr Lanyon in his position or had he been removed from his position?

Ms PEAKE — I am sorry, I would have to go back and check the exact dates for you.

Mr MORRIS — If you could provide that to the committee, that would be very helpful. Can you inform the committee as to why he was moved from that position?

Ms PEAKE — Certainly. I had been having a number of discussions with Mr Lanyon around that — he had been in his position for period of time, and obviously as we faced really significant challenges, from my perspective it was going to be important that we really looked at how we could provide a fresh set of eyes on what could be some new solutions to dealing with all of those challenges that I have outlined while still having the benefit of Mr Lanyon's expertise in the development of the business case for the new facility and in supporting the expert review into secure services that was being conducted by Professor Ogloff and Ms Armytage. So we had a conversation about him coming offline to provide that expert input into those two processes — in the first instance while he was on leave, and then beyond his leave period an experienced manager from the department of justice coming in to provide a new set of eyes on what some solutions might be.

Mr MORRIS — Thank you, Ms Peake. To me that sounds like bureaucratic speak for 'He was sacked'.

Ms PEAKE — He was not sacked.

Mr MORRIS — He was not sacked?

Ms PEAKE — He was not sacked.

Mr MORRIS — Was he happy with being moved from his position?

Ms PEAKE — I cannot speak for Mr Lanyon.

Mr MORRIS — But you just said that you had a conversation with him. Did he appear happy with the being moved from his position? Did he appear happy?

Ms PEAKE — I am really not going to talk about private conversations I had with a staff member, but he was extremely important in providing expert advice to us around both the development of the business case and the expert review, which were two critical pieces of work for us.

Mr MORRIS — I might suggest that if he did appear happy, I think, Ms Peake, you would probably tell us that he did appear happy, so we will take that on — —

Ms PEAKE — I am not in the business of talking about my staff either way.

Ms SYMES — Do not verbal the witnesses. That is inappropriate behaviour, Mr Morris.

Mr MORRIS — Thank you, Ms Symes. I was hoping to move on to the use of Grevillea, if I could, and I was just hoping you might be able to inform the committee of whose idea it was to use the Grevillea unit as a youth justice facility?

Ms PEAKE — Certainly. I think as I outlined in my opening statement, we went through a really rapid but rigorous process of looking at what our options were. I think as I outlined, there are significant constraints under the Children, Youth and Families Act which limited our options — cannot use secure welfare services; must be a secure site, so we could not use the open site at Malmsbury; not allowed to transfer young people interstate — so we were looking for a secure facility.

We did look at other facilities in our control, including the disability forensic assessment treatment centre. I did not think it was appropriate to house young people alongside adults who have been the subject of sexual offending, and therefore we consulted with the Department of Justice and Regulation about what might be options in the Corrections Victoria facilities that would meet those obligations of ensuring that there was available space for visitor rooms and for access to professionals, that there was a separate space away from adult prisoners, both to enter and during the duration of custody, and that there was going to be the capacity for there to be other services delivered. On that basis the advice back from the Department of Justice and Regulation, through my operational staff to me, was that the Grevillea unit was the only facility that met that criteria to meet the obligations under the act and the charter and that they would work with us to do urgent works to make it available to us.

Mr MORRIS — So, sorry, just to be clear, to go back to the question, the idea to use Grevillea was the department of justice's, not DHHS's?

Ms PEAKE — It was on the basis of their advice about their facilities, having ruled out all of those other options. It was then my advice back from that to the minister which led to the advice to Governor in Council around the gazettal of Grevillea. So advice from the department of justice, through to me, who then advised the minister, who in turn advised the Governor.

Mr MORRIS — So at that point that the advice was received from the department of justice, did you receive any legal advice about the legality of using Grevillea as a youth justice facility?

Ms PEAKE — We certainly undertook an assessment against my obligations under section 482 of the Children, Youth and Families Act and under the Charter of Human Rights and Responsibilities. That was work that was done through my legal division in consultation with the Department of Justice and Regulation and with the Victorian government solicitor. Obviously the detail of that advice is subject to privilege, but yes, we did work our way through our obligations and that formed the basis of my advice to the minister.

Mr MORRIS — Despite what you have said there, I will ask: will you provide that advice to the committee?

Ms PEAKE — It is subject to legal professional privilege, but certainly I can indicate to the committee that we did go through quite a thorough assessment.

Mrs PEULICH — Was that qualified legal advice?

Ms PEAKE — Pardon?

Mrs PEULICH — Was it qualified?

Ms PEAKE — It was.

Mrs PEULICH — You said earlier that participation in the riot was not a primary consideration for who was selected to be moved to the facility. So what criteria did you use?

Ms PEAKE — It was really my obligations under section 482 of the Children, Youth and Families Act and the criteria under the Charter of Human Rights and Responsibilities, which require me, in making decisions about the care and custody of young people, in their best interests, to examine their health, their associations, their past offending behaviour, their access to services and supports, their access to family. There are a range of factors, but one of the important ones is looking at how we are going to get a safe and stable mix of young people in each of the facilities, given the overcrowding we were facing.

Mrs PEULICH — So where did the rioters go?

Ms PEAKE — I will confirm for Ms Crozier when and how many were in Grevillea, but we were looking to separate between different facilities — between Malmsbury, different units of Parkville and Grevillea.

Mrs PEULICH — But the Premier called them 'the worst of the worst', so how does that sit with the process of selection that you have just outlined?

Ms PEAKE — It really goes to my point about looking at the mix. So to ensure the safe and secure detention of young people, a really important consideration is looking at the mix of people in individual units.

Mrs PEULICH — So were they the worst of the worst?

Ms PEAKE — I am not going to make pejorative assessments around individual young people. But certainly an important consideration in looking at the appropriate placement of each individual young person is how we can ensure that we can detain them, we can house them, in a secure way so that they are not a risk to themselves and that they are not a risk to others — either other clients or other staff.

Mrs PEULICH — So that was just a convenient line for the media? Are you able to say how many went to Malmsbury? Are you able to tell us that?

Ms PEAKE — When we lost 63 units, it was obviously necessary for us — and there were a large number of young people who were involved in that incident. There were young people who were moved between Malmsbury, Parkville and Grevillea, and there were movements across the successive three months to ensure that we had an appropriate mix. We monitored that when we were responsible, and justice, I am sure, still do. It is a constant process of monitoring what is in the best interests of young people. Again I am happy to take on notice the exact mix at the start.

Ms CROZIER — You do not know how many were moved to Malmsbury and Parkville?

Ms PEAKE — I do not have any of that data with me, but I am certainly happy to take the question on notice.

Mrs PEULICH — Just a general question: what is the average stay of remandees?

Ms PEAKE — It really does vary, but every three weeks remandees return to court to look at whether they are going to be sentenced, whether they are going to be released, whether they are going to be sentenced and released for time served. Again I can get you average numbers, but it really is a constant dynamic environment of people moving in and moving out.

Mrs PEULICH — For average stay?

Ms PEAKE — Yes. I am certainly happy to get you that data.

Mrs PEULICH — You also mentioned, and we have heard often reference being made to how the facilities are no longer fit for purpose, and the Ombudsman's report suggested that that was because of a different profile of the cohort that was now being housed. You have referred several times to the violence that is exhibited by some of these remandees. Has there been an analysis of what the causes of violence are? What are the contributing factors? Is it drug use? Is it dysfunctional lives?

Ms PEAKE — Certainly I think that data that I outlined around both the changing criminal pattern of behaviour as well as the characteristics of young people — so we are seeing an older group really coming to the attention of youth justice for the first time for quite serious offending, as well as the group whose behaviour has escalated from around age 15 to age 17. We certainly are seeing young people entering youth justice who are substance affected, and clearly that can have a pretty significant effect on behaviour, but of course there are also significant issues around displacement trauma and pretty complex backgrounds of young people who come into contact with the youth justice system.

I think the other thing that has really changed in the past couple of years is social media and the networking of young people, so that they are being drawn into behaviours in ways that are more difficult for police and for our community youth justice staff to get a handle on quickly. It is not like it used to be when our street work service was really coming into contact with people congregating on the street. There are different ways by which young people are networking and participating in behaviour.

To really answer your question, it is a combination of those factors of very complex backgrounds, different approaches to how young people are being networked, certainly substance misuse being a factor in some of the behaviour and offending at an older age.

Ms PATTEN — I just wanted to change focus a little bit. From the Youth Parole Board we know that an alarming 45 per cent of young people in our youth justice centres are coming from protection orders. Has your department given any consideration to that quite alarming number?

Ms PEAKE — Yes, I think the data is that 45 per cent of youth in contact with youth justice have a previous child protection order, and about 22 per cent, sorry, a bit less than that, 19 per cent have a current child protection order.

In 2015 we did a body of work really training across our community youth justice workforce, child protection workforce, and working closely with police to really understand the drivers of that behaviour and how we could try to disrupt some of that behaviour. We have been doing a lot of work with education in the last 12 months to really improve the engagement of young people in school because we know that obviously that is a really important protective factor to not participating in antisocial and criminal behaviour.

I am really pleased to inform the committee that we have started to see fantastic results from initiatives like Lookout and Navigator, where early this year at the point of census in one division every single young person in out-of-home care was enrolled in school, which is just a fantastic outcome.

Ms PATTEN — Thank you. Just looking back, this committee did a short inquiry into the changes to the Children, Youth and Families Act, which looked at changes to how the Family Court could decide on child protection orders and in particular permanent orders. There was a lot of concern that this would actually lead to more children being taken on for permanent protection orders. Has your department considered the effect of those changes to the act, particularly on the number of children who would be on protection orders and therefore, I would suggest, at risk of entering our justice system?

Ms PEAKE — Yes. I think it is important to say that the changes that were made to the Children, Youth and Families Act were really about stability for children, and so the first test in that part of the act is case planning to maximise the opportunities for reunification. That is the primary emphasis. We have been doing a lot of work in building up our family services platform to provide support to families, build family capability, to keep children at home.

Ms PATTEN — Are we seeing less or more children in child protection now than we were two years ago?

Ms PEAKE — We are certainly seeing far fewer young people in residential care. So we have seen a significant decrease in young people who are in alternative accommodation where they are not living with a family. We are still seeing increases in the number of reports to child protection, often related to exposure to family violence.

Ms PATTEN — So we are seeing more children under child protection orders?

Ms PEAKE — Not so much under child protection orders, but we are seeing more reports to child protection. So the numbers have grown, but the proportion has stayed about the same. The number of young people in out-of-home care is now at about 8000, but within out-of-home care the proportion who are in residential care services, where there is a higher relationship with youth justice, has decreased.

The CHAIR — I have a couple of very quick questions, then I will go to Ms Springle. There were recent reports about a reward system for prisoners that involved access to the violent game *Halo*, and there were plans to extend that to other youth justice facilities, but I understand that is probably not going ahead. Could you confirm that?

Ms PEAKE — In terms of what is happening now and prospectively, it is probably best to put those questions to Mr Wilson in terms of the responsible secretary. I can talk to the design of the behaviour management system because I was involved in that, and really that was designed to provide consistency and predictability for young people about expectations on them and clarity for staff — we had different regimes in different units, let alone different facilities — and it was based on evidence from around the world.

The CHAIR — But is it appropriate, though, for this cohort of young people and children to be given access to a really violent shooting game?

Ms PEAKE — I cannot speak to whether there has been access to the particular game you are talking about. It is a couple of months since I have been involved.

The CHAIR — It was confirmed by the minister.

Ms PEAKE — But the premise of the program was really about making sure that there was clarity on expectations, that there were incentives that really went to being able to purchase goods from the canteen and having clarity around the sorts of entitlements — TV time and that sort of thing — and that there were rewards for good behaviour and clarity on expectations of behaviour.

The CHAIR — What has the department spent on defending legal action in regard to Grevillea?

Ms PEAKE — In terms of the contested hearings, at the time at which we transferred responsibilities to the department of justice on 3 April, I think, as I indicated to the parliamentary accounts and estimates committee, there had not been settlement of any of the legal claims in terms of finalisation of the outworkings of those contested court cases, so I am not sure where that is up to now with the department of justice.

The CHAIR — So you have no sense of what that cost?

Ms PEAKE — On 3 April we had not paid anything and because the second case was still running, was still finishing — —

The CHAIR — I know, but I am asking you now, not as at 3 April.

Ms PEAKE — I am not involved now.

The CHAIR — So you are not prepared to give any sense of what the cost of that legal action was?

Ms PEAKE — The responsibilities shifted on 3 April, so I am not — —

The CHAIR — I understand that, but you were in charge when most of that legal action was underway.

Ms PEAKE — Certainly when we transferred responsibilities on 3 April we had not made any payments, and there has not been an approach to me around the finalisation of those costs. But certainly it is quite normal legal practice that it takes some months after the completion of matters for costs to be negotiated and finalised.

The CHAIR — I do not accept that, and I think, to be honest, you are being evasive, but I will move on to Ms Springle.

Ms SYMES — Is Mr Morris rubbing off on you?

Mr MULINO — A bit of editorial.

Ms SPRINGLE — Thank you. I do have a couple of questions.

Ms SYMES — It changes the dynamics of the committee.

Ms SPRINGLE — You were talking about the rigorous processes — —

Ms SYMES — So just attack our witnesses — is that what we are going to do now?

The CHAIR — Order! Ms Springle is asking a question. I think she should be heard.

Ms SYMES — Sorry, Ms Springle.

Ms SPRINGLE — That is okay. You talked about a rigorous process around assessing the criteria for another facility that could house the children when the riots damaged the Parkville facility. I am curious to know why it was deemed unsuitable to do urgent works — you used the term ‘urgent works’ for the Grevillea unit — at somewhere like Malmsbury? Because if there were works being done, it is probably logical that they could have been done anywhere.

Ms PEAKE — We certainly had conversations with New South Wales and corrections around could there be temporary units that met our requirements in terms of ligature points and the ability to be able to observe young people at all times anywhere in a room. The advice that we received was that it would be some months for — —

Ms SPRINGLE — You asked New South Wales?

Ms PEAKE — New South Wales had modules that they had used —

Ms SPRINGLE — I see.

Ms PEAKE — and so we approached them very quickly about would that be a possibility that we could use that sort of modular facility on our existing sites. The advice that we got back, both from Corrections Victoria at that time and from New South Wales — which were two places that we knew had used that sort of accommodation — was that it would take some months to be able to produce new units and customise them so that there were not hanging points. So that would have meant that for a number of months we would have needed to have had young people in overcrowded, unsafe conditions.

Ms SPRINGLE — But we have heard testimony from other people who have said that there were empty beds in those facilities. Was it ever considered an option to secure those parts of, say, Malmesbury that were empty — as opposed to bringing in new modular units — to make them more suitable for what you needed?

Ms PEAKE — Sure. And again the work that we did — so we did have a look at that — was that in order to meet those requirements around secure facilities so that there was not only the unit itself that was secure but there was also a perimeter around that unit, which is the requirement, it would have taken some months, and that has been the experience in rebuilding, securing and fortifying the units at Parkville as well. It would have been some months. So the beds that were available — I want to be very, very clear about this — at Malmesbury were on an open unit. There was no perimeter fencing. They were not secure. They were of less — —

Ms SPRINGLE — So a perimeter fence could not have been put up around that?

Ms PEAKE — But to do all of that work would have taken some months. The actual units themselves were even less secure than the units that were damaged in November. They did not have secure doors, and they did not have rooms where you could view and observe young people in all parts of the room. They were not designed as secure facilities; they were designed for the older clients who had been assessed as being medium security, able to be in an open site, and were not appropriate accommodation for the young remandees I needed to house.

Ms SPRINGLE — In another part of your testimony you talked about the need to make decisions because if you put certain cohorts in with other cohorts within the existing youth justice facilities, the human rights breaches would have been excessive in all sorts of ways. Can you unpack that a bit for me, please?

Ms PEAKE — Yes, certainly. Obviously during the day, young people spend time together in communal spaces, and so the dynamics between young people are a really important consideration in managing the safety and security of the site but also their wellbeing. So looking at associations, looking at the interaction between young people and looking at just the sheer number of young people who would be living together or occupying a communal space is really critical in managing a youth justice facility — so really working through, with input from health services, from mental health services and from the operational staff, an understanding of each young person and the mix of young people that is going to lead to a safe and stable unit.

Ms SYMES — Thank you, Ms Peake. Following MOG, DHHS is obviously responsible for a lot of the services for young offenders after they are released — —

Ms PEAKE — Some of.

Ms SYMES — Can you elaborate on those for me?

Ms PEAKE — Yes, certainly. In terms of the community youth justice program, things like supervised monitoring if there is bail, if there is a community sentence, any of those sorts of situations, it would still be the Department of Justice and Regulation who would be responsible there. The Department of Justice and

Regulation also have some specific programs, which I am sure Mr Wilson can step you through, around transitional health services and other programs that he is in a better position to refer to.

But we are certainly very conscious that our big programs around housing, around obviously young people who are returning into the care of either foster carers, kinship carers or residential care, some in child protection, as well as ongoing health care in the community, are services that we are very focused on making sure are planned for while a young person is in custody and that there is continuity of care back into the community. Of course education is another critical part of this with the education department again being part of planning around transition into ongoing education beyond Parkville College.

Mr MULINO — Thanks for your evidence today, Ms Peake. I just want to go back to the decision-making around establishing Grevillea as a youth justice centre. You outlined that you have a number of legislative obligations placed upon you that are quite detailed, and you stepped through a number of those — for example, that for high-risk offenders there has to be a secure bed and it has to be lockable, ligature proof and so on and so forth. You obviously took all of those detailed legislative obligations into account when looking at different options.

Ms PEAKE — Correct.

Mr MULINO — You said you also took into account some advice from the department of justice, and that was more related to security. So really what you did is you looked at all the different options and basically —

The CHAIR — Is there a question here or just a summing up?

Mr MULINO — Yes. So you ended up with Grevillea as the option that was the best balance between your legislative obligations and security considerations?

Ms PEAKE — That was certainly the view that I formed in advising the minister to make a recommendation to the government to gazette Grevillea, taking into account and alongside all of those deliberations around what were available, appropriate facilities that could meet my obligations under the act and meet the obligations under the charter in a way that was better than the alternative, which in my mind was just unpalatable.

The idea of keeping young people in overcrowded conditions for months where they would be sharing rooms, the risks of physical and sexual abuse being exacerbated, the need to have more lockdowns because we would need to separate young people to securely maintain them, which I believed would lead to there being a significant diminution for all young people of access to education services and more diminution of their access to family and visitors, on the balance of looking at how to best meet their human rights, maintain their human rights and meet my obligations under the Children, Youth and Families Act, I believed that maintaining simply capacity that was available at Malmsbury and Parkville was an unacceptable risk.

Given the constraints on interstate transfers, the use of secure welfare, the inability to use insecure facilities at Malmsbury, where there were vacant beds, my view that it was not safe to put young people at the secure facility at the disability forensic service and that we did not have any other secure services, then on the advice from the Department of Justice and Regulation that it was only Grevillea that would have those characteristics of a separate visitor room, a separate entry and exit point, and clarity that we would not have young people mixing with adult prisoners, I thought that was the best way of meeting young people's human rights.

Mr MULINO — I have another question, but just before that I just wanted to specifically reiterate one point, which is that some of the proposals that have been put forward would have involved much more intensive use of existing facilities, some of which had been damaged, and that would have involved sharing rooms, and there are serious welfare risks associated with that.

Ms PEAKE — That is correct. As I have indicated, my view, informed by my operational staff, was having young people share rooms involuntarily for months at a time would have placed them at unacceptable risk and would have posed an unacceptable risk to staff as well.

Mr MULINO — And post the decision to designate Grevillea as a youth justice centre you preceded with work in parallel with that that would have put significant fortifications in place to existing facilities, which would have increased your options down the track?

Ms PEAKE — That is correct. From the first week in December we started work on the planning and works to fortify Parkville. We were very focused on making sure we could return those units as quickly as possible and fortify Parkville so that we did not have this sort of incident in the future. It was always the case that we saw Grevillea as a temporary solution, and we were trying to make that as short a solution as possible.

Mr MULINO — Right, yes, so — —

The CHAIR — Thank you. I am going to move on to Ms Crozier.

Mr MULINO — I think Ms Crozier has had plenty of time already.

The CHAIR — Do you have another question?

Mr MULINO — I will just do one more question. Can you just outline some of the resourcing that went into place following the designation of Grevillea?

Ms PEAKE — Certainly. We worked very closely with the Department of Justice and Regulation to ensure that they supplemented our staff in terms of providing support for the security arrangements at Grevillea. We put in extra management, both from the department of justice and from the Department of Health and Human Services, into Grevillea as well as into our other sites, and I think I indicated to the committee earlier that we also immediately entered into arrangements with labour hire firms to make sure that we had surge capacity, but surge capacity with a more consistent pool of casual workers who were trained and inducted in their obligations under the Children, Youth and Families Act.

Ms CROZIER — Ms Peake, I want to return to Malmsbury. You are there on the day of the 25th when the escape happened. Are you aware of the emails that had gone to management — the general manager and the supervisor of the SERT team — regarding the faulty sally port door?

Ms PEAKE — I was not aware on the day of the 25th. I certainly know that there has been a lot of work done to do security assessments of Malmsbury as a consequence of that incident as well as looking at the staffing arrangements.

Ms CROZIER — So that door was attempted to be lifted by, I believe, some young offenders the week before, and an email was sent to those people that I have just described to say, ‘There is a fault here, and it is going to be breached’. You were not aware of any correspondence in relation to that?

Ms PEAKE — I am not aware that there was an email that said it was about to be breached.

Ms CROZIER — Just highlighting the concerns that the door was faulty, are you aware that the door was faulty? Was that some of your findings?

Ms PEAKE — I was not aware on the 25th that the door was faulty.

Ms CROZIER — Are you aware now that the door was faulty?

Ms PEAKE — I certainly am aware that there have been security assessments that there needed to be an uplift in a lot of the security at Malmsbury.

Ms CROZIER — Sorry, I accept that you were not aware on the day, but in terms of what has been undertaken through those various reviews and understanding that there were concerns raised by staff about the broken door and the concerns that were raised, is it subsequently from January 25th that you have become aware of those concerns?

Ms PEAKE — I am certainly aware that there has been a security assessment done, and I will take your word for it that that was part of the finding. Given I am not in this space any more, I have not delved into that security assessment.

Ms CROZIER — Sure, but you were in the space at the time, and these are pretty serious issues. If a sally port door, which is a security door, is broken or faulty, that raises huge concerns. If you do not know that, then I will try and find that out from other witnesses. One last question: what time did you leave Malmsbury on the day of the escape?

Ms PEAKE — My recollection is there had not been the escape; there had just been a concern raised that there were unsettled units.

Ms CROZIER — That was well known.

Ms PEAKE — At that point I did not want to distract from the operational management of the unsettled units, so I left at that point. It was just a normal, scheduled visit that I had, and it was when I got back to town that I heard the news that there had actually been an escape.

Ms CROZIER — Sorry. My apologies to your earlier evidence. I thought you were there during the time of the escape.

Ms PEAKE — Not during the escape; just at the start of there being an unsettled incident.

Ms CROZIER — But you had gone up because there were some concerns about some unsettlement?

Ms PEAKE — No, no. I had gone up as a regular visit to youth justice facilities.

Ms CROZIER — How often — —

Ms PEAKE — Every couple of months I would visit either Parkville or Malmsbury. I had not been to Malmsbury for quite a while and so it was just a regular visit. While I was there a couple of the units were unsettled. At that point I was really at the end of my visit anyway but I said, ‘I will get out of your way’.

Ms CROZIER — So that was not raised with you — the concerns about the sally port door?

Ms PEAKE — It was not, no.

The CHAIR — I just have one more question. An earlier witness said to us that there is accommodation provided for staff at Malmsbury, or in the township of Malmsbury or nearby, because it is so difficult to get local staff to work there, and when agency staff come there is accommodation provided for at least some of them. Is that the case?

Ms PEAKE — I would have to take on notice the accommodation arrangements, but I can certainly reinforce the basis of the question. It has been very challenging to get regular staffing into Malmsbury, particularly since the opening of the secure unit in 2015 where we have needed more staffing and more skilled staffing out at that site.

The CHAIR — Would it be possible to take on notice getting some detail about the accommodation and also the cost?

Ms PEAKE — Certainly. I can look historically, but in terms of current arrangements and anything further, obviously that would be a question for Mr Wilson.

The CHAIR — I think we are out of time, so I will — —

Mr MORRIS — Chair, can I ask a couple of final questions?

The CHAIR — Yes.

Mr MORRIS — Just in regard to the Muir report, Ms Peake. Would you be able to detail to the committee who the Muir report has been provided to?

Ms PEAKE — Certainly. There were two Muir reports: one that was into occupational violence and one that was into the incident in March 2016. The occupational violence report was not provided to the CPSU, but there was certainly part of it that was discussed in an OHS forum, so they cited some of that report but it was not provided to them.

Mr MORRIS — And the second report?

Ms PEAKE — The second report, to my knowledge, has not been shared for two reasons. Firstly, under the act we have very strict conditions put on us on disclosing security arrangements which could then compromise the safe and secure operation of the facility. The second is that my understanding, consistent with past practice, is that when people were interviewed for that report they participated on the basis that their interview would be kept confidential. So we are very conscious of respecting both the requirements under the act to not make disclosures publicly that compromise the safety and security of the facilities and the basis upon which people participated in the review.

Mr MULINO — On that issue, just a quick follow-up. It is standard practice to have a very limited distribution for sensitive reports like that for safety matters.

Ms PEAKE — We actually have legislative constraints on us.

The CHAIR — I draw this session to a close. Ms Peake, thank you very much for your time and your evidence. You will be provided with a transcript within a few weeks for review.

Witness withdrew.