

TRANSCRIPT

STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES

Inquiry into youth justice centres in Victoria

Melbourne — 27 June 2017

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Witness

Professor John Tobin.

The CHAIR — Welcome today to this public hearing of the legal and social issues committee. 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. I would invite you to take a few minutes to address the committee, and I see that you have provided a handout for each of us, so I would invite you to speak to that.

Prof. TOBIN — Great. Thanks for having me at this late hour of the day as well. I hope that we can have some useful time this afternoon. By way of background, I am John Tobin, professor of law at Melbourne law school. I am director of studies for the human rights program up there. I specialise in human rights law and particularly children's rights. I am also the chief examiner of the Law Institute of Victoria's child law specialisation program. In a previous life I was actually a member of the youth legal service at Victoria Legal Aid, so I spent a lot of time at Parkville representing young people. I was also a member of the department of justice legal team that actually initiated the process to extend the age range from 17 to 18 many years ago, which has caused some of the problems today as well. I am obviously not a practitioner. My work is largely around international standards, but hopefully I will be able to show those things are in fact relevant to you today.

Hopefully you have got a handout, which is an attempt to try and reduce some of the ideas I am thinking about to a very short form. I want to start in a different space. You have probably heard a lot of stuff already about human rights and what have you, but I want to go to the Northern Knights football team. For those of you who do not know what that is, it is an under-18 competition in football, so we are talking about young people who are in a different space to the people that you have been dealing with in this inquiry.

Why do I talk about them? I went to a coaching clinic last week. There was a new coach that came in last year, a new personnel manager and there were issues around the culture at that club. They decided they wanted to change the way they were performing; they wanted to achieve excellence. Part of that process was to then develop this pyramid of success. You will see before essentially four tiers: culture and values, skill development, game plan, and excellence. You are probably asking, 'How on earth is that relevant to a youth justice inquiry?'. I think it is very, very relevant.

The key thing, I suppose, is to start at the bottom. They spent several months looking at the culture and values that inform the entire system. That was a system that was bought into by all staff and all young people as well. What I want to talk about today, I suppose, is the question of what are the culture and values that inform our youth justice system in Victoria at the present time, if they need to shift and change and, if so, how.

If you flip on to the next slide, you will see a diagram that for me tries to capture some of the models of approaches we have to juvenile justice in Australia. As I said, I have worked in this space now for close to 20 years, both as a practitioner and now as an academic, both international and domestic, and I keep seeing new ideas, new words come into the discourse.

You will have views about where we sit right now, but you will see a number of different competing models — law and order, restorative justice, therapeutic justice, justice reinvestment, a justice model, a welfare model. I can explain those in detail later on, but the key point there is that there are a number of competing ideas that inform the way we think about justice right now. You will see that in submissions and different presentations people are reflecting different focuses and different priorities.

I suppose my submission to you this afternoon is to say: can we be thinking much more explicitly about the idea of a rights-based approach, and what that might mean if we were actually to embrace a rights-based approach in the fullest sense of the word? You will see the next slide is about why we actually bother doing that. In fact we are really mandated to think about it, of course, under the Victorian Charter of Human Rights and Responsibilities Act. Section 22 refers to the idea of the dignity of all persons before the justice system, and then section 23 talks about the idea of an age-appropriate response. So in our legislative framework already we have this idea of dignity.

I sort of want to really start with that idea — putting away all the laws and standards and this idea of what it means to live a life of dignity, both for the people who find themselves in trouble, the law enforcers and those people that are offenders as well. It is not just the people who we are talking about, those in youth justice.

What does that actually mean, then, in terms of the system we might create? For me, the references to dignity and rights in our Victorian charter mandate and require us — and I would encourage you to be thinking about the idea then of what does international offer us in terms of that framework to create that culture and values to inform the entire justice system.

I have just picked out a couple of provisions, which you have no doubt read and seen many times before via the submissions and evidence. But if I take you to article 40 of the Convention on the Rights of the Child, which I think is really important, because this is a landmark document, you will see I have highlighted three key phrases in this section. One is the idea of promoting a child's sense of dignity and self-worth; two, I think equally important — and for those who are concerned in the street, as am I with four young children, thinking what is going to happen when they go out late at night — is this idea of respect for the human rights of others; and the third limb of that is the idea of reintegration and encouraging young people to assume a constructive role. So there is the sense of what does it mean to live a life of dignity, how to ensure the rights of others are protected and how to ensure these young people, rather than being punished under a justice or law and order model, are actually encouraged to reintegrate back into society and become constructive members of our society as well.

But of course there are lots of references to the standards, which you have no doubt read about, under the Havana rules and Mandela rules. I do not want to dwell on those today; I would rather think about the overarching principles that are informing this model as well. So what does it mean, then, in terms of consequences? There are two things to think about here for me in terms of our system. One is the idea of the ends — the normative standards that inform what we are trying to create in our justice system today. You will see here 'Freedom from', 'Freedom to' — just one way of organising our system.

Here I am talking about the young people themselves who are incarcerated or come before the law, and some of the standards that would inform how we treat them as derived from both international and our own domestic standards, and also the freedom to receive things around education, health care et cetera. I noticed in the last conversation talking about culture, for example — access to family and friends, all those other things that are really important about a child's development and sense of success and being.

If we go over the page, though, beyond just the end points, to the standards to think about the actual process. Here we are seeing rights as not just being the end point but also the means to get to that destination. Particularly relevant for us in this inquiry is the idea of article 12 of the Convention on the Rights of the Child, which I am not sure has been referred to in great detail in the submissions, but it may have been. Why is it important? Because what we are saying here is that when we think about youth justice and what has been happening over the last 12, 18, 20 months — 20 years et cetera — where has the voice of the young person been? Article 12 says that we, as a state, have to take measures to actually enable young people to express their views freely in all matters affecting them, and also to ensure that those views are given due weight.

With that in mind, I actually asked some of your colleagues if this was happening as part of this inquiry. I was delighted to hear that in fact you have met, I think, with some young people from Malmsbury — and Parkville as well possibly — and there are some really fantastic submissions, which for me are probably the most significant thing I have read when I have gone through the work that has been created as a consequence of this inquiry.

I just want to flag a couple of those key points that really stood out to for me, because I think they are really significant. This is submission 12 from a student at Greenvale at Barwon, which I understand you have been to as well.

Everyone says we're all bad people. We're not we just do silly things when we are out.

I don't feel my voice is being heard really, no-one really cares.

That might sound really trite, but in fact it is very significant for me, as someone who coaches young people, who works with young people and sees young people, and then sees a system that sometimes says, 'You're nothing more than a criminal'. You have seen those transcripts as well, and the media constantly portraying these people as nothing more than criminals. I want to come back to that as well, to the is a sense of worthlessness that pervades the understanding of these young people.

Then you will see also some extracts here from the former Judge Chambers. I thought it was wonderful to see a judge speaking with young people at Parkville College.

They talk to us like we are three years old, I hate that so much. (Don't just look at us as criminals, we're humans too.)

We need people who know how to talk to young people, who know how to help us.

We need things that we can take responsibility for — we can do more than you think.

It isn't always easy to help us or get to know us, learn from the adults who know how to do it, we know they give a shit and that makes all the difference.

Do things together on the unit, like you do in the real world, cook dinner together, talk about shit that's going on, have people around who believe in you.

Again, that last line for me is so unbelievably important in terms of what values actually we have in this system. That line 'We believe in you', I use it nearly every week to under 10s, to under 12s, to under 14s, about how they should go about playing football. It might sound completely displaced in a youth justice inquiry, but in fact it is not. If I keep telling those kids they are crap because they get beaten by 100 points, they start to believe they are crap. If I keep saying to those little boys, young men, young adults out at Malmsbury and Parkville, 'You are bad. You're a criminal', that is what they will become.

Evidence tells us that, experience tells us that, and they are telling us that. So for me this is a really exciting opportunity. I congratulate you for actually doing this and speaking to them, about what do we do with this information in terms of what these young people are telling us and what does it do to shape our justice system. You will see another slide here. One of my colleagues is from Belfast, which is a tough part of the world — juvenile justice is a pretty tough issue over there. Think about what has happened there and the challenges they face. So they have been trying to develop models that will deal with the really severe violence that young people have experienced and then flows onto the streets in ways that we have never had to face here, thank God — although we are having some issues right now.

Lundy's model says, (a) create a space for them to be heard — you have done that; (b) hear their voice; and (c) have an audience — that is you. The fourth one is really important and I suppose I am actually imploring you in some ways to think about how you will take these submissions and allow them to influence you in the way you present your final report. This is a real challenge. What we do very well in some parts of Melbourne and Australia is we hear people's voices but we actually do not then listen to them as well. We do not allow them to influence our ideas. Clearly, if you go back to article 12 it does not say you have to do everything they say. It is not, 'You'll do as the child says'. It says we will give them 'due weight'. The challenge I think then for me in the work I do and you in this inquiry is how do we listen to this and take it seriously; how do we allow the ideas that are coming from this to shape the way in which we can create a culture around valuing young people beyond just their abhorrent behaviour.

I will just go to the last slide. What are the implications for our skill development and game plan, just picking up on the Northern Knights lingo. That is really, I suppose, how do we as a state and how do you as leaders of that state create a system that will respect the dignity of children who come into conflict with the law. There are lots of submissions that will try to address that in detail and I am happy to speak to that in more detail as well. Then that goes across every aspect of our system — the policy framework, the legislative framework, infrastructure we develop and how we develop it, the personnel and how we train them, and the broader social context. The thing that came through from these submissions was that the media clearly is not doing young people a service in the way they are presented and lawyers are not always doing the job they should be doing as well. In my role at the law institute I am quite keen to take that away, that we should be working as well — about lawyers should be doing a bit more to actually receive represent their children, their clients, than is always the case as well. So there is lots of work to be done at the lower levels.

If we flick over onto the second-last slide and I suppose then: what does this mean for our culture and values? This is a question for you as a group to think about when you draft that report — what are the core values that you are going to set up at the front of that report and say: these values will guide and drive our recommendations? I would be asking you to think about the idea of being much more explicit in committing yourselves to a rights-based approach. I do not want to get bogged down by some of the stuff that happens in the public around what rights might mean; I want to get bogged down in the values that inform it: dignity for all, respect for all, and then for our young people who find themselves in conflict with the law, the idea of rehabilitation, which is very different from what we might be thinking about with adults in our justice system as well.

Now, there are consequences in terms of how it flows through into the various levels of our system as well — our legislative framework, and you have got submissions on that as well; infrastructure we create; the training we have; the evidence we use; and the systems we create to oversee our system, which has been addressed in submissions; and also the processes that are enduring to actually hear voices of young people, not just shape what you are doing here today, but have an ongoing impact on the way we actually deliver youth justice in this state.

Then the final thought comes from one of my colleagues and friends, Bryan Stevenson, who is one of the leading advocates in America around issues of racial justice — and injustice, I should say as well. If you have got 23 spare minutes, and you probably have not, I would really encourage you to watch Bryan's TED talk, watched by 3.5 million people. He really challenges the American justice system which in the 70s decided that young people were folk devils, super pederasts and had to be locked up and brutalised. Now it is coming back to bite them. It has not worked; it is unbelievably inefficient; it is not actually addressing the issues that cause the harm. The very, very harsh law and order approaches have led to higher rates of recidivism, more rates of harm, so the system has backfired.

Bryan is using his advocacy and skills to challenge that at a whole range of levels, but his quote I think really is important: 'Each of us is more than the worst thing we've ever done'. When he tells and says it, it is much more impactful and I do it as well. It goes back to those young submissions and those young people who want to be seen as something more than bad, and the challenge for us as a state is how do we provide them with the pathway, the systems and the self-belief to say you are not just someone who committed an aggravated burglary, an armed robbery, a sexual assault. Those things are all heinous; they are all wrong. You must be accountable for those. That is what section 40 says in the convention, but at the same time you are more than just that. Another thing that is a challenge we have as a society is to say, 'Well, how do we make sure that that young person is not defined solely by the worst thing they have ever done?'

No more talking from me. I am happy to answer any questions or comments. I do encourage you. It really is an inspirational presentation. The book is worth seeing and apparently they are planning to make a movie as well. That is a different thing. But it does challenge us to think, particularly those who are in this space right now. I think you would probably enjoy watching someone who has worked that system in America.

The CHAIR — Thank you very much. That is terrific. I think we will go away and look that up. It is good to find some inspiration in this space, so thank you.

Prof. TOBIN — We all need it sometimes.

Mr MULINO — That was a very interesting presentation. I think you have raised a lot of profound issues around how we can more meaningfully listen to and interact with young people in this system. I think a lot of those points are well taken. I guess one thing that comes to my mind is that once you go into a rights-based approach and you are dealing with public policy questions, there is invariably multiple perspectives and multiple people asserting rights. I guess for me one of the challenges, and there are many, is how do you create a safe space in a youth justice facility for staff, for example. I think we should do all we can to intervene earlier to try and stop situations like the one we face now being created, but we are also facing a current situation. What do you say to somebody who might say that, as much as we can look at these rights, and they are important, staff have a right to a safe work space?

Prof. TOBIN — That is a really important point. That is the thing I want to flag, that when you take a rights-based approach, often we hear in the media here that just means criminal have rights. They have rights, but so do staff, so do you and so do I. Under a proper rights-based approach, we are making sure we respect each other's rights. The understanding of rights in Australia is very individualistic. It is like a trump — I have got it; I will play it against you — when in fact for me the international law model is very relational. So I have got a right but it only exists to the extent that it does not infringe your right. This happens all the time and in all contexts. These young people do not have a right to abuse verbally, physically and mentally their staff, either. So that is why I raised the issue of culture at the beginning.

I have these similar conversations with 12-year-old boys about 'You've got to respect the person beside you at all times; that's the foundation and the way we work as a team'. I think this is a thing that happens, I suppose, in these environments as well. You might come in and have rights to things as a young resident at Parkville, but you have got to have respect for the rights of those who are working to support you in situ as well, and there

will be consequences that flow when those responsibilities are not actually undertaken. For me it is a nice strong framework and respect is sort of fundamental to that.

So how do we then challenge and inform? For me, coming from a rights-based approach and particularly children's rights, how do I make sure children see rights as not just something that they have got to exercise against you or me as a parent or as a member of the public, but in fact they have got to respect ours as well. That is part education, part of the building the culture and the values. And I think that is what you see now happening in organisations: it is not just about what I get; it is about what we do as a team.

It seems to me that in youth justice if ever you needed team effort, this is the space where it has to happen. It just will not work if it is not happening as well. So I think input is really important, but I think it can be addressed if it is done properly, with education and ongoing consultation and having a respectful conversation. It can be done. But it is a really important point to raise, because you know why? What happens is I go into Parkville and say, 'This kid's got rights'. The staff are there and saying, 'Well, what about me? I don't want to get whacked. I don't want to be abused'. It has to be presented in a way that is very balanced and fair, otherwise you run the risk of what you talk about happening.

Ms SPRINGLE — Just as an extension of Mr Mulino's point, and I am not quite sure whether this is something that you will be able to explore or address, but in terms of a rights-based approach, often the hurdle I think for some people is — and you did mention it briefly — that there is this media kind of frenzy around being soft on crime. I would be interested to hear your reflections on how one would overcome that narrative with a rights-based approach.

Prof. TOBIN — You have asked the killer question, have you not? How do we challenge the dominant social consensus that all young people are scary and bad, and therefore we have the riots at Malmsbury and the things that happen? This, I think, is a real challenge for all of us. I can give you a number of answers to that. One can be the answer of; well, let us have a policy framework that says the rights, the foundation, and this is what we do. That is one approach that you can advocate. Will that persuade the media? Probably not. Okay. Will that persuade the general public? Probably not.

So what do want to try and do then? Let us think about other techniques we might be able to use. You can start talking about what actually works, the evidence. So if I am in government and I am trying to reduce the expenditure, I want to actually see things that are effective, not ineffective; I want to see the public taxpayers dollar going the furthest distance possible; and we know that law and order approaches are not effective long term. We do know that rehabilitation, reintegration measures, are effective long term. That is what is playing out in America right now, and that is where they are using that argument. You can jump up and down about being tough on crime, but at the end of the day it is your taxpayers dollars, and that is the approach being used in America to try and counter some of that rhetoric.

Part of it is you have to be firm. It is not saying, 'Okay, you've just committed an aggravated burglary; go home with no consequence'. Article 40 requires that you teach children about accountability for action, and that requires obviously minimal intervention in terms of deprivation of liberty, but where there is a risk to the wellbeing of community, then detention is justified. So it is not like we are saying, 'They can all run free, whatever they do'. It is a balanced response. It is evidenced-based and evidence-informed.

The last point is the media. This is an advocacy technique. Whether it is something that you want to raise or not, it is storytelling, so the counterpoint. When I read these submissions I get a very different insight from when I read the *Herald Sun*. This, I think, then is the obligation for people like myself and for people in the sector to say, 'Look, it's more than just a person who's doing really horrible bad things'. That young person, as you know from your reading, has also experienced really horrible bad things. If you watch Bryan Stevenson, there is a situation there where a young person kills his stepfather. You will listen to that and it will move you to a point where you will think, 'My God, I'll never make judgement again about what happens and why'. There is a challenge then for us as a society and for our leaders to say, 'There's a story to tell here, and it's not just the simple one of let's get tough on crime. It actually doesn't work'.

It is a really tough question, and there is a real challenge there for us. But I think for me, as an advocate of children's rights, to give a clear picture, we need to be starting to hear some of the depth and the stories and having leadership on what that actually means, but at the same time, reassuring people like myself and the community and others like me that they are safe at home. Is there not a night on TV when we do not see another

invasion — young people, old people? And that is a real concern for all of us. We have to be firm, but we have to be fair also.

Ms SPRINGLE — From where we are right now, in terms of that public discourse and that media approach, what does the transition to something a bit more balanced look like?

Prof. TOBIN — Good question. If I had time, I would be getting together the media journalists and saying, ‘There’s another story to be telling us as well’. That is tough, let us be honest, but it requires leadership. In some ways I would be saying to you as an inquiry, ‘You’re the people who we listen to. You’re going to write a report that will get the headlines. You’ll make choices about how you deliver that information’. I would be encouraging you to say, ‘Look, we understand, we are aware of and we completely understand the concerns of those who feel threatened, and we also denounce that behaviour. But at the same time there is a much more complex picture that sits behind those actions’. You do not have the rights in isolation.

There is a long history that starts often when these children are two, three or four. Yesterday I went out to a very prestigious independent school in the eastern suburbs to do a tour, and it struck me the world that my family live in and the opportunities my children will have compared to the opportunities of the children that I represented 20 years ago and the children now, speaking to you, have as well. We have to try and capture that story. It is not easy. I suppose I am asking you to think about how you are going to try and really respect and listen to and give voice and application to that complexity that sits behind these stories. It is not easy, but you are the leaders and I suppose it is a challenge for you. People like me can say it, but really no-one is going to listen to what I say. So it is not easy, but I think it is worth telling the story. Watch Bryan’s lecture as well.

Ms CROZIER — Thank you very much, Professor Tobin, for that very interesting presentation and for the material you have provided to us. You mentioned article 12(1) CRC, and you also said, ‘We as a state have to allow young people to hear their comments’, I think is what you vaguely said.

In the next slide you talk about submission 12 from the student at Grevillea at Barwon:

I don’t feel my voice is being heard really, no-one really cares.

So with these young people moved to Grevillea, did the minister breach their human rights?

Prof. TOBIN — I think the court has answered that question in some respects in terms of the actual conditions under which they were kept.

Ms CROZIER — Do you think she did?

Prof. TOBIN — As a matter of international law, the standards under which they were kept were clearly not in keeping with what we would expect from international law, but there is a separate question here in terms of the transfer of a young person. Does it affect them, being transferred? Yes. Do we want to have their voices heard? So we need to think about article 12 on a number of levels. What we are seeing here is an inquiry about youth justice, so we want to enable their voices to influence what you as a committee will say.

Ms CROZIER — But I want to understand in terms of what has actually happened, because the government has lost three court cases and you are the expert in this area, and I am just asking you: in your view, do you think the minister has breached these young people’s human rights?

Prof. TOBIN — As I was saying before, the court found quite clearly that it was a violation —

Ms CROZIER — You are dancing around this subject.

Prof. TOBIN — and I agree with the court’s outcome. It would come as no surprise that the conditions under which they were kept would not be consistent with international human rights standards.

Ms CROZIER — You have not said yes.

Prof. TOBIN — Had the minister asked me at the time, I would have been urging her not to do that, because it would have been a violation of international human rights standards.

Ms SPRINGLE — I think the answer is that he agrees.

Ms CROZIER — But he has not stated it. I was just wondering.

Prof. TOBIN — I am happy to state that I agree with the findings of the court that it was a violation of the rights of the young people, unquestionably, and I do not think that is particularly controversial now. It is kind of nice that the court actually was able to affirm what was being argued by many before the actual hearing took place.

Ms CROZIER — So you just said if you were to advise the minister, you would have given her that; is that what you said?

Prof. TOBIN — I would have been saying to anyone who would listen to me, ‘Don’t shift these young people to Grevillea’, unquestionably, because I have not been there, but all I know about Grevillea is it is not an age-appropriate or youth-appropriate facility, and as a consequence, from my space, it would not be consistent with either the Victorian charter or international human rights standards. That is all I can say, and the court has essentially said the same thing.

Ms CROZIER — So the government said that they did apply what was required in terms of providing education and outdoor activities. Ms Fitzherbert and I actually went and visited the site — I do not think any other committee members have been there — but from your professional — —

Prof. TOBIN — And from my reading of what was happening down there my understanding is that it would not be consistent with international standards, and then the court confirmed that as well. Just on that issue, just because a state provides education or housing or clothing or food to a young person in detention, it does not mean that that young person’s rights have been in fact protected. International law says that you have got to actually look at the quality of those services and the context in which they are provided as well. So the trouble really with Grevillea was that the quality and the context would not satisfy what is called the 3AQ model — make it available, acceptable, accessible, and the perception of quality as well. So it is a really strong demand about ensuring that education or housing or clothing or food actually reach a certain threshold and standard.

Ms CROZIER — So do you think that all of those areas were being provided to young people in Parkville and Malmsbury in the lead-up to the riots?

Prof. TOBIN — I cannot comment on the conditions in Malmsbury. I have not been there for 15 years. I cannot comment on those conditions. I have read reports that suggest that there were deficiencies, but I have not visited those facilities.

Ms CROZIER — Which reports have you read?

Prof. TOBIN — The Ombudsman’s report from 2010 and also colleagues’ visits, but, sorry, I cannot comment on those facilities.

Ms CROZIER — So the Ombudsman’s report in 2010. A lot has happened since 2010.

Prof. TOBIN — I just said I cannot comment on what is happening there — I cannot, and I do not pretend to. I have no insight.

Ms CROZIER — I was just wondering if you had read recent reports or reviews.

Prof. TOBIN — No. I have not visited. I cannot comment on those conditions at all, and I do not claim to.

Mr MORRIS — We have seen in a short space in time some significant change in behaviour of young people, or it appears that there has been that change — I mean the riots and the escapes at Parkville and Malmsbury — as well as what we have seen, an increase in very violent crime by quite young offenders. Can you provide any insight? I am sure it is a very complex issue, but what is your view on why this is happening?

Prof. TOBIN — I am not a criminologist.

Mr MORRIS — It is a long-term trend.

Prof. TOBIN — I would love to be able to answer.

Ms SPRINGLE — You have just completely misrepresented that. You have.

Mr MORRIS — A few assumptions.

Ms SPRINGLE — You have completely misrepresented that.

Prof. TOBIN — I would love to be able to tell you the solutions and why it has happened, but I am not a criminologist and I cannot provide that. What I can say as an observation is that there are clearly issues around family breakdown in this state — increases in family violence and child protection. My professional experience and what I read is that there is a connection between those two things, and so as a consequence, where we see family breakdown we see increases in violence, we should not be surprised that it spills into issues around juvenile justice.

Again, I do not pretend to be an expert there and you would be better off asking someone who knows more about those fields. But someone raised the point in the last section about the connection between child protection and juvenile justice. We cannot sever those two areas. There is a connection and, as you know from the figures about the number of young people in juvenile justice that come from child protection, that was happening when I was practising. It was happening when I was doing youth work in the early 90s, so things have not shifted there. But I cannot. If I could, I would tell you, but I am afraid I cannot.

Mr MORRIS — That would be great. Excellent. Just hoping you might be able to inform the committee as to whether or not you have or you have seen copies of the Muir reports related to Parkville or Malmsbury?

Prof. TOBIN — Only brief extracts, not in detail.

Ms CROZIER — Brief extracts of the Muir reports?

Prof. TOBIN — The reports are in the submissions. I have read report extracts. That is the 2010 report; is that correct?

Mr MORRIS — Sorry, no, the recent Muir reports.

Prof. TOBIN — No.

Ms CROZIER — That is why I actually asked.

Prof. TOBIN — Sorry. No, I have not.

Ms PATTEN — Thank you, Professor Tobin. I too was greatly affected by the children's submissions, and I think that they are very important in this inquiry. One thing that struck me in them was their reaction to the lawyers that represented them. I think the people who were praising their legal representation were in the minority. I am wondering, with your practical experience and with your experience in this field, if you have got any suggestions on how we could improve that relationship between their legal team and the children?

Prof. TOBIN — Yes. I would be encouraging you to make recommendations about the Law Institute of Victoria and my body, actually, ensuring we take these submissions on board and think about how we might respond. I was struck and disappointed. You are right, it was a minority of young people that were being advocated for effectively. That I think is a real indictment on our profession, that so many young people had no way to express that dissatisfaction with their experience of being with a lawyer, so I would be encouraging you to think about what we as a profession and my committee might be doing to try to address that. I think it needs to be addressed. We have a specialisation program that looks to affirm those who have reached specialist standards, but those who are not behaving in a specialist way, we are not addressing them. We are not being able to say, 'Look, you guys have to lift the standard in terms of your presentation of your client'. So I would encourage you to think about some recommendations you might make to us as a profession to address the concerns raised by the young people here.

The CHAIR — I was going to ask if you had any specific suggestions on that front yourself, but I think that has sort of been covered off by Ms Patten's question. I was struck by that as well. I do think it is a difficult gig as a lawyer, but even so, there was quite a pattern there, I thought, of feedback.

Ms PATTEN — Yes. It was not that they were negative about everything. In fact they were quite positive about a lot of the relationships they had with staff in the justice centres and particularly with the educational staff.

Prof. TOBIN — Yes. I would be celebrating what education is doing there. That was the stand-out thing for me as well, no question. But it goes back into the values. As a profession we have to make sure that we are acting in ways that respect our clients, and that means hearing their voices. I do not want to see that sort of feedback coming through about how lawyers are behaving. Clearly the media has a role to play as well. But I think education needs a big tick in the box. They are obviously doing some very, very good things. But that goes back again to that if you do give young people a chance, if you do validate them and if you do respect them, it is amazing what they will produce for you as well. Which is why I am focused on the culture. It is really easy to say negative things about people who do bad things. That does not serve anyone's interests long term — the individual, the community or the state government, for that matter, as well.

Ms PATTEN — I think culture has been reiterated by so many different people, whether it is former staff or any range of people who have said that the culture is one of the problems.

The CHAIR — Probably as an extension of that, do you have a view on the transfer of youth justice from DHHS to corrections?

Prof. TOBIN — Yes, good question. I was discussing this before with a colleague. It should not matter, should it, if the culture is right? That, I think, is the challenge, is it not? As you would all know — and I have worked in government — there are different cultures in different departments. That is the way the world works. There are different cultures in different parts of the university. So it should not matter. Clearly there is a push, I see, in submissions to get it back to health and human services. My guess is that that is because of a perception that that would be a more restorative-type model. My personal view is that if the values and the culture are right and if the framework and settings are right, it should not matter where it sits. But if there are issues around priorities and cultural and value preferences, that becomes your challenge. That, I suppose, is for you to sort through in terms of what you discover as part of the inquiry. I have not got a firm view — I know what people are suggesting — but if the culture and values are right, it should fall into place. It has to be collaborative, anyway. We cannot sit across; we cannot have silos. There needs to be collaboration.

The CHAIR — Where is the suggestion coming from that it should go back to DHHS?

Prof. TOBIN — I read it in, I think, at least two submissions that there was a concern about it being with corrections. I could be wrong. That is just my recount.

Ms SPRINGLE — It has been quite a common thought.

The CHAIR — I know that the decision has been criticised, but I was perhaps getting a slightly different take-out of it, that there was a move to say, 'Move it back', whereas I think that horse has bolted.

Prof. TOBIN — I am just the same. I just saw comments about concerns about that, but I have got no firm view on that other than that as long as the value and culture are right, it should not matter where it sits. It is a whole-of-government approach.

The CHAIR — We might conclude on that point. Thank you very much, Professor Tobin, for your contribution today.

Prof. TOBIN — You are welcome. Good luck, as well.

Ms PATTEN — Thanks for the homework.

Prof. TOBIN — It is important. It is really good you are doing it. It is great. Well done.

The CHAIR — You will receive a transcript within a few weeks to review.

Prof. TOBIN — Thank you.

Committee adjourned.