

# TRANSCRIPT

## STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES

### **Inquiry into youth justice centres in Victoria**

Melbourne — 14 June 2017

#### Members

Ms Margaret Fitzherbert — Chair

Ms Nina Springle — Deputy Chair

Mr Joshua Morris

Mr Daniel Mulino

Ms Fiona Patten

Mrs Inga Peulich

Mr Adem Somyurek

Ms Jaclyn Symes

#### Participating Members

Mr Greg Barber

Ms Georgie Crozier

Mr Nazih Elasmr

Ms Colleen Hartland

Mr Gordon Rich-Phillips

#### Witnesses

Mr Hugh de Kretser, Executive Director,

Ms Shahleena Musk, Senior Policy Advocate, and

Ms Alina Leikin, lawyer, Indigenous Rights Unit, Human Rights Law Centre.

**The CHAIR** — Thank you very much for coming here today to give evidence. Welcome to this public hearing. 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 understand that we have half an hour for this session, and what we have been asking people who come before us to do is to briefly speak for no more than 5 minutes, if they wish to do so, and then open to questions. So we are in your hands at this stage.

**Mr de KRETZER** — We will take the opportunity to make a very, very short opening statement. Victoria has absolutely been a leader in youth justice in Australia with its progressive and effective approach to dealing with children and young people who commit crimes. A strong focus on rehabilitation and on targeted support has helped to deliver Victoria one of the lowest child crime rates and one of the lowest child imprisonment rates in the country. But that record has been badly damaged by a number of serious and confronting incidents over the past 12 to 18 months, including escapes, riots, incidents in which the safety of children and young people, staff and the general community has been compromised.

One of the key points we want to make here today is that the underlying causes of these incidents have been the neglect of youth justice by successive governments, going back to the Ombudsman's 2010 report. Issues which have contributed to these problems include failing infrastructure; staff shortages; staff turnover; use of casuals and agency labour, leading to a loss of expertise; the overuse of lockdowns, locking children in their cells when they would normally be out of their cells and engaged in meaningful activity; and the increases in the number of children detained on remand awaiting their trial or sentence. In rebuilding a safe, humane, well-managed and age-appropriate youth justice system, Victoria needs to focus on addressing these underlying causes as a priority. I will hand over to Shahleena.

**Ms MUSK** — I have worked for most of my professional life in the Northern Territory and Western Australia. I have been a prosecutor and a defence lawyer and, more recently, a senior youth lawyer in NAAJA — that is, the Aboriginal legal service in the Top End. I worked with children detained at Don Dale; I worked to expose and address the treatment that was occurring there. The inhumane conditions within youth detention in the Northern Territory were, like Victoria, a result of significant neglect over many years. These conditions culminated — and this is the Territory — in a series of incidents, including the so-called riot of August 2014, the stuff that we saw on the TV. The significant number of escapes or attempted escapes that all followed were a direct result of the mistreatment that was occurring and the neglect that had been occurring in the centres.

Evidence that has been coming out of the royal commission in the Northern Territory has shown that these incidents — so the behaviour of children — were a direct response to the abuse, mistreatment, mismanagement and inconsistencies that they experienced as part of a dysfunctional youth justice system. Like Victoria, staffing levels had dropped and there was a heavy reliance on casual staff, little training or experience of those staff in being able to deal with often the most vulnerable and disadvantaged children, the excessive use of lockdowns, isolation practices, denial of access to schooling and other activities, inconsistency in management and staff practices, uncertainty as to the rules and consequences for any perceived infractions, unwarranted use of handcuffs, routine strip searching — all of which contributed to the unrest and tensions within Don Dale.

I came to work in Victoria in January and saw a similar environment which was similar in disheartening, punitive and harsh responses from government. I just wanted to say, if we are truly committed to making our community safer, we must focus on helping children — helping them to address factors contributing to their offending and ensuring that they can reach their potential.

**Ms LEIKIN** — Between November 2016 and May 2017 I visited Barwon Prison around 30 times to speak to the boys who were locked up there about their legal cases challenging the use of Barwon to hold children. The boys told me about the impact of being in an adult jail — of what it is like to be locked in a tiny cell for 23 hours of the day, of not being able to go outside in fresh air for weeks and of their sadness and lack of hope. I spoke to worried families and to youth justice staff members who were doing what they could to make the best out of a terrible situation.

I also visited our clients when over time they were moved from Barwon back to Parkville and Malmsbury. One 17-year-old boy told me he worried that his experience of being at Barwon had scarred him forever. When he was finally transferred back to Parkville staff who knew him observed that Barwon had changed him. Over time he said there were moments when he felt better — enough to start thinking about the future again. With

encouragement he started to write down his goals for work, TAFE study and relationships. He said that what had helped him the most was being shown care — when teachers and staff treated him with respect and showed him that there were better ways of doing things and that he could make something of himself.

When we talk about our youth justice system we are talking about children who have their whole lives ahead of them. We must focus on rebuilding a system that respects the dignity of each child and provides genuine opportunities for them to become more engaged, hopeful and productive.

**The CHAIR** — Thank you, Ms Leikin. I have a question. It was put to us by staff — former staff, I should say — who gave evidence earlier that one of the things that happened when there was excessive absenteeism for a day shift was that the young people would be left inside their cells and simply not get out of bed, to use the sort of colloquial term they used. And this was not classed as lockdown or isolation; it was simply people not getting up, so it was not captured in the figures. Is that your observation of what was happening?

**Mr de KRETZER** — I guess it is difficult for us to comment on the compliance with the categorisation issues. I think what is clear from the children's commissioner's report is that there was a significant overuse of lockdowns, and it is clear from reports — for example, the Muir report, and I have not read Neil Comrie's final report, but I understand from the media reports that he has also identified it — that the use of lockdowns is a contributing factor to the tension and unrest. Certainly our observation in visiting our clients when they were detained at Grevillea was when there were staff shortages that led to lockdowns the tension in the unit was palpable, so one of the key underlying factors for these incidents for us is absolutely the overuse of lockdowns, and one of the reasons they have been overused is staff shortages.

**Ms LEIKIN** — Just to add to that, another observation from the time that we spent at Grevillea was around the uncertainty for kids. When they were in lockdown because of staff shortages they often did not know when they were going to be let out of their cell — whether it be noon or 4.00 p.m. or not until the following day. That uncertainty created a huge amount of distress as well.

**The CHAIR** — Certainly. Just to respond to what you say, I appreciate that you cannot comment on the record keeping about all of this, but was it reported to you by your clients, for example, that they were not being let out of their cells in the morning for no good reason other than — —

**Ms SYMES** — Excuse me, Chair, just as a point of clarification, you are asking about Malmsbury, and I think that the witnesses are answering in response to Grevillea.

**The CHAIR** — Okay. I am just asking, though, in terms of their clients, whether they were aware of these reports about people not being got up in the morning and just staying in their cells.

**Mr de KRETZER** — Certainly our experience is in relation to Grevillea. Our focus over the last six or so months has been on obviously the cases around the use of Grevillea as a youth justice facility within the Barwon maximum adult security jail. They were impacted as well down there. Despite all of the focus on trying to resource the unit properly, it was affected by staff shortages with people being locked in their cells when they would normally be outside engaged in meaningful activity.

**The CHAIR** — Thank you. You mentioned the Muir report. There have been two Muir reports, as I understand it. Have you had access to both of them?

**Mr de KRETZER** — Not to both of them. I have read media reports with extracts of both of those reports. I understand the committee does not have access to those reports.

**The CHAIR** — That is right.

**Ms CROZIER** — No, we have been denied.

**Mr de KRETZER** — Yes, and I find that extraordinary because those reports go very much to the heart of the causes of the problems and recommendations to government around why these incidents were occurring. We were provided with a copy of one of those reports after media reporting on it.

**The CHAIR** — Which one did you — —

**Ms PATTEN** — Can you give it to us?

**Mr de KRETZER** — I would prefer not to answer that question, but I would have thought that the committee absolutely should have access to that information because it is critical to your deliberations around what is causing the incidents and how government has responded to those recommendations. The reason we have extracted parts of the Muir report in our submission is because it very much comments on the underlying causes of these incidents and particularly issues around the infrastructure issues around staff shortages and issues around the overuse of lockdowns.

**The CHAIR** — Can I just clarify, was it the second Muir report that you were given?

**Mr de KRETZER** — Sorry, it was the second Muir report, yes.

**The CHAIR** — The second Muir report that you received after the — —

**Mr de KRETZER** — About the March 2016 incident.

**The CHAIR** — Yes, and so that was received after the media reports of it?

**Mr de KRETZER** — Correct, yes. But I understand the *Herald Sun* has reported on the first Muir report.

**The CHAIR** — Yes, that is right.

**Ms PATTEN** — Thank you, all, for your contributions today. My first question was that you make a recommendation that there be an independent overarching body. I just wondered how that would be different from the commission for children. The commission for children seems to have that higher oversight, certainly of the justice centres, so how would this other independent oversight differ?

**Ms LEIKIN** — It would not necessarily need to be with a different organisation. Certainly our observations and what we understand are that the Commission for Children and Young People has a really good level of engagement with children in custody. The difference perhaps would be in the scope and breadth of the commission's powers. Once OPCAT — the optional protocol to the convention against torture — is ratified, hopefully this year, the preventative mechanism, which is the oversight body that would need to operate under that protocol, requires that the body that does inspections have powers to, for example, do unannounced visits, which the children's commission currently does not have the power to do. It also requires that the body under the protocol be able to effectively compel certain information and data, which the children's commission cannot presently do. It may be the case that the children's commission would have oversight obligations or become the body under the protocol that has that role, but its powers would need to be expanded to ensure that it was compliant with the optional protocol.

**Ms PATTEN** — Just finally, how would you respond to Mr Comrie's comments, as well as other comments, that the cohort has changed? Not only has it changed in the seriousness of the offences, but in the age that they are first offending and also just generally even in the size of the children coming into the facilities. Your submission is very strong around removing the use of restraints, removing the use of those sorts of tools.

**Mr de KRETZER** — Minimising them. We are not saying that restraints should be abolished altogether, but obviously we think there need to be proper safeguards around their use, and human rights law has a lot to say around when it is right to use those safeguards. Obviously the legitimate aim is the safety and security of the staff, the community and the children and young people who are detained, and human rights law has appropriate ways to balance those competing interests, if you like.

In terms of the issue around this changing cohort, I think we really need to be wary about what is being said around this and really look at the evidence of what is actually going on. When the 2010 Ombudsman's report was handed down, I saw the then minister commenting that there is this new and dangerous cohort of young offenders who are bigger and more violent — similar kinds of things that are being said now.

What we can tell from the evidence is that undeniably there is a large increase in the number of children and young people being held on remand. That creates a more difficult environment for staff to manage, because there is less certainty around the time people are being in detention. There has been a different approach to access to rehabilitation and programs for people who are on remand versus people who are sentenced, and there

has been a lot written about how it is harder to manage young people who are held on remand than sentenced. So that has definitely changed and made the management of the centres more difficult.

In terms of the profile of offending, I think the Crime Statistics Agency are giving evidence later today and they are best placed to provide advice about that. Overall there is very much a large downward trend in the number of individuals aged 10 to 17 who are committing crimes, and it is really an extraordinary success in something like a 40 per cent drop in the number of 10 to 17-year-olds who are committing crime, and then about a 25 per cent drop over the last five years in terms of overall crime committed by 10 to 17-year-olds. Within that, you have got issues like home invasions, where there is genuinely a significant problem. I have looked at the crime stats around that, and there is a significant upward trend in that, so that is a genuine issue that is of significant concern which is backed by what the crime stats agency is telling us about this.

In terms of the size and height, you might want to comment on that, Alina, because you have spent a lot of time looking at people coming in in all different — —

**Ms PATTEN** — But as you said, this was said in 2010 as well.

**Mr de KRETZER** — That is right. Certainly I have heard police say and people within the system say that there is a small but growing number of young people who are offending with no prior history whatsoever, but that is still a small part of the overall group. The data that we have extracted from the Youth Parole Board and here around the backgrounds of people with long-term interaction often with child protection and then escalating crimes is very much still the norm. But I have seen reports at least of a small and growing number of people who are committing serious crimes with no prior criminal history whatsoever, and that is where we absolutely have to get the approach right to be able to minimise the risk of them reoffending and minimise the criminogenic impact of them being housed on remand, for example, if they are not going to get a sentence of detention at the end of it.

**Mrs PEULICH** — I think the most recent Ombudsman's report, however, narrowed that time frame to a shorter period of time in relation to the escalation of the changing hardening profile of those in youth justice facilities than the figure that you quoted, so obviously there is a change. I think that report refers to 2012 as being the time when they began to observe changes in the hardening of the profile of clients in youth justice facilities rather than the date to which you refer. I am not sure whether you have had the chance to have a look at the report.

**Mr de KRETZER** — My comment was around media reports when the Ombudsman handed down his report in 2010. I think the minister was Lisa Neville at the time, and I observed a very similar comment made in 2010 to what is being said now around the changing profile and more dangerous offenders, if you like.

**Mrs PEULICH** — And the most recent Ombudsman's report?

**Mr de KRETZER** — The 2016 report?

**Mrs PEULICH** — Yes.

**Mr de KRETZER** — I would need to re-read that to see what it says about that, but obviously that is what she said. I guess that the caution I want to exercise around this is to say we need to look at the evidence, and the evidence says that home invasions are going up significantly and that is a significant problem, but overall there is a large drop in the number of 10 to 17-year-olds committing crimes and a drop in the overall crime rate.

**Mrs PEULICH** — Mr Comrie spoke earlier about how, because of the changed profile of the clients, there needs to be a higher emphasis on safety and security, and you have said something to the same effect. He also indicated that perhaps having people with predominantly youth qualifications and social work qualifications is not providing the suite of skills that are needed to meet that first criterion and that objective to maintain a safe and secure environment not only for the clients but also for the staff. His view was that the two needs did not necessarily need to be provided by the same person.

I am interested in particular in the cultural overlay, and perhaps the question could be directed to you, Ms Musk. As the shadow Minister for Multicultural Affairs, I am certainly aware of concerns from parents in some of our multicultural communities about their capacity to parent in ways that are consistent with how they have raised their children before migration and about the feeling of helplessness. Are you able to comment perhaps on

whether the support services and the behaviour modification programs that are in place are consistent with some of those cultural needs? Are they informed by cultural differences? I certainly did not get a sense of that when we visited. Are you able to comment on that?

**Ms MUSK** — I can only talk from a Northern Territory and Western Australia perspective, so it is quite difficult not having been part of youth justice in Victoria, and maybe my learned friend can help me out with that. Just going back, I was really concerned about the evidence of Mr Comrie around the labelling of children as getting worse and that it is a cohort. We are actually talking about children and young people.

**Mrs PEULICH** — It think the Premier said the same.

**Ms CROZIER** — He said they were the worst of the worst.

**Ms MUSK** — It was just difficult because when it enters into politics and the media — it happened in America, and I am sure you heard from Mr Schiraldi about that and the superpredator campaign that happened there where the government was using this labelling and this media frenzy to drive the toughening up and the hardening of practices involving young people — it only serves to dehumanise, isolate and further marginalise these very vulnerable and disadvantaged children.

When I was working in the Territory I was really concerned that there was a lack of expertise and understanding of the unique needs of young people. We did not have the number of social workers. It became very correction orientated. Staff in there were people without any skill set or experience or training to be able to recognise what behaviours were starting to become concerning and to be able to respond appropriately. There was a lack of emphasis on trying to bring down the child.

A lot of the children that I represented were children who had histories of complex trauma, who would get into these hypervigilant states, and there were quite clear triggers that were being set off, and yet the staff were just not able to see that and just thought this kid was acting badly. They would come down hard on the kid or put them in lockdown, isolate the child. It was counterproductive, and it would only further compound the trauma that this young person was going through. I think that is the danger here in that we need expertise and understanding of the children that are coming through and an understanding of the background and the particular issues that the young person is dealing with.

We saw the evidence that has come out of the parole board in that the vast majority of children — 63 per cent of children — have complex trauma. The vast majority of young people have significant disadvantage, mental health issues and/or cognitive impairment, so they are children that have really complex needs, and their behaviours and the way to manage those behaviours really require expertise and understanding.

**Mrs PEULICH** — Thank you, Ms Musk. You have not really answered my question. I certainly as a mother — and we all have children, even if they are 40 — and people do not see some of these particularly violent crimes that are committed in exactly the same light, so you can understand why public opinion is hardening.

But my question is: to what extent are our behaviour modification programs within youth justice facilities suitable to the cultural demographic that is now being over-represented — which Mr Comrie commented on and which we actually saw some visual evidence of — given that already there is anecdotal evidence which indicates that parents are struggling to control some of these young people because of different parenting methods in a fairly laissez faire society compared to perhaps the traditional methods in which they have raised and disciplined their children? As a schoolteacher I remember coming from a migrant background and going into a school where students — —

**The CHAIR** — Mrs Peulich, we are running out of time.

**Mrs PEULICH** — I understand that.

**The CHAIR** — I am going to suggest that we extend to 12.45 p.m. Ms Musk has already said she cannot answer that question. I will ask if Mr de Kretser or Ms Leikin may like to respond.

**Mrs PEULICH** — Are the behaviour modification programs consistent with the needs of some of these clients in there, because it seems to me that your answer was a generic answer, not one specific to the question that I was asking.

**Ms LEIKIN** — I think again we can only speak from the observations over the time that we spent at Grevillea, but I assume there is consistency largely across the system in this. My observations were and what the children were saying was that in many ways their cultural needs were not being met. Access to support that was culturally specific seemed to be very limited. Also I think there is an issue around Aboriginal and Torres Strait Islander children and access for them to have their very unique cultural needs met. I think another issue is around access to family and the difficulties that some families have going into facilities and spending time with children.

**Mrs PEULICH** — I accept that. What I am actually getting to is that the laissez faire nature of many of our relationships in our family lives in the way that we have been raised is often not consistent with the upbringing that those young people have had, and therefore many of those youth workers that I saw — drawing on my own professional experience — would not be effective in bringing about behavioural changes amongst many of those clients. That is my concern.

**Mr de KRETZER** — I think the Centre for Multicultural Youth will be giving evidence after us, so they are probably better placed to answer that specific question about cultural needs being taken into account in staff training and the delivery of programs.

**Mr MORRIS** — Thank you for your testimony today. I was hoping just to ask some further questions about the Muir report. I note that you said earlier that you would prefer not to say who it is that provided the report to you, but can you tell the committee whether or not you received it through official or unofficial channels?

**Mr de KRETZER** — Unofficial, so obviously journalists have been leaked a copy of these reports by someone who has access to them with a view to presumably having stories that are in the interests of their particular perspective.

**Mr MORRIS** — Yes.

**Ms SYMES** — It happens in parliamentary committees sometimes too.

**Mr de KRETZER** — Yes, and someone has provided us with a copy after that media has reported on it.

**Mr MORRIS** — Okay. Would you be able to provide the committee with a copy of that report that you have?

**Mr de KRETZER** — I have been asked this before. I would have thought the appropriate process for that is for the committee to request that report, but as I said earlier, I think — —

**Mr MORRIS** — We have done so, yes.

**Mr de KRETZER** — It is incredibly important for the committee to have access to those reports to inform your deliberations around what are the causes of these incidents. Has the response been appropriate? What should the response be going forward?

**Ms CROZIER** — Thank you very much for being before us this afternoon. Can I just ask you a couple of things. How is the Human Rights Law Centre funded?

**Mr de KRETZER** — The vast majority of our funding comes from private donations, philanthropic trusts and foundations and a little bit from events and sponsorship. We get about \$55 000 a year from the Victorian government at the moment, and we have a small grant with the South Australian government as well.

**Ms CROZIER** — In relation to the various court processes that have been undertaken, what is the number of resources that you have put into those proceedings?

**Mr de KRETZER** — Obviously there were substantial resources. We had a team of four barristers acting on conditional pro bono cost agreements with us over a period since November — six months.

**Ms CROZIER** — And did the government have similar resourcing in terms of defending their position?

**Mr de KRETZER** — I guess it is for the government to comment on its resourcing. What we observed in court was, yes, they had a significant barrister team as well as representation from the Victorian government solicitor.

**Ms CROZIER** — So most of your work was pro bono, so you have not got a cost that it has cost you to undertake those proceedings or an idea of the cost that it would have been in relation to that pro bono — —

**Mr de KRETZER** — We are engaging with someone to quantify those costs, but we have not got that advice back yet.

**Ms CROZIER** — Would you be prepared to provide that costing to the committee once you do receive that?

**Mr de KRETZER** — It is complicated by the fact that the initial proceeding was brought by the Victorian Aboriginal Legal Service, the subsequent proceeding was brought by the Fitzroy Legal Service and the third proceeding was brought by the Human Rights Law Centre. We were involved in those first two proceedings as well. Three of the barristers involved were consistent across the case, but the QC that led the team changed, so it was a different QC. There will be a process around that that will go forward. That will be directly with government.

I saw that the committee asked, I think, government for an estimate of its costs as well. That is a process that can take place obviously through the committee's request for government's quantification.

**Ms CROZIER** — We have asked in a number of forums in relation to the first proceedings which have been concluded. The government have come back and said that they cannot provide us with the full details for the second and third, because they were still going at the time they were asked. So I suppose I was just trying to get an indication from you about those legal proceedings and what you think it has cost the various organisations involved so that at least the Victorian community could have an idea of perhaps what the government has also spent on these proceedings.

**Mr de KRETZER** — I do not want to speculate on the government's costs, but I think the appropriate channel for — —

**Ms CROZIER** — We will be pursuing that. Thank you, Mr de Kretzer.

**Ms SYMES** — Thank you for appearing today. Were you here when the secretary for the department of human services appeared? I was just going to reflect on her testimony, but without rehashing obviously your whole legal case, I know that the Human Rights Law Centre has maintained that there have been alternatives to Grevillea. I am just a little unclear about exactly what the alternatives that you guys suggested would be, considering that the testimony we heard this morning from the secretary was that they explored very many avenues but came back to the restrictions under the act and to anything available being exhausted. I was just wondering what exactly you said should have happened instead of Grevillea.

**Mr de KRETZER** — We obviously got asked this question a lot over the last six months, and our answer is the same as it has always been, which is that, with all of the resources at the disposal of the state, it defied belief that the only location that the government could find to address the accommodation shortages at Parkville as a result of the riot damage was a unit within a maximum security jail at the Barwon Prison that used to house, I think, adult protection sex offenders.

There was evidence in the proceeding before Justice Garde. I think there were only 11 or 12 boys at that time when the decision was handed down. There were some 32 beds available at Malmsbury at the time. Some of those were in the low-security units, so obviously you would not transfer boys who were high-security risk to those low-security units, but there was capacity within the system. There were also issues around the process by which those units were repaired and the timing of them coming on board, which I think the committee has asked questions about, and there has been some reporting on that.

**Ms SYMES** — Sorry, Mr de Kretser, I am just not quite clear. You said there must have been alternatives, mainly because of the resources available to government. What do you think the resources should have been spent on? How would you have done it?

**Ms LEIKIN** — I think it is pretty insightful to look at Justice John Dixon's judgement in the most recent proceeding, where he found that the options that were explored were not sufficient in effect, and I am paraphrasing of course. He said that, having looked at what was available in the youth justice system, it was not sufficient for the state to then say that it had met its obligations in looking at the options of where to house and how to house the children in the system.

One of the things I think he flagged in the judgement was approaching the Youth Parole Board around children who were close to their parole dates and looking at creating capacity in the system in that —

**Ms SYMES** — Did the Youth Parole Board have a view on that?

**Ms LEIKIN** — I do not know. I am just saying it is something that was raised by the judge in his judgement around what could have been explored to create capacity in the system.

**Ms SYMES** — But nothing specific?

**Ms LEIKIN** — It is difficult of course for a community-based organisation or a judge to say specific examples.

**Ms SYMES** — I understand. It is just that we are saying there should have been, there could have been, there must have been, but no-one has actually provided any clear evidence to something else that would have been an alternative to Grevillea.

**Ms SPRINGLE** — To be fair, no-one else is the government but the government.

**Ms SYMES** — But the government's testimony this morning from the secretary was that they exhausted the opportunities, so I am just exploring whether anybody has actually put something towards an alternative that was a concrete example, and I have not got one yet.

**Ms SPRINGLE** — I do not think it is possible.

**Ms SYMES** — That is the point.

**Mr de KRETSE**R — And what Justice Garde said in his decision was that the government, in his words, and the department were flying blind as to the suitability of the Grevillea unit as a place to house children. This is a high-security unit in a maximum-security jail that we obviously maintain was completely inappropriate for children.

**Ms SYMES** — Do you agree that it is inappropriate to accommodate high-risk young offenders or children with instances of poor behaviour and violence both in and out of a youth detention facility?

**Mr de KRETSE**R — Again one of the issues over the court case was that the government was trying to create the impression that the people who were sent to this unit in Barwon Prison were the people who did the damage to the units at Parkville, and we had clients who were not even in detention at the time of those riots at Parkville.

**Ms CROZIER** — The secretary could not answer that question for us this morning.

**Mr de KRETSE**R — We had clients who were told that the reason they were chosen to go to Barwon was because they were well behaved.

**Ms SYMES** — But my specific question was not to that point. My specific question was: is it appropriate to put high-risk young offenders in low-security facilities?

**Mr de KRETSE**R — No. So you would obviously target your placements, and this is the flexibility that Neil Comrie talked about earlier. Whether it is in an adult prison with adult prisoners or in a youth justice

facility, you have a range of facilities available, but it was always inappropriate and a terrible mistake to house children in a unit designed for adult maximum-security prisoners within an adult maximum-security jail.

**Ms SYMES** — Just to clarify, when you say ‘with adult offenders’ — —

**The CHAIR** — I think we need to move on.

**Ms SYMES** — Just one, really quickly.

**The CHAIR** — Very quickly. Ms Springle needs to ask a question.

**Ms SYMES** — Just to your point about putting young offenders with adult offenders — can I put my question to Ms Leikin — when you were visiting young offenders were you seeing adult offenders in proximity to the young offenders?

**Ms LEIKIN** — No, but certainly I was told by a number of children that they could hear adult offenders. The Melaleuca unit basically shares a wall with the Grevillea unit where the children were being held, and from some of the cells on one side of Grevillea, consistently boys were saying that they were communicating with or able to hear adult prisoners. They were also able to hear dogs on the Barwon site. So they could not see adult prisoners, but they could hear them.

**Ms SPRINGLE** — I am curious to know if there has been any dialogue between the human rights sector, I suppose — I will use that loosely as a term — and the government about future plans for the youth justice system.

**Mr de KRETZER** — That is a broad question.

**Ms SPRINGLE** — It is a very broad question.

**Mr de KRETZER** — Before these cases I met with Professor Ogloff and Penny Armytage to talk about their investigation. We have obviously an ongoing dialogue with the Victorian government around a whole range of human rights issues. When you have the prism of that relationship through litigation around youth justice, that obviously changes the dynamic, but we fully intend to have an ongoing constructive relationship with the Victorian government which is in the best interests of a safe, humane, well-managed youth justice system.

**Ms SPRINGLE** — You have got a list of recommendations in your submission. From your perspective do you feel confident that any of those recommendations will be taken up by the government?

**Mr de KRETZER** — We have seen some good things coming from government. Stepping back, we have an opportunity now in Victoria. There have been seriously harmful incidents to community confidence, to the individuals who have been involved, to the children and young people who have been affected by these incidents. There is now great attention being focused on the youth justice system in Victoria. You have small numbers being talked of — around 200 people at any one time. The numbers are small, so the opportunity to actually invest, change behaviour, reduce reoffending rates and give children a pathway to reach their potential is significant now. We are seeing some good things in terms of a legislated youth diversion scheme, the promise of a secure mental health unit — things that have been recommended for many years which have not happened until now.

We have got the infrastructure issues being resolved in one way, but not in the way that we would want in terms of, yes, we want a new facility, but not a 200-plus bed, high-security facility. With the issues around the overuse of isolation, the government has accepted those recommendations, which is a good thing, and that is obviously one of the contributing factors that Peter Muir and others have identified around these incidents. The youth control orders, if there is good investment behind that in terms of the resourcing of them, have potential. So there are some — —

**Ms SPRINGLE** — Just on that, though, I think you are referring to the piece of legislation that is before the Parliament currently. While the diversion and the youth control orders are probably the most positive parts of that piece of legislation, there are also a lot of parts of that legislation that are highly problematic.

**Mr de KRETZER** — Absolutely. So at the same time as we are doing those positive things, we are announcing ever more punitive measures, which will place more children in adult courts. It will reduce the scope of dual track; I think you have heard evidence from many people about how successful dual track has been.

**Ms SPRINGLE** — How does that reconcile? I mean, there are two things going on in your response. How do we reconcile those things?

**Mr de KRETZER** — What I hope the committee would do is look at what the evidence is around what is actually going to work to give young people a pathway to reach their potential, to reduce reoffending rates, to make the community safer and then make recommendations based on that. But obviously the climate we have got at the moment is one in which that kind of evidence is not being heard and is not being followed in relation to some of the policies that are being announced.

**The CHAIR** — I just have one last question. I am conscious that we have gone over time, and I apologise for that. You may not be able to answer this, but are you planning any further legal action against the government in relation to children and young people in the youth justice system?

**Mr de KRETZER** — No.

**Ms CROZIER** — Compensation?

**The CHAIR** — Ms Crozier is saying ‘compensation’. That was a possibility that was raised at the time of the last decision, and I suppose that was what my question was getting at.

**Mr de KRETZER** — Sorry. We obviously are in the process of advising the clients that we have had about their legal options and to pursue compensation. That is entirely appropriate if someone is illegally detained, if they are mistreated, if they are assaulted, if they are held in solitary confinement, and we have three court decisions now which confirm the unlawful aspects of what the government has done in terms of the treatment of these children. There are legal complexities involved in that. There is confidentiality around the advice, but that is a process that is happening, and that is entirely appropriate.

**The CHAIR** — Certainly. Is there any time limit on bringing the sorts of actions that you have referred to?

**Mr de KRETZER** — Yes. All legal actions have time limits, and they are typically in the years rather than the months, if that in a broad sense answers your question.

**The CHAIR** — I think we are well and truly out of time. Thank you very much for meeting with us today. You will be provided with a transcript within a few weeks for review.

**Witnesses withdrew.**