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A Reality Check – Rethinking Youth Justice and Reconfirming Community Rights

Abstract – While this submission addresses the Terms of Reference listed for the Parliamentary Inquiry into Youth Justice Centres in Victoria, the authors submit there is a need to acknowledge a number of indisputable Red Alert facts. They argue there is a need to reassess the ideology, principles and objectives that underpin juvenile incarceration. Significantly, the authors challenge the way in which particular language is now used to engineer a refocussing from youth who are convicted of significant crimes to one of social blame.

The submission identifies six Green Light Action areas that must be addressed if Youth Justice Centres are to do their job in accordance with community expectations and the law. The submission challenges the government and senior bureaucrats to stop engaging in never ending reviews and actually do what needs to be done.

A Word About the Title – The title emphasises that the rights of the Victorian community cannot and should not be ignored. The authors emphasise that while it is one thing to emphasise the human rights of incarcerated youth, it is equally important not to ignore that all Victorians, both as individuals and as a community, also have rights. As such, the title infers the community has a right to expect that Youth Justice Centres are places where those incarcerated can be controlled. Also, that the community has a right to expect public money will be used in accordance with its stated intent. Further, that there should be no need to have to redirect funds to rectify damage caused by rioting youths.

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Introductory Note

Despite this submission being made to the **Parliamentary Inquiry into Youth Justice Centres in Victoria** and the responsibility of the Inquiry to address a set of Terms of Reference, the authors note that since the Inquiry was announced the government, principally via the Premier, has made significant announcements concerning Youth Justice.

Given the above, there seems little doubt that no matter what the Inquiry determines there may be some matters considered by the Inquiry that will have been pre-empted by the Premier or alternatively, some announcements that may be contrary to particular findings or recommendation of the Inquiry.

While the authors of this submission have tended to present matters as they see them, nonetheless, in relation to particular issues they do acknowledge particular announcements made by the Premier. As such, the submission is written in such a way so as promote the authors' views while also making comment on particular announcements already made.

Significantly, the authors note the announcement concerning the government's intention to construct a *'$288 million fit-for-purpose high security youth justice centre in Werribee South'* to be completed by 2020. They also note the announcement to move '*responsibility for the youth justice system'* to the Department of Justice and Regulation.

As noted in the body of this submission, while the authors generally support the proposal to construct a '*fit-for-purpose high security youth justice centre'*, nonetheless, they argue two critical considerations. Firstly, that although provision should be made for remand clients, the facility should be designed in such a way so as to ensure a total separation of those clients on remand from those inmates who have been formally sentenced. Secondly, the authors also argue that children, as in 10 to 14 year old male and females who have been placed on remand or who have been sentenced to a custodial placement, ***should not*** be housed in this facility. Instead, these children should be housed in a totally separate facility. It is proposed that the current Malmsbury Youth Justice Centre should be redesigned for such a purpose and renamed the Malmsbury Children's Remand and Secure Centre.

Also as noted in the body of the submission, while the authors generally support the decision to move '*responsibility for the youth justice system'* to the Department of Justice and Regulation, nonetheless, they argue a variation to this decision. This being for the Department of Health and Human Services to maintain responsibility for the management of Community Based Orders for children 10 to 14 years of age.

Underpinning each of the above is the need to define ***Youth Justice,*** noting that nowhere is an actual definition of Youth Justice available. Again, as detailed in the body of the submission, the authors argue that Youth Justice and all the programs or activities associated with the concept is Youth Justice should only refer to individuals 15 to 17 years of age. By contrast they further argue that children 10 to 14 years of age should not be defined as or included in Youth Justice; and further, that individuals 18 years and over must be defined as adults and not therefore included in the Youth Justice system.

SECTION A: An Overview

Introductory comment

This submission acknowledges the matters listed for inquiry by the Standing Committee on Legal and Social Issues - Inquiry into Youth Justice Centres in Victoria. In doing so, the authors of this submission note in particular the items listed as numbers 1, 2, 3, 4, 5, 6, 7 and 8 of the Terms of Reference for the Committee.

They also note and emphasise that their submission particularly focuses on the inquiry as being into Youth Justice Centres in Victoria.

While the authors address each of the Terms of Reference within the context of the submission, they emphasise that this is done within the structure of the submission as outlined below.

Submission structure

The core of this submission addresses key areas that the authors submit must form the platform issues that underpin the functioning of Youth Justice Centres in Victoria.

While the authors submit each represents a critical factor in its own right, they further submit that if the government is to re-take control of Youth Justice Centres the elements must be addressed as a composite action.

The vigour with which this task is undertaken will ultimately determine whether Youth Justice Centres function in a way that instils in Victoria's population a level of trust that the system is working efficiently and effectively - or whether the system will continue to be controlled by those it purports to manage.

The submission is divided into five sections. The overall purpose is to establish the link between the drivers of the Youth Justice system, how these are translated into the operational parameters for Youth Justice Centres and the undeniable need for immediate action.

Section B: The Facts Reveal – A State of Chaos, Inaction and Moribund Management

This section contends that the Juvenile Justice Program has for many years lacked competent leadership. While the authors acknowledge that the government and the designated Ministers are ultimately accountable for government departments and the programs they administer, departmental Secretaries and senior bureaucrats must equally be held accountable. In terms of the Juvenile Justice Program, the authors therefore contend in the strongest way possible that successive Secretaries and the senior bureaucrats responsible for the Juvenile Justice Program must be placed front and centre when failure is attributed.

Section C: Fitting the Jig Saw Pieces Together – Where does the Committee fit?

This section raises the issue of - How many reviews need to be undertaken before effective action is actually taken? The section notes the recent and current history of reviews and challenges how the current Inquiry relates to other current activities.

Section D: Addressing the Terms of Reference

This section specifically responds to Terms of Reference 1 to 7. In doing so the authors acknowledge that some aspects of their response are also incorporated in other parts of the submission. However, the authors contend that the significance of their comments and views should not be underestimated.

Section E: Six Green Light Actions

Although listed individually, each of the listed areas has a relationship with each of the other areas and as such none must be considered to stand-alone.

1. Moribund management - the need to relocate the Juvenile Justice Program
2. The language of youth justice
3. Facilities, fabric and creating a separate remand facility
4. Centre management, staffing and Occupational Health and Safety (OH&S)
5. Consequences and privileges
6. Legislative review

Thus, while the authors acknowledge that Youth Justice is a composite program, this submission does not focus on why young people commit crimes and what might be done to reduce the potential of risk taking behaviour. Instead, this submission addresses what needs to be done to address the riotous and deliberately destructive behaviour that has been occurring in Victoria's two Youth Justice facilities.

Section F: Lost in Translation

This section provides a historical perspective in relation to changes that have occurred over the decades as relating youth justice secure services and highlights what can be argued to be a significantly different approach when compared and contrasted to adult secure services system.

A concluding comment

As a final comment, the authors argue that those with the power must be prepared to close the door on blame and put aside the ***'ising'*** tendency, where the focus on psychologising, theorising and apologising has become the convenient avoidance tactic.

If the government refuses to adopt a hard-headed approach to dealing with the dysfunctional factors that currently underpin the operation of Youth Justice Centres, then the existing chaotic and out of control situation will not only continue but can reasonably be concluded to become worse.

The authors argue the three first-order ***must do*** actions are:

1. Firstly, the Minister and the senior bureaucrats must be willing to make an open and uncluttered admission that the system is not working.
2. Secondly, the Minister and the senior bureaucrats must be willing to admit that major and urgent changes are required in order to get Youth Justice Centres back on track.
3. Thirdly, the Minister and the senior bureaucrats must be willing to acknowledge that in the first instance Youth Justice Centres are custodial facilities where security, safety and control must take precedence over soft-centred ideology.

Max Jackson and Margaret Ryan

3 March 2017

A Word About the Authors

Following a Review of the Melbourne Juvenile Justice Centre undertaken by former Police Commissioner Neil Comrie in 2010, the authors were among a group of independent consultants subsequently engaged to conduct operational debriefings reviews into incidents that occurred at the centre and as involving inmates. They conducted a total of 16 such debriefings over a period of 14 months commencing June 2011.

As a former Special Education Teacher, Max Jackson once taught at both Malmsbury and the former Turana Youth Training Centres. Additionally, the same author at one time served for a number of years as an Honorary Probation Officer dealing with young people placed on probation by the courts.

SECTION B: The Facts Reveal – A State of Chaos, Inaction and Moribund Management

There are particular social issues in our society that engender high levels of emotional debate whenever problems occur in relation to factors such as funding, program design or the management of the particular issues. It seems to the authors that increasingly it is not uncommon for debate to lose sight of the facts and instead promote a whole swag of esoteric arguments. In terms of Youth Justice, so called, increasingly the language has become diversionary. Rather than focus on what Youth Justice is and what it aims to do and how the various elements of the program are supposed to operate, there is sense of social engineering.

As such, the authors submit that the starting point for addressing the debate about the Youth Justice Program and its current dysfunction must be to confront the facts and consider them as ***Red Alerts***. What then do we know and what are the facts?

Red Alert Fact 1: A state of chaos

The Youth Justice Centres are, and have been for some time, in a state of chaos. Let us not attempt to minimise the situation and downplay just how bad the situation has become. The frequent riots and trashing of fabric at Malmsbury and Parkerville cannot be denied. The recent escapes from Malmsbury and ones that occurred at Parkville as far back as 2009 represent the ultimate in chaos when speaking about so-called secure facilities.

Red Alert Fact 2: Inactive moribund management

The Department of Health and Human Services and it various iterations has been the government department responsible for the Youth Justice Program including the Youth Justice Secure Centres for decades. Indeed even going back to days when the Langi Kal Kal (males) and Winlaton (females) centres operated as secure youth facilities.

In the ten-year period since 2006 there have been several departmental Secretaries. Ms Fran Thorne was in the position for several years as was Ms Gill Callister. Dr Pradeep Philip held the post for a limited time only; noting at that time Human Services and Heath formed a single department. The current Secretary is Ms Kym Peake. Each had carriage of the Youth Justice Program and each failed. At the next level of the bureaucracy, program design and policy dictates have been overseen by a succession of Youth Justice Program management teams. Since October 2015, Deputy Secretary – Operations, Ms Chris Asquini has had responsibility for *'the delivery of services and improved client outcomes across the four operational divisions.'* Additionally, Deputy Secretary Amanda Cattermole has responsibility for Community Services Program and Design. This includes developing '*operational policy and funding frameworks for … youth justice services.'* The evidence suggests they not only have they failed their task but they simply do not know what to do.

Yet, despite senior management's failure to manage the Juvenile Justice system, these same bureaucrats have escaped any form of condemnation. The multitude of incidents that have occurred time and time again are not systemic – they are people failures. When former Secretary Callister failed her assignment in Community Services, rather than terminate her contract, the government instead transferred her into the role of Secretary, Education and Training. Do senior bureaucrats face any consequences for failing?

Red Alert Fact 3: Performance indicators ignore incidents

The DHHS Annual Report for 2015-2016 (page 53), details the performance measures for Youth Justice Custodial Services under the descriptors – ***Quantity – Quality - Timeliness*** and ***Cost.*** Significantly, however, missing from the list of performance indicators are the very indicators that are applicable to the internal management of the centres and the inmates. The missing indicators relate to figures associated with ✸Number and type of incidents by each Category✸number of inmates involved in multiple incidents by number of incidents for each ✸ number of staff Workcover claims due to assault by inmates ✸ cost of repairs due to vandalism. These are the real indicators.

Red Alert Fact 4: A lengthening history of dysfunction

The recent escapes from Malmsbury and the trashing of Parkville are not one-off incidents. A litany of incidents mark the dishonour roll with the most recent series beginning in October 2015 with four workers being assaulted at Parkville. Incidents then occurred with concerning monotony throughout 2016 and into the opening month of 2017 at both Parkville and Malmsbury. Yet, departmental management acted as though their hands were tied and silence has reigned supreme.

Red Alert Fact 5: Youth Justice Centres are centres for incarceration

Much of the debate that has occurred in relation to the Youth Justice Program and the Youth Justice Centres in particular seems to have largely ignored the indisputable and critical fact that Parkville and Malmsbury are designated as ***secure facilities***. Their primary purpose is to provide secure placement for those individuals who crimes have been determined by a court of law to be such that the individuals must be separated and secured from the broader community.

Yet, despite this fact, the Red Alert is that the debate has focussed on promoting the alleged causes for the crimes committed as opposed to the fact that incarceration is a legally imposed penalty for having committed the particular crimes in the first place.

Red Alert Fact 6: Political correct language and the language of social work

The Youth Justice Program although comprising a number of sub-programs, by virtue of a significant focus on community-based services, tends to subsume the Youth Justice Centres as though they are also community programs. In so doing what can be called the language of social work has infiltrated the approach taken to Youth Justice Centres with the result being a diversion from the fact that Youth Justice Centres are first and foremost custodial facilities with all the attendant responsibilities of security, safety and control. The language as applicable to Youth Justice Centres must be refocussed to reflect reality.

Red Alert Fact 7: The numbers are not large

Setting aside the Youth Justice Community-based Services, the number of individuals accommodated in the two Youth Justice Centres is not large – indeed in relative terms when compared to the number in Community-based Services (923 average daily) it is small. The DHHS Annual Report for 2015-2016 recorded the average daily custodial combined number of males under the age of 15 and females as being 17.9. For males 15 years plus, the number is listed as 146.5. Yet, when considered in the context of the chaos that has beset the Youth Justice

Centres, the authors ask - Why is it that DHHS is unable to manage those numbers?

A further relevant question is to ask - How many of the 140+ inmates were involved in the riots at Parkville and Malmsbury? Despite the drug '*ice'* and the nature of the inmates having been promoted as cause for the increasing dysfunction and allegedly increasing the degree of difficulty in managing inmates, what do the actual figures show?

Red Alert Fact 8: Incident reporting, analysis and application of lessons learnt

Incident Report data can provide a window to the effectiveness of a program, both in terms of the target clients for whom the program is designed and the effectiveness of the incident reporting, analysis of the information and actions arising from the incident reporting. DHHS appears not to be able to get it right and ongoing reviews continue. Typical of many initiatives undertaken by government departments the tendency is to go for the biggest and the best – the world leader model. Yet, despite Incident Reporting having been a feature of the various iterations of DHHS since at least 1986, over the past three decades review after review has been conducted. Yet, still the system for Incident Reporting is '*being developed'*.

What is so difficult? As reported in Hansard (28 October 2016) the number of Category One Incidents reported for 2015/16 in Youth Justice Custodial Services was 100 only - ***no not 1,000 but 100 only.*** They consisted of 80 assaults; three incidents related to behaviour and 17 '*other incident types*.' Surely, a sophisticated computerised database, integrated with all other programs across the department is not required to analyse this small number and applying the lessons learnt.

For example – How many clients were involved? How many clients were involved in more than one incident? Who was assaulted - other inmates or staff? Where did the incidents occur and at what time? What if any consequences were meted out to the offending inmates? How many of the incidents involved inmates 18 years or older? What, if any remedial actions were taken to reduce the risk of similar incidents occurring? Who took lead responsibility for analysing the incidents and determining outcomes? How did the number and type of incidents compare and contrast to previous years? What was the breakdown between Malmsbury and Parkville? How many, if any, involved illicit drugs? What was the delay time in incident reporting, analysis and outcome actions?

SECTION C: Fitting the Jig Saw Pieces Together – Where does the Committee Fit?

1. The authors acknowledge that in establishing the Inquiry into Youth Justice Centres, the Legislative Council can be applauded for having responded to the riots that had occurred in Victoria's Youth Justice Centres. It is significant that at last the Parliament demonstrated an awareness that the community had become fed-up with the out of control behaviour that led to the Inquiry.

2. The authors note however, that it is not uncommon that when faced with high profile issues that cause consternation among the community, political leaders like to portray an image of being a replica of the cartoon heroes Action Man and Wonder Woman. That is, they are keen to demonstrate that they can act quickly and leave no stone unturned to address the presenting issue.

3. A problem can of course occur with such a pro-active approach. This can be that other activities that may already be in train and as associated with the issue that is the subject of the action can either be ignored; or worse still, there may be no awareness that they actually exist and hence double handling can occur with the potential of outcomes that conflict.

4. Significantly, the Premier has already made a number of announcements associated with Youth Justice. Thus it can be argued that regardless of what comes out of the Inquiry, a new direction seems already to be in train for Youth Justice in Victoria.

A right-hand – left-hand dilemma

5. Issues associated with the Youth Justice Program and Youth Justice Centres in particular are not new. Yet, despite the program having been scrutinised, reviewed and pronouncements made as to new approaches aimed at rectifying deficits over several years, at least four reviews are currently in train. Each has implications for Youth Justice Centres. So it seems reasonable to ask:
   - How do they each relate to each other? And,
   - Who will take responsibility for ultimately determining, initiating and coordinating the necessary changes?

5. In relation to the first of the two questions above, the authors express concern as to the potential for contradictory outcomes and/or for confusion to occur. In relation to the second of the two questions above, the authors note that the Youth Justice Program and Youth Justice Centres in particular have been the responsibility of the Department of Health and Human Services (DHSS), in its various forms for many years. Yet, the evidence of the history of the need for the frequent reviews and the apparent continuing, and indeed escalation of dysfunction within the Youth Justice Centres, raises the legitimate question of – ***Is DHHS up to the job of managing the Youth Justice Program?*** This question is addressed as one of the six Green Light Actions in Section E.

6. Notwithstanding the issue of responsibility for the Youth Justice Program, the authors use this section of their submission to highlight the current jigsaw that exists in relation to the review of the Youth Justice Program.

7. Despite former Police Commissioner Neil Comrie having undertaken a review of the Melbourne Juvenile Justice Centre a few years ago, whatever the outcomes of

that review and whatever actions taken, it seems reasonable to suggest that whatever positive recommendations came from it have fallen by the wayside. Now Mr Comrie has again been engaged this time to undertake a review at the Malmsbury Youth Justice Centre.

8. Running parallel with the above assignment, there is also a *Review of youth support, youth diversion and youth justice services*. This review has a broad ranging brief including Youth Justice Centres. In a recent media release (6/2/2017) the Premier announced that this ongoing review being conducted by Ms Penny Armytage and Prof Ogloff '*will address the adequacy of the current operating model and existing youth justice programs.'*

9. Additionally there is also currently DHHS internal review of the Incident Reporting system. This has been in train since December 2015.

10. The authors note that all four activities, including the Committee Inquiry, have as part of their brief the requirement to address the matter of Incident Reporting.

11. The authors therefore submit that this jigsaw of activities, all associated with Youth Justice, all with their own briefs, all with differing representation and all with different time lines, represents a potential dog's breakfast.

12. With a likely mixture of inputs and outcomes the potential for confusion is high and thus there must be a single point of control.

13. The authors contend that given the obvious questions associated with DHHS's ability to deal with the complexities of Youth Justice, in the first instance the government must take charge before reassigning the total of the Youth Justice Program to the Department of Justice.

14. In relation to the above, the authors note the Premier's announcement of 6/2/2017 to *'move the responsibility for the Youth Justice system – including all custodial and community based youth justice services – from the Department of Health and Human Services to the Department of Justice and Regulation, effective from 3 April 2017*.'

15. While the authors fully support and applaud the Premier's decision to relocate responsibility for the Youth Justice system from DHHS to the Department of Justice and Regulation, they nonetheless argue that in the absence of a clear definition of what constitutes ***Youth Justice*** in part this decision could be considered to be pre-emptive.

16. In relation to this matter, the authors direct the attention of the reader to the heading – ***What is Youth Justice?*** In Section E below.

17. Based on the commentary that addresses the question of – ***What is Youth Justice?*** The authors contend that the inclusion of children 10 to 14 years of age is inappropriate in the definition of Youth Justice.

18. The authors submit that children aged 10 to 14 on community-based orders should be maintained as a responsibility of DHHS. However, any who have been given a custody order should be located within the Department of Justice.

19. While the matter of age and the distinction between children, youth and adults is also explored in Section E below, the authors emphasise that the Premier's recent

announcement concerning the relocation of the Youth Justice system to the Department of Justice and Regulation seems to have been made as a catchall statement. As such, and to emphasise the points made in Section E, the authors submit that not only should a distinction be made between which department should have responsibility for children 10-14 years of age who have been placed on community-based orders, and those who have been sentenced to a custodial period, but consideration should also be given to those individuals who should be deemed beyond the age of youth, as in 18 plus.

20. Therefore, the authors contend that both males and females aged 18 plus and who have been sentenced to a custodial period should serve their sentences in the adult prison system. Equally, those in the same age cohort who have been placed on a community-based order should be deemed not to be part of the Youth Justice system.

SECTION D: Addressing the Terms of Reference

21. The authors note that the Committee is required to address eight Terms of Reference. While the authors note that Term of Reference 8 requires the Committee to determine any other issues they may consider relevant, nonetheless, the authors have addressed this Term of Reference. This being on the basis that the authors wish to draw the Committee's attention to the issue of – What is Youth Justice? They argue that an unambiguous definition is required in order to ensure consistency in addressing all the matters associated with the concept.

Term of Reference 1 – matters relating to incidents including definitions, numbers and any changes to the reporting of incidents

22. The authors submit that the functions of security, control and safety must be considered as having a direct relationship to incident definition, reporting, review and outcomes.

23. Included in the definition of incidents that occur in Youth Justice Centres must be those that occur as a result of failures of security or control or those that compromise safety.

24. Significantly, the reporting and review of incidents related to failures of security and control and where the safety of individual inmates, staff or visitors was compromised must be objective and timely.

25. Given the Comrie recommendations from his consultancy in 2010 and the subsequent reviews, the authors ask –
    - How many reviews of incidents were undertaken?
    - How many of the incidents reviewed related to security, control or compromised safety?
    - When were the reviews ceased?
    - Since their cessation, how many incidents as related to control, security and safety have been reported since?

26. Additionally, the authors submit that in order for Term of Reference 1 to be adequately addressed, the Committee must review the process undertaken within each of the Youth Justice Centres to ascertain whether there is a common and consistent process. Further, whether centre management's review all reported incidents.

27. While the authors do not deny the importance of Term of Reference 1, nonetheless, they emphasise that any incident reporting system or process is what can be defined as an ***after the event activity***.

28. Thus, on this point the authors submit that the effectiveness of incident reporting and review will only occur if or when actions are taken to reduce the likelihood of similar incidents occurring again.

29. The authors argue that Youth Justice Centres are unique and thus the importance of capturing incident reporting information specific to such centres in order that appropriate responses can be determined should not be ignored.

30. The authors have significant experience and knowledge of the Incident Reporting system that has existed in the disability sector for over three decades and as

specific to that sector. Yet, despite this they are also aware that for over 12 months now DHHS has been reviewing the Disability Incident Reporting System in the context the department establishing a system to cover all programs within the department.

31. In a departmental Fact Sheet dated 29/12/2015, DHHS announced the establishment of ***A new Department of Health and Human Services client incident management system.***

32. Over 12 months on, the outcomes have not been advised. This new client incident management system is described as focusing on the safety and wellbeing of clients.

33. The Fact Sheet advises that the department has undertaken several reviews that are directly relevant to the department's incident management systems and its regulatory and contract management arrangements.

34. Among the aims for the new system is the establishment of '*a consistent approach to incident management, embed transparency and accountability throughout the system, ensure client safety and wellbeing, and support positive client experiences and outcomes.'*

35. Significant for Term of Reference 1 for the Committee's Inquiry, the authors note that the Fact Sheet states that '*The new system will apply to all departmentally delivered services and funded organisations, except those that report through the Victorian Health Incident Management System (VHIMS), which includes hospitals and some community health services.*' Included in the 13 services identified, as being in scope for the new system is '*Youth Justice.'*

36. Yet, as already noted above the number of Category One incidents reported for the two Youth Justice Centres in 2015-2016 was ***100 only***. The authors submit that in DHHS establishing a new Incident Reporting System the department has gone 'over-the-top'. The attempt to create a *'catch-all'* system totally ignores the uniqueness of the individual programs, and as particularly related to Youth Justice Centres denies the fact that Youth Justice Centres are custodial facilities.

37. The fact that Incident Reporting has been in vogue for in excess of three decades, that a number of reviews have been undertaken over several years, that a current review is underway at Malmsbury, that the Committee is required to address Incident Reporting and to top it off DHHS has been mucking around with its own review for in excess of 12 months, must be considered to say something about the inability of DHHS to tackle such a critical information need.

38. The authors ask – What on earth is going on? Where is the leadership in DHHS? Incident Reporting is not akin to sending a rocket to the moon; it is a relatively straightforward operational requirement.

39. The Committee must address the inability of DHHS to lead in defining and determining the best process for Incident Reporting for ***individual programs***

40. The current procrastination is nonsense. It is inefficient and ineffective and must be halted.

41. If it is that DHHS is unable to get Incident Reporting right, how on earth can they manage Youth Justice Centres?

42. Given the inability of DHHS to have yet finalised an efficient and effective incident reporting system, the authors contend that given the Department of Justice and Regulation will shortly assume responsibility for the Youth Justice system, then that department must learn from the shortcomings demonstrated by DHHS and not repeat the failures. As such, the authors urge the establishment of an efficient incident reporting system that not only reports the incidents but is able to be interrogated in terms of the frequency of particular incidents, the frequency of the involvement of particular individuals and the identification of any remedial actions necessary to reduce the risk of similar such incidents occurring again.

43. The authors further submit that there must be transparency in the public reporting of incidents. The public has a right to know.

Term of Reference 2: the security and safety of staff, employees and young offenders at both facilities *(as in Parkville and Malmsbury)*

44. It is essential to note that DHHS has a legal duty of care to its employees, those individual placed in its care or custody as well as those who visit premises managed by DHHS.

45. Based on information arising from the various riots as well individual situations that have occurred in each of the Youth Justice Centres, there can be little doubt that the department has on several occasions failed to meet its duty of care to staff and clients.

46. The authors submit that duty of care has a direct relationship with the security and safety of the staff, the employees and the young offenders. As such, they contend that attending to the needs of one group should not compromise the security and safety of another group. Or, in other words, the department has equal responsibility to all groups and individuals.

47. Despite the common responsibility as noted above, based on reports which have come to the public's notice it seems reasonable to conclude that the department has on a number of occasions failed to meet its duty of care responsibility to both staff/employees and young offenders. If it is, as has been reported, that during times of unrest at both the Parkville and Malmsbury sites, that staff have been instructed to withdraw and in doing so leave the young offenders to rampage with the potential of inflicting harm on particular other inmates, then the only conclusion that can be drawn is that the department is guilty of ignoring its responsibility to ensure the safety and security of all the young offenders in each of the facilities.

48. The authors submit that it is totally incongruous that staff in a secure facility are required to withdraw during times of fracas. If this is as a result of a policy directive from DHHS then clearly the policy is wrong and contradicts the department's duty of care responsibilities.

49. If on the other hand the requirement to withdraw is because of the inadequacies of staff training or skills, then clearly this has implications for such matters in the future. It seems contradictory to on the one hand argue that the department has a responsibility for the occupational health and safety of its employees, and hence their requirement not to engage when a fracas occurs, yet at the same time other public servants, as in the police, are called upon to quell such riots.

50. A third matter associated with security and safety is that of the configuration of the facility and the grouping of inmates. Logic suggests that the larger a group the higher the risk of aggressive group based behaviour, as in rioting. Logic also suggests that if known ring-leaders are permitted to or are given the opportunity to encourage less aggressive inmates to join a riot, then this is when things can get quickly out of hand.

51. As such, the authors submit that the committee should examine the structure of groups, the structure of the facilities, and the movement of inmates within each of the facilities. Clearly, the objective ought to be to reduce the potential for larger groups of inmates to congregate.

52. Television and newspaper photographs have clearly shown that during particular riots at both Malmsbury and Parkville inmates were able to climb onto the roof of parts of each of the facilities, as well as obtain equipment such as fire extinguishers, iron bars and the like and turn them into destructive forces and weapons. Security and safety in a secure facility must be alert to minimising the potential for such to occur.

53. DHHS must be condemned not just because of its failure to meet its duty of care to its staff and the inmates, but because of its failure to have apparently done anything of significance in terms of structural and fabric reform and policy and practice requirements as a result of incidents occurring as far back as 2009.

Term of Reference 3: reasons for, and effects of, the increase in the numbers of young people on remand in the last 10 years.

54. In addressing the issues associated with remand, it is firstly necessary to acknowledge that remand relates to an alleged offender being held in custody while waiting for their case to go to court after having been charged with an offence(s). It is also necessary to acknowledge that remand is given either by a magistrate in the Children's Court or, in some cases, by judges in the County and Supreme courts. In other words the decision to place a person on remand is a legal decision.

55. The significance of the above therefore suggests that the reason for an increase in remand numbers over the last 10 years is because there has been an increase in the number of young offenders having allegedly committed offences of a type that require the individuals to be remanded before a court makes a determination on the matters.

56. While the Ombudsman's February 2017 report into Youth Justice facilities details numbers associated with remand (page 8), the authors suggest that the figures need to be considered in the context of the increase in actual numbers and percentages and to determine whether the increase is statistically significant.

57. Additionally, the authors also submit that it is necessary to consider the nature of the crimes alleged to have been committed and for which remand has been applied. If it is that the nature of the crimes alleged are of a type that are at the serious end of the crime spectrum, then obviously the real focus needs to be on what can reasonably be concluded to be the increase in the nature of the crimes being committed and not be distracted by the increase in remand numbers.

58. In relation to the above point, the authors highlight this as an example of how the potential to be distracted from the critical fact that young people are committing

crimes is ever present. They argue there must be full acknowledgment that alleged serious crimes lead to remand, and if the case is proven, remand leads to incarceration.

59. If the increase in remand is considered from a different perspective, as in the actual number of young people being held on remand at any one time, then this highlights three separate issues.

60. The first being whether the individuals held on remand are, or should be, housed separately from those individuals whose cases have been proved and hence they are formally designated as young prisoners. On this matter, the authors argue that even if those on remand are housed in the same single facility as those whose charges have been proven and hence they are committed prisoners, the facility should be designed in such a way so as to ensure a totally separate remand section.

61. The second issue is that of the period individuals are held on remand before their cases go to court. In order to make sense of the Term of Reference it is necessary to identify the range of time individuals are spending on remand, the average length of time spent on remand and the whether or not each of these figures have been increasing over the past ten years.

62. Clearly, the time spent on remand is directly related to the time each case takes to go to court and thus is in effect court dependent. Or, in other words, it is the court system that determines the time each individual spends on remand.

63. As such, to truly address the reason the time spent on remand has increased it would be necessary for the Committee to review the court processes of the Children's Court, and as appropriate the County and Supreme Courts in order to determine why the courts take so long to hear remand cases. There may be a number of possible reasons.

64. It may be the courts are overloaded with cases, it may be that remand cases of young people are not given priority, it may be that the Magistrates and Judges are simply inefficient in the way they carry out their tasks. Or, it may be that a new or different approach for dealing with youth remands needs to be established.

65. On the latter point as made above, the authors submit that it may be that a special ***Youth Remand Court*** may need to be established in order to ensure that young people on remand have their cases heard as a priority and hence the decision as to whether guilt or innocence is established in a fair and reasonable time period.

66. In terms of the affect that extended remand can have on young people, the real answer to this may lie in surveying young people on remand. However, not withstanding this consideration, it seems reasonable to conclude there may be a number of likely impacts.

67. One may be the impact that uncertainty can have whereby the longer the remand the greater the level of uncertainty and the greater the likelihood of discontent and unrest and hence an increase in management challenges to staff.

68. On the other hand, the impact on some individuals can be a sense of being demoralised and hence a state of depression can occur.

69. Further, another impact could be to create in some individuals a sense of '*the system had no regard for me therefore why should I reform and have regard for the system.'* Hence, the likelihood of increasing an attitude of belligerence.

70. Clearly, part of the answer to reducing the length of time a young person may spend in remand is to establish action that facilitates an efficient court process able to cope with variable and increased numbers.

71. However, given that when a young person is placed on remand he or she will spend some time in remand before a decision on the individual's case is made, the issue then becomes one of what strategies can be established in order to reduce the potential negative impact caused by remand.

72. The authors submit that the same opportunities that should be available to convicted individuals should also be available to those individuals who have been placed on remand. As such, the authors contend that there should be organised educational programs, recreational programs, behavioural change programs and what the authors define as leadership programs. It should be noted that an explanation of what constitutes behavioural and leadership programs are outlined elsewhere in this submission

Term of Reference 4: Implication for incarcerating young people who have significant exposure to trauma, alcohol and/or drug misuse and/or the child protection system, or who have issues associated with mental health or intellectual functioning in relation to:

a. the likelihood of reoffending
b. the implications of separating young people from their communities and cultures

73. The authors consider this an interesting Term of Reference, as it seems to suggest or assume that incarceration may necessarily be a negative in relation to the factors identified.

74. This Term of Reference seems to suggest that an individual's environment can have a significant impact on his or her behaviour where his environment exposes him to such factors as trauma, alcohol or drug misuse, or is in a situation where the child protection system has been necessary to be invoked. The authors agree with any proposition that suggests that environment has a significant impact on modifying an individual's behaviour from that where negative consequences occur to one where positive consequences occur.

75. The authors argue that in those cases where a young person does have significant exposure to the elements as identified, then unless his or her environment can be significantly changed it is more likely than not that the exposure will continue.

76. As such, the authors therefore submit that if a secure youth justice facility provides the right types of supports and guidance, then not only will the exposure to the elements as described not occur when a person is incarcerated but through innovative program design and delivery the service system should be better placed to support those young people who have experienced exposure to the elements as described.

77. As such, the authors argue that the implications of incarcerating young people who have significant exposure to the elements as described should not necessarily be seen as a negative. After all, it ought be that the service provider is better

placed to control the environment of incarceration than the service system has to control the environment in which the young person engages in the community.

78. Indeed, on the above point the authors are critical at the commentary that portrays recidivism as being a result of incarceration. They argue that this totally ignores the environmental factors of the community to which young people return when released from custody.

79. In relation to young people who are incarcerated and who may have mental health or intellectual functioning deficits, the authors submit that in the first instance it is necessary to consider why the individual has been incarcerated. Certainly, while it may well be that the individual's mental health or intellectual functioning has played a part in having committed a crime, the indisputable fact remains that a crime warranting incarceration had been committed.

80. Therefore, unless the global service system has some way of intervening in relation to individuals who have mental health or intellectual functioning issues prior to the crime being committed, then once committed the crime cannot be ignored.

81. However, the significance for individuals with mental health or intellectual functioning issues is what the service system can or is providing for them once they are incarcerated. Clearly, as with any support system, the identification of presenting issues and a needs analysis is necessary. Once done, of course, it is then the nature of the programs and services available to support these individuals that is essential.

82. The youth justice structure as defined by DHHS lists a Youth Justice and Disability Forensic Unit as part of the service mix. The descriptor for this unit is that it '*undertakes review, design and development of specialised statutory services'.* Given the title and description of this unit as detailed by the department, the authors query as to exactly what does this mean. At a surface level it seems reasonable to suggest that it is a unit that has responsibility for supporting young people with mental health and intellectual functioning disabilities through program review and design and the development of specialised services. The question therefore is – What has been the activities and record of this unit specifically when considered in the context of those young people who have been incarcerated and who have mental health or intellectual functioning difficulties?

83. As already noted, the authors cast doubt as to any inference that incarceration is the preeminent precursor to re-offending. They argue that to proceed on the basis that it is could well lead to a flawed outcome.

84. In relation to part B of this Term of Reference, again the authors express concern at the inference conveyed by this particular part. In the first instance, it cannot automatically be argued that the individual is either operating lawfully within his own community or exactly what his community consists of. There seems to be an almost Pollyanna-type inference that the individual's community is supporting and guiding the individual on a pathway of reform. While this would need to be tested for each individual, the assumption that each individual's community is necessarily positive is strongly contested.

85. On the matter of culture, this can either be considered from an ethnic perspective or alternatively on what might simply be called operating in a culture of crime. While cultural influences, other than that of a criminal culture, have the potential

to be supportive and guiding, this will only be so if family and cultural leaders have a significant influence on the young person. One thing that we do know about adolescents is that peer pressure and peer relationships can often have a greater influence on an individual's behaviour than that of family and community leaders.

86. Therefore, again, the authors suggest that it would be unwise to promote the notion that community and culture must be the key determinants in whether or not a young person is incarcerated.

Term of Reference 5: additional options for keeping young people out of youth justice centres.

87. The authors submit that it must firstly be stated and again emphasised and acknowledged that incarceration in a youth justice centre arises a result of a crime having been committed that is determined by the courts to warrant the incarceration of the individuals who committed the crimes. The significance of this statement is that additional options can only be applied if the Magistrate or Judge hearing a particular case determines an alternative to incarceration is appropriate.

88. Therefore, subject to alternative options to that of incarceration being available, and if required any necessary changes to legislation or the decision-making of courts, then the options would seem to be limited to the following.

89. Option 1 – The application of a community based order, noting that this option is already available to magistrates and judges. The assumption being that when incarceration is ordered, then the presiding magistrate or judge has decided the nature of the offence is such that it warrants incarceration and not a community based order.

90. Option 2 - Establishing a process whereby the young person is entrusted into the responsibilities of a nominated significant person related to the young person (as in parent) sibling, but where if there is a further transgression that contradicts the order given by the magistrate or judge, then an immediate custodial sentence is applied.

91. Option 3 – The imposition of a community based order where there is agreement for a secure tracking device to be applied to the young person, with the individual's agreement.

92. Option 4 – The imposition of a community based order with conditions for regular attendance at counselling sessions and other nominated support services appropriate to the young person's needs.

93. While there may be a range of other options that could be considered, the authors again emphasise that while keeping young people out of youth justice centres may well be considered as an admirable objective, unless this action is paired with a complementary set of requirements of the young person, then the objective of simply keeping young people out of the youth justice centres must be seen as a soft option.

94. In relation to the above, the authors emphasise that the committing of a criminal act and the consequences imposed by the law for committing such an act must not be seen as a singular event. In other words, there are more parties to the crime

than just the young person who committed the crime. As such, whatever options might be considered, the rights of the community and particularly where victims are involved, must not be ignored.

95. If criminal and anti-social activities are held to be the result of behavioural deficiencies, then the point of consequences cannot be ignored. Therefore, whatever options may be available, each must ensure a set of consequences that must be imposed on the offender.

Term of Reference 6: the culture, policies, practices and reporting of management at the centres.

96. While it is desirable to build a service system on a particular ideology, the authors argue that given that ideology by definition is a system of beliefs or theories, held by an individual or a group, guiding parameters must be firmly established in the laws relevant to the particular system. Therefore, practical realities such as acknowledging that any service system must be considered in the context of broader governmental and societal responsibilities and also recognising the rights of the broader community cannot be ignored.

97. Given that ideology, by definition, is a system of beliefs or theories, held by an individual or a group this must be taken to mean that it is the ideology that underpins the culture, policies, practices and reporting associated with the management of youth justice centers.

98. While the authors do not deny the significant part that youth justice centres should be able to play in rehabilitation, training and meeting the developmental needs of the inmates, ultimately the ideology should not ignore that in the first instance youth justice centres are places of incarceration because the law has determined that the crime which has been committed requires the punishment of incarceration.

99. Associated with this requirement is the absolute need to ensure that the policies, practices and reporting within the centres are able to meet the duty of care requirements that the department has to both its staff and the inmates. The authors argue that it is a sad indictment on the way in which the department has overseen the management of its two youth justice centres over the past decade or so that there has been so much negativity reported about the operations of the centres. This can only suggest that there is a mis-match between the ideology that drives the cultural parameters which in turn set the policies and practices and reporting requirements to be followed by the management at the centres and the day-to-day practical challenges that face centre management.

100. It is important to highlight that while each of the centres has its own management structure, ultimately the operations of the centres and the policies and practices that guide those operations are dictated by the department's senior management. The authors submit, as is often the case in the public sector, there can be a significant divide between the ideology, policies, practices and reporting requirements as dictated from on high by staff in the head office of an organisation, and the practical realities that are faced by the operational staff on a day to day basis.

101. The authors submit that it would be a worthwhile exercise to ascertain exactly what is the direct operational experience in terms of youth justice centres of the senior bureaucrats who occupy the positions of authority in the department's

head office. The authors submit that youth justice is one of those areas where those ultimately responsible for its operations need more than 'researched ideology' to guide their decision-making.

102. In order to further address this particular Term of Reference, the authors contend the commentary as detailed under the following sets of headings is necessary in order to fully consider what are the culture, policy, practice and reporting requirements imposed by the Youth Justice program leadership team on the management teams within the Youth Justice Centres.

Avoiding diversion and acknowledging it is crimes committed, and not familial and social factors, that lead to incarceration

103. The authors note that significant attention has recently been given to what can be described as an esoteric promotion of the social reasons for juvenile crime. This has tended to cast blame and responsibility on anyone and anything other than the offender himself or herself. The focus has therefore become one of looking for causes of juvenile crime - with a focus on the part played by families, schools, unemployment, mental health, drug use and society in general.

104. This focus has tended to divert attention from the reality that serious crimes have been committed and, as a result of the determination of the courts, particular individuals found guilty of particular crimes have been given a custodial sentence in a Youth Justice Centre.

105. While the authors do not deny the significance of the many factors that can affect young people and their growing up, the reality is that there are many young people who face adversity who do not turn to crime and who certainly do not turn to violence.

106. Apart from this however, the reality is that once a young person has committed and been found guilty of a crime that leads to his or her incarceration, the focus must then be on how best to deal with the person in the Youth Justice Centre. The authors see little value in focusing on ***'what might have been'*** when discussing the out of control behaviour that has been exhibited in both Youth Justice Centres.

Youth is youth – youth are not children or adults

107. Associated with the diversionary debate, human rights advocates and the ideological purists along with particular sections of the media have sought, either deliberately or thoughtlessly, to characterise all those in the juvenile justice system as ***children***. By association, this ill conceived descriptor then has the effect of directing the debate away from the reality that many of those who offend are not children, they are instead adolescents; and in some cases they are adults because they are 18 plus years of age,

108. The authors therefore submit that from an ideological perspective the government must provide an unambiguous descriptor as to what defines ***youth.***

109. The authors contend that a clear line must be drawn between children, youth and adults. This being where children are represented by 10 to 14 years of age inclusive, youth as being adolescents of the ages of 15 and 17 years inclusive and adults as being persons 18 years of age plus.

110. The authors contend that its is quite ridiculous to include adults in facilities defined as Youth Justice Centres, when in Australia the voting age is 18 and hence

determines one as being an adult and in Victoria a person aged 18 can obtain a driver's licence and legally drink alcohol.

111. Therefore, as a first action, the authors urge that an immediate revision must be undertaken to define Youth Justice Centres as being for young offenders between the ages of 15 and 17 years of age only.

Specifying objectives for Youth Justice Centres

112. The authors note that the website for the DHHS lists four objectives (dot pointed) for its Youth Justice program. These are:

(i) *Where appropriate, support diversion of young people charged with an offence from the criminal justice system*

(ii) *Minimise the likelihood of reoffending and further progression into the criminal justice system through supervision that challenges offending behaviours and related attitudes and promotes pro-social behaviours*

(iii) *Work with other services to strengthen community-based options for young people enabling an integrated approach to the provision of support that extends beyond the court order*

(iv) *Engender public support and confidence in the Youth Justice service.*

http://www.dhs.vic.gov.au/__data/assets/pdf_file/0020/660413/Youth-Justice-in-Victoria-fact-sheet-2013.pdf (downloaded 23/01/2017)

113. The authors submit that while it might be argued that each of the four objectives can be applied equally to community based Youth Justice services as well as Youth Justice Centres, they contend that clarification is required in relation to the application of Objectives (i), (ii) and (iii) to Youth Justice Centres.

114. By way of query, it might be argued that when considered in the context of offenders sentenced to a custodial placement in a Youth Justice Centre objective (i) can be taken to mean diversion from the adult criminal justice system. However, the fact remains that by virtue of their custodial sentence, youth offenders are already enmeshed in the criminal justice custodial system.

115. In terms of Objective (ii), the authors acknowledge this as a highly desirable objective for all youth offenders. However, in terms of the use of the word *'supervision'* they contend that this can more reasonably be concluded to relate to the support and *supervision* of young offenders who have not been placed in a custodial centre. As such, they submit there is need to establish a more specific objective applying to the supervision, support and rehabilitation of youth offenders in Youth Justice Centres.

116. In terms of Objective (iii), the authors acknowledge the importance of Youth Justice Services working in partnership with community-based organisations. Thus, while accepting that Objective (iii) can apply to the support and guidance of young offenders when they are released from their custodial sentence, nonetheless they contend the way the objective is written can reasonably be taken as being directed towards youths who have not been given a custodial sentence but instead a Community Based Order

117. In terms of the fourth listed objective, the authors submit that the significant riots that have occurred in the two custodial facilities and the resultant establishment of the Inquiry provide undeniable evidence that the department has failed to *'engender public support and confidence in the youth justice service'* as applying to the custodial facilities.

118. Given the department's failure to meet the fourth objective, the authors again highlight the title of this submission. They argue that the failure to meet this objective brings into recognition that the rights of the community are not only significant when addressing the matter of the delivery of services in Youth Justice Centres, but that the government and those charged with the delivery of Youth Justice services must not deny the community's expectations and rights.

119. Given the above commentary and given the significant part that Youth Justice Centres play as stand-alone specialist facilities, the authors argue that objectives specific to Youth Justice Centres need to be devised.

120. By way of example, the authors submit the following represent desirable objectives specific to Youth Justice Centres:
   (i) Support the youth population of Youth Justice Centres through the provision of mandatory educational, recreational and social leadership programs
   (ii) Minimise the likelihood of reoffending through the provision of supervision and counselling within the Youth Justice Centres that challenges offending behaviours and related attitudes and promotes pro-social behaviours
   *(iii) Establish individual **Exit Release Plans** in conjunction with the individual offender prior to his or her release, identifying the community-based services that can enable an integrated approach to the provision of supports to be provided to the individual post his or her exit from the Youth Justice Centre*
   (iv) Engender public support and confidence in the management of Youth Justice Centres by ensuring they are managed efficiently and effectively and that the management and control of the youth offenders is one that meets community expectations.

Public policy must be scrutinised

121. The DHHS website purports that *'In Victoria the youth justice service is guided by policy to divert young people from entering or progressing further into the criminal justice system, to provide better rehabilitation of high risk offenders, and to deliver pre-release, transition and post-release support programs to reduce their risk of re-offending.'*

122. While such policy objectives are admirable, the authors argue that their effectiveness must be questioned in light of the recent riots and dysfunction occurring in the Youth Justice Centres.

123. As such, the authors therefore submit that unless there is a clear and detailed articulated link between the ideology underpinning Youth Justice services - and as particularly as applying to Youth Justice Centres - the principles guiding service delivery and the stated objectives, as noted further above simply represents bureaucratic feel-good weasel words.

124. The authors therefore submit in the strongest way possible, that an immediate revision is required of the language describing the ideology, the principles and the objectives that guide the public policy associated with Youth Justice Services and Youth Justice Centres in particular.

125. They further submit that the Minister and the bureaucrats responsible for Youth Justice services must be willing to discard the cosy, feel-good, esoteric language and get down to the use of descriptive language and measurable indicators.

126. Specifically in relation to Youth Justice Centres, the authors contend that the language describing the ideology, principles and objectives must not continue to

ignore or minimise the reality that such centres often house hard core recidivists whose crimes go beyond being anti-social. These individuals are hardened young criminals.

127. Thus, unless the ideology, principles and objectives recognise the above, the authors contend that current malaise and the ignoring of reality will continue.

128. The authors acknowledge that it is of course necessary not to deny the importance of the need for the provision of wide-ranging supports for youth offenders, with diversion programs promoting a holistic approach and emphasising rehabilitation as major goal.

129. However, it is a denial of reality to deny that Youth Justice Centres provide secure accommodation for individuals whose crimes the courts have deemed to be of sufficient seriousness to require incarceration and removal from the broader community.

130. As such, the authors contend that the wording of public policy as applying to Youth Justice Centres must acknowledge the Centres primary purpose; and further, the policy must be translated into measurable performance indicators.

131. On the matter of performance indicators, the authors express concern as to the failure of those responsible for establishing the Inquiry and the calling for submissions not to have provided a suite of useful information sheets. For example, what does the data show if DHHS does maintain date in relation to:

- Number of admissions to Youth Justice Centres in the age groups 18, 19 and 20
- Number of current population in Youth Justice Centres who have been placed in a Youth Justice Centre more than once
- Definition and distribution of the types of crimes that have led to custodial sentences
- Number of the inmates in Youth Justice Centres, and, as a percentage of the total number, how many have been involved in riots over the past 12 months
- Number of individuals on remand in Youth Justice Centres for each of the past twelve months
- Average length of remand over the past 12 months
- Number of individuals on remand over past 12 months who were found not guilty, number placed on Community Based Orders and number given a custodial sentence

The writers urge that such information, if available, be published on the Inquiry's website, or requested of DHHS by the Committee and made public.

Not denying the necessity of security, control and safety

132. As an outcome of the Inquiry, the Committee must ensure that the language of the ideology, principles and objectives for Youth Justice Centres acknowledges that such centres are custodial centres. Therefore, security and control must first and foremost be the primary objective.

133. As such, the authors of this submission contend that the management of the centres and the youth population housed in them, and the delivery of programs and supports, must always be undertaken within the context of the centres being secure, custodial facilities.

134. Unless the current fuzzy language used to describe the ideology, principles and objectives ceases to be used for what is in effect a promotion of the Youth Justice Program as though it is the font of all that is effective, the departmental Secretary and public servants responsible for the program design and management of Youth Justice Centres in this state will continue to avoid performance scrutiny.

Term of Reference 7: the role of the Department of Health and Human Services in overseeing practices at the centres.

135. The evidence is clear; DHHS senior management has failed in its responsibilities for overseeing the operations and practices at the two Youth Justice Centres.

136. This conclusion seems already to have been accepted by the government by the fact that responsibility for Youth Justice centres will be transferred from DHHS to the Department of Justice as from 1 April 2017.

Term of Reference 8: any other issues the Committee considers relevant.

What is Youth Justice?

137. In order to satisfactorily and comprehensively address each of the Terms of Reference, the authors submit that the Committee must address the question of – ***What is Youth Justice?*** The authors argue this position on the basis that other than identifying the various program arms of Youth Justice neither the government nor DHHS have provided an unambiguous descriptor.

138. The authors argue that in the absence of a definition with particular emphasis on - What constitutes ***youth*** and what does the word ***justice*** mean? The parameters of each Term of Reference runs the risk of being variable to the degree that different interpretations will yield differing outcomes.

139. The authors further argue that specific to the Inquiry and in order to address the many issues associated with the current Youth Justice Centres it is first and foremost essential to address the question of - ***What is Youth Justice?*** The significance of this being who should be the target groups for admission to Youth Justice Centres.

140. While the DHHS website defines the programs and structure of Youth Justice Services, the department fails to define Youth Justice in terms of what it actually means.

141. It seems reasonable to assume that the two words that define the over-all program as in ***Youth*** and ***Justice*** are meant to convey a specific meaning that can be associated with each word.

142. In addressing the word ***Youth***, the authors refer to their comments above as to the fact that youth should not embrace children as in 10 to 14 year olds or adult as in individual 18 years and over. Therefore, if the word *Youth* in the service descriptor ***Youth Justice*** is to have an exact meaning the programs associated with Youth Justice must be for youth only, as in young people 15 to 17 years of age inclusive.

143. The authors note that in terms of making a distinction between children and youth, their position is supported by a DHHS Fact Sheet that provides commentary on the Children, Youth and Families Act 2005 (the Act). By reference

to children 10 to 14 years and under 15 years of age, this clearly makes a distinction between children and youth.

144. Indeed, although a definition for youth is not provided in the Act, and in some ways the Act is somewhat incongruent in terms of making a distinction between children and youth, by reference to particular sections specific to youth, as for example *s. 391(b) - Youth Attendance Orders* and *s. 412 (b) – Youth Justice Orders*, it is reasonable to conclude that the Act has determined that youth are not individuals 10 to 14 years of age but are individuals 15 years and over.

145. Again however, the Act is somewhat incongruent in defining an upper age for youth and thus making a distinction between youth and adults.

146. By way of example s*.412 (1)2(b) – Youth Justice Centre Orders* makes reference to a child '*aged 15 years or more but under 21 years*'

147. By reference to the above section of the Act, the authors again submit that by reference to '*but under 21 years*', the Act is in time warp to suggest that youth encompasses individuals 18 years of age up to 21 years.

148. Thus, when it comes to the use of the word *Youth* in the title – *Youth Justice* – there is no consistency and the term does not accurately describe the full range of age grouping from 10 to 21 years of age. This is pure nonsense.

149. In considering the word ***Justice*** in the descriptor ***Youth Justice***, what meaning does this word convey or what is intended to mean?

150. DHHS identifies ***Youth Justice Services*** as comprising the program components of:
- A Youth Justice and Disability Forensic Unit responsible for undertaking review, design and the development of specialised statutory services.
- Youth Justice Teams, which are area-based, statewide teams providing supervision to young people on statutory orders residing in the community.
- Youth Justice Custodial Services that are responsible for the operation and management of youth justice centres.

151. Therefore, given the statutory nature of each element of the services and in particular that the individuals directed to either the community based or custodial services are as a result of court orders, the logical conclusion must be that the principal responsibility of Youth Justice Services is justice in accordance with the administration of the law.

152. Thus, given that courts impose penalties as a result of crimes committed then again logic suggests that the term ***justice*** relates to the law and as applying to a penalty imposed on the perpetrator. Additionally, given that society has a right to be protected by the law and that victims of crimes may have a right to submit a Victim Impact Statement and also to compensation, then justice must also be considered from these perspectives.

153. The combination of the above strongly suggests that the descriptor ***Youth Justice*** must be brought into question. It is ambiguous, it ignores the rights of the community and the victim and it fails to recognise that is a criminal act that has brought the individual into contact with the justice system.

A new nomenclature

154. The authors therefore promote the introduction of the descriptor ***Youth Criminal Justice Programs***. This approach should then distinguish between community-based programs and secure services as in – ***Youth Criminal Community Based Justice Programs*** to replace Youth Justice Community Based Orders and ***Youth Criminal Justice Secure*** **Facility** or Facilities to replace Youth Justice Centres.

155. On the basis of the above, the authors therefore urge the Committee to recommend the descriptors as detailed immediately above. Further, that the term youth be defined as being young people 15 to 17 years of age inclusive.

SECTION E – Six Green Light Actions

156. The Overview of this submission identified six key areas that must be addressed in order to ensure the rectification of the problems currently plaguing the Youth Justice Centres.

157. Youth Justice Centres must be able to operate in a way that ensures they meet their stated objectives including their primary purpose as custodial facilities. Essentially, this must mean that the staff are able to go about their work with a sense of safety and support and that the public has confidence that the system is secure, well-managed and that public funds are being used to the greatest degree of efficiency and effectiveness.

158. However, notwithstanding the significance of each of the six areas as addressed below, the authors emphasise that each must be seen as being in a co-dependency relationship with each of the others. Therefore, the authors argue that a comprehensive approach is required in order to reform how Youth Justice Centres are managed. A piecemeal or softly-softly approach will offer little by way of change.

Green Light Action1 – Moribund management – relocate the Juvenile Justice Program

159. The DHHS website identifies the structure of the Youth Justice Service as comprising:

- A Youth Justice and Disability Forensic Unit responsible for undertaking review, design and the development of specialised statutory services.
- Youth Justice Teams, which are area-based, statewide teams providing supervision to young people on statutory orders residing in the community.
- Youth Justice Custodial Services that are responsible for the operation and management of youth justice centres as in:
  - Parkville Youth Residential Centre: 10 - 14 year old males; 10 – 20 year old females.
  - Melbourne Youth Justice Centre: 15 - 18 year old males.
  - Malmsbury Secure Youth Justice Centre: 15 - 20 year old males.
  - Malmsbury Senior Youth Justice Centre: 18 – 20 year old males.

160. Despite the Performance Measures detailed in the DHHS 2015-2016 Annual Report, the authors of this submission contend that the details listed provided little if any real clarify as to how the department performed in each of the three program arms.

Green Light Action 2 - The language of youth justice and classification

161. Associated with the above is a consideration to ensure that the language of the crimes committed by individuals is definitive and thus allowing for more appropriate classification of clients into appropriate groupings.

162. In terms of defining the nature of the crimes, and the nature of the individuals who commit the crimes and have been sentenced for such criminal activity, the authors again highlight the diversionary language that has often recently been espoused by the media and the ideological purists. The authors see little value in constantly referring to hard-core criminal youth as children. They see little value in the attempts to redirect the public's impressions of the nature of the crimes committed as though the crimes are of minimal consequence.

163. The reality is that a number of those who have committed crimes can already be defined as hard-core criminals. They can be defined as having committed serious and violent crimes. They can be defined as having no respect for authority and no respect for other members of the community. The authors therefore argue that the social work language of youth justice must not be allowed to dominate to the point where it seeks to minimise the seriousness of the criminal activities committed by young criminals, and the effects on the victims of such crimes.

164. The authors applaud any effort to rehabilitate and to reduce the risk of recidivism. However, they argue that seeming to minimise the seriousness of criminal activity by a number of young people adds no value whatsoever.

165. While not being in a position to know what currently occurs in terms of how offenders are classified when they enter a Youth Justice Centre, for example, is it that the nature of their offences and whether some are a repeat offender is taken into account? The authors submit that whatever system currently operates the classification and grouping of offenders must be considered as key issue.

Green Light Action 3- Facilities and fabric

166. Given this submission is concerned with the Youth Justice Custodial Services, the authors submit that the starting point for reform must be how the term ***youth*** is defined. As already noted in Section A above, the authors contend that this must be undertaken as an immediate action.

167. As previously noted, the current Youth Justice Custodial Services are listed as the Melbourne Juvenile Justice Centre and the Malmsbury Centre. Operationally however, these are separated into two entities.

168. Notwithstanding the structural divisions however, each of the four entities is identified as being for ***youth.*** Yet, despite this, the authors note that the descriptor ***youth*** embraces:
- *Young boys 10 – 14*
- *Young girls 10 – 14*
- *Teenage girls 15 – 17*
- *Adult women 18 – 20*
- *Teenage boys 15 – 17*
- *Adult men 18 - 20*

169. As already stated further above, but again emphasised here, the authors contend that a clear line must be drawn between ***children, youth and adults***. This being where children are represented by the ages 10 to 14 years of age inclusive, youth as being adolescents inclusive of the ages of 15 and 17 years and adults as being persons 18 years of age plus.

170. The authors again contend that it is quite ridiculous to include adults in facilities defined as ***Youth Justice Centres*** when in Australia the voting age is 18 and hence determines one as being an adult and that in Victoria a person can obtain a driver's licence and legally drink alcohol or place wagers at 18 years of age. People of this age are neither children nor youth.

171. Therefore, as a first action, the authors urge that an immediate revision must be undertaken to define Youth Justice Centres as being for young offenders between the ages of 15 and 17 years of age only.

Implications for the current structure of the two Youth Justice Centres

172. Clearly the adoption of the proposal above has significance for the structure of the current centres, or indeed any proposed new centres.

173. By adopting the definitions of children, youth and adults as detailed above, and taking into account previous comments distinguishing between children 10-14 on community based orders and 10-14 year sentenced to a custodial period, as well as separating adults totally from the youth justice system, the authors propose the following.

Redefining the Malmsbury Centre – a custodial facility for children aged 10-14 years.

174. Given that millions of dollars have been expended on the Malmsbury Centre over recent years, and any proposed sale of the land and buildings is unlikely to realise a windfall for the government, the authors submit that this Centre should be redefined.

175. The purpose of Malmsbury should be to accommodate both males and females 10 to 14 years of age who have been sentenced to a custodial period.

176. While the authors acknowledge that maintaining the Malmsbury Centre would entail maintaining a separate management infrastructure, and further that the Centre is approximately an hour road travel time from Melbourne, nonetheless the authors contend that it would be far preferable to house children in a facility totally separate from the 'fit for purpose high security youth justice centre' proposed to be built at Werribee South and to include 224 beds for remand and sentenced clients, a 12 bed mental health unit and an intensive supervision unit of at least 8 beds.

A Replacement for the Melbourne Juvenile Justice Centre at Parkville

177. While the authors have already noted the Premier's recent announcement establishing a new centre at Werribee South, and as a general comment they support this initiative, nonetheless they emphasise that their support is subject to the following provisions.

178. Firstly, not housing custodial sentenced children aged 10-14 in that facility, but instead in a separate facility as detailed above.

179. Secondly, although noting the inclusion of remand individuals in the new facility, the design of the new centre must ensure that the remand section of the facility is completely separate in all aspects from that of the sentenced individuals.

180. To emphasise this matter, the authors contend that program, including educational and recreational activities, must be delivered separately to remand and sentenced individuals.

181. Although not having had access to the 'design imperatives' outlined by the former Commissioner of Police, Neil Comrie, AO APM, and the Premier advising that these 'design imperatives' will be incorporated into the new facility, the authors emphasise and trust that the imperatives will include security and safety of both clients and staff as the number one priority. Further, that the lessons learnt from the riots and vandalism created at both Malmsbury and Parkville must ensure such things as no access to roof areas, no access to equipment or other devices that can be used as weapons, an ability to separate clients into small groups, thus avoiding the congregation of a large number of clients and an increased difficulty in quelling riots.

182. An expressed criticism of the current Youth Justice system is incarceration in the same facility of those individuals who are on remand and therefore awaiting sentence with those individuals who are serving a custodial sentence. Several years ago the government of the day saw fit to establish a separate remand centre for adults awaiting sentence. The authors submit that a separate remand facility should also be established for young people who are awaiting sentence. Clearly the advantage of such a facility means that those people on remand are kept separate from those people who are serving their custodial sentences.

183. While the authors are not in a position to know the current number of individuals on remand and whether separate arrangements operate compared with those who are sentenced and serving a custodial sentence, they suggest that if for no other reason it should be considered as desirable that individuals on remand are not included in the same programs or accommodated in the same facility as those individuals serving sentences.

184. Notwithstanding the above, however, the authors are also alert to the criticism that suggests those individuals on remand often spend a significant amount of time incarcerated prior to their cases coming before the courts. As such, the authors therefore further argue that an urgent review of the court processes for dealing with youth remand must be held so as to ensure minimum time is spent in remand.

Green Light Action 4 – Centre management, staffing and OH&S

185. There is a need to ensure that whatever department is responsible in the future for managing Youth Justice Centres has staff who are suitably experienced in managing a large secure facility and that these staff are not bound by restrictive policies and practices imposed by remote managers from the head office.

186. There must be a clearly defined recruitment policy aimed at ensuring suitably qualified, experienced and capable staff are recruited to staff the facilities. In the first instance, this should ensure that such staff are capable of managing all types of inmates.

187. On the matter of occupational health and safety, the authors submit that this is as much about the fabric and security of the facility as it is about the relationship between staff and inmates. Clearly, staff to inmate ratios may well be a significant consideration, this being not only in terms of having the ability to provide suitable program activities, but also in terms of increasing the safety and well being of staff.

Green Light Action 5 – Consequences and privileges

188. The matter of consequences and privileges, as in what types of responses may be imposed on inmates for inappropriate behaviours, and what types of rewards or privileges might be granted for desirable behaviour cannot be divorced from the policies and practices imposed on centre management.

189. The authors are concerned as to whether or not basic behavioural management principles are either understood or applied within the context of managing inmates. One of the most basic principles of course is that of rewarding desirable behaviour and not rewarding undesirable behaviour. Underlying an effective behavioural management program which may either be applied on a one-to-one basis or a group basis is the matter of having clearly articulated and published outcomes associated with particular types of behaviours.

190. IN the context of consequences and privileges, the authors introduce the concept of what might be called a leadership developmental program for inmates. Certainly, if this were to be done, then the application of positive consequences and privileges for the exhibition of desirable behaviours could then well apply. While not in a position to have knowledge of what if any consequences have been applied to undesirable behaviour exhibited by inmates in the past, the authors urge the committee to seek information and documentation associated with such practices, if indeed any such information exists.

Green Light Action 6 - Legislative review

191. The *Children, Youth and Families Act 2005* (CYFA) has been defined by DHHS as being the principal legislation for the youth justice service. The CYFA provides the framework for the youth justice, child protection, out of home care and family services together with the constitution for the Children's Court of Victoria, as a specialist court dealing with matters relating to children.

192. In addition to the CYFA, other legislation relevant to the operation of the youth justice service includes:
- *Sentencing Act 1991*
- *Crimes Act 1958*
- *Bail Act 1977*
- *Sex Offenders Registration Act 2004*
- *Family Violence Protection Act 2008*

193. While it likely that each of the Acts as detailed above will continue to apply, the authors urge that the current Children, Youth and Families Act 2005 be reviewed with the aim of separating youth justice from any revision of the Act.

194. Again the authors point to comments made further above in relation to the need to have a clear distinction between children, youth and adults. They also further point to their comments in regards to the need for new nomenclature. The authors see little point in the government making pronouncements about the establishment of a new secure facility, the transfer of Youth Justice Centres to the Justice department, unless there is concomitant change to legislation.

SECTION F – Lost in Translation

195. The Youth Justice secure or centre-based system of today is vastly different in structure to that of several decades ago.

196. The authors accept that change can be considered as a product of development. Equally, however, they also submit that of itself change does not necessarily denote improvement. Therefore, they submit that the changes that have occurred are worthy of commentary, as is a comparison with the approach taken to the way the adult secure services system is structured.

197. As such they submit that these factors are worthy of consideration by the Committee.

198. Understandably, the approach to what is now known as youth justice has changed considerably. In part, this has been as a result of changes to legislation as well as changes from the concept to what used to be known as children's welfare to that of separating the concept of welfare from offending. Until the mid-1950s the centre known as Turana, which of course more recently became the Melbourne Youth Justice Centre, was in effect a receiving depot for girls and boys from infancy to 18 years of age who came into the care of the State government, whether by way of having committed offences or for the purpose of what was known as care and protection.

199. Although at that time described as a '*receiving depot*' some of the children were then sent from Turana to various government and non-government institutions throughout the State. Significantly, however, those children who were deemed 'difficult' to handle or who required psychiatric treatment or who were due to appear in court were either retained or returned to Turana.

200. Either as a result of a change in ideology or what was occurring elsewhere, a separate institution known as Winlaton Youth Training Centre was established for young women aged 14-18 years of age in 1956. In order to better cater for children, that is, 10-13 years of age, the Pirra Children's Home and the Allambie Reception Centre were established in 1960.

201. It is also worthy of note that although currently used as a minimum security prison for adult prisoners, Langi Kal Kal originally operated as a minimum security facility for youth.

202. The significance of the above historical perspective is that changing ideology through the 1950s dictated that it was desirable to separate children from youth and further, that it was desirable to separate female from males. Again, and as a result of changing ideology, the approach to dealing with children and youth was tipped on its head some years later.

203. Therefore, notwithstanding the recent transfer of some inmates to the Grevillea Unit of the Barwon prison, the structure of the Youth Justice secure or centre-based system is now somewhat of a mish-mash. As an example, what became known as the Melbourne Youth Justice Centre which became operational in 1993 houses a combination of youth and adults in that a number of the inmates are 18 years plus. There are both remand and sentenced inmates housed in the same facility and there appears to be no clear detail as to how the inmates are grouped and if account is taken of the severity of the crimes committed, separating and providing specialist program supports for inmates with mental

health issues or who have an intellectual disability, and where what might be called hard-core recidivists are separated from first time inmates.

204. While physically separated, children, both boys and girls, aged 10-14, female youth and adult youth up to the age of 21 are housed in a separate secure facility located on the same site as the Melbourne Youth Justice Centre. The Malmsbury Centre, while originally established as a minimum security facility and primarily for youth up to17 years of age, was reconfigured some years ago to include a high security facility on the same site. Of further significance, the age of inmates was extended to include adults up to the age of 21.

205. Therefore, taking consideration of the more recent changes, and comparing and contrasting them to the structural reforms that occurred in the 1950s and into the 1960s, it can be seen that the youth justice secure system of today is not only vastly different to that of several decades ago but can reasonably be argued to give less recognition to the differences in age cohorts. Whether the changes were driven in part by ideology and in part by an attempt to control the cost of the youth justice system is something of a moot point.

206. The real question, however, must be as to whether the changes are the best way of meeting the needs of the different cohorts and recognising the desirability of separating females and males, children from youth, youth from adults, while at the same time addressing time lags created by remand, the variable nature of crimes, and the desirability of separating first time offenders from hard core recidivists.

207. While not necessarily suggesting that a youth justice system should reflect the structure and approaches taken by an adult justice system, nonetheless the authors contend that the current differences between the two systems is worthy of reflection. Some years ago the then government deemed it necessary and desirable to establish a totally separate remand centre for adult offenders awaiting trial, and hence the establishment of the Melbourne Remand Centre. The adult prison system also acknowledges the variable nature of crimes, and the desirability of separating low-risk prisoners from high-risk prisoners. Hence the adult system ranges from having prisons of the type of maximum security, as in the Barwon prison, through to minimum security facilities such as Sale and Langi Kal Kal. The system also attempts to separate prisoners who have committed what are deemed to be white-collar crime from those who have committed hard core crimes as well as separating prisoners who have committed sexual offences.

208. Additionally, the adult system has seen the need to totally separate in separate facilities, female prisoners from male prisoners.

209. Therefore by contrast, despite the generally accepted view as to the vulnerability of children and youth, the ideology that has driven the youth justice system over recent years has not seen fit to establish secure facilities best able to cater for the separation of children and youth and young adults and the variable nature of the offences for which they have been incarcerated.

210. As noted by the title of this section – Lost in Translation – the authors point to the dangers created by ideologically driven systems as opposed to systems where the structure and service profiles are best designed to meet the practical considerations of those whose needs are supposed to be met by the system.

211. Therefore, the authors urge the committee to consider the following principles as being critical to their considerations.

212. **Principle One**: Children should be defined by the age grouping 10-14 years.

213. **Principle Two**: Children should not be housed in either the same facility or same location as youth.

214. **Principle Three**: Youth should be defined by the age grouping 15-17 years and by contrast adults are individuals aged 18 years plus.

215. **Principle Four**: Youth should not be housed in either the same facility or same location as adults.

216. **Principle Five**: There is separation in terms of facilities and location between females and males, for both the children age cohort and the youth age cohort.

217. **Principle Six**: There should be a separate facility to accommodate those individuals who are on remand.

218. **Principle Seven**: Time spent on remand should be minimal and the minimisation of such time should be facilitated by an efficient court system.

219. **Principle Eight**: Secure facilities are able to ensure the combination of security, safety, duty of care, rehabilitative supports and meeting psychosocial needs.

220. **Principle Nine**: Recognition is demonstrated through policy, structure and program delivery as to the differing needs between first-time offenders and hard-core recidivists and the variable nature of criminal offences.

221. **Principle Ten**: The provision of youth justice secure services must recognise and take account of the fact that the general community also has rights. These rights include an expectation that the community's safety will be taken into account, an expectation that secure facilities will operate as secure facilities, and an expectation that public money expended on youth justice secure services will be spent efficiently and effectively.

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End of Submission