

Opening Statement Brendan Murray Parliamentary Inquiry into Youth Justice

My name is Brendan Murray. I oversaw the establishment of Parkville College and held the position of Principal until March 2017. Parkville College is a Victorian Government School providing school based education 52 weeks per year, including weekends, to students detained in custody in Victoria.

The problem

My experience working within Youth Justice Centres and with thousands of young people in custody suggests that the current crisis in Youth Justice Centres boils down to:

- 1) Poor governance and a lack of independent and specialist oversight of Youth Justice Centres. This has allowed decisions to be made based on the political priorities of the Government rather than what is in the best interests of detainees.
- 2) A failure to understand and comply with applicable legislative requirements, and falling well below international minimum requirements for the care of children in custodial detention. This has led to unlawful and harmful practices with dire consequences for detainees, custodial staff and the community.

I would like to use this opportunity to briefly expand on each of these issues, before sharing what I believe is the solution to the current crisis.

1) Poor governance and a lack of independent oversight

The State Government, acting through Ministers, Secretaries and Departments, is responsible for the collapse of Youth Justice Centres in Victoria. Its administration of the Centres has been highly incompetent. It has been heavily influenced by political factors. There has been a consistent failure to make decisions in the best interests of the children and young people detained in the Centres as well as repeated non-compliance with mandatory legal obligations.

This has been made clear by recent Supreme Court of Victoria findings. Even while Victoria has been the focus of intense scrutiny and litigation, the Government, acting through the Ministers, Secretaries and Departments, was found by the Supreme Court to be 'flying blind' and merely 'providing lip service' to their legal obligations in the oversight and administration of Youth Justice Centres. On multiple occasions now, the Government, Secretary and Department/s have detained children unlawfully and breached the Victorian *Charter of Human Rights and Responsibilities Act 2006*. This is shameful and unacceptable.

Even more concerning is that many of the unlawful and harmful practices exposed in the course of the Supreme Court legal challenge to the detention of children at Barwon Prison are entrenched and commonplace across all of Victoria's Youth Justice Centres. Such a claim comes as no surprise given recent reports including *The Same Four Walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system* by the Principal Commissioner for Children and Young People and *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville* by the Victorian Ombudsman, as well as internal and confidential reports commissioned by the Victorian Government.

The Commission for Children and Young People (CCYP) and the Ombudsman have oversight of the Centres. However, the CCYP has struggled to obtain accurate information from the Government and Department for its inquiry. The Ombudsman can compel the provision of information but has a wide jurisdiction, which makes it difficult to have close and ongoing oversight of the administration of Youth Justice Centres.

2) A failure to understand and implement essential legislative requirements including international minimum standards pertaining to children and youth in juvenile detention.

The young people I have taught in custody are the most vulnerable children in the State: vulnerable to being both subjected to harm and in subjecting others to harm.

The *Children, Youth and Families Act 2005* requires that 'the best interests of the child must always be paramount' (s 10). There has been a blatant disregard for the paramount principle of the 'best interest' of children and youth in Youth Justice Centres. The same applies for the decision-making principles prescribed by the *Children, Youth and Families Act 2005*. They have not been applied at critical junctures within decision-making processes of Youth Justice Centres at a macro level or micro level. Again, in one of the recent legal findings, the Supreme Court of Victoria adjudged that not only did the Minister, Secretary and State not adhere to minimum standards of protection, care, custody or treatment, but even more damning was the lack of any actual consideration in this area: 'no attention was paid to the form of protection, care, custody or treatment that was in the best interests of the young persons transferred to the Grevillea unit.'

This Committee would have difficulty locating any documents or case plans of a child detained in custody in a Victorian Youth Justice Centre that prioritises the best interests of the child or a young person's development and measures that development against the required areas of physical, social, emotional, intellectual, cultural and spiritual development, as outlined in the *Children, Youth and Families Act 2005*. Additionally, I believe the Committee would not be able to find evidence that the best interests (and developmental needs) of children and young people have been assessed, as the paramount consideration, with the preliminary planning of a new Youth Justice Centre at Cherry Creek.

The opportunity

The solution is simply to reform the governance system for Youth Justice Centres so that it follows United Nations guidelines that are developed to ensure the best interests, safety and wellbeing of children and young people in custody. This will lead to our shared goal of a safer community, in the best interest of all Victorians.

The first step is to follow the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* and establish a Competent Authority as the governing body of the Youth Justice Centres. This body would be an independent statutory authority generally accountable to the Minister but not subject to the direction and control of the Minister. Instead of vesting powers and functions in the Secretary, the *Children, Youth and Families Act 2005* would give those responsibilities to the Competent Authority.

The Competent Authority must 'oversee the protection of the individual rights of juveniles, with special regard to the legality of detention measures' (*United Nations Rules for the Protection of Juveniles Deprived of their Liberty*).

The second step is to establish, as per United Nations guidelines, a Duly Constituted Body (see *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*), that performs the oversight role. It pursues the objective of securing social integration of juvenile detainees by regular inspections and other means of control to ensure that rules, legislation and international agreements regarding the operation of Youth Justice Centres are being upheld by the administration. Again, the function and utility of this body is outlined in the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, but importantly includes regular unannounced inspections, investigations and reporting to the Competent Authority who can then ensure operational compliance and prosecution of those failing to uphold rules, legislations and international agreements.

Lastly, it is critical that a Competent Administration is developed that is responsible for the operation of the Youth Justice Centres in accordance with the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*, otherwise known as the *Beijing Rules*. The role of the Competent Administration is accountable to the Competent Authority. It is multi-faceted, but must prioritise the 'careful selection', recruitment and development of qualified staff, 'since the proper management of the detention facilities depends staff integrity, humanity, ability and professional capacity to deal with juveniles detained in custody' (*United Nations Rules for the Protection of Juveniles Deprived of their Liberty*). The personnel of a Youth justice Centre should understand youth justice as a 'social service' and be continually encouraged to fulfil their duties and obligations in 'a humane, committed, professional, fair and efficient manner', and to conduct themselves at all times in such a way as 'to deserve and gain the respect of the juveniles, and to provide juveniles with a positive role model and perspective' (*United Nations Rules for the Protection of Juveniles Deprived of their Liberty*).

In short:

The Competent Authority makes decisions in the best interests of children and young people and ensures the effective governance of Youth Justice Centres. The Competent Authority is responsible for the adherence of Youth Justice Centres to relevant legislation and minimum standards of care, protection, custody and treatment of juveniles detained in Youth Justice Centres.

A Duly Constituted Body inspects, investigates and reports on the function of the Competent Administration and its ability to fulfil its obligations and duties to implement the decisions made by the Competent Authority (operation of the Youth Justice Centre). Further to this, it makes recommendations to the Competent Authority for adjustments to be made in the administration of Youth Justice Centres to ensure compliance with essential rules, laws and international agreements.

A Competent Administration implements the decision of the Competent Authority and is responsible for the operation of the Youth Justice Centres. A fundamental aspect of the role of the Competent Administration is the employment and development of carefully selected and suitably qualified staff to discharge the duties and obligations of the administration. I would direct the Committee's attention to the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice ('The Beijing Rules')* as a guiding framework for the administration of Youth Justice Centres and to work with young people in Youth Justice Centres.

Conclusion

Building higher or new walls will not solve the crisis in Youth Justice Centres in Victoria. Following international guidelines by reforming the governance framework will.

We do not need to reinvent the wheel. The *Children, Youth and Families Act 2005* combined with the Victorian *Charter of Human Rights and Responsibilities Act 2006* provide a robust and clear framework for the work to be done towards realising an effective and exemplary system of Youth Justice in Victoria. The problem is that Government, acting through Ministers, Secretaries and Departments is incapable to administer and comply with these Acts because they are vulnerable to politicisation. A Minister will not even dare make a public announcement that they will always act in the best interests of a detainee even though this is irrefutably the law, through fear of losing a political vote. The United Nations guidelines set out below identify governance models, which are designed to avoid this problem.

International Standards relating to children in the criminal justice system

The Convention on the Rights of the Child

The United Nations Guidelines for the Prevention of Juvenile Delinquency

United Nations Standard Minimum Rules for the Administration of Juvenile Justice

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty

The United Nations Standard Minimum Rules for Non-custodial Measures

The United Nations Guidelines for Action on Children in the Criminal Justice System

The United Nations Manual for the Measurement of Juvenile Justice Indicators

The United Nations Basic Principles on the use of Restorative Justice Programmes in Criminal Matters

The United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime