SUBMISSION TO THE YOUTH JUSTICE AND CHILD WELLBEING REFORM ACROSS AUSTRALIA PROJECT

Background

I am a Magistrate who sits in the Children's Court of Victoria. I have sat on the Bench for almost 25 years and for the majority of that time, I have sat in the Children's Court. I sit in both the Criminal and Family (child protection) Divisions of the Court. I am also the Supervising Magistrate for the Children's Koori Court and I chair the Crossover Research Advisory Committee. I am also a Churchill Fellow. I make this submission in my capacity as a Churchill Fellow.

The research (for example, the Youth Parole Board Annual Reports) overwhelmingly confirms the inextricable link between children and young people using substances, committing criminal offences and becoming part of the criminal justice system. The research (Sentencing Advisory Council and Monash University studies of crossover children) also confirms the critical role that substance use plays in the lives of crossover children who also appear in child protection proceedings. My research into emergency care warrants issued for children missing from care, also confirms this to be the case.

I was awarded a Churchill Fellowship in 2014. I applied for the Fellowship due to my concern that a significant number of children and young people appearing before both Divisions of the Children's Court had significant substance misuse issues and were not engaging in treatment. Sadly, this was frequently part of an intergenerational cycle which continued to perpetuate itself. I wanted to see how this cycle could be broken by researching whether Court mandated substance abuse treatment could be effective, for those not voluntarily engaging in treatment.

I travelled to Sweden, England, Scotland and New Zealand. I visited a broad range of facilities in these countries and spoke to professionals and the children and young people at the facilities. I confirmed that, provided critical features are present, mandated treatment can be as effective as voluntary treatment. In my Churchill Fellowship Report I explain those critical features and recommend that Children's Courts have the power to make Youth Therapeutic Orders in both the Criminal and Family Divisions of the Court which would mandate treatment for children and young people. The Orders would provide a therapeutic, holistic health-based treatment approach, promoting their human rights rather than being draconian punishment-based orders. I also recommend that Children's Courts initiate crossover lists for those appearing before both Divisions of the Court. I have, with the consent of the parties introduced informal crossover lists.

Q 1. WHAT FACTORS CONTRIBUTE TO CHILDREN'S AND YOUNG PERSONS' INVOLVEMENT IN THE YOUTH JUSTICE SYSTEMS IN AUSTRALIA?

The research as contained in the Youth Parole Board of Victoria Annual Reports confirm each year the characteristics of those children and young people in custody on a particular date. Each year the Table includes the percentage of those in custody to which the relevant characteristic applies. It was previously possible to directly compare the relevant categories

and percentages but in 2020/21 the categories of characteristics were slightly modified. There is still a consistency of characteristics. They confirm the factors relevant to the children and young persons' involvement in the youth justice system including:

- A history of use or misuse of substances – alcohol and/or illicit substances;
- Offending whilst under the influence of alcohol and/or illicit substances;
- Victim of abuse, trauma or neglect;
- Has been subject to a current or previous child protection order;
- Has experienced family violence;
- Has a history of mental health including self-harm, suicidal ideation or suicide attempts;
- Has a cognitive disability;
- Has been expelled or suspended from school;
- Is a parent.

Please find attached the link to the Youth Parole Board of Victoria Annual Reports 1999/2000 to 2021/22 for your convenience. The first reference to characteristics of the young people in detention is referred to in the 2005/2006 Annual Report. The statistics commence and continue from the 2006/2007 Annual Report to date. Sadly, there is remarkable consistency in the personal characteristics of the children and young people in custody. I have also attached a chart outlining four key sets of figures entitled 'Children and Young People in Custody' which confirms this consistency.

As in all jurisdictions, custody is the last resort. From my experience sitting in the Children's Court, many of those young people appearing before the Criminal Division (who are not in custody), also possess these same characteristics.

In addition, whilst the categories of characteristics do not include Aboriginal and Torres Strait Islander children and young people, it is axiomatic that our First Nations Peoples are overrepresented in the criminal justice (and child protection) systems. In 2013/2014 Aboriginal and Torres Strait Islander children were 13 times more likely than non-aboriginal children to be in detention[1] and 16 times more likely to be in out of home care[2]. Mr Andrew Jackomos, the former Victorian Commissioner for Aboriginal Children and Young People, highlighted the sad trajectory of many who have started in out-of-home care: '*Two thirds of Aboriginal children in the youth justice system have graduated from out-of-home care and it is understood two thirds of those in adult prison have graduated from youth justice.'*[3]

The relevance of child protection involvement in many of these children's lives, confirms the intergenerational cycles to which many of these children and young people are exposed. The research conducted by the Sentencing Advisory Council in 2020 entitled *'Crossover Kids – Vulnerable Children in the Youth justice System- Report 2 – Children at the Intersection of Child Protection and Youth Justice Across Victoria'* reviewed 892 crossover children. The Monash University Study – '*Crossover Kids – Effective responses to Children and Young People in the*

[1] Commission for Children and Young People (CCYP). "Commission for Children and Young People Annual Report 2013-2014", Melbourne: Victorian Government, 2014, p 17.
[2] CCYP Annual Report 2013-2014, p 37.
[3] CCYP Annual Report 2013-2014, p 6.

Youth Justice and Statutory Child Protection Systems (2019)[4]examined the files of 300 children appearing before both the Criminal and Family Divisions of the Children's Court of Victoria.

Each study confirmed the over representation of Aboriginal and Torres Strait Islander children and young people. Whilst at the time of this research only 1.6% of Victorians aged 10 to 20 were Aboriginal or Torres Strait Islanders, both studies confirmed 18% of the crossover children were Aboriginal or Torres Strait Islanders.

The Monash University research also confirmed in relation to the crossover children:

- 74% experienced alcohol/drug misuse;
- 61% had been diagnosed with a mental health disorder;
- 48% had a neurological or neurodevelopmental disorder;
- 35% had experienced self harm, suicidal ideation or suicide attempts;
- 12% had been subject to sexual exploitation or were at risk of sexual exploitation.

Q 2. WHAT NEEDS TO BE CHANGED SO THAT THE YOUTH JUSTICE AND RELATED SYSTEMS PROTECT THE RIGHTS AND WELLBEING OF CHILDREN AND YOUNG PEOPLE? WHAT ARE THE BARRIERS TO CHANGE AND HOW CAN THESE BE OVERCOME?

It is submitted there needs to be a disruption to the intergenerational cycle which continually perpetuates itself. The relevance of substance misuse, including as the research confirms children and young people being under the influence of substances when offending, needs to be addressed. Many of these children have been subjected to abuse and/or neglect and are using the substances to self-medicate.

The current service model requires the children and young people to voluntarily engage in substance abuse treatment[5]. The gap in the service provision is for those children and young people who do not engage voluntarily. I am not critical of the voluntary services. However, rhetorically I ask - what about those children and young people who do not access treatment? Sadly, they are often those who have commenced using substances when very young (eg 8 to 10 years of age) and have the most significant substance dependency.

The voluntary treatment model provides for children and young people to attend for an assessment and to attend for counselling with a clinician. Counselling is generally conducted once per week for an hour. It is unsurprising given the nature of dependency, the lack of maturity of the young people and their personal circumstances, that the vast majority of children and young people, particularly those with the most significant, entrenched dependency issues, do not engage voluntarily in treatment. Their lifestyles are not conducive to treatment. They are generally not at school and are spending time with others who are using. Many are in residential care and frequently spend time away from their placement.

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[4] Dr Susan Baidawi and Professor Rosemary Sheehan AM

[5] There are a minority of children and young people with significant substance misuse issues who determine they wish to have assistance and enter a detoxification facility. However, such is the force of dependency that many leave a 7- or 10-day program after a few hours or within a few days.

When a young person's substance abuse is raised in Court, the responses of the young people frequently include '*I'm not going to counselling*'; '*I enjoy using*'; '*I don't have a problem. I could stop whenever I want to*'; '*I'll cut down when I turn 18*'. Sadly, rather than stopping at 18, they are often on the trajectory for adult imprisonment and the cycle continues.

In addition, as a result of the research I undertook on my Churchill Fellowship, for those children with really severe substance use issues, I was advised that *'attending once per week is a drop in the ocean … it isn't going to work'*[6]. They require intensive therapeutic support.

What is required to change is for an additional treatment option to be made available. It is submitted that it is necessary for the Children's Court to have the power to place a child or young person who is not engaging voluntarily in treatment, on a Youth Therapeutic Order (YTO). The YTO would mandate drug and alcohol treatment in an initially secure but therapeutic residential environment.

The process by which it is proposed that the Children's Court could impose a YTO is detailed on page 40 of my Churchill Fellowship Report '*What Can Be Done? – Residential therapeutic treatment options for young people suffering substance abuse/mental illness'* [7]. It is also summarised and diagrammatically represented on pages 6 and 7 of my article – '*Why Can I Lock Kids Up But I Can't Ensure They Receive Treatment?'* [8]

As previously indicated the Orders would provide a therapeutic, holistic health-based treatment approach, promoting the human rights of the children and young people, rather than being draconian punishment-based orders. The critical essential elements necessary to achieve this purpose and to maximise the opportunities for the young people to heal are summarised below and detailed on pages 43 to 54 of my Churchill Fellowship Report:

1. Committed and high quality professional staff (eg psychiatrists, addiction clinicians);
2. An initial detailed assessment which is continually monitored and updated;
3. The location of the facilities;
4. The nature of the onsite buildings (both secure and open residences) being homely;
5. A therapeutic community model in which the young person is respected;
6. A 'step down' facility as part of the transition;
7. Support for the young person after leaving the residential facilities;
8. Democratic principles within the residences;
9. Culture, including specific residences and programs for Aboriginal and Torres Strait Islander children and young people;
10. Education and training;
11. Professional development and support for all of the staff; and
12. External scrutiny, including judicial oversight and monitoring of the progress of the young person, a role for Children's Commissioners, un/announced visits.

The model was developed as a result of the research I conducted overseas and by cherry picking the best features of each model. I visited numerous facilities ranging from involuntary

[6] Dr Sasha Hvidsten, Psychiatrist, Huntercombe Hospital, Stafford, Staffordshire, England.
[7] Churchill Fellowship report.
[8] *Policy Futures: A Reform Agenda* article.

adolescent and adult hospital wards (England), secure homes (Sweden, England and Scotland), voluntary residential services (Scotland and New Zealand) and an outreach service (England). They are detailed at pages 62 to 65 of my Churchill Report. The Order would not be a sentence however, but rather the Court would have regard to the progress of the young person on the YTO and that would impact on any sentence imposed or child protection order/involvement of the Department required. The Court could place greater emphasis on the rehabilitative prospects of the young person who progressed well on the YTO. Conversely, the young person would not be penalised if they did not proceed well on the YTO.

The United Nations Convention on the Rights of the Child provides for children to have the right to a full life. Governments should ensure that children survive and develop healthily[9]. In addition Governments should provide ways of protecting children from dangerous drugs[10] and children should be protected from any activities that could harm their development[11]. The children and young people to whom I am referring appear before the Court without hope in their eyes. They include for example, a 14 year old girl chroming daily on spray paint and functioning at the level of a 7 year old; a 16 year old boy with severe pancreatitis due to alcohol abuse and a 16 year old girl who is pregnant and using heroin daily.

Many of the children and young people are using a cocktail of substances, including in particular crystal methamphetamine (ice). The urgency of the current situation is highlighted by Dr Danny Sullivan, Consultant Clinical Psychiatrist, Executive Director of Clinical Services at Forensicare. He stated in relation to ice use:

> *'So over time the brains of people who use stimulants (which includes methamphetamine) become depleted of dopamine, and in long term use we see a syndrome which is similar to Parkinson's disease which of course is a disease where our brain reduces its supply of dopamine, and people have the Parkinsonian face, reduced movement, and the sorts of the effects that we see from Parkinson's disease. …. In terms of people who go on to develop problems, we know that that correlates to early use, poly drug use and dosage … in methamphetamine users, the increase in rate of psychosis is 11 fold. So if you take a population of teenagers who don't use methamphetamine and those who do, and you follow them up over time, 11 times the number in the methamphetamine group will have had contact with psychiatric services with a diagnosis of a drug psychosis, a psychosis or schizophrenia.'* [12]

It is submitted that the proposed YTO advances and promotes the human rights of the children and young people not engaging voluntarily in treatment, in accordance with the Articles of the UN Convention on the Rights of the Child, referred to above.

The barriers to change are:

- the current lack of effective legislation in all States and Territories[13]. There is a need for the respective State and Territory Governments to pass legislation which empowers the relevant Children's or Youth Courts to make YTOs; and

[9] Article 6.
[10] Article 33.
[11] Article 36.
[12] Churchill Fellowship Report at page 20.
[13] Please refer to footnote 14 in relation to the ACT jurisdiction.

- current lack of funding. Funding needs to be committed to ensure appropriate residences are built and/or existing residences are renovated (capital funding) and ongoing operational funding needs to be provided.

Costings have previously been prepared which confirmed that the daily operational costs of the YTO model are less than the daily cost of a child or young person being detained in a detention facility. In addition, the cost of not intervening - in both economic and human terms, is cumulative, as the tragic intergenerational cycle continues. The costs include the health costs associated with psychiatric illness, welfare benefits, the cost of investigating criminal offending, imprisonment, the impact on victims of crime and community safety.

In relation to legislative change, I refer to the Bill which passed the ACT Legislative Assembly on 9 May 2023, being the *Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023*. Significantly, the Bill provides for the establishment of Intensive Therapy Orders[14].

Governmental commitment to effective legislation and funding will remove the barriers to implementing my recommendations.

It is submitted that the other changes which need to be made are:
- the establishment of Crossover Lists in the Children's and Youth Courts[15] and
- the expansion of Marram-Ngala Ganbu (Koori Family Hearing Days).

These initiatives are also discussed in the attached presentation (including slides) entitled *'Crossover Children in the Children's Court: Who are they and what can be done?'* delivered on 29 March 2023.

Q 3. CAN YOU IDENTIFY REFORMS THAT SHOW EVIDENCE OF POSITIVE OUTCOMES, INCLUDING REDUCTIONS IN CHILDREN'S AND YOUNG PEOPLE'S INVOLVEMENT IN YOUTH JUSTICE AND CHILD PROTECTION SYSTEMS, EITHER IN AUSTRALIA OR INTERNATIONALLY?

When conducting my Churchill Fellowship research overseas, I had the opportunity (to which I have previously referred) to visit numerous, varied facilities. Significantly, I also had the opportunity to speak not only to the professionals at each facility but also to the children and young people who were undergoing the treatment programs.

The advice I received from numerous experts and practitioners in all countries was that for some young people compulsory orders to attend therapeutic residential facilities are necessary: in order to ensure these young people are safe and secure; to deal with their dependency issues; to commence the process of improving their physical and mental health and wellbeing; and to reconnect them with education and training. Young people also admitted that they did not wish to attend for treatment but having attended, they believed it was essential for them.

[14] Link to the Bill: ACT Legislation.
[15] Refer to 11.2 at pages 58 and 59 of the Churchill Report.

A sample of the qualitative and anecdotal evidence included the following statements from the professionals:

- '*One thing with secure (accommodation) is that you can get a lot of treatment and not have breakdowns in treatment … breakdowns in treatment are very bad for youth..'*[16]
- *[Compulsory v voluntary]- 'I think it's both. It's not black and white because for example we told a guy 'you need to talk about your alcohol abuse if you want to move forward'. From the beginning it's 'no, I do not have a problem', but with the right person, a lot of things happened with him. So he understood he has this problem. Because it was compulsory, he had to confront it.'*[17]
- *'They don't want to be here .. there is a turning point … when you can see your drug use and behaviour in some kind of mirror. .. you can realise that this is not good for me when you have perspective and you can see what you have done … if I continue, this is going to be the end of my life.'*[18]
- '*For a long time, we considered treatment had to be voluntary … but here, they studied groups, one mandatory and the other voluntary and they couldn't see any difference.'*[19]
- *'When the young people first arrive, generally they will say they don't want to be here, they hate it – within one or two days, there is a shift – the staff look after them, they are away from poverty and for some, homelessness.'*[20]
- *(Compulsory?) 'I think especially for the younger kids because I think they don't see themselves in 10 or 15 years' time being an addict that's begging in the streets. That's because it's always 'That won't happen to me', so I think for some kids things have to be compulsory. Something that might start off compulsory does not end up that way for them because the thought process changes during that (the treatment).'*[21]
- *'When I worked with addictions previously, we did have people coming to us when it was compulsory for them to be there, but over time they wanted to be there because they liked what they were seeing; they liked how they started feeling; and having a bit of time out, especially some young kids whose families are chaotic as well. So what choice, really, would they have if you were not making things compulsory for them?'*[22]
- *'If you can get away with voluntary without mandating, that's great, but where there's absolutely no volunteerism and there's risks to self and other people, the situation is very clear that you can't keep harming other people and their property.'*[23]
- *'[Question of mandatory orders to contain young people] – 'They'd be better off if it is more like a secure children's home set up with access to psychological therapies. Not all of them will take it up, but it would be in a safe environment – that's better than having people just roaming about.'*[24]

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[16] Associate Professor Tove Pettersson, Stockholm University.
[17] Ms Karin Olsson, Co-ordinator, Sundbo, Sweden.
[18] Mr Anders Ermann, Senior Teacher, Sundbo, Sweden.
[19] Ms Asa Wallengren, Swedish Prison and Probation Service, Project Manager, 'Young Offenders, Violent Offenders'.
[20] Mr Robert Clark, Unit Manager, The Good Shepherd, Bishopton, Scotland.
[21] Ms Lorranie Fraser, Manager, James Shields Project, Glasgow, Scotland.
[22] Ms Lorraine Fraser, manager, James Shields Project, Glasgow, Scotland.
[23] Dr Dickon Bevington, Consultant Child and Adolescent Psychiatrist, Children and Adolescent Substance Abuse Service, The Bridge, Cambridge, England.
[24] Dr Mark Tattersall, Medical Director and Consultant Psychiatrist, Huntercombe Maidenhead Hospital, Maidenhead, England.

- *'There's certainly, in my view, a place for compulsion. I can always lock people away, but I can't always put them in rehab.'*[25]
- *'The research indicates there is not very much, if any, difference in the results between voluntary and compulsory. Once there, it's about the exposure to some of the thinking and reflection that goes on and that's the most important thing.'*[26]

The following statements were made by young people with whom I spoke:

- *'I didn't want to come here. But I couldn't do it on my own. I'm really scared to think what could have happened if I hadn't come here … I could have died.'*[27]
- *'It was hard when I first came because it was so different to the life I was leading. But everyone was so supportive when I came here that it made me want to stay. I felt safe and I hadn't felt safe for a long time. My life was all about scoring. I couldn't live at home and whenever I saw my mum we fought – mainly about drugs. Since I have been at Odyssey one of the highlights is seeing my mum each week.'* [28]
- *'Even if I'd been sent here, it would mean I'd have a chance to make a difference …. For four years I have been putting up a wall and I came here and the wall collapsed in minutes.'*[29]
- *'We're just kids – you guys are the adults. … we don't like to admit it … You're wiser and isn't it up to you to know what's best for us?'*[30]
- *'When I entered Odyssey House, I couldn't believe that I would only be able to have things that were necessities … Initially I did not think I could cope without my phone, Facebook, makeup, my hair straightener. … but then it wasn't so bad. I realised it was great not having to worry about Facebook and my phone. I realised such things were a burden. When I didn't have those things I was able to get back to who I really am. I feel for the first time like the girl I used to be – the real me and I can laugh at the things I used to laugh at. I am happy again.'*[31]

I have attached the membership of the What Can Be Done Steering Committee as at June 2023. These members are leaders in relation to treatment for substance abuse and dependency issues. They largely operate in the voluntary treatment regime. The members also include two First Nations people, including one who has lived experience. The members have provided total support for the What Can Be Done Model. In light of their significant experience and expertise, in my view substantial weight should be placed on their support for the proposed Youth Therapeutic Order model.

In addition, it is apparent from the quotes above from the professionals in all four countries I visited, that there is a remarkably consistent view regarding the efficacy of mandated treatment, when there is no voluntary engagement in treatment. The countries I visited in

[25] Judge Jane McMeeken, presiding Judge of the Christchurch Youth Drug Court, New Zealand.
[26] Mr Nigel Laughton, Clinical Director, Odyssey Youth, Christchurch, New Zealand.
[27] 'Peter', 18, Sundbo, Sweden.
[28] 'Melanie', 17, Youth Odyssey, Auckland [voluntary residential program – but required to attend by Court or alternative was detention].
[29] 'Lavinia', 16 Te Waireka, New Zealand (after entering a sweat lodge - the significance of culture to healing).
[30] 'Tara', 16, Youth Odyssey, Auckland, New Zealand [in the same position as 'Melanie' above regarding her attendance at Odyssey].
[31] 'Tara', 16, Youth Odyssey, Auckland, New Zealand.

which mandated treatment for children and young people was available were Sweden, Scotland and England.

Q 4. FROM YOUR PERSPECTIVE, ARE THERE BENEFITS IN TAKING A NATIONAL APPROACH TO YOUTH JUSTICE AND CHILD WELLBEING REFORM IN AUSTRALIA? IF SO, WHAT ARE THE NEXT STEPS?

It is submitted that there are benefits in taking a National approach to youth justice and child wellbeing reform in Australia. It would be appropriate for policies, the sharing of data and initiatives concerning children and young people in the youth justice and child protection systems to be the subject of regular meetings at a National level. These regular scheduled meetings could be attended by such people as the Attorneys General, relevant Ministers, the Australian National Children's Commissioner and potentially others.

It is important for the public to have a greater understanding of these children and a National approach could raise their profile. It is in the best interests of these children and young people and ultimately the general community for there to be nationally informed and if possible, a consistent approach agreed upon by the States and Territories. This could relate to such matters as the imposition of minimum standards, regarding conditions in detention [eg the use of spit hoods, those in detention being detained in their cells for extended, excessive periods of time]. A united approach in relation to the age of criminal responsibility could have also been such a topic discussed at these meetings.

However, it is also submitted that there is an ongoing role for the States and Territories as they administer their youth justice and child protection systems and the demographics, geography and distances vary in each State and Territory.

CONCLUSION

In my capacity as a Churchill Fellow, I am genuinely of the view that the model I have proposed would provide an opportunity for those with significant substance misuse issues and who are not voluntarily engaging in treatment, even when required by Court Orders, to receive intensive therapeutic support provided by expert clinicians/psychiatrists etc. The proposed model would give the young person some 'time out' of their chaotic, sad lives in order to give them the chance to heal.

I appreciate the opportunity to make this submission and would be grateful to participate in any round table discussions and/or to further expand or clarify any matters I have raised. I am deeply committed in my capacity as a Churchill Fellow to supporting the improvement of services for those children and young people appearing before the Criminal and Family Divisions of the Children's Court.

Jennifer Bowles
Magistrate
Churchill Fellow 2014.