Submission from the *What Can Be Done* Steering Committee to the Royal Commission into Victoria's Mental Health System

Introduction

This submission from the What Can Be Done Steering Committee responds to the Royal Commission's Terms of Reference matters numbered 1, 2, 4 and 5. The submission will particularly respond to matter numbered 5, namely: *How to best support those in the Victorian community who are living with both mental illness and problematic alcohol and drug use, including through evidence-based harm minimization approaches.* It will also specifically address improving mental health outcomes for young people[1] (matter numbered 4.4): *in contact, or at greater risk of contact, with the forensic mental health system and the justice system.*

It is indisputable that there are serious mental health/substance misuse issues to be addressed by the Victorian Youth Justice system. Appendix i[2] demonstrates the percentage (87%) of children and young people in detention in Victoria who have a history of alcohol and/or drug misuse and the fact that 82% of children and young people in custody offended whilst under the influence of alcohol and/or drugs. Further, 70% of those young people in custody are victims of trauma, abuse or neglect. Those in custody who were recorded as presenting with mental health issues rose from 27% in 2013/14 to 53% in 2017/18, with 30% of those in custody in 2017/18 having a history of self-harm or suicidal ideation.[3]

Australian studies[4] have found *'risk factors for the development of mental health problems among young offenders include parental incarceration or death; a history of abuse or neglect; being in out-of-home care; social isolation; and living with someone with physical or mental disabilities.'* Additionally, '*..not being engaged in education, employment or training; frequent drug use; and experience of multiple adverse life events were found to be associated with police contact for young people accessing mental health services*.'[5]

As this submission will attest, these complex factors impacting on deeply troubled young people often require intensive therapeutic interventions in order to commence the process of improving health and welfare outcomes.

A very recently released Sentencing Advisory Council Report[6] confirms the substantial percentage of young people sentenced to custodial orders (49%) who were the subject of at least one child protection report. In the long term, the What Can Be Done Steering Committee will be seeking the implementation of interventions in both the Criminal and Family (Child

[1] Children and young people aged 10 to 17 appearing before the Children's Court of Victoria
[2] Youth Parole Board (Victoria) Annual Reports 2013/14, 2014/15, 2015/16, 2016/17, 2017/18
[3] Youth Parole Board Annual Report 2017/18
[4] *National data on the health of justice-involved young people. A feasibility study*. Australian Institute of Health and Welfare, 2017 p. 4-5
[5] Ibid, p. 5
[6] 'Crossover Kids': Vulnerable Children in the Youth Justice System. Sentencing Advisory Council, June 2019, Executive Summary p. xxiii

Protection) Divisions of the Children's Court of Victoria, but we propose that the recommendations referred to in this submission be initially implemented in the Criminal Division of the Court, whilst noting the significant overlap of young people appearing in both Divisions (so-called 'crossover kids').

In 2019 in Victoria, we continue to be confronted with the serious question of how to structure our child protection and youth justice systems to best balance keeping the community safe and to promote, wherever possible, a young person's potential to lead a healthy and productive life. Our youth justice system is further challenged in dealing with young people who experience serious substance abuse and/or mental health issues (as demonstrated above, many of these young people are vulnerable and are suffering from abuse, neglect or trauma) and then offend.

As the Chair of the Victorian Sentencing Advisory Council, Professor Arie Frieberg AM observes[7] *'.. sentencing alone cannot address the root causes of offending by young people. The best way to protect the community is to invest in measures that prevent or interrupt the criminal pathways of children ….Measures such as enhanced early intervention and resources to rehabilitate young offenders are the best way to steer at-risk children away from a life of crime and protect the community in the long term.'*

Within the current youth justice system, there are varying cohorts of young people and it is important to recognise that a homogenous, 'one size fits all' approach will never provide an effective solution for all young people in terms of rehabilitation and avoidance of recidivism. This is especially the case for those with substance use issues, which is commonly aggravated by mental health issues, disabilities and disadvantage. Dr Dickon Bevington[8], consultant child and adolescent psychiatrist and international expert on treatment for substance use in young people explains: '*Nearly all have histories of trauma, abuse, neglect, bereavement, maybe major anxiety, emerging psychotic illnesses. The problem for these kids if they had one of those, for example, we know how to treat trauma, bereavement, drugs, but the cumulative burden of all of that rubble pushes the flight path down – so it will inevitably hit the trees at the end of the runway. These children very often struggle the most to make helpful relationships, they least know how to say "help me" and they don't have an expectation they will receive treatment.'*

The Steering Committee includes senior members of the voluntary treatment regime who acknowledge gaps for those young people not accessing their services.

Overall, it is clear that serious recalibration of our youth justice system is urgently needed to avoid the significant compounding economic and social costs to the community, which will continue to escalate unless alternative, but significant interventions are employed.

[7] *Reoffending by Children and Young People in Victoria*: Factsheet, December 2016, Sentencing Advisory Council

[8] Bowles J. *What Can Be Done? Residential therapeutic treatment options for young people suffering substance abuse/mental illness* February 2015, p.78

Magistrate Bowles' Churchill Fellowship Report ('the Report')

Magistrate Jennifer Bowles was deeply concerned about the significant number of young people appearing before the Children's Court of Victoria who could not or would not attend voluntary drug and alcohol/mental health treatment services due to their chaotic and deeply troubled lives. Her Churchill Fellowship Report commences with [redacted] story.[9] [redacted] was so heavily dependent on substances that, despite the best of intentions, he could only last a few hours in a detox facility before he left to find more substances. His life rapidly spiralled out of control to such an extent that his mother asked Magistrate Bowles 'What can you do? I am watching my son die before my eyes'. It is worth noting that [redacted] is now an adult, and despite a supportive family, continues to have severe substance abuse issues, has had housing instability and has regularly cycled in and out of psychiatric services.

In 2014, Magistrate Bowles[10] undertook a Churchill Fellowship to ascertain whether mandated treatment could be effective in assisting vulnerable children with significant substance dependency/mental health issues who were in the youth justice and/or child protection systems and not engaging in voluntary treatment services. She travelled to Sweden, England, Scotland and New Zealand and conducted extensive best practice research, observing a variety of treatment services, from in-patient psychiatric hospital wards to secure homes to community outreach services. The overwhelming views expressed by numerous experienced practitioners were that mandated treatment can work as effectively as voluntary treatment: *'The research indicates there is not 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.'*[11] As a result of such research and analysis, Magistrate Jennifer Bowles developed a model of a mandated therapeutic residential service for troubled young people in Victoria.

Magistrate Jennifer Bowles' Report[12] (the Report) is submitted as an attachment to this submission. Appendix ii is a summary of Magistrate Bowles' Report.

As Magistrate Bowles summarised "*The advice I received from numerous experts and practitioners in all countries was that, for some young people, compulsory orders to attend therapeutic facilities are necessary in order to ensure these young people are safe and secure, to deal with the addiction, to commence the process of improving their physical and mental health and wellbeing and to reconnect them with education and training. I spoke with some young people who admitted they did not wish to attend such a facility, but having been there, they believed it was essential for them*."[13]

[9] Bowles J. 2015, p. 12-13 (note that 'Greg' is a pseudonym).
[10] Currently a Magistrate in the Melbourne Children's Court, but it is noted that the Fellowship was prepared outside her capacity as a judicial officer.
[11] Quote from Chris Rewha, Residents' Manager, Te Puna Wai Youth Justice Residence (Nigel Laughton, Clinical Director, Odyssey Youth Christchurch shared this view as did numerous other clinicians – refer p. 35-38 of The Report) in Bowles J. 2015, p. 37.
[12] Refer attachment: Bowles J. *What Can Be Done? Residential therapeutic treatment options for young people suffering substance abuse/mental illness* February 2015 (The Report)
[13] Ibid, p. 6

In 2016, a Steering Committee was established to undertake further development of the model. The Steering Committee meets regularly and comprises 27 professionals who have varied involvements in the field. This includes the CEOs of YSAS, Windana, Odyssey House and Taskforce, senior medical/addiction specialists from St Vincent's Hospital, alcohol and other drug clinical specialists, clinical and forensic psychiatrists, the community service agency sector, education/training, lawyers, an aboriginal person with lived experience and advocacy groups. The seniority and breadth of involvement demonstrates the importance we all place in seeing the Report's recommendations implemented.

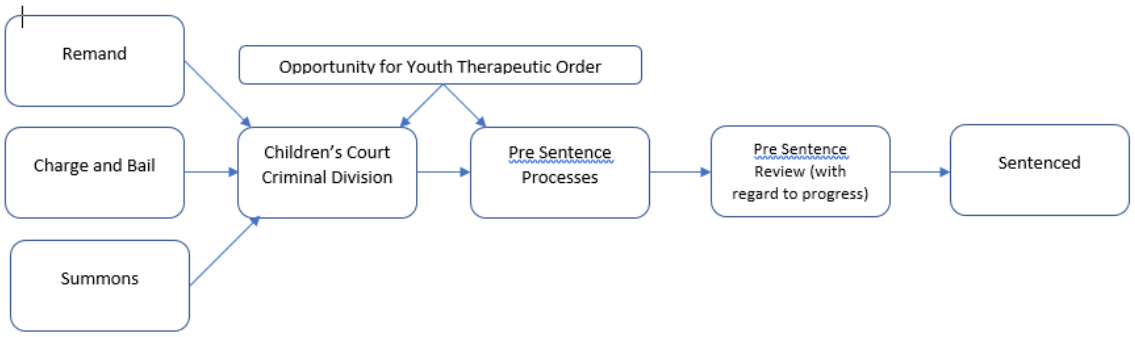
Magistrate Bowles was recently interviewed on the ABC Radio National's *The Law Report*. The following is a link to the interview:

https://www.abc.net.au/radionational/programs/lawreport/2019-03-26/10935302

The Steering Committee fully supports the findings and recommendations of the Churchill Fellowship Report written by Magistrate Bowles.

The Model

The Steering Committee has endorsed the Proposed Model outlined in the Report.[14] However, given the imminent review of youth justice following the release of key Government Reports (to be discussed further in this submission), the Steering Committee has given priority to securing an immediate response for young people who are before the Criminal Division of the Children's Court. The various proposed entry points are demonstrated as follows:



In order for a Youth Therapeutic Order (YTO) to be made, the Court would require a detailed clinical assessment to be undertaken of the young person. Significantly, the YTO is not a sentencing order, but rather an opportunity to provide therapeutic treatment. Progress on the YTO could subsequently be relied upon to seek a reduced sentence, if one is to be imposed, due to the greater prospects for rehabilitation.

The Report[15] details critical elements for the proposed 'Therapeutic Treatment Facility' under the headings of: committed and high quality staff; assessment; location of the facilities; the nature of the onsite buildings (both secure and open elements); a therapeutic community

[14] Bowles, J. 2015, Section 8, p. 40
[15] Ibid, Section 10, p. 43-54

model; a 'step-down' facility as part of the transition; support for the young person after leaving the residential facilities; democratic principles; culture;[16] education; professional development and support for staff; and external scrutiny.

The therapeutic program is proposed to operate within a 36-bed facility that is structured into 5 units.

The first stage of entry (first unit) into this program is where a child is assessed in what could be called the 'Foundation Program'. This will be conducted in a unit that is purpose built to accommodate young people entering the service**.** The Foundation Program will be conducted in a six-bed facility with an additional two emergency beds available. During the foundation stage, the conditions will be created in which young people can stabilise, undergo a comprehensive assessment and develop a therapeutic program plan. Where required, medically supervised drug withdrawal and mental health services will be provided. The Foundation Program will also include a range of therapeutic activities that prepare each young person for either transition into the more intensive program within the facility (according to their plan) or assist and support them to transition effectively back to the community.

If the latter is considered the best option, the Court will be advised and a properly resourced transition plan will be enacted. The six available beds would allow for sufficient throughput to ensure that the intensive therapeutic program is constantly populated. The additional two beds increase the capacity of the unit to bring more young people through the Foundation Program where necessary. These beds can also be used as a 'step up' option for young people in the other units who may require more acute and contained care for a short period.

The other four units will each have 7 beds. The intensive therapeutic program would be delivered in blocks of 4 months each (e.g. the first block would be inclusive of the four weeks spent in the 'foundation unit'). Young peoples' progress will be closely monitored through regular reviews by the unit, and progress reports to the Court. Where clinical assessment determines that transition to the community before completion of a therapeutic block is most appropriate, it will be an option open to the Court. However, it is expected that most young people will complete the 'foundation block' and progress into the next units/phases at the facility. At this stage a young person might transition to the community or undertake another 'therapeutic block' at one of the other 4 units at the facility. Young people will have access to up to 3 therapeutic blocks. The focus will always be on preparing each young person to live healthy and fulfilling lives, with an emphasis on successful transition and aftercare services back in the community.

Our modeling indicates that 47 young people per annum can be expected to complete an 'Intensive Therapeutic Program'. An additional 13 young people are expected to complete the

[16] Given the substantial over-representation of Koori young people in Youth Justice (16% - when Koori young people only represent 1.6% of the population aged 10-19 years)[16] (Penny Armytage, Professor James Ogloff AM *Youth Justice Review and Strategy: Meeting needs and reducing offending.* July 2017, Part1, Section 4.6) a key element to be considered in operating services is the importance of cultural competence – respect and understanding being built into the culture of services.

'Foundation Program' and make the transition back to the community, well supported and assisted.

The Service will be staffed by properly trained residential therapists, a consultant psychiatrist, medical practitioner/s, nurses, transition workers with family therapy training and a range of allied health professionals. Careful attention will also be paid to clinical governance. An effective education program will be essential and appropriate security will be provided.

The culture and values of all staff would support optimism for the young people. All staff would be active members of the care team; education/training would foster self-esteem and employability skills; and a biopsychosocial model of care/treatment would be implemented. This will be designed to create a life altering, nourishing environment in which to re-orientate and to much better equip the young people to be healthy and productive in the community.

Key State Government auspiced reports that support our recommendations

The Steering Committee refers to the 2016 KPMG report to the Department of Health and Human Services entitled *"A proposed contained therapeutic treatment and care service"*[17] *(*CTTCS). The KPMG report provides a very similar model of care to that contained in Magistrate Bowles' Churchill Fellowship Report and such reports demonstrate the failings of the current system and the likely long-term cost savings if such suggested 'Therapeutic Treatment Facility/Units' were established.

The Steering Committee also wishes to bring to the Royal Commission's attention the recommendations contained in two key Victorian Government/Parliamentary reviews which specifically support our recommendations:

*'Priority access to assessment and treatment should be considered for complex young offenders…..**There is also merit in considering a youth therapeutic order for court-mandated therapeutic treatment for young offenders. This has been proposed to address these deficiencies by Magistrate Bowles (2014) and the 'What Can Be Done' Steering Committee.'*** (**Youth Justice Review and Strategy - Armytage/Ogloff 2017);**[18] and

Recommendation 19 of the **Parliamentary Inquiry into Youth Justice Centres in Victoria** provides: ***That the Victorian Government establish a trial program of Youth Therapeutic Orders based on the 'What Can Be Done' model*.**[19]

Costs

The Steering Committee is currently reviewing costs for the provision of the proposed service. It is to be noted, however, that the 2016 cost to detain a young person per day was $1,495,

[17] KPMG (for the Department of Health and Human Services) *A proposed contained therapeutic treatment and care service* April 2016, (released under FOI).
[18] Penny Armytage, Professor James Ogloff AM *Youth Justice Review and Strategy: Meeting needs and reducing offending.* July 2017, Executive Summary p. 14
[19] Inquiry into Youth Justice Centres in Victoria. Parliament of Victoria. Legislative Council Legal and Social Issues Committee 2018, p. 102

whilst the cost for the KPMG preferred model[20] was $1,420 per day. If a new facility is to be established, Capital costs are estimated to be approximately $30 Million.

If such a model is implemented, there will be significant overall (further) savings to the criminal justice system, by the reduction of recidivism, reduction in societal costs, reduction in the number of victims of crime and a reduction in compounded costs in the youth and thereafter adult criminal justice systems. Research indicates that $1 spent on AOD treatment, for example, returns $8 in future savings to health and justice related services.[21]

Human Rights

Section 9 of the Report[22] addresses human rights considerations and Appendices III and IV of the Report provide relevant extracts from the *United Nations Convention on the Rights of the Child* and the *Charter of Human Rights and Responsibilities Act 2006 (Vic).*[23] Provided the safeguards referred to in the Report are in place, children have clear rights to be protected from drugs and harm and to be able to live healthy lives. A further report on the human rights implications is attached as Appendix iii of this submission.

Conclusion

The Steering Committee believes Magistrate Bowles' proposal of a therapeutic residential service incorporating 'step-down' facilities is one significant answer to a myriad of urgent issues within Victoria's youth justice system. It is naïve to expect many of the most troubled young people in our community to make informed, rational choices for treatment. Even if they identify the need, few have the capacity, whilst substance dependent, frequently impacted upon by trauma and abuse and dealing with mental health issues, to voluntarily remain at treatment facilities. If the Steering Committee's model is implemented, such a service would provide much needed secure therapeutic intervention for many vulnerable, complex young people. Legislative reform and funding to support the establishment of such a therapeutic service would reflect international best practice and would enable Victoria to continue its fine tradition of leading the way in its approaches to youth justice.

Recommendation

That the Royal Commission into Victoria's Mental Health System recommends that the Victorian Government introduces legislation to enable Youth Therapeutic Orders to be made in the Criminal Division of the Children's Court of Victoria; funds the establishment of secure and step-down residential treatment facilities; and funds the provision of comprehensive onsite support services and aftercare services for young people who are placed on Youth Therapeutic Orders.

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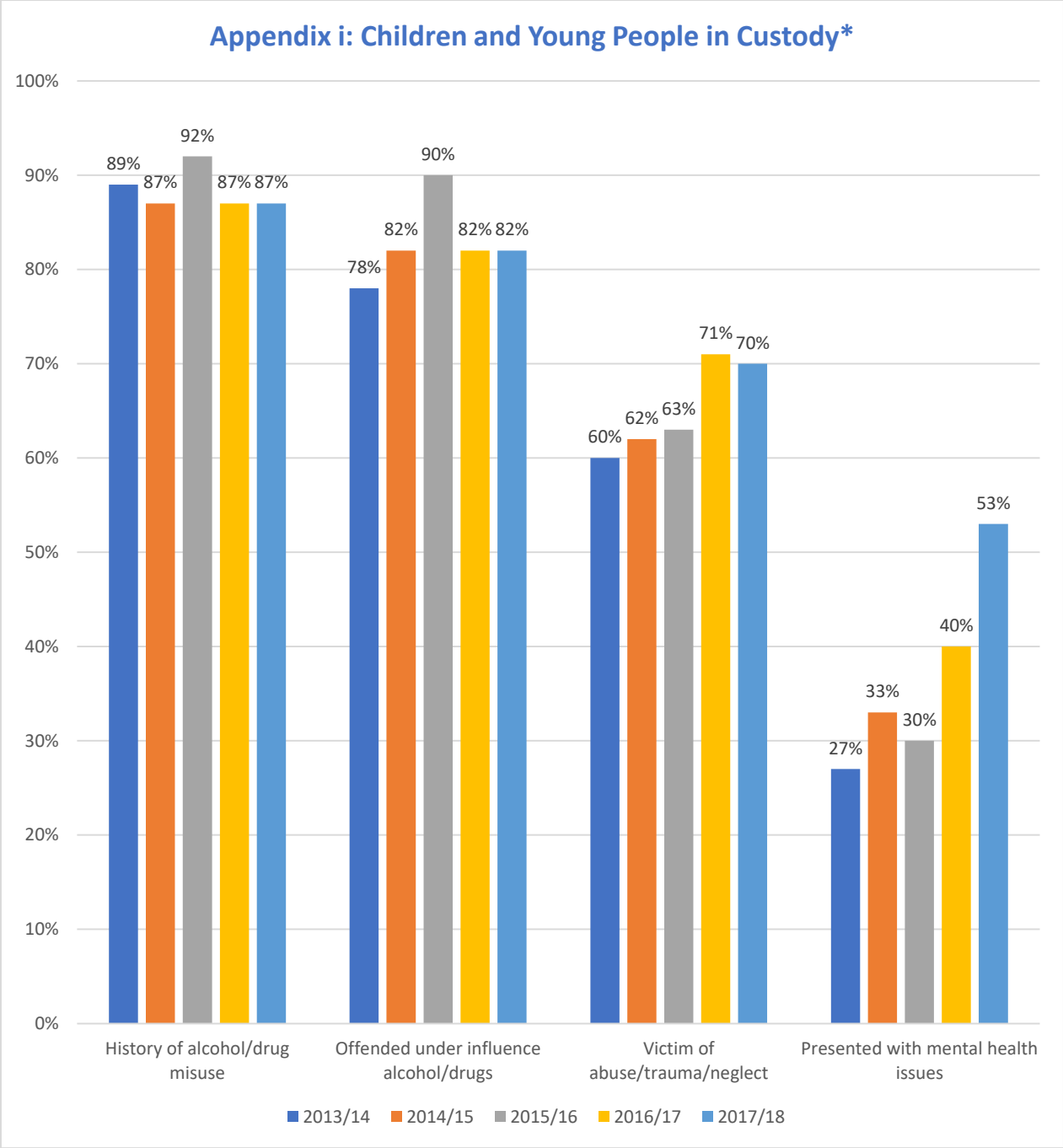
[20] KPMG (for the Department of Health and Human Services) *A proposed contained therapeutic treatment and care service* April 2016, p. 40

[21] Coyne, J., White, V. and Alvarez, C. Methamphetamine: focusing Australia's National Ice Strategy on the problem, not the symptoms, 2015. Australian Strategic Policy Institute, Barton

[22] Bowles, J. Section 9 p.41-42

[23] Ibid, p. 71-72



***Youth Parole Board Annual Reports**

Appendix ii: Churchill Fellowship Report Summary:

What can be done? Residential therapeutic treatment options for young people suffering substance abuse/mental illness

Introduction

Greg[24] was 17 when he wrote a poem which included the following verses:-

My depression turns to anger from the pain it's brought to me

Is there anyone to blame, or is this how it's meant to be?

I crave for something in the distance, too far for eyes to see

My sense of logic figures that it is a sense of tranquility …

I pray for a Saviour to help me conquer my compulsive behaviour

Which keeps leading me into trouble and life threatening danger

I feel weighed down and burdened with responsibility

Having to work on getting better and back to normality

It seems like it's all too much, after years of such fuss

I'm prepared to give up and declare that I've had enough

If I am to die, please keep in mind that I did try

Tears come to my eyes, at times I've contemplated suicide.

Greg was more articulate than many of the young people who appear before the Children's Court and have substance abuse/mental health issues. However, he was able to encapsulate the struggles and dire circumstances which confront many young people. His mother was also very eloquent and was a constant support for him. One day in Court, she poignantly said to me '*What can you do I am watching my son die before my eyes?'* I felt bereft of options. In 2014 I applied for and was awarded a Churchill Fellowship to explore options to assist young people like Greg.

I have been a magistrate for over 17 years, more than half of which I have sat in the Children's Court, which has both criminal and family (child protection) jurisdictions. Unfortunately, Greg's circumstances are far from unique. The following table provides a snapshot of the characteristics of the children and young people in custody:-

[24] Name has been changed.

ISSUES	2013 / 2014[25]	2014 / 2015[26]
History of alcohol and/or drug misuse	89%	87%
Alcohol and/or drug use related to offending	78%	82%
Victims of abuse/trauma or neglect	60%	62%
Previous child protection history or current child protection involvement	59%	62%
Mental health issues	27%	33%
History of self-harm or suicidal ideation	26%	23%
Parents	13%	10%
Previously suspended or expelled from school	56%	58%

The statistics are compelling. These young people are aged between 10 and under 18. In addition to the link between criminal offending, substance abuse and mental health issues, regrettably, the cycle is commencing again with 60% having child protection involvement in their lives[27] and 10% to 13% of those in custody already parents themselves.

Current system

Greg was initially before the court for shop thefts of vanilla essence,[28] which he consumed in life threatening quantities, such was his dependence. He also smoked cannabis and experienced a number of psychotic episodes due to schizophrenia. On multiple occasions he attended a detoxification facility but such was his dependence he could not remain for longer than a couple of hours. At times he was admitted to hospital on leaving the facility due to alcohol toxicity or due to a psychotic episode. However, the only options available to the Court were to require him to attend for detoxification (there are only 35 adolescent residential detoxification beds for the State of Victoria) or residential rehabilitation (assuming there was a bed available) or to remand him in custody. Despite the support of his mother, I watched his life spiralling downwards to the point of him becoming homeless.

Apart from the very limited circumstances detailed in [4.7.1] of the Report, when a young person is abusing substances or has mental health issues, the current treatment model is a voluntary model, that is, in order to access treatment, the young person has to decide that s/he wishes to attend for treatment. If the young person has committed criminal offences, the Children's Court can require the young person to attend for counselling or treatment by including such a condition on a Court Order. Such treatment would generally involve attending counselling or therapy once a week for approximately one hour. It is not the case that I am critical of the current voluntary services which are available. However, I am concerned about

[25] Annual Report of the Youth Parole Board and Youth Residential Board 2013/2014 – (snapshot 9 October 2013) p 13 (134 males and 4 females).
[26] Annual Report of the Youth Parole Board and Youth Residential Board 2014/2015 – (snapshot 3 September 2014) p 13 (157 males and 8 females).
[27] Refer to [4.4} to [4.6] of the Report.
[28] Vanilla essence has a very high alcohol content approximately 35%).

the current treatment model and the limited legislative options available to the Court. Given the complex reasons people use substances, the trauma to which many of these young people have been exposed and their chaotic lifestyles, one could rhetorically ask, is this a model which provides the optimal opportunity to assist these young people whilst they are still young? Do we really expect the most vulnerable members of our community to make informed, rational choices about matters which potentially have permanent profound health implications for them?

Churchill Fellowship

I applied for a Churchill Fellowship to evaluate whether a secure (closed) therapeutic residential facility for young people with substance abuse/mental health issues needed to be established in Victoria. The fundamental questions were:-

1. Could mandated treatment make a difference?
2. If so, what legislative changes would be required which would safeguard the rights of the child and also provide for mandated treatment?
3. What would be the features of such a facility to ensure the greatest prospects for success?
4. What, if any, other observations could I make of overseas innovative approaches and initiatives from which we could learn in Victoria?

I travelled to Sweden, England, Scotland and New Zealand. In addition to visiting their courts and gaining an understanding of their legal systems, I visited the following adolescent programs: closed care youth facilities; closed wards in psychiatric hospitals; a youth detention centre; drug and alcohol residential programs; a residential program for sexual offenders; and drug and alcohol outreach services. I also visited some adult facilities including psychiatric hospitals; a drug and alcohol residential program; and a residence for people who would otherwise be homeless and had substance abuse/mental health issues.

The advice I received from numerous experts and practitioners in all of the countries I visited 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 addiction and dependency issues, to commence the process of improving their physical and mental health and wellbeing and to reconnect them with education and training. I was so fortunate to be able to converse with and hear the experiences and opinions of some of the young people at all of the adolescent facilities I visited. A number indicated that they had not wished to attend the facility at which they were residing, but having been there, they believed it was essential for them. Quotes from the young people in the Report are most powerful.[29]

The answers to the four questions posed above were:

1. Mandated treatment can work as effectively as voluntary treatment provided certain features exist and that ongoing support is provided. Most importantly, the environment has to be therapeutic and not draconian.[30]

[29] Pages 34 and 35 of the Report.
[30] Pages 34 – 37 of the Report.

2. The proposed legislative changes are detailed at pages 41 and 42 of my Report. The placement of a young person in a closed facility involves a restraint on a person's liberty. There are fundamental human rights as detailed in the *UN Convention on the Rights of the Child* and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).[31] Of particular relevance is the right of children to live a full life and governments should ensure children survive and develop healthily,[32] governments should protect children from dangerous drugs[33] and activities that could harm their development.[34] In the case of children and young people, the deleterious impact of illicit substances, particularly: the depletion of dopamine when using crystal methamphetamine (ice); alcohol on the developing brain; and the impact of untreated mental health on their development is axiomatic.

   Whilst it is important for voluntary options to remain available, the proposed legislative amendment would provide the Children's Court with the power, when deemed necessary, to make a Youth Therapeutic Order (YTO) for up to 6 months, subject to judicial oversight. The Order could be made in both the Criminal and Family Divisions of the Court. It would place the young person in a secure therapeutic residential facility to be assessed and to detoxify. There would be appropriately qualified and committed staff. The young person would remain in the secure facility for the shortest period of time possible. There would be a school on site. There would be a transition to an open therapeutic community residence, ideally on the same site as the closed facility and the clinicians would work with young people at both facilities to ensure continuity of care.

   Undoubtedly there is a need for transparency, accountability, scrutiny and oversight. In addition to judicial oversight, there would be a vital role for such organisations as the Commission for Children and Young People. The Youth Therapeutic Order would not be a sentence, but rather a health and welfare approach for young people. The Children's Court would have regard to the progress of the young person on the Youth Therapeutic Order in determining an appropriate sentence or child protection order.

3. The essential features of a facility to ensure the greatest prospects for success are[35] :

   - Committed and high quality staff, including staff who have previously had dependency issues themselves;
   - Quality assessments conducted;
   - Location of the facilities;
   - The nature of the buildings (both secure and open elements);
   - A therapeutic community model;
   - A 'step down' facility as part of the transition;

[31] Refer to Appendices III and IV.
[32] Article 6 UN Convention on the Rights of the Child.
[33] Article 33 UN Convention on the Rights of the Child.
[34] Article 36 UN Convention on the Rights of the Child.
[35] Pages 43 to 54 and Appendices III and IV.

- Support for the young person after leaving the residential facilities;
- Democratic principles at the facilities;
- Culture – especially to address the over representation of Koori young people;
- Education – schools/training on site;
- Professional development and support for staff and
- External scrutiny.

4. The other lessons which I learnt from overseas and have recommended for Victoria are:-
    - the establishment of a Youth Drug Court within the Children's Court and
    - the establishment of a cross-over list in the Children's Court for those young people appearing in both the Criminal and Family Divisions of the Court.

Conclusion

A valuable opportunity to intervene to assist some of the most vulnerable members of our community is currently being lost. This Fellowship Report sets out a blueprint to answer Greg's mother's question – 'What can be done?' The model I have proposed is unique and represents the very best features of the facilities and legal systems I observed overseas. The establishment of therapeutic treatment facilities and effective after-care will require significant resources. However, regard must be had to the opportunity cost, both human and economic, of not intervening. These young people will continue to lead the most damaged lives and will be the most resource intensive, unless their needs are addressed now. Future economic costs impact across a number of different government departments: the health costs associated with psychiatric illness; welfare benefits; and the costs associated with the commission of crime being the police, the courts and the costs of imprisonment. Significantly, there is also the adverse impact on victims of crime and community safety if we do not act.

Her Honour Judge McMeeken, sits in the Youth Court and the Youth Drug Court in Christchurch, New Zealand. She stated '*I can lock kids up but I can't order treatment for them.*' It is vital as a community that we provide the opportunity for effective treatment for our young people.

Jennifer Bowles

Magistrate

Churchill Fellow 2014.

12 May 2016

Appendix iii

Human Rights of Children and Young People

The recommendations in the Report *'What can be done? – Residential therapeutic treatment options for young people suffering substance abuse/mental illness'* (the Report) are not only consistent with the human rights of children and young people, but promote their human rights. The human rights implications are discussed at pages 41 and 42 and Appendices III and IV of the Report.

The placement of a child or young person in a secure facility involves a restraint on a person's liberty. There are fundamental human rights as detailed in the *UN Convention on the Rights of the Child*[36] and the *Charter of Human Rights and Responsibilities Act 2006 (Vic).*

The Convention includes

- the right for children to have their opinions taken into account when adults are making decisions which affect them[37] and
- children have the right to privacy and for the law to protect them from attacks against their way of life, good name, their family and their home.[38]

The Convention also includes the following Articles which are directly referable to the harm being addressed in the Report's recommendations –

- children have the right to live a full life and governments should ensure that children survive and develop healthily;[39]
- governments should provide ways of protecting children from dangerous drugs;[40]
- children should be protected from any activities that could harm their development.[41]

The Charter includes the following provisions:-

- every person has the right to enjoy his/her human rights without discrimination;[42]
- every person is equal before the law and is entitled to equal protection without discrimination;[43]

[36] Ratified by Australia 17/12/1990.
[37] Article 12
[38] Article 16
[39] Article 6
[40] Article 33
[41] Article 36
[42] Section 8(2)
[43] Section 8(3)

- a person must not be subjected to medical treatment without his/her full, free and informed consent;[44]

- families are the fundamental group unit of society and entitled to be protected by society and the State;[45]

- every person has the right to liberty and security.[46]

However, it also includes the following provisions:-

- every child has the right without discrimination to such protection as is in his/her best interests and is needed by reason of being a child;[47]

- a person must not be deprived of his/her liberty except on grounds and in accordance with procedures established by law;[48]

- all persons deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person;[49]

- a child charged with a criminal offence has the right to a procedure that takes account of his/her age and the desirability of promoting the child's rehabilitation.[50]

The children and young people who would be eligible to be placed on a Youth Therapeutic Order are suffering from serious substance abuse/mental health issues which are impacting adversely on their health. For those young people taking crystal methamphetamine, the health implications can be life long, eg the taking of stimulants, including crystal methamphetamine depletes dopamine, a chemical in the brain which does not replenish itself. In long term use the depletion of dopamine presents as a syndrome similar to Parkinson's Disease. For young people who use methamphetamine, their rate of psychosis is 11 times the rate of contact with psychiatric services with a diagnosis of drug psychosis, a psychosis or schizophrenia as those young people not using methamphetamine.[51] For some young people, the health impacts are already evident and yet treatment is not being accessed, for example, a 14 year old girl chroming every day and functioning at the level of a 7 year old and a 15 year old boy with pancreatitis due to alcohol abuse.

The opportunity for the child or young person to access voluntary treatment services would be provided prior to the Youth Therapeutic Order being made. The Order is providing treatment for those not otherwise receiving any treatment. The placement in the secure unit would be for the shortest time possible (informed by the clinicians) and the young person would transition to the step down facility on site. In order to effect change, the average length

[44] Section 10(c)
[45] Section 17(1)
[46] Section 21(1)
[47] Section 17(2)
[48] Section 17(3)
[49] Section 22(1)
[50] Section 25(3)
[51] Page 20 of the Report

of total stay would be approximately 4 months to 6 months and there would be a staged transition to supported accommodation in the community.

Significantly, the Order places the child or young person in a therapeutic environment which is homely. It is not a draconian prison environment. There are committed qualified clinicians working with and assisting the young people by providing intensive therapeutic counselling and treatment. It is an opportunity for rehabilitation. It is not a sentence. The court will have regard to progress in treatment when determining the appropriate sentence. For a young person in the child protection system, it may result in DHHS (child protection) no longer being involved and instead the young person transitioning to live independently.

Further opportunities for rehabilitation are included by the provision of education and training facilities on site.

It is critical that independent oversight is provided, eg by the Court and other external agencies. Such external agencies overseas include the Ombudsman for Children in Sweden, the Care Quality Commission in England and the Mental Welfare Commission in Scotland. Scrutiny could include un/announced visits by such agencies. Regular progress reports would be provided to the Court.

The proposed Order would provide a circuit breaker for some of the most vulnerable children and young people in our community who are leading chaotic lives in which their substance abuse and mental health issues are not otherwise being addressed. One mother stated in Court to the presiding magistrate – *'What can you do? I am watching my son die before my eyes.'* [52]

For children who are drug dependent and living sad, chaotic lives, Dr Dickon Bevington, consultant child and adolescent psychiatrist and international expert on treatment for substance use in young people, succinctly stated the position many of the young people find themselves -

> *'Nearly all have terrible histories of trauma, neglect, bereavement, maybe major anxiety, emerging psychotic illnesses. The problem for these kids if they had one of those, for example, we know how to treat trauma, bereavement, drugs but the cumulative burden of all of that rubble pushes the flight path down - so it will inevitably hit the trees at the end of the runway. These children very often struggle the most to make helpful relationships,* ***they least know how to say 'help me' and they don't have the expectation they will receive treatment.'*** *(emphasis added)*

Conclusion

The Youth Drug Court judge in Christchurch, New Zealand, Her Honour Judge McMeeken stated - *'I can always lock people away, but I can't always put them in rehab.'* It must be remembered we are dealing with children and young people. As one young person in a

[52] Page 12 of the Report

residential facility in New Zealand said - *'We're just kids - isn't it up to you to know what's best for us?'* Sufficient resources, independent oversight and the critical features of the facilities as detailed in the Report[53] will ensure that the human rights of children and young people are respected and advanced.

18 February 2017

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