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10 March 2017

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Legal and Social Issues Committee
Parliament of Victoria

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Submission to Inquiry into Youth Justice Centres in Victoria

Liberty Victoria thanks the Legal and Social Issues Committee for the opportunity to provide a submission to the Inquiry into Youth Justice Centres in Victoria. Thank you for the extension of time granted to make this submission.

Liberty Victoria is one of Australia's leading human rights and civil liberties organisations. It is concerned with the protection and promotion of civil liberties throughout Australia. As such, Liberty is actively involved in the development and revision of Australia's laws and systems of government. Further information on our activities may be found at www.libertyvictoria.org.au.

1. The children detained in our youth justice centres are especially vulnerable.

2. A revealing study undertaken in October 2015¹ showed that most of those children were victims of abuse, trauma or neglect. Most had previously been suspended or expelled from school. Almost half had been subject to a child protection order. 30 per cent presented with mental health issues. 18 per cent had a history of self-harm or suicidal ideation. 24 per cent presented with issues concerning their intellectual functioning. 11 per cent were registered with Disability Services. 66 per cent had a history of both alcohol and drug misuse. 12 per cent were parents. 38 per cent had a family history of parental or sibling imprisonment. 12 per cent spoke English as a second language. 10 per cent were homeless.
3. Further, the overrepresentation of Aboriginal children in detention has continued.²
4. These are children who very much need our care and protection.³ Yet, recent history suggests that we are failing in our duty to them.
5. In October 2010, the Victorian Ombudsman⁴ said of the Parkville Youth Justice Centre:⁵

... the design and location of the Precinct is inappropriate for a custodial facility which houses vulnerable children. The dirty, unhygienic and ill-maintained conditions reflect poorly on the management and staff at the Precinct. ...

... the structural problems I have identified are beyond simply maintenance and repair. As such, the only practical way to address the conditions at the Precinct in the long-term is to develop a new facility at another site.

6. Tragically, both major political parties failed to heed these warnings.

¹ Youth Parole Board, "Annual Report 2015-16", August 2016, 14.

² Ibid., 19.

³ In its report "Forgotten Australians", the Australian Senate's Community Affairs References Committee opened with a quote from Nelson Mandela: "Any nation that does not care for and protect all of its children does not deserve to be called a nation" - The Senate, Community Affairs References Committee, "Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children", August 2004.

⁴ George Brouwer.

⁵ Ombudsman Victoria, "Whistleblowers Protection Act 2001: Investigation into conditions at the Melbourne Youth Justice Precinct", October 2010, 8.

7. More recently, a designated section of Barwon Prison was gazetted to be a youth justice precinct. We now hold child detainees in a prison built for adult prisoners. As Elliott J, who has visited this section – the Grevillea Unit – observed in *Application for Bail by HL*:⁶

The state of the evidence concerning the conditions at Barwon Children’s Remand Centre, both generally and also specifically with respect to the applicant, is concerning. Although there has been progressive improvement over time, there can be little doubt that the conditions at Barwon Children’s Remand Centre are far from ideal.

Barwon Children’s Remand Centre was built to be an adult prison. The overwhelming impression given from the building and its surrounds is that Barwon Children’s Remand Centre is an adult prison and not a centre for holding children on remand Given the location, structure and surrounds of Barwon Children’s Remand Centre, it is difficult to envisage that, whatever measures are taken with respect to programs and other resources that might be made available to the residents, this distinct impression will materially change.

Further, the manner of operation of Barwon Children’s Remand Centre from late November 2016 to at least 19 December 2016 suggests little by way of measures being taken with respect to rehabilitation. It would seem that the promise of further facilities and resources in the future for the residents is an acknowledgment that, at least until 19 December 2016, the situation was less than satisfactory.

8. In December 2016, the Supreme Court of Victoria heard evidence that children detained in the Grevillea Unit had confronted conditions including:⁷
 - a. Very long periods of solitary and prolonged confinement of young people in cells formerly used for high security adult prisoners;
 - b. Uncertainty as to the length and occurrence of lockdowns;

⁶ [2017] VSC 1, [113]-[115].

⁷ *Certain Children by their Litigation Guardian Sister Marie Brigid Arthur v Minister for Families and Children* [2016] VSC 796, [169] and [178].

- c. Fear and threats by staff against young persons;
 - d. The use of SESG⁸ inside the Grevillea unit, including German Shepherd dogs;
 - e. The use of handcuffs on young people when moving to outdoor areas;
 - f. The noise of loud banging on the doors or screaming;
 - g. The failure to advise young people of their rights or the rules of the centre;
 - h. The general lack of space and amenities for young persons and the limited opportunity to use the space and amenities available;
 - i. The absence or very limited opportunity for education or other pursuits; and
 - j. The absence of family visits or access to religious services or advisers.
9. It was found that those conditions breached the obligations upon correctional authorities as public authorities pursuant to the Charter of Human Rights and Responsibilities. The Government has abandoned its appeal against those particular findings. It is shocking that, in Victoria in the 21st century, the Government is engaged in breaching the human rights of child detainees. The damage caused by such conditions is something that that Victorian community will have to deal with in years to come as we begin to understand the cost of prioritising punitive policies over the rehabilitation of child detainees.⁹
10. Although this Inquiry is focussed on issues at the Parkville and Malmsbury Youth Justice Centres, the conditions at the Grevillia Unit are cited as an example of what

⁸ The SESG is the Security and Emergency Services Group of Corrections Victoria at Barwon Prison.

⁹ For completeness, it is noted that the Victorian Ombudsman has expressed his view that “there are no circumstances that justify the placement of a child in the adult prison system”: Ombudsman Victoria, “Investigation into children transferred from the youth justice system to the adult prison system”, December 2013, 5 and 37.

can happen when decisions are made in relation to children without having due regard to the human rights and particular vulnerability of young persons in the criminal justice system.

11. Liberty Victoria is not only troubled about the conditions that children in detention face, but also the evidence that suggests that an increasing number of children are being detained on remand.

12. In November 2015, the Attorney-General¹⁰ said:¹¹

The number of children remanded has increased considerably since 2012. For children aged 10–14 years, in particular, remand admissions have tripled Representation of Indigenous children within the criminal justice system is disproportionately high and the Children's Court and other stakeholders have called for this issue to be addressed as a matter of urgency. The Youth Parole Board annual report notes that the number of remandees held in youth detention often outnumbers sentenced children and young people, and a significant proportion are bailed within a short period. This runs counter to the principle that young people should not be held on remand unless it is necessary.

13. In *Woods v Director of Public Prosecutions*,¹² Bell J observed that the:¹³

... detention of young people on remand can have deleterious consequences for them and the community which are out of all proportion to the purpose of ensuring appearance at trial and protecting the community. It separates them from their families and the community, disrupts their education and employment, causes them to associate with other young offenders at a vulnerable time in their lives, ... deprives them of access to therapeutic programs and increases the risk of them being given a sentence of incarceration. ...

14. Liberty Victoria believes that the youth justice system can be improved by ensuring that all decisions made are consistent with and promote every child's right to:

¹⁰ The Honourable Martin Pakula.

¹¹ *Bail Amendment Bill 2015* (Vic), second reading speech.

¹² [2014] VSC 1.

¹³ *Ibid.*, [95] (citation omitted).

- a. Protection in his or her best interests and as needed by reason of them being a child;¹⁴
- b. Protection from torture and cruel, inhuman or degrading conduct;¹⁵
- c. Be treated in a way that is appropriate for his or her age (if convicted of an offence);¹⁶
- d. Enjoy, to the maximum extent possible, development and recovery from past neglect, in an environment that fosters their health, self-respect and dignity;¹⁷
- e. Education;¹⁸
- f. Recreational, cultural and artistic activity;¹⁹
- g. (In the case of disabled children): Special care in a manner conducive to the child's achieving the fullest possible social integration and individual development;²⁰
- h. Be separated from adults;²¹ and
- i. Be brought to trial as quickly as possible.²²

¹⁴ Charter of Human Rights and Responsibilities, s 17(c). See too: *Convention on the Rights of the Child*, Article 3(1).

¹⁵ *Ibid.*, ss 10 and 22(1). See too: *International Covenant on Civil and Political Rights*, Articles 7 and 10; *Convention on the Rights of the Child*, Article 37(3).

¹⁶ *Ibid.*, s 23(3).

¹⁷ *Convention on the Rights of the Child*, Articles 6(2) and 39.

¹⁸ *Ibid.*, Article 28.

¹⁹ *Ibid.*, Article 31.

²⁰ *Ibid.*, Article 23.

²¹ Charter of Human Rights and Responsibilities, s 23(1). See too: *Convention on the Rights of the Child*, Article 37(c).

²² *Ibid.*, s 23(2).

15. This Inquiry has the considerable benefit of having received valuable submissions from the Youth Affairs Council Victoria (**YACV**)²³ and the Law Institute of Victoria (**the LIV**),²⁴ amongst others. Liberty Victoria broadly supports the recommendations made by YACV and the LIV, which are consistent with and promote those rights identified at paragraph 14 above. In particular, Liberty Victoria supports the recommendations that:

- a. Early intervention, prevention and justice reinvestment programs ought be pursued;²⁵
- b. The unacceptably high numbers of young people being held on remand and their shortage of adequate supports ought be addressed,²⁶ with the availability of alternatives to remand expanded;²⁷
- c. Cases involving young people on remand (having been refused bail) ought be expedited;²⁸
- d. A long-term, overarching strategy for improving outcomes for young people facing significant disadvantage (including young people who are in contact with, or at elevated risk of contact with, the youth justice system) ought be developed;²⁹

²³ Youth Affairs Council Victoria, "Inquiry into Youth Justice Centres in Victoria: A submission to the inquiry by the Standing Committee on Legal and Social Issues, Parliament of Victoria", March 2017.

²⁴ Law Institute of Victoria, "Submission to the Legal and Social Issues Committee: Inquiry into Youth Justice Centres in Victoria", 3 March 2017.

²⁵ *Ibid.*, 25-26.

²⁶ Youth Affairs Council Victoria, "Inquiry into Youth Justice Centres in Victoria: A submission to the inquiry by the Standing Committee on Legal and Social Issues, Parliament of Victoria", March 2017, 74-75.

²⁷ Law Institute of Victoria, "Submission to the Legal and Social Issues Committee: Inquiry into Youth Justice Centres in Victoria", 3 March 2017, 29-30.

²⁸ *Ibid.*, 31-32.

²⁹ Youth Affairs Council Victoria, "Inquiry into Youth Justice Centres in Victoria: A submission to the inquiry by the Standing Committee on Legal and Social Issues, Parliament of Victoria", March 2017, 69.

- e. Ongoing, meaningful engagement with young people who have had contact with the justice system (to help inform policy and program development) ought be supported;³⁰
- f. Those aspects of Victoria’s current youth justice system that have demonstrated positive impacts (such as youth diversion) ought be maintained and strengthened,³¹ with the availability of alternative sentencing options expanded;³²
- g. Youth justice centres ought focus on supporting young people to transform their behaviours and address the causes of their involvement in crime, and ensure that by the time young people leave the centres they: (i) have re-engaged with education, training and/or employment; (ii) have a safe home and a nurturing family / community environment to return to; and (iii) are receiving ongoing support to avoid re-offending;³³
- h. Trauma screening to help facilitate referrals to interventions and support programs that are responsive to the needs of traumatised young people ought be used;³⁴
- i. Youth Justice ought not be ‘absorbed’ or ‘eroded’ into a corrections system designed for adults;³⁵

³⁰ Ibid., 69-70.

³¹ Ibid., 70-71. See too: Law Institute of Victoria, “Submission to the Legal and Social Issues Committee: Inquiry into Youth Justice Centres in Victoria”, 3 March 2017, 29.

³² Law Institute of Victoria, “Submission to the Legal and Social Issues Committee: Inquiry into Youth Justice Centres in Victoria”, 3 March 2017, 30-31.

³³ Youth Affairs Council Victoria, “Inquiry into Youth Justice Centres in Victoria: A submission to the inquiry by the Standing Committee on Legal and Social Issues, Parliament of Victoria”, March 2017, 71-74.

³⁴ Law Institute of Victoria, “Submission to the Legal and Social Issues Committee: Inquiry into Youth Justice Centres in Victoria”, 3 March 2017, 26-27.

³⁵ Youth Affairs Council Victoria, “Inquiry into Youth Justice Centres in Victoria: A submission to the inquiry by the Standing Committee on Legal and Social Issues, Parliament of Victoria”, March 2017, 74; Law Institute of Victoria, “Submission to the Legal and Social Issues Committee: Inquiry into Youth Justice Centres in Victoria”, 3 March 2017, 34-35.

- j. Behaviour management practices in residential care ought be reformed;³⁶
- k. The particular needs of Aboriginal and Torres Strait Islander young people ought be responded to;³⁷
- l. Expert and targeted interventions aimed at young people who are living in the community but are at elevated risk of future re-offending ought be resourced, to direct those young people away from crime and address barriers to their wellbeing and positive engagement;³⁸
- m. Changes that would make a strong impact in terms of preventing young people’s engagement in crime ought be planned and resourced;³⁹ and
- n. International best practice ought be followed in the construction of a new Youth Justice Centre.⁴⁰

16. There is a vital community interest in maximising the prospects of rehabilitation of an individual who has been convicted of a crime.⁴¹ That is especially so in relation to children who come into contact with the criminal justice system. As Redlich JA said in *Azzopardi v The Queen*:⁴²

... courts “recognise the potential for young offenders to be redeemed and rehabilitated”. This potential exists because young offenders are typically still in a stage of mental and emotional development and may be more open to influences designed to positively change their behaviour than adults who have established patterns of anti-social behaviour. No doubt because of this

³⁶ Ibid., 28-29.

³⁷ Ibid., 27-28.

³⁸ Youth Affairs Council Victoria, “Inquiry into Youth Justice Centres in Victoria: A submission to the inquiry by the Standing Committee on Legal and Social Issues, Parliament of Victoria”, March 2017, 75-76. See too: Law Institute of Victoria, “Submission to the Legal and Social Issues Committee: Inquiry into Youth Justice Centres in Victoria”, 3 March 2017, 32-34.

³⁹ Ibid., 76-79.

⁴⁰ Law Institute of Victoria, “Submission to the Legal and Social Issues Committee: Inquiry into Youth Justice Centres in Victoria”, 3 March 2017, 35-36.

⁴¹ *Director of Public Prosecutions v Tokava* [2006] VSCA 156, [21] (Maxwell P). His Honour was then considering a serious crime.

⁴² (2011) 35 VR 43, 54 (citations omitted).

potential, it has been stated that the rehabilitation of young offenders, “is one of the great objectives of the criminal law”. The added emphasis for the purposes of sentencing on realisation of a young offender’s potential to be rehabilitated is further justified because of the community’s interest in such rehabilitation, not only at a theoretical level, but because the effective rehabilitation of a young offender protects the community from further offending.

17. Liberty Victoria urges this Inquiry to promote the rehabilitation of children who offend, to promote policies and interventions that help such children to remain in the community and out of detention, to take steps that aim to address the causes of such offending, and reject any calls for a more punitive approach towards youth justice.

Thank you for the opportunity to make this submission and for the extension of time granted to do so. Please contact Liberty Victoria President Jessie Taylor, Liberty Victoria Secretary, Paul Smallwood, or the Liberty office on 9670 6422 or info@libertyvictoria.org.au if we can provide any further information or assistance. This is a public submission and is not confidential.

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