

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS – INQUIRY INTO AUSTRALIA’S YOUTH JUSTICE AND INCARCERATION SYSTEM

Opening Statement

Reserve Magistrate Jennifer Bowles – 25.5 years’ experience as a Magistrate, including 18 years presiding over proceedings in both the Criminal and Family (Child Protection and Intervention Orders) Divisions of the Children’s Court of Victoria.

Appearing in my capacity as a Churchill Fellow (visited Sweden, Scotland, England and New Zealand).

(My submission addresses TOR 1.5 but primarily addresses TOR 2.2 – ‘... effective alternative approaches to incarceration for young people, including diversionary programs. ...’).

In my Churchill Fellowship Report I refer to a young person (‘Greg’) who appeared before me on a number of occasions in the Children’s Court of Victoria. His offences commenced with stealing bottles of vanilla essence to feed his dependency on drugs and alcohol and rapidly escalated. As evidenced in a poem he wrote to me, he desperately wanted to address his substance abuse issues but could not last more than a few hours in residential detox, as his dependence was so strong. His mother asked me “What can you do. I am watching my son die before my eyes.”

An average of more than 80% of young people in youth detention in Victoria over the past 10 years had a history of substance abuse and had offended whilst under the influence of alcohol and/or other drugs and around 60% had been subject to child protection orders.

Whilst effective for some, voluntary rehabilitation services are far too often not the solution and not accessed for many deeply troubled young people due to their chaotic lives, and often, the trauma, neglect and abuse they have been subjected to. Many of these young people require effective, sustained therapeutic treatment in order to detox and then address the underlying causes of their dependence; but they are not receiving these services at present.

The observations I made at the numerous overseas facilities I visited and the research I conducted on my Churchill Fellowship confirmed that mandated therapeutic treatment

can be effective for many severely affected young people, provided that the service is health based and not punitive and meets a set of key criteria, which are outlined in pages 43 to 54 of my Report. I am happy to further discuss these together with the criteria which must be satisfied for the Court to make the proposed Youth Therapeutic Order (YTO); should the Committee so wish. The advice I received from psychiatrists and addiction clinicians is that a supported homely environment is required, rather than a punitive environment, for therapeutic treatment to be effective.

On my return, I established a Steering Committee of senior experts in the Alcohol and other Drugs service industry, for example, the CEOs of key agencies including Odyssey and YSAS, expert clinicians, First Nations people and people with lived experience. All members and many key stakeholders (such as the National Children's Commissioner and numerous parents of severely affected young people) fully support my recommendation that the Children's Court have the power to make Youth Therapeutic Orders. These Orders would require appropriately assessed young people appearing before either Division of the Court to attend an initially secure yet homely service and progressively step down to less secure environments and participate in group and individual counselling, education and recreation. The cost per person per day for my proposed service is significantly less than the existing cost for Youth Justice detention. Throughout the Order, there would be fortnightly progress reports provided to the Court and external oversight.

The Court would have regard to the progress of the young person on the Order. The successful completion of the YTO would impact on the outcome of child protection and intervention order proceedings and on criminal charges, for example, the young person may not receive a sentence of detention but rather a lesser sentence or may be placed on diversion or a same day deferral; as greater weight could be placed on the young person's rehabilitation. Conversely the young person would not receive a longer sentence if they did not complete the Order. The Court would however have regard to the period of time the young person was on the Order.

As indigenous young people in Victoria are 9.4 times more likely to be in youth detention than non-indigenous young people and 20.6 times more likely to be in care, I have recommended that there be a separate culturally safe facility for First Nations young people, with Elders and Respected Persons performing a critical role and ACCOs conducting the service.

There is no doubting that all States and Territories are at crisis point in terms of the challenges facing community safety, Youth Justice and Child Protection. This requires a coordinated and sustained national approach.

I conclude by quoting from the United Nations Convention on the Rights of the Child:
'Governments should ensure that children survive and develop healthily' and
'Governments should provide ways of protecting children from dangerous drugs.'

Thank you.

Jennifer Bowles

Churchill Fellow 2014

12 March 2026