

Youth Justice Conference
Measuring up for the next generation

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Acknowledgments

Before I begin, I want to acknowledge the traditional owners of the land on which we meet and to pay my respects to their Elders past and present. I also want to thank the organisers of today's event for inviting me to contribute this morning.

The more things change, the more they stay the same...

When I was Attorney-General – about mid-way through, I think – a headline hit the Herald-Sun which screamed, in outrage, that Victoria had the lowest juvenile incarceration rate of any jurisdiction in the country. Apparently this was a scandal – a sign that Victoria was soft on crime and letting juvenile offenders off the hook.

I think this headline was intended to incite panic, but I wore it as a badge of honour. I saw it as a sign that Victoria was doing the right thing, that Victoria was taking the smart and holistic approach in the way that it responded to kids who fell onto the wrong side of the law. Fast forward a decade – including through the recent outrage over the treatment of young, vulnerable kids at Don Dale in the Northern Territory – and the headlines have been screaming again, this time about riots in Victoria’s juvenile justice facilities. Backed by a constant barrage of commentary about the Apex gang, the media builds a case for panic and the pendulum swings again.

Instead of identifying these riots – and more broadly the behaviour of certain groups of marginalised youth within the community – as a signal of disenfranchisement, disengagement, disenchantment or need, on this occasion the government decided to transfer these juvenile offenders to Victoria’s *highest maximum security adult prison* while juvenile facilities are ‘fortified’. The question I want us to ask today is – what are we doing as a community which allows them to do this in our name?

Overlooking the evidence

It's a common occurrence in political and policy cycles, of course – governments feel caught between a rock and a hard place, a seemingly intractable problem on the one hand and a concerted media or opposition campaign on the other.

When this occurs, governments feel pressured to 'do something' and, what's more, be *seen* to be doing something. Governments often succumb to this pressure and offer up what appear to be little more than knee-jerk, quick fix solutions that end up being portrayed as unplanned and unsatisfactory on the one hand, and too little, too late on the other. This simply leads to an ugly law and order bidding war that does nothing for community safety.

The bit that we skip in this scenario, of course, are the facts. Despite what the headlines insist, the evidence tells us that youth crime is dropping in Victoria. Police and court statistics show that crime by 10-17 years olds dropped by 25% in the five years to 2014/15 and that young people are accounting for a smaller proportion of the state's crime than they were a decade ago.

Victoria still has one of the lowest child crime rates and child detention in Australia. All this suggests to me that approaches put in place some time ago have been having an effect – that we are diverting a greater proportion of kids from committing crime.

What the evidence also tells us, however, is that a certain cohort of young offenders are caught in a cycle of serious recidivism. These presumably include the offenders who are currently cycling through our juvenile justice facilities and are presenting a challenge for authorities in terms of their behaviour.

I don't pretend that this challenge is not significant. When responding to it, however, the evidence also provides substantial guidance. For the reality that remains the same – whatever the moment in time – is that those children who *are* caught up in the criminal justice system continue to represent those most disadvantaged in the community.

In fact, a recent survey of a juvenile justice facility indicated that:

- 63% of kids there were victims of abuse, trauma or neglect;

- 64% had been or are currently subject to a child protection order;
- 30% presented with mental health issues;
- 24% presented with issues about intellectual functioning;
- 38% had a family history of parental or sibling imprisonment...the list goes on.

This is consistent with what we know about adult prison populations – characterised by disadvantage, victimisation, low levels of education, our prisons have become symbols of the way in which we have failed certain sectors of the community. Meanwhile, astonishing rates of mental illness and Acquired Brain Injury tell us that we have simply turned our prisons into 21st century asylums.

In other words, these kids have significant need, and it's this need that we must address. Equally, if disadvantage is the predominant pre-cursor to committing crime, it is disadvantage that we must address. This is particularly so in the case of young offenders from marginalised or disenfranchised communities – kids who do not necessarily commit more crimes, but simply more visible to authorities and a suspicious public; kids from communities trapped in

intergenerational unemployment; or whose members have endured horrific hardship and torture along the way.

Smarter, not tougher

We have to start asking ourselves as a community how we can address this disenfranchisement, whether we have the guts to take a smarter road. One of the great secrets of politics, of course, is that the smart road is actually the tough one – the ‘lock ‘em up and throw away the key approach’ is the easy one, the lazy one, the cop out. It’s the one concerned with election cycles and media damage control.

As Deputy Commissioner Andrew Crisp from Victoria Police explained, however (and it’s not often that I quote a cop):

‘...While no-nonsense policing and tougher sentencing might provide a greater sense of short-term justice for the community, it does not address the broader, underpinning issues which are driving this increase in offending. ...Every criminal that is rehabilitated is one less person committing robberies, assaults and burglaries on innocent people. This is how we will make our community safe into the future.’

Therapeutic justice

I couldn't agree more and, unsurprisingly, I believe that part of our solution must be through therapeutic justice – using contact with the criminal justice system as a positive intervention in young people's lives, leveraging the authority of the court, and the participation of services to address the factors which propel people into crime.

Case management

Where young people are already in the system, we can still learn from these therapeutic court approaches. This does not just mean, however, throwing the odd counselling session at them for what appears to be their most pressing problem and hoping it works out.

Instead, it means thorough assessment and identification of *all* issues which have contributed to past offending and might contribute to it again. It means addressing trauma and family violence victimisation, *as well as perpetration by young people* so that it can be addressed. It means links to services. It means making sure we don't confuse the high needs of a young offender with high risk.

Education the key

Most importantly, however – and perhaps I *would* say this now that I work at a University – I believe that education is the key. Evidence tells us, without a doubt, that a lack of engagement in education is one of the primary drivers of young people into offending. Time and again in Cabinet we were presented with figures about the consequences for kids who fall behind. The prospect wasn't always prison, but nor was it ever good.

We *must* get better, then, at ensuring that kids from disadvantaged communities – kids who are already vulnerable, or who may be marginalised by the racism and discrimination they encounter in their daily lives – are properly engaged and supported at school, to stop them falling into this poverty to prison pipeline.

Just as relevantly, however, we must start harnessing the power of education for people who are already on their way. Here I'm talking about assessing someone's educational level and capability once they hit the system and *using that opportunity* to improve this on a sustained and meaningful basis while they're in the state's care.

Take Parkville College for instance. As you know, this is an educational facility within the walls of the Youth Detention Centre, run by the Education Department, not Corrections, where teachers get the first call on the kids.

Education must NOT be an added on extra. It needs to be the key focus of any time a person is in the care and control of the State. In fact judicial officers could even think creatively about crafting sentences around educational attainment.

As a community, we also have to take responsibility to ensure that kids are encouraged to continue their education upon release from the State's care rather than, as often happens now, being shunned from schools due to their past.

Measuring justice, measuring up as a society

At the outset I referred to that headline in the Herald Sun which thundered that Victoria's low level of juvenile incarceration was a signal that the government was soft on crime. Instead, I saw as it is a signal that we were on the right path.

The question I want us to ask ourselves as a community, is how do we want to be measured as a community – what kind of signals do we want to send about the wellbeing of our society, and what do these signals mean?

In the background of our myriad other projects, the CIJ has been quietly exploring the concept of measuring justice – the challenge of identifying indicators which can tell us whether our system is functioning as it should. As part of this work, we have asked whether there are certain ‘signpost’ indicators – like the indicators on a dashboard – which are more powerful than others; which tell us about whether the engine under the bonnet is failing or firing well.

I believe that the way in which we respond to juvenile offending, and to juvenile offenders, should be on our collective dashboard. I believe that when we see a Don Dale, when we hear about abuses in Queensland juvenile justice facilities, and when riots in Victorian facilities result in a proposed transfer of young people to a maximum security adult prison, this is a flashing light that something even bigger needs our attention.

Just like the shameful rates of Indigenous incarceration, when we see this flashing light we need to ask what is causing us to veer onto a punitive and ultimately ineffective path.

Though governments are elected to bear a substantial amount of the responsibility, they should not have to bear it all. Organisations like those represented here today – like all of those with whom we collaborate – need to make the case and create the demand for evidence-based practice.

As a community we need to decide how we want to measure up, what we want the symbols of our overall wellbeing to be. We need to decide what we want those headlines to be – what we want children from newly arrived communities to read, think and feel about how we perceive them and their efforts to belong. If we truly agree that societies should be measured by how they treat their most vulnerable members, we need to make this clear. We need to give governments permission to take the smarter road.