

**Utilising data in evidence-based policy:**  
***The justice system: battling entrenched perceptions and 'good' politics***

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Before I begin I'd like to acknowledge the traditional custodians of the land on which we meet and to pay my respects to their elders past and present. I'd also like to invite the organisers of this event for inviting me to contribute today.

They may have done so rashly, of course, because – as a former Attorney-General - I have more than a decade's experience of working in an area which is, on the whole, curiously devoid of data, or of evidence. In fact, 'law and order' is an area in which, all too often, the political push and the tabloid headlines seem to go firmly *against* the evidence. The challenge for all policy makers, therefore, is to highlight this evidence and build a groundswell of community support for governments to *abide* and be informed by this evidence – a challenge I spent over ten years trying to meet.

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

Let me give you an example. 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 a collection of kids dubbed 'the Apex gang', the media builds a case for panic and the pendulum swings again.

Instead of identifying these riots – and more broadly the behavior of certain groups of marginalized 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 being ‘fortified’. The question I want to ask the public 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.

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 actually *dropping* in Victoria. Police and court statistics show that crime by 10-17 year 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 crimes than they were a decade ago.

Victoria also still has one of the lowest child crime and child detention rates 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 behavior.

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 imprisonment...the list goes on.

This is consistent with what we know about adult prison populations – characterized by disadvantage, victimization, 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 21<sup>st</sup> 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 also address. This is particularly so in the case of young offenders from marginalized or disenfranchised communities – kids who do not necessarily commit more crimes, but are simply more visible to authorities and a suspicious public; kids from communities trapped in intergenerational unemployment; or whose members have endured horrific grief and trauma along the way.

### **Following the evidence – getting 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 a Deputy Commissioner from Victoria Police explained, however (and it's not often that I quote police command):

'...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'.

So what does the evidence tell us that we need to do? It tells us that part of the solution must be through use of **therapeutic justice** approaches – using contact with the criminal justice system as a positive intervention in young people's lives, leveraging the authority of the court and participation of services to address the factors which propel people into crime. These approaches also employ procedural justice – evidence which tells us that, when court users feel that they have been treated fairly and with respect by the court, and spoken to as an individual by an engaged judicial officer, they are far more likely to comply with the orders of the court, regardless of what those orders actually are.

The evidence also tell us that **case management** is essential – providing every young person who comes through the justice system with 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 victimization, it means links to services. It means making sure that we don't confuse the high needs of a young offenders with high risk.

Most importantly – and perhaps I would say this now that I work at a University – the evidence tell us that **education** is the key. Without a doubt, 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 in this regard. 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 marginalized 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, international evidence tells us that 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. This has been the case at Victoria's Parkville College, turning young offender's lives around, yet at the moment we are retreating from this approach in Victoria – while the NT is embracing the evidence in new criminal justice terrain.

## **How we make the case for using evidence**

So if these are the things which evidence tell us to do, how do we make the case for following this evidence? As many of you who work in government will know – despite our best efforts, far too often the story we want to put out there becomes about *who* is delivering the message, not what the message is about.

For example, if I were to campaign vocally about the direction of juvenile justice in Victoria, many may argue that ‘Hulls would say that, wouldn’t he?’ simply because the message comes from one of the usual suspects.

‘Former Labor Attorney-General at odds with government’ is another, in which case the story becomes about former colleagues at loggerheads, not kids being held in adult jails.

Most worrying of all is the potential headline - ‘Government stands strong on young hooligans in face of criticism from Labor colleague’.

When a government wants to look tough on any issue, one of its best allies is a bleeding heart former leader bleating from the sidelines.

In other words, the role of politics, the media and public opinion in this debate is crucial to understand – not only in how the issue is portrayed, but in who is featured in this portrayal.

Once we understand this role better, of course, we can start to harness it. It's not an easy task, but there are certain basic guidelines that are useful to follow.

The first is obviously to humanise the subjects at the centre of the story. It is crucial that the public is given the opportunity to see young offenders as more than the sum of their crimes, as so frequently the *victims* of other crimes committed against them. It is always fascinating and somewhat heartbreaking to me, in fact, to see how much sympathy we have as a community for a victim of crime until their experiences propel them into poverty, homelessness, mental illness, substance abuse and they fall onto the wrong side of the law. When this happens we seem to have a sympathy bypass, an artificial dichotomy which sees so many people falling through the cracks.

The second task in order to sell the evidence base is to identify the *less than usual suspects* to tell this story – to find youth justice champions to explain why these young people’s lives matter. This is certainly the approach I took when building the evidence base and case for human rights reform in Victoria – engaging a diverse range of human rights champions to go out into the community and tell the story of why human rights matter to *everyone*, and are not just about ‘special treatment’ for the marginalized, which is so often the misconception.

The third is to identify different audiences to *hear* this story – it’s no use preaching to the converted, no matter how much comfort this might offer us. This means we need to venture out into the lion’s den – we need, in this case, a champion for evidence based approaches to juvenile justice to take the humanised story of young offenders to audiences who would not usually hear it, to community groups, to business, to faith leaders, the list is long.

The final and perhaps most challenging part is to establish what the most effective message should be based on all this evidence.

Are we going to cut through talking primarily about human rights and the fact that, in Victoria, the current approach to juvenile justice is actually violating our Charter of Rights and Responsibilities? As established as this mechanism might be, and as useful a measuring stick, it's not the show stopper on the front pages of the Herald-Sun.

Are we going to cut through speaking primarily about the costs of incarceration? The evidence is certainly overwhelming in terms of the vast expense of a punitive approach compared with the far more cost-effective option of therapeutic approaches. What's more, issues of the bottom line are definitely persuasive in Cabinet discussions.

However, the latest research suggests that this is not necessarily the case in terms of public opinion – that the public (and therefore a government) is prepared to spend *whatever it takes* on measures which are perceived to be about public safety.

What cuts through, therefore, has to be messages about what works, about effectiveness – the simple message that a punitive approach to youth justice is not actually going to keep the community safe.

To this end, the report from the Victorian Ombudsman about the situation in our *adult* prisons was devastating in the evidence it presented. It made it abundantly clear that locking more people up was not only costing us vast amounts of money but not making us any safer as a community. In many cases, it was making us *less* safe, because a failure to meet the legislated purpose of rehabilitation while offenders are under sentence is meaning that they are returning to the community and reoffending at a ridiculous rate of over 40%.

### **Building evidence bases into workforce requirements**

For this reason I believe we need to build evidence bases into workforce KPIs. In the case of young offenders or even adult offenders, the majority of whom have very low rates of educational attainment, the KPI should be for our justice machinery to use *first* contact with the justice system as an opportunity to support offenders to complete this education.

We also need to build in KPIs around rehabilitation – with Corrections and youth justice environments alike required to demonstrate how they have prevented their clients from coming back by delivering them the services that they needed while they are in prison.

Just as essential should be KPIs around continuing to make the evidence base stronger – gathering data, understanding who it is that is in our criminal justice system, and what has brought them there.

It is a bold government, of course, that will take the evidence-based approach in such a volatile political landscape. Law and order is where governments feel vulnerable, where they want a quick fix, not a long haul. We have to appeal to the public's common sense, therefore, about why they should be demanding evidence-based approaches from the people they elect.

## Conclusion

Certainly, I envy those of you working in areas which are supported and driven by evidence bases. While in government I fought for the justice system to become one of those areas, and slowly and surely it started heading in the right direction.

There's a lot of work still to be done, however. In fact, that is why I work where I now do at the Centre for Innovative Justice – because I want to keep contributing to the evidence base about better and more effective ways of doing and designing justice. It can be a virtuous circle, a beautiful thing in which evidence bases contribute to policy reform which in turn support the strengthening of the evidence.

It takes perseverance but there *are* examples of – conservative states in the US which have realised that they can save millions of dollars by investing in education and social services in disadvantaged communities, rather than building more prisons. We'll keep plugging away, then, and the policy pendulum will ultimately swing again. I just hope that, for those young offenders of whom I spoke earlier, it's not too late.



