

Proposal for Meeting Sept 11, 2019

The Hon. Gareth Ward, MP, Minister for Families, Communities and Disability Services with Justice Action.



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Brief for a proposed agenda for the meeting with the Hon. Gareth Ward, MP, Minister For Families, Communities and Disability Services on 11 September 2019.

Justice Action and Juvenile Justice

Justice Action (JA) is a not-for profit organisation whose aim is to give a voice to marginalised groups such as youth and ATSI people, prisoners, mental health patients and their families.

JA has a long history working with juvenile justice and being part of the Youth Justice Coalition. It has represented all detainees in Australia including youth at the OPCAT negotiations. JA spoke for youth in detention at the 2017 Juvenile Justice Youth Summit in Sydney and at the 2018 Indigenous Youth and Juvenile Justice Conference in Brisbane. JA has also worked with Mission Australia on a mentoring program for at-risk youth.

Problems with Juvenile Justice

Juvenile justice is an area of immense failure, expense and national concern, with recidivism rates much higher than those of adult offenders.¹ Nationally, 794 young people are in detention.² In 2017, juvenile recidivism rates rose from 63.4% to 64.4% despite current policy objectives to reduce recidivism.³ This incurs costs at an average of \$1,391 per child per day federally – amounting to over half a million dollars a year.⁴ Considering the significant cost already imposed upon taxpayers, the current failures of the juvenile justice system are unacceptable.

The overrepresentation of minority groups further reflects the unfairness of the current system, as Indigenous youths are twenty-five times more likely than non-Indigenous youth to be incarcerated in detention centres.⁵

The 2018 Don Dale and 2019 Kariiong Youth Detention Centre riots are public expressions of how young detainees in juvenile detentions centres are being badly handled. The extensive use of force, and torturous methods such as spit hoods and gagging contributed substantially to the tension between inmates and officers.⁶ This culminates in violence as an inevitable outcome. Other practices such as 22 hour daily isolation fails to address detainees' underlying issues and exacerbates destructive behaviour.⁷

¹ Australian Institute of Criminology, *Juvenile Offenders* (2007) <<http://www.aic.gov.au/Criminology/statistics/criminaljustice/juveniles.html>>.

² Ibid.

³ Bureau of Crime Statistics and Research, 'Re-offending statistics for NSW', *NSW Department of Justice*, <https://www.bocsar.nsw.gov.au/Pages/bocsar_pages/Re-offending.aspx>.

⁴ Save the Children, *Federal Government Budget Submission* (January 2017) <https://static.treasury.gov.au/uploads/sites/1/2017/06/C2016-052_Save-the-Children-Australia.pdf>.

⁵ Australian Institute of Health and Welfare, *Youth Justice in Australia 2015-16* (March 2017).

⁶ Northern Territory Department of Correctional Services, *Final Investigation Report* (August 2016) <https://occ.nt.gov.au/__data/assets/pdf_file/0003/440832/pdf-final-investigation-report.pdf> p35.

⁷ Patrick Begley, 'Juvenile Justice bosses 'approved unlawful isolation' lawsuit claims' *The Sydney Morning Herald* (online at 26 August 2019) <<https://www.smh.com.au/national/nsw/juvenile-justice-bosses-approved-unlawful-isolation-lawsuit-claims-20190825-p52kjj.html>>.

JA proposes fresh strategies to manage young people who need positive influence and guidance to fully develop into contributive and productive members of society.

Proposals for change

- **Engagement**

We first must acknowledge that juveniles living together in custody are a community.

Proper engagement with juvenile detainees is part of the solution and the first step towards change. Listening to them, and allowing them to take responsibility for their own management is crucial. By expressing their concerns, detained youth are provided with greater personal agency, both as a community and as individuals. While the involvement of inmates may appear concerning to some, it is important to accept research that says that helplessness and authoritarian environments produce and reinforce criminal behaviour.⁸ Videos, music and other sources of media allow creative expression and provide an effective means of voicing concerns, which needs to be encouraged. Care must be taken to engage with inmates in a respectful manner.

Justice Action has continually raised this issue of involvement. Yet such a conciliatory approach has been ignored. The youth sector considers it easier to blame the individual child for failure and dictate the ways he/she should change. The failures of the current system can be directly attributed to the lack of an adequate voice representing juvenile offenders in discussions concerning their diversion, incarceration and rehabilitation. The stated aim of the juvenile justice system is to rehabilitate offenders. With rehabilitation relying on individual empowerment, the lack of participation is nothing more than a confused policy design. It is self-defeating.

- **Computers in cells**

Computers in juvenile cells are crucial to the rehabilitation of juvenile offenders.

All jurisdictions have officially mentioned the importance of education for youth offenders in detention. However, no jurisdiction has implemented effective systems that would permit computers in cells. Computers in cells would lessen social isolation through using modern technology to enhance their skills. Education is mandatory and teens are digital natives. It replaces passive TV watching, and instead gives them access to family, peers, external authorities, and counselling in a safe and efficient manner.

The lack of access to technology for juveniles in detention centres has been said to be a “significant shortfall” in relation to prisoner education.⁹ Jim and Jillian Dellit found that “more

⁸ Richard A. Schill & David K. Markus, ‘Incarceration and Learned Helplessness’ (1998) 42(3) *International Journal of Offender Therapy and Comparative Criminology*, 224-232.

⁹ Jim Dellit and Jillian Dellit, Development of an Effective Services Delivery Model for Victoria’s Youth Justice Custodial Clients (15 July 2011) <<http://www.education.vic.gov.au/Documents/about/programs/pathways/youthpartnerships/Development%20of%20an%20Effective%20Services%20Delivery%20Model%20for%20Victoria's%20Youth%20Justice%20Custodial%20Clients.pdf>>, 4.

use needs to be made of diagnostically detailed individual learning plans linked to rehabilitation plans.”¹⁰

Counselling using computers in cells provides:

1. Proper use of the up to eighteen hours a day they spend in bored isolation;
2. greater trust and choice generated by external providers of therapies;
3. stability of service providers through the duration of detention and after release;
4. some empowerment and self-management;
5. more effective counselling via online than face-to-face; and
6. a relatively cheap alternative.

The ACT adult system has had computers in cells with access to the internet through a safe server for the past nine years.

The fundamental aim of juvenile detention is the rehabilitation of the juvenile offenders.¹¹ A key component of this rehabilitation is education,¹² which would be facilitated by the provision of computers into the cells of prisoners.¹³ Having access to computers can help with the implementation of individualised learning plans, allowing young offenders to receive the help they undoubtedly need. The education of youth offenders also works to reduce rates of recidivism.¹⁴ It is now commonplace that most educational courses require access to a computer, and lack of computers in cells presents a significant barrier to education for detainees.¹⁵

Justice Action proposes that providing detainees with computers in their cells would allow for easier access to education, counselling, legal resources and communication with family members, ultimately decreasing rates of recidivism.¹⁶ Access to computers has been stressed as the “natural tool in relation to expanding access to various educational options outside prisons”.¹⁷ A safe server system costs only \$230,000 to install within a large prison.

¹⁰ Ibid.

¹¹ Australian Law Reform Commission, *Seen and Heard: Priority for Children in the Legal Process* (1997) Report 84, [20.22].

¹² Report for the Minister for Juvenile Justice, *Review of Effective Practice in Juvenile Justice* (January 2010) <<http://www.juvenile.justice.nsw.gov.au/Documents/Juvenile%20Justice%20Effective%20Practice%20Review%20FINAL.pdf>>, v.

¹³ Jim Dellit and Jillian Dellit, *Development of an Effective Services Delivery Model for Victoria’s Youth Justice Custodial Clients* (15 July 2011) <<http://www.education.vic.gov.au/Documents/about/programs/pathways/youthpartnerships/Development%20of%20an%20Effective%20Services%20Delivery%20Model%20for%20Victoria’s%20Youth%20Justice%20Custodial%20Clients.pdf>>, 4.

¹⁴ NDTAC, *Fact Sheet: Juvenile Justice Education* (2011) <<http://www.neglected-delinquent.org/sites/default/files/NDFactSheet.pdf>>.

¹⁵ Justice Action, *Computers in Cells* (2012) <<http://www.justiceaction.org.au/images/JusticeReformPapers/computers%20in%20cells%20pdf.pdf>>, 2.

¹⁶ Ibid 11.

¹⁷ NCVER, *Vocational Education and Training for Adult Prisoners and Offenders in Australia: Research Readings* (2007), 20.

- **Peer Mentoring**

Justice Action proposes that peer mentoring programs be introduced to the NSW Juvenile Justice System. This approach would allow offenders to develop a meaningful relationship with someone who has a similar background and shared experiences with them.¹⁸ Role models and the employment of young people who have managed to overcome their problems is key.

Mentoring is premised upon ‘building a relationship of mutual trust, friendship and support within which help, advice and assistance can be offered as part of the process of re-building a life after being labeled a criminal and where many barriers actively prevent return to normal life’.¹⁹ Perhaps most crucially, it provides them the skills and objectives that they will need to survive, not just on the inside, but on the outside. These needs include, but are not limited to: shelter, food, clothing, health care, drug counselling, education, and job search assistance. It further provides an invaluable cultural experience for the juvenile justice detainees, as they are able to communicate with their peer mentor on a level ground, which is not possible with authority figures.

The selection of mentors involves a ‘person trusted by the offender, in a one to one relationship on a daily basis, to give support and guidance’.²⁰ Ideally the mentor would have a background or personal experience similar to that of clients of the criminal justice system. Prisoners and ex-prisoners are some of the best and most qualified people to offer support to other individuals caught up in the justice system. Adequate training would be provided to mentors, with NSW Tafe currently running additional mentoring courses in correctional centres.

The Women’s Justice Network mentoring scheme has helped ensure that 93% of women have not returned to prison after release, a rate of success that cannot be ignored.²¹ The mentors would provide juvenile justice detainees with support and guidance, working within the system and externally.²² This support empowers the individual to take control of their own rehabilitation by providing them with a positive and realistic expectation of what they can achieve.

Overall, mentoring was found to achieve profoundly positive outcomes for young offenders. All the young people in well performing mentoree relationships of six months or more reported reduced offending, increased community involvement, improved self-esteem, communication skills, and greater motivation.

¹⁸ Justice Action Mentoring Group Project, Fourth Edition (May 2008) p4.

¹⁶ Justice Action Mentoring Group Project, Fourth Edition (May 2008) p8.

¹⁹ Justice Action Mentoring Group Project, Fourth Edition (May 2008) p4.

²⁰ Justice Action Mentoring Group Project, Fourth Edition (May 2008) p8.

²¹ Women’s Justice Network, *My Way Youth Mentoring* (u.d.)

<https://womensjusticenetwork.net.au/?page_id=1411>

²² Justice Action, *Investing in Youth* (2011)

<<http://www.justiceaction.org.au/images/Youth/JJForumMtoringJReinvest.pdf>>, 7.

- **Restorative Justice**

Justice Action fully supports the process of restorative justice as it provides a human face to the losses due to offending rather than the failed authoritarian approach that has long failed. Linking peer mentoring with this process brings support and open dialogue.

Restorative justice aims to reconcile tensions between offenders, victims and the community in a humanising way.²³ It enables stakeholders to cooperate with one another and come to an agreement on appropriate outcomes at different stages of the criminal process, not just in the pre-trial process. By separating the offence from the offender, restorative justice relies on forgiveness and self-reflection to help rehabilitate the person.

This process encourages young people to accept responsibility for the offence and attempt to repair the harm.²⁴ The accused discusses the consequences of their crime; empathising with and appreciating the feelings of those who have been harmed; how that harm might be repaired and any steps that ought to be taken to prevent reoffending.²⁵ Restorative justice programs have shown reductions in recidivism rates and greater success for those offenders in treatment programs, in comparison to more retributive approaches to criminal behaviour.²⁶

There has been an increase in the use of restorative justice in NSW. This positive movement towards greater referrals of Youth Conferencing have not only improved outcomes for victims of offenders, but also improved the time efficiency of the courts.²⁷ In 2018-2019, 1,060 young people participated in youth conferencing, diverting vulnerable people away from the courts.²⁸ Additionally, 90% of the outcome plans agreed upon in the conferences were completed.²⁹ This indicates that the program is effective in addressing the needs of both the victim and offender. The process eases an offender's acceptance and reintegration into the community, and both victims and offenders find the process satisfying and rewarding.

There is strong public support for restorative justice measures, particularly youth justice conferencing. 85.3% of NSW residents supported greater mental health care to reduce crime, followed by 82.6% supporting drug treatment and 71.6% to treat excessive alcohol consumption.³⁰ Despite this, the general public is not confident in the effectiveness of restorative justice programs to reduce crime rates. Thus, measures need to be made to ensure such programs address the underlying causes of criminal behaviour alongside the needs of the parties involved.³¹ Additionally, juvenile offenders were found to be much more likely to

²³ J Prihan, 'On the Social Theory of Restorative Justice' (2009) 4(2) International Journal of Restorative Justice 35.

²⁴ Australian Institute of Criminology, Youth Justice Conferences versus Children's Court: A Comparison of Time to Finalisation, Report No 74. (2011).

²⁵ J. Braithwaite, Theories of Why Restorative Justice Might Restore, Restorative Justice: Theories and Worries, 123rd International Senior Seminar Visiting Experts' Paper, (1999) 47.

²⁶ Research And Statistics Division Methodological Series, Department of Justice Canada, The Effectiveness of Restorative Justice Practices: A Meta-Analysis (2001) 14.

²⁷ Elizabeth Moore, *Youth Justice Conferences versus Children's Court: A comparison of time to finalisation* (NSW Bureau of Crime Statistics and Research Bureau Brief no. 74, December 2011).

²⁸ Bureau of Crime Statistics and Research, 'Youth Justice Conferencing', *NSW Department of Justice*, <http://www.juvenile.justice.nsw.gov.au/Pages/youth-justice/about/statistics_yjc.aspx>.

²⁹ Ibid.

³⁰ Elizabeth Moore, *Restorative Justice Initiatives: Public opinion and support in NSW* (NSW Bureau of Crime and Statistics Bureau Brief no. 77, February 2012), 6.

³¹ Nadine Smith and Don Weatherburn, *Youth Justice Conferences versus Children's Court: A Comparison of*

receive a caution or be referred to court over Youth Justice Conferencing, indicating that more may need to be done to promote restorative justice options.³²

Re-offending (NSW Bureau of Crime Statistics and Research Bulletin no. 160, February 2012).

³² Elizabeth Moore, *The Use of Police Cautions and Youth Justice Conferences in NSW in 2010* (NSW Bureau of Crime Statistics and Research Bureau Brief no. 73, December 2011).