

OPCAT in Victoria: A thematic investigation of practices related to solitary confinement of children and young people, the Victorian Ombudsman

The Victorian Ombudsman has released her report into the solitary confinement of children and young people at Port Phillip Prison, Malmsbury Youth Justice Precinct and Secure Welfare Services. The report highlights serious failings in the use of isolation for young people in our detention settings including practices that are *'contrary to law ... may be incompatible with the Human Rights Act ... unjust, oppressive and improperly discriminatory ... [and] wrong'*.¹

The use of isolation in institutional settings is harmful and can have profound impacts on health and wellbeing and can exacerbate or actively cause mental illness.² The use of solitary confinement for children and young people under the age of 25 poses a serious risk of long term harm because of their continuing development – physically, mentally, neurologically and socially.³ The Ombudsman found that the practice of isolating children and young people is widespread in prison and youth justice environments and each has the potential to involve physical isolation of individuals for 22 hours or more a day without meaningful human contact.⁴ The report states:

The evidence in this report, from detainees, staff and the facilities themselves, is both overwhelming and distressing. It is apparent that whatever name it is called, and for whatever reason, the practice of isolating children and young people is widespread in both prison and youth justice environments. It is equally apparent that the practice is seen as punitive even when that is not the intention; young people can be isolated both for acts of violence and for being the victim of an act of violence, and when used in response to challenging behaviour may exacerbate rather than improve the situation.⁵

Port Phillip Prison

During the 12 month reporting period, 987 young people passed through Port Phillip prison and 265 young people were placed on a separation order.⁶ Of these, nine percent identified as Aboriginal, despite the recognised impact of isolation on Aboriginal people.⁷

The inspection observed that at Port Phillip Prison the median duration of separation was 10 days, and that prisoners subject to a separation order were provided with one hour exposure to the open air per day for 'run out'. For a third of cases, the young person's period of separation was followed by a further median length of placement of 48 days in an Intermediate Regime,⁸ which allows three hours exposure to the open air per day, although in effect most prisoners receive one and a half hours per day.⁹ For prisoners in the Charlotte Unit the run-out area is *'little more than walled-in slabs of concrete*

¹ Victorian Ombudsman, *OPCAT in Victoria: A thematic investigation of practices related to solitary confinement of children and young people*, September 2019, paragraphs 1211 and 1218. See also: Ombudsman Act 1973 (Vic) ss 23(1) (a), 23 (1)(b) and 23 (1)(g).

² *Ibid.*, paragraph 1225.

³ *Ibid.*, paragraph 331

⁴ *Ibid.*, paragraph 1200.

⁵ *Ibid.*, paragraph 1202.

⁶ *Ibid.*, paragraphs 679-680.

⁷ Royal Commission into Aboriginal Deaths in Custody

⁸ Victorian Ombudsman, *op. cit.*, paragraph 1209.

⁹ *Ibid.*, paragraph 452.

with a steel mesh opening to the sky ... The inspection considered that the Charlotte Unit run-out areas fell considerably short of the international human rights standards applicable to exercise and recreation in custodial settings.¹⁰ The inspection team was not satisfied that separated prisoners receive adequate meaningful human contact with staff, contact with other prisoners and the outside world, and access to purposeful activity.¹¹

The Ombudsman's report raises serious concerns regarding the mental health of young prisoners in separation. It found that in the majority of cases staff did not document the extent to which they had regard to a prisoner's medical or psychiatric condition before authorising a separation, and that consideration was not given to whether the prisoner's mental health condition or disability may have contributed to his conduct.¹² It also *'saw little evidence of active treatment or therapeutic interventions for those at risk of suicide or self-harm'*.¹³ It was also not apparent why a person categorised as being at immediate or significant risk of suicide or self-harm was kept in isolation for extended periods of observation rather than being transferred to a mental health facility.¹⁴

Malmsbury Youth Justice Precinct

The inspection found a 'mixed picture' at Malmsbury.¹⁵ On the one hand they observed a commitment at many levels to the welfare of the young people and their rehabilitation but on the other there was a very strong prioritisation of security. The inspection observed occasions of excessive force including compliant young people being led through the facilities in handcuffs, each escorted by eight staff. *'This appeared to be driven more by fear of negative headlines in the event of an incident, than the risks actually being presented'*.¹⁶

The Children, Youth and Families Act 2005 empowers the officer in charge of a youth detention facility to authorise the isolation of a child or young person detained at the centre.¹⁷ A review of the Malmsbury Isolation Register found a total of 1,214 isolations for behavioural reasons during the 12 month reporting period and, of these, 26 percent involved the child or young person being placed in a dedicated isolation room.¹⁸ The median length of isolation for behavioural reasons is one hour.¹⁹ There were ten isolations recorded as lasting more than 12 hours and four for more than 22 hours.²⁰ The inspection found that the current isolation rates at Malmsbury are four times the 2014-2015 rates.²¹

The inspection found that Aboriginal and Torres Strait Islander young people were overrepresented in the isolation data. Approximately 14 percent of the population identified as Aboriginal and Torres Strait Islander, however these young people represented 20 percent of behavioural isolations.²²

¹⁰ Ibid., paragraphs 576-578.

¹¹ Ibid., paragraph 591.

¹² Ibid., paragraphs 633-636.

¹³ Ibid., paragraph 664.

¹⁴ Ibid., paragraph 667.

¹⁵ Ibid., Foreword p. 7.

¹⁶ Ibid.

¹⁷ Children, Youth and Families Act 2005 (Vic), s488.

¹⁸ Victorian Ombudsman, op. cit., paragraph 756.

¹⁹ Ibid., paragraph 772.

²⁰ Ibid., paragraph 773.

²¹ Ibid., paragraph 762.

²² Ibid., paragraph 54.

The inspection noted the frequency of lockdowns at Malmsbury. A lockdown may include locking down a unit for a period of time or rotating small groups of young people out of their bedrooms.²³ Some 40 percent of the 13,653 reported lockdowns are due to staff shortages.²⁴ The inspection was concerned that the use of lockdowns and rotations has impacted on the ability of children to access education and other components of a fully structured day.²⁵

Secure Welfare Services

The Ombudsman found that overall there appeared to be a relatively low risk of ill-treatment arising from the current use of isolation practices at Secure Welfare.²⁶ She does however have concerns about the material conditions of the Secure Welfare facilities.²⁷

The importance of culture within the three facilities

The Ombudsman found that in the youth justice and prison settings there is a lack of understanding of the dangers of isolation, its impact on mental health and its effect on behaviour. In addition she found that greater reliance on the use of isolation did not correspond with an increased sense of safety or lower levels of stress amongst staff.²⁸ However, she found that the culture at Secure Welfare was comparatively therapeutic and appeared reasonably successful in limiting the use of extended isolation.²⁹

The Ombudsman's report highlights the very real impact workforce and operational culture can have on the use of isolation practices within the three facilities. She found that the staff culture at Secure Welfare is the *'single greatest protective measure the facility had against ill-treatment'*.³⁰ The report finds:

There was, fundamentally, a difference in ethos and motivation underpinning the work of staff at each of the three facilities. There appeared to be a direct correlation between, on the one hand, the extent to which a facility prioritised a trauma-informed approach to managing the children and young people in its care and, on the other, the tendency of staff at the facility to recognise the harm caused by isolation and other restrictive practices.

At one extreme, the comparatively therapeutic model implemented by Secure Welfare appeared reasonably successful in limiting the use of extended isolation at the Ascot Vale and Maribyrnong facilities. At the other end of the spectrum, the priority afforded to deterrence and considerations of 'good order' within Port Phillip appeared to make solitary confinement the preferred behaviour-management tool, rather than the exception.³¹

...While the material conditions of all facilities tended to the bleak, the culture of the staff in dealing with comparably challenging behaviour presented strikingly divergent responses. The comparison also leads to the inescapable conclusion that while the youth justice system is far

²³ Ibid., paragraph 800.

²⁴ Ibid., Foreword p.7.

²⁵ Ibid., paragraphs 937-948.

²⁶ Ibid., paragraph 1044.

²⁷ Ibid., paragraphs 1101-1116.

²⁸ Ibid., paragraph 37.

²⁹ Ibid., paragraphs 1225-137.

³⁰ Ibid., paragraph 1169.

³¹ Ibid., paragraphs 1231-1232.

from perfect, and work is needed to bolster Secure Welfare, the adult prison system is particularly poorly equipped to deal with young people.³²

Finally, the Ombudsman states, *'it is time to look beyond the 'tough on crime' rhetoric to consider what will genuinely lead to safer communities and safer correctional facilities. We should ask ourselves: are we best served by a practice that promotes security over rehabilitation, and then provides neither?'*³³

Recommendations

The Ombudsman has made 25 recommendations in respect of the use of isolation practices in these three facilities and the Victorian Government has accepted the majority of these. The Centre urges the Victorian Government to implement these recommendations as a matter of urgency, and in particular:

- Prohibit solitary confinement.
- Move 18-25 year olds out of the mainstream Victorian prison system into a dedicated facility.
- Establish culturally supportive therapeutic spaces as an alternative to separation, isolation or seclusion rooms.
- Implement as a priority the government's plan to reduce to zero the number of lockdowns and rotations due to staff shortage at Malmsbury.
- Amend policy and practice and ensure that the routine use of restraints without a contemporaneous risk assessment cease immediately.
- Staff to give proper consideration to the medical and psychiatric condition of a person before separating them, and adequately record that assessment. For Aboriginal and Torres Strait Islander prisoners, this should include consideration of social and emotional wellbeing.
- Ensure that principles and practices of trauma-informed behavioural management, including the impact on mental health, harmful effects of separation and isolation, and cultural awareness, are core elements in staff training across Corrections Victoria and Youth Justice, both to new staff and on an ongoing basis.
- Ensure that detaining authorities are required to notify Aboriginal support workers of each instance of separation or isolation of Aboriginal or Torres Strait Islander peoples, and to give proper consideration to their cultural advice, including advice about relevant recent or upcoming sorry business and other sensitivities.³⁴

Finally, the Centre urges the Victorian government to raise the age of criminal responsibility of children to 14 years.

The full report can be found here:

<https://www.ombudsman.vic.gov.au/getattachment/Publications/Parliamentary-Reports/OPCAT-in-Victoria-A-thematic-investigation-of-prac/OPCAT-in-Victoria-A-thematic-investigation-of-practices-related-to-solitary-~-September-2019.pdf.aspx>

³² Ibid., paragraph 1233.

³³ Ibid., Foreword p.9.

³⁴ Ibid., Recommendations Chapter Two.