

The Worst of the Worst¹

These are strapping young lads, but my goodness gracious me we will crack down on them and we will control them².

Attorney-General John Elferink did not mince his words when reacting to news that there had been yet another breach of security by a group of detained youths (“the worst of the worst”, as he labelled them) in Darwin in September 2014. Nine months later, as he rose to his feet in support of the motion “Tough Love is required to manage youth crime” in a debate organised by Amnesty International at Charles Darwin University, news of yet another escape came through: there have been at least 11 such incidents over the last 12 months.

This column is written in the sad shadow of the untimely passing of former Executive Director of NT Youth Justice Pippa Rudd, who, just a few months before her death, didn’t mince her words either:³

If I were asked to outline a plan to ensure increasing incarceration, both generally and of vulnerable groups, I would just point to the Northern Territory of Australia. No need to look to the United States...

The failure of governments to meet the need for a suitable youth facility means young people are now locked up in a jail deemed unfit for adults; Correctional Services described the facility as “fit only for a bulldozer”.

Both [the youth justice and child protection] systems are effectively driving young people’s further and deeper involvement in the criminal justice system. Young people are remanded in custody, sometimes for weeks, because no parent or family member comes to court, yet child protection maintains the young person is not in need of care.

The unpalatable fact is that in a jurisdiction where our incarceration rate is the country’s worst, the real “worst of the worst” is our disastrous youth incarceration regime. Locking up child offenders primes them to re-offend: nationally, young people who are released

¹ My thanks to Jared Sharp, Chris Warren, Clement Ng and Nicola MacCarron for their generous assistance in the preparation of this article.

² Hon John Elferink, Attorney-General, accessed at <http://www.abc.net.au/news/2014-09-16/juveniles-highlight-major-flaws-at-maximum-security-unit/5746676>

³ Rudd, P “State of imprisonment: if locking ‘em up is the goal, NT’s a success”, *The Conversation* (20 April 2015), accessed at: <https://theconversation.com/state-of-imprisonment-if-locking-em-up-is-the-goal-nts-a-success-39185>

from detention are three times more likely to end up back in juvie within twelve months than those sentenced to community-based supervision.⁴

We can see the dots, but we seem to have great difficulty joining them up. We know these things: the typical persistent child offender has been exposed to chaos, violence, substance abuse and family dysfunction. That child is consequently traumatised. Traumatization affects both brain development and the response to stress.⁵ Being detained is a traumatic experience. Re-traumatizing a traumatised child will not tend to interrupt a pattern of uncontrolled anti-social behaviour. On the contrary.

Thanks to recent advances in neurobiology, youth workers now have a toolkit which equips them to work (and, importantly, play) with damaged young people to undertake the sophisticated, sensitive and structured process of psychological and social repair: identify the source and patterns of trauma, facilitate the building of supportive social and familial relationships, develop resilience to replace the learned responses of the traumatised child, establish a secure and stable environment, reboot and recover. It is not just Todd Sampson who can redesign his brain: so, with expert intervention, can traumatised young offenders.

When we don't lock up young offenders, we often do a good job: The NT's youth diversionary programs (putting to one side the fact that they are inadequately resourced, particularly in remote areas) and pre-sentencing conferencing (although used only rarely to date) are regarded as models of best practice.⁶

This approach is strongly consistent with the principles set out in Section 4 of the *Youth Justice Act*, which include custody as a last resort, re-integration into the community, developing socially responsible ways, and so on. Indeed, a frustrating feature of the fix we are in is that on paper, we're headed in the right direction: both the NT government and youth justice sector workers appear to support the nine recommendations enunciated in the Carney Report,⁷ as well as those set out in the Vita Review.⁸

⁴ Australian Institute of Health and Welfare "Young people returning to sentenced youth justice supervision 2015", *Juvenile Justice Series No. 18*, p. 1. (The NT did not supply the relevant 2013/14 Juvenile Justice National Minimum Data Set data for this study. It is safe to say, however, that the picture in the NT is at least as bad as in other jurisdictions.)

⁵ See Oliver, S (SM) "When the Vulnerable Offend" Conference paper (15th CLANT conference, June 2015) accessed at <http://clant.org.au/index.php/the-bali-conference/2015>

⁶ Sharp, J "Does the NT Youth Justice deliver justice for vulnerable young offenders or their victims?" Conference paper (15th CLANT conference, June 2015) accessed at <http://clant.org.au/index.php/the-bali-conference/2015>

⁷ Carney, J *Review of the Northern Territory Youth Justice System: Report* (2011), accessed at http://www.correctionalservices.nt.gov.au/YouthJustice/ReviewOfTheNorthernTerritoryYouthJusticeSystem/Documents/youth_justice_review_report_introduction.pdf

⁸ Vita, M *Review of the Northern Territory Youth Detention System Report* (February 2015) accessed at <http://www.correctionalservices.nt.gov.au/YouthJustice/ReviewOfTheNorthernTerritoryYouthJusticeSystem/Pages/default.aspx>

The trouble is, however, that roughly 30% of youths under justice system supervision in the Northern Territory are in detention. That is twice the national rate.⁹

Vita's findings are in equal measure straightforward and chilling:

Youth detention facilities in the Northern Territory are struggling to maintain service level standards in the absence of a coherent operating philosophy, staff training, direction, appropriate infrastructure, leadership and resourcing.¹⁰

In this rudderless environment, the youth detention system is particularly vulnerable to the encroachment of poor and even dangerous practices. Furthermore, the recent demonisation of young offenders both by politicians and sections of the media serves to lend a patina of legitimacy to increasingly punitive responses by custodians reacting to persistently provocative and defiant behaviour by detainees. Features of this vicious circle include: extended periods of isolation and lockdown in dilapidated cells; the use of force restraints (handcuffs, shackles, the cutting off of clothing, dogs, and in at least one incident, tear gas); the limitation or withdrawal of educational, recreational and other rehabilitative programs; the increased use of adult prisons to detain youths; and the abandonment of individualised case management.¹¹

Despite the enormous challenge to get this drifting, overloaded and leaky boat back on course, it can – it must – be done. The Carney and Vita recommendations need implementation, with sufficient resources dedicated to get the job done properly. An Independent Custodial Inspector should be appointed, as has been done in Western Australia. The government should release the findings of the inquiry conducted by former Children's Commissioner Howard Bath into the major security breach in August 2014, and its aftermath.¹² More supported and supervised accommodation for young people on bail should be established, to reduce the completely unacceptable levels of youth detainees on remand (about 75% of the detention centre population, compared to 50% nationally). Much has been achieved in establishing a culture of restorative youth justice in community-based programs. It is now high time to import that ethos into our youth detention centres as well.

⁹ Australian Institute of Health and Welfare, *Youth justice in Australia 2013–14* (AIHW bulletin no. 127, 2015)

¹⁰ Vita, *supra* n. 8, 11

¹¹ See Sharp, *supra*, n. 6

¹² Attorney-General Elferink maintains that an Independent Custodial Inspector is unnecessary, in part because of the scrutiny provided by the Children's Commissioner. That rings hollow in the light of the Attorney's refusal to publish the results of Commissioner Bath's scrutiny.

Over the last five years we have somehow managed to increase the rate of incarceration of our young people by an astonishing 50%: from an estimated 12 per 10,000 to 18 per 10,000,¹³ bucking the national trend, which *declined* from 4 to 3.5 per 10,000 over the same period.¹⁴ The NT trend is disturbing. Even more importantly, it is simply unsustainable.

If we don't reverse it quick smart, then there's no two ways about it: we'll also need to build ourselves a new youth detention centre. That would set us back by about \$150 million.

Let's leave the last word to a usually surly 13 year old who recently graduated from the NT's fledgling Early Intervention Youth Boot Camp Program, about which he encouragingly reported to his lawyer as follows:

- It was good
- It was really fun
- We did lots of hiking
- And rock climbing
- Really, lots and lots of hiking
- We saw kangaroos, camels, wallabies and cows
- There were about nine kids
- All my age
- And five adults
- There were some sessions
- We learnt about spiders webs and how spiders live
- We did talk about getting into trouble and how to stay out of trouble
- I don't want to get into trouble anymore

Amen to that!

Russell Goldflam

27 July 2015

¹³ Australian Institute of Health and Welfare, *Youth detention population in Australia 2013* (Juvenile Justice Series no. 13), p 50

¹⁴ See *supra*, n. 9, p 15