Presentation Paper

Options Other Than Incarceration for Youth in the Justice System

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Thank you for your kind invitation to speak to you this evening on the important topic of youth justice and options other than incarceration for youth involved in the justice system.

First, I wish to pay my respects to the traditional owners of the land on which we meet, the Noongar people, and to their elders past and present.

I think that it is fair to say that there is currently a national focus on youth justice. I include Western Australia in that. That is a good thing. There is an urgent need to revisit and reflect upon the underlying objectives and principles of youth justice and chart a new direction on how those objectives and principles are applied in practice. The objectives and principles to be applied in this State are set out in the *Young Offenders Act 1994* (The Y O Act). They essentially mirror the key principles set out in the United Nations Convention on the Rights of the Child to which Australia is a signatory.

My role as President of the Children's Court of Western Australia (the Court) puts me in a world of reality, having to make decisions every day based on an application of the law to the facts of the particular case before me. The law requires me to apply the objectives and principles as set out in the Y O Act in every decision I make when I deal with a young person. I perform that task openly and for all to see and think and comment on as they choose.

Those same objectives and principles apply to the bureaucracy, which by force of statute is required to provide administrative support to the Court by way of providing pre-sentence reports and managing and servicing the orders of the Court.

From my position speaking generally and referring to the current position systemically, I think that practices within the youth justice space have strayed from the relevant objectives and principles. That said, I should add that some parts are operating well, and that there are a lot of good, capable and passionate people working within the space with the aim of improving the lives of children and young people.

In the bureaucratic world, the objectives and principles in the Y O Act are adopted and often referred to as policies or alternatively policies are drafted by reference to those statutory objectives and principles. Hopefully, the policies drafted by the bureaucracy are consistent with the statutory objectives and principles.

The point that I wish to make, is that regrettably we have reached a stage where some practices do not properly accord with the statutory objectives and principles in the YO Act and nor do they even accord with some of the policies drafted by the relevant bureaucracy which are based on those statutory objectives and principles.

We must fix that and we must fix it quickly.

From time to time I hear comments along the lines of “the justice system is not solving the criminal behaviour of children and young people” and that “the justice system is failing us”. With respect, those kind of comments reflect an ignorance of or a very mistaken and narrow view of the underlying causes of the criminal behaviour of children and young people, what is needed to address all of those underlying causes, and in the context of Government agencies, which agency or agencies has particular responsibility for a particular cause.

It seems to me that accountability for the justice system, and in particular the offending by children and young people, is very much focused on 1. the Court, and 2. the Department of Corrective Services (DCS), and 3. the Police. However, an understanding of the wide range of underlying causes of the criminal behaviour of children and young people will show that there are many Government agencies

which have some responsibility and an important role to play in addressing the problem.

Can I use the following analogy. An ambulance and paramedics are parked at the bottom of a cliff attending to children and young people who have fallen down from the top of the cliff. They take the children and young people to hospital where the doctors attend to them. The paramedics are the police taking the children and young people to the hospital, which is the Court, and the doctors are the Judges and Magistrates. Using that analogy, I would not expect anyone to blame the paramedics and the doctors for the children and young people falling off the cliff. The focus, should of course be on how and why the children and young people came to fall of the cliff.

In Western Australia, as in other States, and also in the Territories of Australia, a young person becomes criminally responsible as a matter of law upon reaching 10 years of age. The Court has jurisdiction to deal with children who have committed offences. A child is defined as a person of more than 10 years of age but less than 18 years of age. Whether or not the Court has jurisdiction depends on the age of the alleged offender as at the time of the commission of the alleged offence. It is not difficult to understand that so much happens in the life of a child from when the child is conceived to immediately before his or her 10th birthday which shapes the child's behaviour and also the child's neurocognitive capacity.

I will refer to the common features of the profile of young offenders later. Suffice to say that they support my comment that many Government agencies, and also community have an important role to play. In no order of priority those other agencies include Education, Health, Mental Health, Disabilities, Community, Child Protection and Family Support (DCPFS), Police, Sport and Recreation, Aboriginal Affairs, Housing, and Arts.

In addition to all of those agencies, organisations in the not-for-profit sector have a very important role to play in delivering services to children and young people in the youth justice space. Further, as just mentioned, the community must take some ownership of the problem.

About 25 years ago and earlier, the legal landscape in Western Australia was as follows. The *Child Welfare Act 1947* carried provisions for both criminal offending by children and also child protection. The one bureaucracy, namely the Department for Community Development (DCD), provided the management and the services necessary to support Court orders in both the criminal and the child protection jurisdictions. The criminal jurisdiction was based on a welfare model. In cases involving very serious offending, the Court, as it was constituted then, could place children under the control of the Director General of DCD, and in cases where the Court thought that a custodial term was appropriate, it could not impose the custodial term itself, but rather could only make a recommendation to the relevant minister for

the custodial term to be imposed. Accordingly, whether or not a child spent time in a custodial facility was decided by executive order and not by a Court.

In the late 1980s, and following on from some serious offences committed by children and young people which resulted in the death or serious injury of members of the public, there was a push for children and young people to be held more accountable for their actions and for the Court system to deal with and finally decide what sentences were appropriate. Hence, there was a shift from a welfare model to a justice model. The justice model for children and young people essentially mirrored the adult justice model but required certain objectives and principles to be applied when dealing with children and young people.

Looking at history and where we were over 25 years ago and where we are at today, it seems that in a practical sense and within the youth justice space, we have gone from too much of a welfare approach to too much of a punitive approach.

The final result of all of that, is that within the bureaucratic structure of the Government, youth justice has ended up as a division within the Department of Corrective Services (DCS). In the broad scheme of things, DCS is the Government agency which manages adult offenders in prisons and also in the community. It also manages children and young people in detention and also in the community. Youth

justice is now a separate division within DCS and manages children and young people in detention and also in the community.

DCS is overwhelmed by having to deal with adults and all of the issues that go with that. The adult prison population in Western Australia is currently at about 5600/5700. That can be compared with the number of children and young people in detention at Banksia Hill Detention Centre, located in Perth (BHDC), which is 159 as at today's date.

It is not surprising when one has regard to those numbers, that within DCS, an adult culture overwhelms youth justice. In particular, an adult prison culture overwhelms youth justice and the focus that youth justice should have on the rehabilitation of children and young people. The creation of a separate division for youth justice within DCS to try and rid youth justice of an adult prison culture and replace it with a culture of rehabilitation has regrettably not worked. Regrettably, despite good intention, the adult prison culture permeates youth justice and particularly BHDC.

We have got into a situation where children and young people are no longer treated as children and young people. Rather they are treated as adults. A practical example of that is BHDC. It was originally designed to be a detention centre for children and young people and its architecture and behavioural management regimes had the rehabilitation of children and young people at its core. It was also originally designed

to essentially only house sentenced children and young people. A separate facility, known as the Rangeview Remand Centre (Rangeview), essentially only housed children and young people on remand. Having the two facilities provided the flexibility to shift one or more children and young people between the two when an occasion required it. Now, regrettably, BHDC is very much like an adult prison.

I have great respect for the many dedicated and passionate people who work at BHDC and approach their work with the intention of positively changing the lives of children and young people. However, their good intentions are rendered impossible or at least seriously hampered by reason of the physical structures and the regimes applied to the children and young people within the facility.

That said, the staff and the children and young people at BHDC, and the community, would be so much better served if:

1. BHDC was not so prison like, and
2. BHDC had a meaningful rewards system for the good behaviour of children and young people, and
3. Rehabilitation was a key purpose of BHDC and practices and regimes properly reflected that, and
4. Punishment was not used as a means of trying to achieve behavioural management, and

5. Behavioural Management Regimes took into account neurocognitive impairments, and
6. The accommodation was generally more house-like than cell-like, and
7. There was provision for day(s) release for personal and family development.

In my respectful view, we should not be operating BHDC in a way which causes hardened and damaged children and young people to be released back into the community more hardened and damaged, and thereby further disconnected from the community and a greater risk to the community.

BHDC should have a culture of and be primarily about the rehabilitation of children and young people and setting them up to be able to reintegrate back into the community. It is about capacity building children and young people to ‘connect’ them with community when they are released.

Youth justice also has an important role to play in managing and providing services to children and young people within the community. The Court can impose two kinds of community orders, namely youth community based orders and intensive youth supervision orders. When children and young people are placed on those kinds of orders, they return back into the community on the order and subject to the conditions of the order. Conditions commonly imposed include supervision, and attendance at substance abuse and psychological counselling as directed. There is

nothing to stop youth justice from arranging non court ordered prevention and diversion programs for children and young people to voluntarily attend.

The practical reality is that there are not enough services and there are not enough programs to deal with the underlying causes of the offending by children and young people.

Detention numbers have actually reduced significantly over the last four years. In January 2013, at the time of the riot at BHDC, there was a total of 219 children and young people at BHDC. As at today's date there is a total of 159. That represents a reduction of about 27.3%.

While that is positive, unfortunately the recidivist rates remain too high. They are in the order of about 60%.

A small number of children and young people commit the vast majority of offences. The rule of thumb is that about 20% of the offenders commit about 80% of the crime. Interestingly, that seems to be the general rule nationally and internationally. Accordingly, there is a lot of merit in the policy of the Government to focus on and provide holistic services to the top 120 young offenders and their families.

Having said all of that, and Western Australia having just had a change of Government, there will no doubt be fresh consideration on how the bureaucracy should be structured. How many, and what agencies should we have and what role or roles should the various agencies perform?

In my view youth justice should be removed from DCS. That was not done after the riot at BHDC in January 2013. Now, given that more than four years has passed and significant issues continue to exist, the time has come to break the mould and remove children and young people from an agency predominantly concerned with adults. Children and young people are not adults. We need to change the way we do business. Decisions should be based on sound research and evidence. The centuries old model based on punishment does not work. That is not simply my subjective view. It is what the historical evidence, including recent historical evidence, clearly shows us. It is also what justice reinvestment in Texas and other places shows us. If Texas can do it then surely we can also do it.

I note that in Victoria, young people were shifted from a youth detention centre to an adult custodial facility, namely the Barwon Prison, which is a maximum security prison. The Court of Appeal in Victoria has given a decision on that. The Government and so also the relevant agency in Victoria seem to have persisted with the approach of treating some young people as if they were adults.

Victoria used to lead the nation with its rehabilitative approach in youth justice and it had low rates of youth offending when that was its focus. We would be very wise not to follow their recent approach.

All of that said, there is a place for sentences of immediate detention for children and young people. In some cases, because of the seriousness of the kind and factual circumstances of the offence, immediate detention is the only appropriate outcome. It is very important that the Court properly maintains public confidence. But even with a sentence of immediate detention, rehabilitation remains a primary purpose. History shows us that the hard, lock them up, and treat them like adults approach, does not work.

I have deliberately not added the word “populist” when saying that and used the phrase “populist approach”. That is because, in my view, people in the community are reasonably minded. We as a community, select our juries from the community and entrust them to apply their reasonable mind to decide serious criminal charges. If reasonably minded people in the community are fully informed of all of the circumstances of a case and sound research, then they do understand that it is the rehabilitation and reintegration back into the community of young offenders which makes the community safer.

Having mentioned that youth justice be removed from DCS, the next question is where should it go? Should it be stand alone or should it be with another agency? When that question is asked, often DCPFS is mentioned as the host agency. That is what has happened in the Northern Territory and elsewhere in Australia.

To put youth justice with DCPFS would be going back in history to the days when we had one bureaucracy, DCD, under the *Child Welfare Act 1947.* The Ford Review recommended that there be a greater focus on child protection. So we have gone from the *Child Welfare Act 1947* and the one bureaucracy, DCD, to the *Children and Community Services Act 2004* for child protection and the one bureaucracy, DCPFS, and also the YO Act for criminal offending by children and the one bureaucracy, youth justice in DCS. So we now have two bureaucracies in total. More accurately, we now have one bureaucracy and part of another.

From my position of having dealt with child protection cases before the Court, I see DCPFS doing a very difficult, complex and important job while being stretched for resources. Child protection including working with parents and arranging contact between parents and children is very resource intensive work. From my observations when sitting in the criminal jurisdiction of the Court, there are many children who are not on the caseload of DCPFS who should be. So adding youth justice to DCPFS, and particularly if it is not adequately resourced, would not be a good outcome.

The decision of what happens with youth justice should be decided on what provides the best prospects of achieving the objectives of reducing youth offending, creating a safer community, and achieving better life outcomes for children and young people. It should not be decided primarily on the number and size of bureaucratic structures. That said, I am of the view that good people, good culture, and proper resourcing can usually overcome an unhelpful structure.

If youth justice does go into another agency, DCPFS or any other agency, however well intended that other agency may be, if the resources allocated to it are stretched or reduced, then resources would likely be diverted from youth justice to the detriment of youth justice and also the community. That is what happened to Courts when Courts and Prisons used to be combined in the one super Ministry of Justice. They were separated after the Mahoney Report in 2005.

Further, if youth justice is added to another agency then it would not have the focus that it so desperately needs. In my view, layering youth justice into DCPFS, while perhaps having some superficial appeal, would not be a good idea. Core business of DCPFS is working with and rehabilitating parents and not rehabilitating children and young people. If youth justice was layered into DCPFS then it would get lost in another larger agency just as it is now in DCS. We should not make the same kind of mistake twice, and particularly we should not move from one mistake straight into another.

In my view there is good reason for us in Western Australia to break new ground in Australia and create a stand alone Youth Justice Agency to maximise the prospects of positive youth justice outcomes for the community, and also children and young people.

Can I say that whatever the structural arrangement is, it must be adequately resourced both financially and with suitably qualified people. Can I also say that no one agency is by itself ever going to do everything necessary. It will need to have real collaborative relationships with other agencies.

Having already said that we should have a stand alone Department of Youth Justice, can I add and emphasise that our youth are our future.

We already have many Government agencies which already fund and do things for youth. However, they seem to work in silos. It all needs to be brought together and delivered holistically for youth in the youth justice space.

Key agencies which play some kind of important role with children and young people could be funded and staffed such that satellites of them could be embedded in the

Department of Youth Justice to deliver services to youth in a coordinated way. It is critical that all agencies are held to be accountable. It is also critical that these satellites of the key relevant agencies within the Department of Youth Justice have a positive and innovative working relationship with the Youth Justice Agency and share the ultimate objectives of youth justice.

In other words, there is a corralling of satellites of other key agencies within the Youth Justice Agency to result in holistic service delivery to youth to achieve the objectives of youth justice. The Department of Youth Justice would form close partnerships with other relevant agencies which did not have satellites embedded within it.

So other key agencies such as Education, Health, Mental Health, Disabilities, Community, Aboriginal Affairs, Sport and Recreation, DCPFS and Housing should have a position within the Youth Justice Agency. Each agency involved in this structure should have key performance indicators directly related to the Youth Justice Agency and to youth justice outcomes. For example Education should provide alternative educational programs as well as schooling and work with the other satellite agencies within Youth Justice to get the children and young people to the programs.

This proposed structure is essentially based on an emergency management framework. It identifies the objectives, the issues, and brings the relevant agencies together. In relation to any one particular issue the lead agency could be determined by way of agreement amongst the agencies on a project by project and case by case basis.

Finally, I wish to comment on the need for accountability of the Youth Justice Agency and the satellite agencies within it. I am not sure and I am not an expert in this area to decide whether accountability should be monitored and enforced by the Department of Premier and Cabinet, the Public Service Commissioner, or a sub-committee of ministers. But there should be accountability for the relevant agencies to do their respective bit to satisfy the ultimate objectives of youth justice. The answer to accountability may be found in the use of the Aboriginal Affairs Coordinating Committee with a minister chairing it, or when a minister is not available, then at least an officer of Premier and Cabinet doing so. In addition to that, the Aboriginal Affairs Coordinating Committee could return to having Chief Operating Officers attached to it who go out into the field with the imprimatur of the Aboriginal Affairs Coordinating Committee and make sure that all of the other agencies are working collaboratively together in various locations to achieve the youth justice outcomes.

If the Youth Justice Agency worked on prevention and diversion for children aged from 10 to less than 18 years, then there would potentially be a gap in early

intervention programs for children less than 10 years old. Actually I should say from in utero to less than 10 years old, having regard to FASD and neurocognitive issues.

In my view, early intervention is crucial. We should not be waiting until a young person reaches the age of criminal responsibility, 10 years of age, before we engage prevention strategies. Early intervention is essential to reduce the number of young people entering the youth justice space.

I am aware that DCPFS does have some early intervention strategies. While rehabilitation of children and young people is not core business of DCPFS, care and support of children and young people is. In my view early intervention for children less than 10 years of age should be clearly identified as a service and function of DCPFS.

I am not in a position to now engage in any cost benefit analysis of the creation of a successful stand alone Youth Justice Agency. That said, there is no doubt a lot of duplicity of expenses and inefficiencies across the broad range of agencies. The cost savings following on from a reduction of youth crime would not only financially benefit the Youth Justice Agency itself, but would also ripple across many agencies including, the Courts, the Police, Legal Aid, ALS and DCPFS.

On the matter of potential cost savings to the State, can I briefly comment on the broader picture of expenditure by Government agencies on aboriginal affairs. Back in 2011, the Indigenous Implementation Board, chaired by Lieutenant General John Sanderson, delivered its final report to Parliament. It contained an analysis of State Government spending. At that time taxpayers of the State were spending two billion dollars each year to pay for health, justice, education and housing programs for aboriginal people. That amount at that time represented about 10% of the State budget being spent on about 3% of the population. Policing, courts, prisons and child protection accounted for 40% of the 2 billion dollars, health 20% and education and training 22%. There was very little spent on community development and economic participation. Despite that massive amount of expenditure the circumstances of aboriginal people were not noticeably improving.

I would be surprised if the position has improved very much, if at all. It could have got worse. My point is that if the social justice argument does not sway a decision that there is a need for change, then particularly given the current economic environment, the economic argument surely would. Against that background, I again make the point, that if structured properly and with the necessary inter-agency partnerships in place, a stand alone Youth Justice Agency would deliver significant social and economic benefits to the State.

I now turn to comment on programs for children and young people.

I would favour a model for the Youth Justice Agency which partnered with not-for-profit organisations to deliver a large range of services. Such organisations are usually very nimble, responsive, localised and close to the ground. It is desirable that the Youth Justice Agency delivers some services so that it has a position in and so some first hand knowledge of what is happening in the Youth Justice service space. I am a proponent of the view that primarily services should be outsourced.

The coordination of services should be overseen by the Youth Justice Agency but the day to day management decisions be left with the service organisations. Of course, there should be reviews on whether services are satisfying youth justice outcomes.

I am also a proponent of the view that organisations should not set out to try and provide all services to all children and young people. Different organisations will have different strengths. Organisations should partner with each other. Obviously there is a limit to how many service providers a young person should be linked up with. It is not desirable for young people to have to go to too many places and it is also not desirable for young people to have too many people to be answerable to. There needs to be consistency in service arrangements and personnel to enable positive and trusting relationships to develop between a young person and the person delivering the service.

Funding arrangements should be such that partnerships of organisations are encouraged and that the youth justice environment is one in which service organisations are encouraged to work, talk and share information with each other to improve the overall strength of the sector and the quality of the services delivered to children and young people.

I wish to set out the features of young offenders as based on my experience on the Court. In nearly all cases the young offender has a multiple number of them. In no particular order of priority, they are as follows:

- Parental separation, often when the child is very young.
- Father has a history of being imprisoned.
- The mother may also have been imprisoned from time to time, although not to the same extent as the father.
- They experience one or more step parents, or one of their parents, usually the mother, has had another partner or over time has had a multiple number of partners.
- History of direct and indirect exposure to serious domestic violence and substance abuse.
- Has been cared for by an aunty and /or a grandmother.
- Exposure to the death of a caregiver or family member or members, giving rise to significant grief. This is particularly so when the deceased was the one person who cared for and loved the young person.
- Unstable accommodation, homelessness, and transience.

- Neglect, abuse and abandonment by a parent(s), or extended family.
- Poor school attendance at all levels.
- Abuse of alcohol and cannabis, and now an increasing use of meth.
- Associations with negative peers with similar histories, usually as a means of looking for belonging and acceptance.
- No engagement in sporting or recreational activities.
- No or very little cultural knowledge or sense of self identity.
- Some level of cognitive impairment, and potentially FASD.
- Depression, anxiety, and low mood.

The obvious conclusion to draw from all of those features is that young offenders live in a world with layers of crises. It must never be forgotten that they are children. Finding resilience is hard enough in the face of a crisis against a background of stability and support. However, when there are layers of crises and no foundation of stability and support at all, then resilience is impossible to find.

Young offenders are usually badly damaged, both emotionally and cognitively. They are themselves victims, and mostly through no fault of their own. In saying that, it in no way diminishes the trauma suffered by innocent victims as a result of their offending.

Nelson Mandela once said, “The true test of the health of a society is how it treats its children.”.

It is against a background of all of the seriousness of those features in the profiles of young offenders that I again advocate for the creation of a stand alone Youth Justice Agency.

Any combination of those features, and bearing in mind that they are children and therefore neurologically underdeveloped anyway, means that young offenders lack empathy and insight into their own behaviours and are very susceptible to negative peers and engaging in anti-social behaviour. That spells danger and renders them very vulnerable to commit serious criminal offences. That of course renders the community less safe.

If left unchecked, and if you work on the basis that young offenders may well have about four children who each in turn may well have about 4 children, then potentially over the next two generations, i.e. about 30 years, we will go from one to about sixteen. Therefore, there is the real potential for the problem to increase exponentially. That would create tsunami. We should of course do everything we can to avoid that. That is why we must get it right. There is no more time to lose. The seriousness of all of those underlying personal features and the likely consequences of having a combination of a multiple number of them, in my view supports the case for a stand alone Youth Justice Agency.

There is no quick fix. The problems are so entrenched and complex that change will be generational. But we need to make the change now so that down the track we can look back and point to when things started to improve.

So we need programs and interventions to address the underlying causes that I have just mentioned. They are the issues that service providers will need to address.

It should not be thought that young offenders who have committed serious offences and who have complex personal circumstances, cannot be rehabilitated. Some time ago I sentenced a 17 year old young offender to a lengthy term of immediate detention for a serious aggravated armed robbery and stealing a motor vehicle. When in detention, she completed a barista course. I visited her at BHDC and she made me a coffee and served it with a piece of cake that she had made. After her release, I attended her workplace where she was the shift supervisor and she served me and my staff a coffee and settled our payment at the cashier desk. She told me disapprovingly that some people would drink their coffee and leave without paying.

The moral of that story is that we should never give up on a young person.

In my view there are some key components to good programs. They are as follows:

- Before anything can really work, the young person must have a sense of his or her own identity as a foundation.
- For aboriginal children especially, that means knowledge of culture, family and country.
- There must be a strong relationship between the young person and the service provider. Trust is crucial.
- There needs to be boundaries and consequences as well as rewards.
- Programs need to have a practical and life-skills component and provide structure to the day.
- Programs need to have goals and depending on age, equip the young person to engage in economic participation in the community.
- There needs to be a positive future which is clear to the young person.
- Because of the entrenched and complex issues, programmatic support needs to extend well beyond the expiration date of court orders.

So there are 3 essential ingredients in all of that. They are:

1. Building self-identity, and
2. Capacity building, and
3. Creating a future pathway.

I have referred to aboriginal children and young people. As at today, there are 102 aboriginal children and young people in detention at BHDC. There are 97 males and 5 females. In total, they represent 64.1% of the total population of 159 at BHDC.

That is actually lower than is historically the case. It has usually been in the order of about 75% to 80%.

There is a real need to include aboriginal people and aboriginal organisations in the youth justice space.

Can I add that there is also a real need to include aboriginal people in the child protection space.

I know that there is an aboriginal person in the audience tonight who works in the field of providing information on kinship connections. I hope that Government agencies utilise her knowledge and expertise. Government agencies should also meaningfully employ more aboriginal people including in executive positions.

Cultural camps are an excellent way for young aboriginal children to learn their culture and discover themselves. Elder Noel Nannup does great work in that area. The Live Works Program model is excellent for capacity building and creating future pathways. Art, music, dance and language programs are also good for cultural learning and building a sense of self identity.

To maximise the benefits of programmatic supports for young people, there also needs to be parallel programmatic supports for parents, family and community. There are many cases that I see where the home environment is simply not safe and conducive to the well-being of the young person, such that some alternative accommodation arrangements should be made to maximise the young person's prospects. In such cases parents and family need to be supported, and where it is in the best interests of the young person contact with family should be arranged.

I am pleased to have observed that the Department for Housing and a local government authority in Perth have made houses available for young people on programs to reside in on the basis that the young people were participating in programs which provided services to the Department or the authority. That is an excellent model and I encourage more of it. It reflects a proper community response.

The Court is always looking for programs which deal with the underlying issues that the young offenders present with. They should be included in action plans in pre-sentence reports so that participation in them can be included in the orders of the Court, whether they be bail orders or sentence orders.

I note that my presentation is headed "*Options Other Than Incarceration for Youth in the Justice System"*. At the outset of my presentation I made some comments about BHDC before moving on to comment on structure and programs. I now wish to make some further comments on BHDC, because I do not want the heading of my

presentation to mislead people into thinking that I think, or that they should think, that once detention has been imposed then we can forget about trying to rehabilitate and reintegrate young people back into the community. Indeed far from it.

One response to the riot in January 2013 was to harden the BHDC estate. That was done by building new fences, the addition of razor wire, and fixing grills over windows. It was done to supposedly improve security and staff safety. It has arguably contributed to compromising both of those things, and particularly so when it was not off-set by implementing enough practices to build good relationships between staff and young detainees.

What I regard as excessive lockdowns in combination with the hardening of the BHDC estate likely instils in the minds of young detainees a sense that they are regarded as criminals in a prison and that the community has given up on them. Young detainees should be given a sense that they are cared about by the community and that they are in BHDC to be rehabilitated and supported for their return into the community.

Prior to October 2012, BHDC was essentially used to detain sentenced young people and as previously mentioned Rangeview was essentially used to detain young people on remand. From October 2012, BHDC has been used to detain all sentenced and remanded young people from across the whole State.

The closure of Rangeview as a youth justice facility and merging the remand population of Rangeview with the sentenced population of BHDC at BHDC was a massive mistake and no amount of tinkering or finessing will make it good.

The Inspector of Custodial Services, Professor Neil Morgan, is of the view that BHDC would make a good adult women's prison. I support that view being favourably considered. If it was accepted, then it would mean that we could move on and design and construct proper facilities for children and young people.

Having the one detention facility in Western Australia for both males and females, and for both sentenced and remand detainees, and for all ages from 10 years to 18/19 years of age is unmanageable and will never enable proper compliance with the objectives and principles of youth justice and achieve the outcomes expected of such a facility.

Girls and young women need to be located separate to boys and young men. At present at BHDC, the girls and young women are suffering collateral damage as a result of management decisions made in relation to the boys and young men.

In my view there needs to be at least two smaller facilities in Perth. The distinction between the two should be based on age. One facility would be for 10 to 15 year olds and the other for 16 to 18 year olds and older.

The accommodation in such facilities should be designed like group housing with provision for some higher security accommodation.

Staff working at such facilities should be properly trained and have a culture underpinned by the objectives and principles for dealing with children and young people as set out in the Y O Act. The culture of the facility should be one of rehabilitation. The development of positive relationships between the staff and the young detainees is essential. There should be a proper rewards system for young people. Behavioural management regimes should be based on therapeutic models with proper regard for the neurocognitive issues of the individual young person concerned. There needs to be a wide range of programs available for the young people.

In addition to the facilities in Perth, there should also be detention facilities in regional areas of the State. This would enable young offenders to be closer to country, family and their local community, into which they would be reintegrated. In my view it is highly desirable for Royalties for Regions money to be used to capacity build communities and families as well as build physical structures.

Thank you once again for your attendance tonight and I extend to you all my best wishes for every success in the very important work that you do for our community and for our children and young people.

Judge D J. Reynolds
President, Children's Court of Western Australia