The real crisis facing Victoria's youth justice system

The Age, December 31, 2016

There is indeed a crisis in Victoria’s youth justice system. It is not one, as the Government suggests, of available beds or suitable facilities – these things are imminently fixable with a dose of political will.

Rather, the crisis is one of a myopic outlook and a merciless attitude: a willingness to countenance cruel, inhuman and degrading treatment.

This week the Victorian Court of Appeal unanimously upheld the Supreme Court’s decision that the government acted unlawfully in detaining children in the state’s most notorious maximum security adult jail: that the government failed to consider the welfare needs and human rights of children.

The Court ultimately ordered the government remove the children to a lawful facility within 48 hours of the decision. That the government has decided to try to re-gazette Barwon is a consummate act of bad faith.

When we look back, it is abundantly clear that over the last six weeks the Andrews Government has spent an astonishing amount of resources defending the indefensible – jailing children in an inappropriate and unsafe facility.

A decision that was both morally and legally wrong from the outset. During the course of the case we heard evidence of children being routinely held in solitary confinement for upwards of 22 hours per day. We also heard that Barwon jail does not have, and cannot foreseeably accommodate, a registered school.

This confirmed what children held at Barwon had been telling us: that they weren’t getting access to proper education and were rather spending their hours alternating between staring at the ceiling and pacing four steps up and back in their cramped concrete cells.

Using solitary confinement on children is strictly prohibited under international human rights law. This is because the science is clear: holding children in extended isolation can cause irreparable psychological and physiological harm.

The government sought to defend the use of isolation by claiming that it is common practice throughout the youth justice system. A staggering admission when we consider that President Barack Obama this year outlawed solitary confinement in federal youth detention facilities, calling the practice an “affront to our common humanity”.

But the government ultimately went further, making the Orwellian claim that the children’s case focused too heavily on conditions beyond their cells – namely, lack of access to proper education, outdoor time and minimal family visits – and not enough on the actual conditions within the cells themselves.

This, they said, was important, because children had been spending most of their time locked down in their cells. Again, a gob-smacking admission from any government, let alone one required to uphold a Charter of Human Rights.

In addition to the extended periods of isolation, our clients repeatedly told us that the lack of proper education was one of the hardest aspects of being confined in Barwon jail. Like all of us, they know that education equals opportunity and the potential to change course.

One of our clients was despairing when he told us that only a few weeks ago, prior to his transfer, he was awarded student-of-the-week at Parkville. He was
acutely aware that being confined in the state's most notorious prison meant losing far more than his liberty – it meant losing the hope that accompanied completing his VCE.

Our community is undoubtedly better served by having children in classrooms rather than confined to jail cells. This is why Britain will soon be introducing "secure schools" – youth justice facilities that focus on training and education, rather than confinement and punishment.

But the government's dogged insistence on detaining children in Barwon prison utterly belies sensible or evidence-based policy making. It is simply implausible that the state of Victoria, with all of its resources, cannot accommodate 10-15 children in an appropriate and lawful youth justice facility.

There is no question that children who are locked up have been charged with, if not convicted of, serious offences. There is no excusing wrongdoing. Children who commit crime should be held responsible for the harm they have caused.

The perennial question for us – for the system – is what this punishment should be, and critically, what we want this punishment to achieve. The fact of the matter is treating children badly will never make our community safe.

The moment we succumb to the base mentality that says children who commit crime are irredeemable or deserve to be mistreated; or that they will somehow learn a lesson from mistreatment; it becomes us, not them, who have lost our way.

As a society, we agreed long ago that punishment should not be gratuitous or unforgiving. We no longer tolerate public floggings or executions. Likewise, we should not countenance even a hint of cruel, inhuman and degrading treatment. That the government sought to jail children in Barwon, and in so doing, to justify cruelty, is the real crux of the youth justice crisis facing Victoria.

Ruth Barson is the director of legal advocacy at the Human Rights Law Centre.

Alina Leikin is a lawyer at the Human Rights Law Centre.