

Legislative Council

Hansard

Tuesday 18 June 2024

[excerpt...]

Ashley Youth Detention Centre – Removal of Children on Remand

[12.44 p.m.]

Ms WEBB (Nelson) - Mr. President. I rise to debate motion number 5 standing in my name and I will read the motion in to begin our discussion.

I move –

(1)

(a) That the Legislative Council notes a recommendation 12.1 contained in the Commission of Inquiry into the Tasmanian Government's Response to Child Sexual Abuse in Institutional Settings Final Report dated August 2023 which states the Tasmanian Government should close Ashley Youth Detention Centre as soon as possible.

(b) that in correspondence to the Premier dated 6 October 2023 from 15 Community and Social Justice Organisation signatories, they expressed extreme concern for the safety of children held at Ashley Youth Detention Centre (AYDC), particularly in light of the Commission of Inquiry's Final Report's assessment of current and live risks for detainees and recommendation for urgent closure and requested:

(i) the urgent appointment of specialist forensic experts to assess all detained children and identify their treatment needs to plan for their care in community; and

(ii) the development of a multidisciplinary working group.

(c) that on 11 October 2023, a coalition of justice and social service organisations, including TasCOSS, Prisoners Legal Service Tasmania, and 54 Reasons publicly released an open letter to the Premier in which they called for the urgent closure of AYDC, along with the appointment of specialist forensic experts to assess all detained children and identify their treatment needs to plan for their care in community and the development of a multidisciplinary working group.

(d) the public statement made by the Commissioner for Children and Young People on Wednesday 22 May 2024, in which the Commissioner:

(i) revealed that the beginning of the week of Monday 20 May this year, there were 26 children and young people held at the AYDC, the highest number the commissioner had ever seen; and

(ii) called for urgent action from the government, including the establishment of a special task force to reduce the numbers of children held on remand at AYDC.

(2) that the Legislative Council calls upon the government to immediately form a multidisciplinary taskforce to design and implement interim measures to remove children on remand from AYDC while the Youth Justice Blueprint continues to be developed as a more permanent reform.

On Wednesday 5 June this year, the Mercury newspaper ran an article stating, and I quote:

The Liberal Party promised to close Ashley Youth Detention Centre 1000 days ago.

Today, it is now 1013 days since that promise was made, and the calendar pages keep turning over. To place that 1013 days and counting into context, I wish to revisit a few pertinent statements made about Ashley Youth Detention Centre, which I will refer to from now on as AYDC. Firstly, to quote:

I have long held the concern that the allegations of historical abuse and the ongoing speculation around Ashley is not conducive to achieving the best practice outcomes that we have strived for. I have made a decision, enough is enough.

That was the former premier, Peter Gutwein, reported by the ABC on 10 September 2021, following Mr Gutwein's public commitment made the previous day to undertake, and I quote:

... a major systemic change in our youth justice system by closing the AYDC and to introduce a new service delivery model in its place by the end of 2024.

Let us keep that in mind, Mr President.

In 2021, the then premier declared: 'Enough is enough' when it came to the Ashley Youth Detention Centre. That was the commencement date of the 1000-day countdown and we should keep track following that statement. We should be on track following that statement to be witnessing the preparations for the AYDC's imminent closure within months by that initial schedule declared by the then premier back in 2021. Instead, the current government has blown out the closure schedule until 2026 and possibly longer.

Mr President, as members here would know, on the 15 March 2021, the commission of inquiry was established to examine allegations and incidents of child sexual abuse in Tasmanian government institutions. The commission provided a final public hearing on the 30 August last year before handing its final report to the Governor.

During her closing address, the president of the commission of inquiry, Marcia Neave AO stated, and I quote:

... It is our view that the Ashley Youth Detention Centre should be closed as a matter of urgency

And this:

... The treatment of children in out-of-home care and youth detention is of particular concern and improving safety for them should be a priority.

Then the commission of inquiry's final report was publicly released the following month on 26 September. As referred to in section 1(a) of the motion before us, these public statements highlighted by the commissioners during their closing address were reiterated as a formal recommendation in the final report. Recommendation 12.1 states:

The Tasmanian Government should close Ashley Youth Detention Centre as soon as possible.

And further, on page 29 of the Executive Summary, the Commission's final report states, and I quote:

We support the Tasmanian Government's decision to close Ashley Youth Detention Centre. We consider it is not fit for purpose as a youth detention facility and should be shut down as soon as possible. We also welcome the willingness of the Tasmanian Government to fundamentally rethink the youth justice model in Tasmania to one that is a more evidence based and therapeutic. The current model is not working - for staff, detainees or the broader community.

We were disappointed that there are some indications the Tasmanian Government is reconsidering its previous announcement to close the Centre by 2024. We hold grave concerns for the safety and well-being of all detainees at the Centre. While we acknowledge that the process of replacing Ashley Youth Detention Centre is complex, we consider the closure of the Centre should be treated with urgency.

Yet, Mr President, for those yet to read through all the volumes of the report, you may be interested to know in the final report, the word search for 'Ashley' returns 2964 instances, while the acronym AYDC returns at least 306 mentions. Time constraints now prevent me from raising all those hundreds and thousands of instances where Ashley was discussed during the commission of inquiry proceeding. However, I can assure you the report's extensive discussion of AYDC over the three volumes that relate to youth justice is a gruelling, traumatising, heartwrenching and painful read.

I have revisited the earlier commitments made by the Liberal government by the former premier to close AYDC. I turn to recent statements made by the current premier and minister.

In his ministerial statement delivered on the resumption of parliament on the 23 May this year, the current premier reiterated his government's commitment to, and I quote:

... Build a child-safe future for our state and to hear and act on the voices of those who have suffered abuse in our systems and institutions and to work together to achieve enduring change.

The Minister for Children and Youth issued a media statement last week on 13 June in which he stated, and I quote:

... There is nothing more important than the safety and well-being of our children and young people.

In fact, the minister asserts, and I quote:

... A laser focus is being applied to achieve this.

Mr President, let us apply that 'laser focus' to highlight some concrete realities to go alongside this rhetoric.

On 22 May this year, the Commissioner for Children and Young People served up some harsh reality when she told ABC Statewide Mornings, and I quote:

... This morning I think we have 24 children in AYDC. Earlier this week on Monday we had 26, which is an all-time high while I've been the Commissioner and I'm in my sixth year, and it is the highest numbers of children we have seen in detention for more than a decade.

During the same interview, the commissioner also raised her concerns that due to the high numbers of detainees and low numbers of staff, management is relying upon, and I quote:

... The isolation of children to be able to operate the centre in a safe way.

This has become the new normal for detention in Tasmania. To be clear, Mr President, isolation is the same as lockdown, essentially has become the new norm for youth detention in our state. The commissioner for children went on to state that isolation erodes children's wellbeing and does not uphold their rights. The commissioner for children has identified this.

While I acknowledge that the incarceration rates of children and young people at AYDC can fluctuate day-to-day and that the recent numbers provided to parliament last week by the minister are probably now out of date, they still reiterate the fact that a shocking number of detainees at AYDC are on remand. For example, last Wednesday, the figures provided by the minister stated that as of that morning, there were 17 young people in AYDC, 11 on remand, six detained, ranging from 14-18 years of age. Eleven children on remand at that time, held in that place where isolation and lockdown, according to the commissioner for children, is the norm and for whom the commission of inquiry holds grave concerns for their safety and wellbeing.

That is almost 65 per cent of the detainees who are there on remand, which means they have not been convicted and should be presumed innocent until such a conviction occurs. To highlight the extent to which this is the norm of which the commissioner for children warns, I refer back to answers I received to questions I put to the government in September last year on the same topic, which indicated at that time the total number of detainees held from 1 July 2023 to 3 September 2023 was 26. Of those detainees, seven were sentenced to a court hearing, leaving 19 young people unsentenced and on remand. Those unsentenced detainees had been held at that time for durations ranging from two days to 205 days in an institution where the norm is isolation - essentially lockdown.

The deeply sad truth is that many of these children on remand are placed in AYDC because it is regarded they have nowhere else suitable to go while waiting for their cases to come before the court.

It is not surprising this belief is held considering the significant dearth, under current arrangements, of relevant services for children in these circumstances. This is coupled with the complete lack of a suitable early-stage assessment and referral service for children coming into contact with police and the youth justice system. Our state has an appalling lack of housing options to support unaccompanied homeless children of this age. Tasmania continues to have no alcohol and drug rehab services for children of this age and incredibly limited mental health services for children in these situations. In fact, our Children and Adolescent Mental Health Service (CAMHS) will not take these children to deal with the trauma issues that they experience.

We would find that many of these children are, or have been, in the out-of-home care system; the state has not effectively provided support adequate to meet their needs during the time that they were or are under state care. All these inadequate services and supports are a choice, the lack of which could be solved by a requisite level of commitment, investment and urgency.

There is also a knowledge gap in the police service and the courts about the services and supports which are currently available to children coming into custody. If the range of services and supports available are not known or understood, then all roads lead to AYDC.

There is currently no system in place that provides an assessment of need when a child first comes into police custody as part of the bail support planning process. Assessments done at AYDC when children are already incarcerated is too late. As they are incarcerated at that point, many of the services that they may have been linked up with cannot provide services to them while incarcerated.

Why do we not have a youth justice worker automatically notified when a child comes into custody? If an assessment of the child's needs is not done prior to them being presented at court, any supports or services which may have been identified cannot be considered. This contributes to more children being sent to AYDC on remand for whom there could have been services and supports provided within a community setting if an assessment and referral was undertaken at the earliest opportunity.

Not only do we lock up these children on remand without first assessing their needs and our capacity to support them in the community, we lock them up in a place recognised as so fundamentally unsafe the commission of inquiry stated it should be closed as a matter of urgency due to the risk to children held there.

It is worthwhile to also apply the laser focus here on the concerning issue of isolation, as mentioned by the commissioner for children. An over-reliance on isolation and lockdown is not only a breach of Tasmania's policy settings, it is in contravention of international conventions of which Australia is a signatory, and which therefore should bind the State of Tasmania. For example, United Nations Protocol, known as the Nelson Mandela Rules, provides signatory states such as Australia with detailed guidelines for protecting the rights of persons deprived of their liberty, from pretrial detainees to sentenced prisoners. Yet in his most recent annual report of 2022-23, on pages 25 to 26, Tasmania's Custodial Inspector states:

I have not previously observed lockdowns on a systemic level in youth detention in Tasmania and it is a disturbing precedent. It was the subject of negative comment by the United Nations Committee against Torture in its Concluding Observations on the sixth periodic report of Australia with respect to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It said on 5 December 2022:

The Committee is seriously concerned about: ...

(d) the practice of keeping children in solitary confinement, in particular at ... Ashley youth detention centre [sic] in Tasmania, which contravenes the Convention and the Nelson Mandela Rules.

He is referring to the OPCAT visit, which raised concerns.

This is not just me saying that the AYDC is fundamentally and systemically contravening the rights of our children and young people. It is not just TasCOSS and civil society, nor is it just the Commissioner for Children or even the Custodial Inspector. It is the United Nations.

Sitting suspended from 1 p.m. to 2.30 p.m.

Resumed from above.

[3.08 p.m.]

Ms WEBB (Nelson) - Mr President, picking up where I left off prior to the break, I was saying it is not just me saying that AYDC is fundamentally and systemically contravening the rights of our children and young people; it is not just TasCOSS; nor the Children's Commissioner; nor even the Custodial Inspector; it is the United Nations Committee Against Torture stating this. That is what our application of a laser focus tells us, which brings us to the question of what is required to protect children from the immediate and continued risk of harm at AYDC, identified by the commission of inquiry and to restore their human rights as soon as possible.

As detailed in paragraphs 1 (b), (c), (d) and (e) in the motion before us, there have been multiple urgent offers of help by those with relevant experience in the community sector and civil society organisations.

For the benefit of the public record and for those who may be listening, I will provide a brief summary of those offers. On 6 October last year, barely 10 days after the public release of the commission of inquiry's final report, a letter emphasising the urgent action required to address the emergency at Ashley Youth Detention Centre was sent to the Premier, the ministers Mr Guy Barnett, Mr Roger Jaensch and Ms Madeleine Ogilvie. This letter was signed by 15 organisations and individuals with expertise in this area. This letter states and I quote:

... We remain extremely concerned for the safety of the children currently held at Ashley Youth Detention Centre, particularly considering that the final report confirms there are current and live risks for detainees and recommended its urgent closure. It has now been two years since the former premier, Peter Gutwein, announced the closure of Ashley, yet it seems we are still no closer to a date. Waiting any longer for change is unacceptable.

Further, I quote:

... This is an emergency. The government must act now to uphold the rights of all Tasmanian children and ensure they are safe. The closure of Ashley is just the first step.

The signatories proposed a multidisciplinary working group to be developed consisting of members of civil society organisations, community practitioners, and experts in the fields of child safety and youth justice to progress the urgently needed reforms. On 11 October, this coalition of organisations publicly released an open letter to the Premier reiterating the need to close AYDC as a matter of urgency, along with the appointment of a specialist forensic expert to assess all detained children and the development of a multidisciplinary working group to assist now rather than wait until the government's proposed new models are in place.

On 13 November last year, TasCOSS, 54 reasons, Colony 47 and Anglicare wrote to the minister, Mr Jaensch, yet again calling for the establishment of a multidisciplinary working group. Then on 22 May this year, the Commissioner for Children and Young People issued a public statement calling for urgent action by the government on AYDC, including the establishment of a special task force to reduce the number of children held on remand at that institution.

Most recently, it is my understanding that all state MPs received an open letter from the CEO of TasCOSS on 7 June last week - or some weeks ago - reiterating the need for urgent action to address the emergency at AYDC. This letter states, and I quote:

... We have no reason to believe AYDC is a safe place for children. We must act now and work collaboratively to support Tasmanian children and their families.

This letter reiterates that Tasmanian community organisations have written to the government on multiple occasions offering to work collaboratively to address the needs of those children currently detained.

Members would have noticed a theme emerging here over the last eight months. It simply does not stack up for the government to argue that the commission of inquiry's recommendation that AYDC is closed as a matter of urgency cannot occur until 2026, two years after the government's original promise, while also appearing to ignore repeated requests and offers by community sector and civil society organisations to work collaboratively right now to find ways to avoid children and young people being put at risk in this widely recognised unsafe institution.

As TasCOSS said last week, we have no reason to believe AYDC is a safe place for children. This brings us to the crux of the motion before us, as outlined by paragraph 2 of that motion. We have at least 15 community sector organisations and civil society individuals and organisations with expertise in the areas of youth justice and child safety, plus the children's commissioner, both calling for an urgent multidisciplinary task force to address the immediate situation to be established, as well as being on standby to assist on that task force.

We cannot afford to turn our back on this very practical offer. The children and young people currently and potentially incarcerated at AYDC cannot afford for us to continue to turn our back on this offer. For over eight months, the sector has repeatedly referred to the AYDC

situation as an emergency. The government has continued to claim the welfare and wellbeing of our children is paramount, which begs the question: what is the problem? Why has this offer, as proposed back in October last year, not been embraced and taken up by the government?

It is 1013 days since the promise was made to close AYDC and we find ourselves here now, urging the government to heed the request of the community service providers with expertise in this area. As noted in the motion before us, I am very conscious that the initial focus of any such emergency multidisciplinary task force formed is to prioritise children on remand. We are all very conscious that this is a partial, albeit important and essential step. Those who have received a custodial sentence also must not be forgotten or relegated to some other not-as-important status.

However, under our judicial system, which is predicated on the presumption of innocence until proven guilty, it is unconscionable for those still being presumed innocent, to be incarcerated in these unacceptable conditions which are widely recognised as unsafe, especially if other options can, in fact, be made available. I cannot help but note, Mr President, that had the Premier acted immediately when he received the first letter of the concerned community sector offering to share their expertise to assist - and just to remind members that letter was dated 6 October last year - the work called for in the motion before us today could have been underway 257 days ago, eight months and 18 days ago. Children who are still presumed innocent on remand could have been benefiting from the shared expertise, skills and dedication of a multidisciplinary task force working in collaboration with the government services.

To reiterate, the Premier and the responsible ministers received the final report from the commissioners on 30 August last year, which clearly highlighted the fact this was an emergency situation, that they regarded children to be at risk at AYDC, and 257 days ago the Premier and responsible ministers were offered expert help to deal with this situation. Yet by all accounts that offer was largely ignored. Apparently, late last week following the same group of community sector organisations writing the letter to all state members of parliament, as I mentioned earlier, a government request for a meeting was received. I believe a meeting was held yesterday. That only took approximately eight months and two weeks from the initial emergency call made on 6 October late last year.

Laser focus indeed. I have no doubt that in the government's contribution on this motion we will hear a laundry list of actions being taken to implement the recommendations of the commission of inquiry, including actions being taken to progress the redesign of the youth justice system. There is nothing this government likes more than giving us a long list of actions or commitments to distract us from those areas in which they have a shameful lack of outcomes or results.

Let me be clear, no-one is accusing the government of doing nothing in this space or of not being busy progressing numerous important recommendations from the commission of inquiry. But the fact of the matter is, the commissioners said close AYDC as a matter of urgency, that they had grave concerns for the safety and wellbeing of all detainees at the centre. Given that unequivocal advice from expert commissioners who immersed themselves for close to two years in evidence of the shocking abuse being perpetrated on children at that institution and the extensive and shameless enablement of that abuse, the government has not, and is not,

acting with urgency - not with sufficient urgency - to keep children from that harm. That is what this motion is about.

It is worth considering that it is not only former or current AYDC detainees who receive a record. In the eyes of many, we all carry an Ashley Youth Detention Centre record. Former governments and parliaments, the current government and current parliament, everyone who has allowed these crimes against children and young people to continue on their watch must bear the record of that shame. Thanks to the brave whistleblowers who were the catalyst for the commission of inquiry, and also thanks to the work of the commission of inquiry itself, this parliament is in a unique position.

We cannot say we did not know. We cannot say we do not know. Now it is on our watch. Government and non-government members, all of us. No excuses will wash. To put it bluntly, AYDC is Tasmania's Point Puer of the modern era. I do not make that comparison lightly. Instead, it reflects a deep shock, sadness and profound horror in light of the experiences people have had in that place which some have shared with me.

AYDC is an ever-growing, immutable stain of shame on the records of former governments, the current government and this parliament.

I mentioned the sadness and horror I felt and continue to feel. The more I discover about what has occurred at AYDC - and I have no doubt that barely scratches the surface - but I can also add anger to that list. I am angry on behalf of those children and young people sent to AYDC who have been subjected to appalling abuse, many of whom will never receive justice for what was done to them, nor the recognition of how it continued to destroy their lives, relationships and opportunities long after.

I am angry on behalf of those honourable workers and others who tried to alert us that things were gravely wrong, who exhausted themselves and risked their own safety while ringing that alarm bell. I am also angry that this has been occurring and continues to occur on my watch.

I had the privilege of being elected to this place in 2019. Over the past five years, it has become glaringly clear that despite independent reviews, promises by premiers, and commissions of inquiry recommendations, we are still failing to protect those vulnerable children and young people for whom the state has a duty of care. Every single day that AYDC stays open, we fail in that duty of care to protect those children and I am so very angry to realise that the state received offers of expert assistance for, at best, interim measures eight months ago, but apparently chose to ignore those offers.

To conclude, Mr President, I wish to acknowledge the strength, bravery and commitment of the whistleblowers, carers, organisations and individuals, most importantly the victim/survivors, the former and current AYDC detainees, who have all placed themselves on the line and by doing so, risked greater and ongoing harm to themselves in their efforts to expose the AYDC conditions to seek justice and drive meaningful reforms. I am so very sorry for what they have had to go through and what they have had to continue to endure.

I also acknowledge the tireless efforts of those community sector organisations and individuals who, having good faith, offered their expertise, time and commitment to the government and therefore more broadly to the Tasmanian people in working to deliver

expeditiously those much-needed and meaningful reforms. I genuinely hope that if this Chamber votes in support of the government immediately forming a multidisciplinary task force to work together to implement necessary interim measures that will help remove children on remand from AYDC now while the proposed Youth Justice Blueprint continues to be developed as a more permanent reform, that we can start to change that record. We can ensure that our watch becomes one of vigilance and the consistent upholding of our children's safety, dignity and human rights.

Mr President, I commend the motion to the House.

Resumed from above.

Ms WEBB (Nelson) - Thank you, Mr President. Thank you to the members who have made contributions on the motion. I very much appreciate it. Particularly to, also congratulations to, the member for Hobart who has made her inaugural address in relation to this motion also and thank you for the support expressed for it from her. I appreciate members have made very thoughtful contributions and raised some really good points. I want to pick up on a couple of things as I wrap up, but will not dwell on it too long.

None of us argue about the fact we need to be developing and progressing to a therapeutic model of care for our youth justice system and as the Leader said, we have one chance and we want to get it right. Of course, we all do. But it does not mean we cannot be doing more with greater urgency in the meantime, because it is simply too clear to us from all evidence that AYDC is not a safe environment. It does not matter the extent to which the government gets up here and makes a list of things being done if they cannot stand up here and guarantee 100 per cent that no child is being abused there in the ways so explicitly detailed in the commission of inquiry report. If you cannot get up here and say we guarantee that is not happening now, it is not a safe place. The commissioners made it really clear; they regarded it as an unsafe environment.

The 'as soon as possible' timeline is incredibly problematic. This motion is not about closing Ashley; this is just being mentioned in passing really. It is about, okay, we cannot move to a fully redesigned system yet, but we must get people out in the meantime. There is urgency to that and 'as soon as possible' is not good enough for that. Interim measures should be undertaken with much greater urgency. COVID taught us when the urgency is there we can stand up responses to all manner of incredibly complex and sensitive things like that, at the drop of a hat. This is not to say we rush into it, but if we felt the same urgency here, if we had the minister and the government actually feeling that they cannot risk another child being abused for another day longer in that facility, they would be making different choices now. They would be genuine choices made with urgency. I want to make that point very, very clear. It is not good enough to keep pointing to 'as soon as possible'. This is a very mild motion because it is not about closing the facility; it is about what we do in the meantime with much greater urgency. The community sector is critical and, plainly, they have been ignored for far too long, while offering - with heartfelt desperation - to assist in the interim.

It is not good enough to list safety upgrades that have apparently been made at Ashley Youth Detention Centre. I suggest the minister and the government go away and think really carefully before they make lists like that and bring it to this place or the other place and tell us what is being done. Every time they make that list and read it out, they have to actually be able

to say, 'and with this we can guarantee no child is being raped in that facility'. If they cannot say that at the end of that list, then they should stop saying that list and they should get the children out of there.

I, particularly, appreciate some distinctions and some discussion brought to this place by the member for Rumney, with some of those carefully made points that the motivation for putting children in isolation is irrelevant, because the impact is the same regardless of why we did it. That is true. Every time we are putting children in isolation in that place, we are breaching their human rights. The UN and every oversight body in this state has told us that. We are breaching their human rights - full stop, regardless of why we do it.

I appreciate the points made by the member for Murchison that, indeed, we should be warned about not glossing over this; that it is not okay to say today there are fewer numbers in there than there might have been a week ago or two weeks ago, because just as easily in a week or two weeks, there could be more, and with a government which is, every day, in a newspaper somewhere in this state, celebrating a tough-on-youth-crime approach being taken. We know more children are simply being driven there at the moment through that policy position the government is choosing to take.

While it is fine for the government's contribution today - I know it is not the Leader's choice to do it - to get up and list the numbers there today and the fact the custodial inspector happens to be visiting and what not, all the other things, that is all well and good. Tomorrow might be a different story; next week might be a different story. Those are not things we can rely on to know with confidence that every child there is safe. We just cannot.

I appreciate the government noted and did not oppose the motion in its contribution. Even if it means the government is not supporting the motion, I appreciate that tenor taken to at least note it rather than oppose it outright in their contribution. It is a well-intentioned motion. It is pointing, as the member for Murchison and the member for Rumney said, toward working together, but with much greater urgency and accepting the help that is on offer. That is what it is calling on the government to do. There is nothing negative in that call. It is an encouragement. It is an exhortation to please do better.

Thank you to the members for their contributions. There will be much more to say on this matter. Certainly, through the commission of inquiry committee that has been set up, but also, no doubt, other mechanisms in this place. I, for one, will be regarding it as an utter priority from here on in. It is on our watch, as I said in my contribution to the motion, for all of us here. Everything that happens now and every step forward - or not - is on our watch. Every child in that facility and every instance in which a child is abused in that facility is on our watch.

Motion agreed to.