

INQUIRY INTO JUVENILE OFFENDERS

Organisation: Combined Community Legal Centres' Group (NSW) Inc
Name: Ms Agnes Chong
Position: Co-Convenor
Telephone:
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Subject:

Summary



11 March 2005

The Director
Select Committee on Juvenile Offenders
Parliament House
Macquarie Street
SYDNEY NSW 2000

Fax: 02 9230 2981

Dear Sir/Madam,

RE: INQUIRY INTO JUVENILE OFFENDERS

Thank you for the opportunity to make a submission to the Inquiry into Juvenile Offenders and the *Juvenile Offenders Legislation Amendment Act 2004* ("the Act").

Combined Community Legal Centres Group (NSW) Inc. (CCLCG) has 42 member community legal centres (CLCs) throughout New South Wales. CCLCG is also a member of the National Association of Community Legal Centres (NACLC), which is a national body peak body for community legal centres.

Community legal centres work for the public interest, particularly for disadvantaged and marginalised people and communities. We promote human rights, social justice, and a better environment by advocating for access to justice and equitable laws and legal systems, and through the provision of legal services including strategic case work, community legal education and law reform campaigns. Community legal centres are independent, non-profit community organisations providing free legal advice, information and referrals for individuals and communities across New South Wales.

In particular, the National Children's and Youth Law Centre as well as several of the generalist community legal centres frequently assist juvenile offenders. CLCs have also advocated for law reform on children's rights, as well as conducted research and delivered community legal education on juvenile justice issues.

CCLCG's members that work on juvenile justice issues also work closely with the Youth Justice Coalition, which is a coalition of youth, legal, welfare workers and academics. We wish therefore

**Combined
Community
Legal Centres'
Group (NSW) Inc**

**Suite 3B Briard House
491-493 Elizabeth St
Surry Hills NSW 2010
Ph: 02 9318 2355
Fax: 02 9318 2863**

to endorse and support the Youth Justice Coalition's submission to the Inquiry into Juvenile Offenders, as well as the submission provided by the National Children's and Youth Law Centre.

In this submission we would in particular like to draw the Committee's attention to two critical areas:

- the contravention of human rights standards, national and international practices and principles of juvenile detention;
- the lack of judicial discretion and lack of transparency and review of decisions made under the Act.

1. CONTRAVENTION OF RIGHTS, PRINCIPLES AND BEST PRACTICES

The legislation contravenes national and international standards and best practices for juvenile justice including:

- the *Convention on the Rights of the Child*;
- *UN Standard Minimum Rules on the Administration of Juvenile Justice (the Beijing Rules)*;
- the *UN Rules for the Protection of Juveniles Deprived of their Liberty*;
- the *Australasian Juvenile Justice Administrators Standards for Juvenile Custodial Facilities (Australasian Rules)*;
- the recommendations of Royal Commission Into Aboriginal Deaths in Custody;
- best practices for rehabilitative and restorative approaches to juvenile justice; and
- the fundamental principles of juvenile justice such as the 'rights of the child', 'the best interests of the child', and the importance of differentiating between adult and juvenile justice systems;

The main reason for this failure to implement recognised standards and practices, is that the legislation places an emphasis on incorporating juveniles within adult justice systems. This fails to provide adequate safeguards for the special needs of juveniles in detention and exposes youth to a range of harsh punishment regimes that are inappropriate for juveniles. This also fails to abide by accepted practice in sentencing of juveniles where regard should be had for their background and personal circumstances, not just their age and nature of their offence(s). As a result, juveniles within the mandate of this Act are vulnerable to being placed in an environment that is potentially threatening to their physical safety and psychological well-being.

The legislation also makes no guarantees regarding juvenile detainees' rights to education and their need for an environment that will foster their return to the community as active and socially productive citizens.

We are concerned that the Department of Corrective Services Officers and Staff may not have been given adequate training in youth specific and juvenile justice issues, including Indigenous cultural training to ensure that the specific needs of juvenile detainees are met.

While the juveniles detained at Kariong may represent some of the more serious juvenile offenders in the state, there is no basis on which Kariong detainees can be distinguished from other juvenile detainees to the extent that warrants such a strong departure from accepted principles, practices and standards for juvenile detention. The problems at Kariong were

essentially related to security and staffing issues, and the detainees should not be made the scapegoats. The Act is not an adequate response for meeting this range of issues.

2. INADEQUATE DECISION MAKING PROCEDURES

The lack of judicial discretion under the Act is also of concern. For instance, the Act removes judicial discretion to direct where a juvenile will serve a term of detention/imprisonment, and vests this decision making power in the Director-General. The significant decision-making powers vested in the Director-General are problematic because of the lack of corresponding clear decision-making criteria or review mechanisms.

We contend that the *Juvenile Offenders Legislation Amendment Act 2004*, having been introduced to respond to complex managerial and structural problems at Kariong Juvenile Justice Centre, introduces a regime for juvenile justice centres that largely disregards the rights and interests of the child detainees and that should not be allowed to be imposed on other juvenile justice centres. Unfortunately the Act does not limit the number of Juvenile Correctional Centres that may be established. The amendment to section 225A of the *Crimes (Administration of Sentences) Act 1999* states that "any premises" may be declared to be a juvenile correctional centre. As the legislation is not articulated to apply only to Kariong there is a real risk that it could be extended to other Juvenile Justice Centres in NSW, to the detriment of the centres and the juvenile detainees within them.

We also note that there is a lack of clarity as to the purpose of this Inquiry, due to the fact that the legislation was introduced in 2004, without any formal review clause. This leaves us with concerns as to how the issues we have articulated with regards to this legislation will be addressed by the Committee, the Department of Juvenile Justice and the Department of Corrective Services, in terms of their practical implementation.

We would recommend that our concerns be seriously considered and that the following measures be implemented:

- an empirical and research based approach be adopted when considering juvenile justice issues and determining the best interests of children and the strategies which optimise their reintegration into society;
- separate and distinct administration systems for juvenile and adult offenders be implemented to ensure that foundational principles such as the best interests of the child are reflected in all aspects of the system and that all efforts are made to ensure juveniles can be reintegrated into the community as soon as possible;
- the rights of juvenile detainees to education, specialised health, counselling and welfare services are safeguarded; and
- appropriate procedures be included in the Act to allow for judicial discretion, clear criteria and a review mechanism for decisions made under the Act.

For further information, please do not hesitate to contact Emma Keir or Louise Sutherland on 9559 2899 if you require further information or wish to discuss any further aspects of our submission.

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'Agnes Chong'.

Agnes Chong
Co-Convenor, NSW Law Reform and Policy Committee
Combined Community Legal Centres Group (NSW) Inc.