

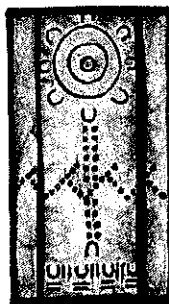
## **INQUIRY INTO JUVENILE OFFENDERS**

**Organisation:** Chairperson  
**Name:** Mr Lennie Frail  
**Position:** Aboriginal Justice Advisory Council  
**Telephone:**  
**Date Received:** 12/04/2005

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**Subject:**

**Summary**



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

Dear Madam

**RE: INQUIRY INTO JUVENILE OFFENDERS**

Thank you for providing the Aboriginal Justice Advisory Council with the opportunity to make submission (see attached) to the Inquiry into Juvenile Offenders and the recently passed Juvenile Offenders Legislation Amendment Act 2004.

The NSW Aboriginal Justice Advisory Council (AJAC), a council of Aboriginal people, was established in 1993 as a direct response to Recommendation 2 of the Royal Commission into Aboriginal Deaths in Custody and is made up of a chairperson, six community representatives and two specialist representatives, one being a youth representative from the Aboriginal Youth Justice Advisory Network (AJAN) and a legal specialist.

To complement AJAC's submission, the Chairperson Mr Lennie Frail and Ms Bobbi Cattermole, Youth specialist and Chair of the Aboriginal Youth Justice Advisory Network and Ms Lydia Miller, AJAC's Executive Officer will be available to present our position to the Inquiry.

Thank you once again and we look forward to a positive response and outcomes for the youth of NSW.

Yours sincerely,

**Mr Lennie Frail**  
Chairperson

12 April 2005

**NSW PARLIAMENTARY  
LEGISLATIVE COUNCIL  
SELECT COMMITTEE ON JUVENILE OFFENDERS  
INQUIRY INTO JUVENILE OFFENDERS**

***“Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of every human person, and in a manner which takes into account the needs of persons his or her age”.***

s37 (c) Convention on the Rights of the Child

**1. Summary**

- 1.1. The NSW Aboriginal Justice Advisory Council (AJAC) welcomes the opportunity to make a submission to the NSW Parliamentary Legislative Council Select Committee on Juvenile Offenders *Inquiry into Juvenile Offenders*.
- 1.2. The NSW Aboriginal Justice Advisory Council is greatly concerned about the impact of the *Juvenile Offenders Legislation Amendment Act 2004* on Aboriginal children and young people, families and communities; and opposed its introduction in December 2004. Those concerns are in line with the aims, objectives and principles that reflect the Aboriginal communities of NSW that we represent.
- 1.3. The NSW Aboriginal Justice Advisory Council holds grave concerns that the continuing gross over-representation of Aboriginal children and young people in the criminal justice system is further compounded by the draconian legislation proposed in an environment of political expediency, to which all intent and purposes, would deliberately undermine the evidence that, entrenched institutionalisation does not produce rehabilitative outcomes for juvenile offenders and the wider community; and that such institutionalisation further alienates and brutalises an already marginalised community. That this legislative amendment targets a highly vulnerable and powerless group, Aboriginal young people, is an indictment of the society that purports to uphold the rights of children as integral to the notion of civilised society.
- 1.4. The NSW Aboriginal Justice Advisory Council considers that the transfer of Kariiong Juvenile Justice Centre detention from a Juvenile Justice system to an adult management system: -
  - ignores recommendations from the Royal Commission into Aboriginal Deaths in Custody;
  - contravenes principles relating to the Convention on the Rights of the Child;
  - highlights the lack of consultation with the NSW Aboriginal Justice Advisory Council and other Aboriginal representatives in the criminal justice system in assessing the impact of legislative proposals and reform;
  - does not acknowledge the criminalisation of poverty and disadvantage that results in Aboriginal children and young people appearing in the criminal justice system;
  - contributes to further entrenchment of Aboriginal children and young people in the criminal justice system;
  - increases systems abuse of Aboriginal children and young people through institutionalisation;
  - does not acknowledge the highly specialised discipline of child and adolescent development and the needs of specific age cohorts;

- highlights a lack of cognisance of rehabilitation theory and 'what works' programming and limits the rehabilitation potential of youth;
- dismisses important work done by agencies in the area crime prevention, diversionary and intervention initiatives;
- places a significant value on the offence committed by the youth and not the age, background, cultural needs and mental health of young people;
- does not guarantee that the child would not be placed in an adult gaol; and
- places Aboriginal youth in a high-risk situation i.e. isolation, self-harm and suicide.

## **2. The NSW Aboriginal Justice Advisory Council**

- 2.1. The NSW Aboriginal Justice Advisory Council (AJAC), a council of Aboriginal people, was established in 1993 as a direct response to Recommendation 2 of the Royal Commission into Aboriginal Deaths in Custody which states,

*"Subject to the adoption by Governments of this recommendation and the concurrence of Aboriginal communities and appropriate organisations, there be established in each State and Territory an independent Aboriginal Justice Advisory Committee to provide each government with advice on Aboriginal perceptions of criminal justice matters, and on the implementation of the recommendation of this report."*

- 2.2. AJAC is made up of a chairperson, six community representatives and two specialist representatives, one being a youth representative from the Aboriginal Youth Justice Advisory Network (AJAN) and a legal specialist. AJAC's role is:-

- To provide advice to the NSW government on the operation of the criminal justice system and what works to prevent crime and violence in Aboriginal communities
- To commission research on priority issues affecting Aboriginal people's contact or experience with the criminal justice system
- To evaluate criminal justice agency performance on key indicators of Aboriginal people's experience with the criminal justice system
- To act centrally to develop coordination and partnership between all parties pursuing the objectives of addressing the underlying causes of crime and anti-social behaviour; and improving the operation of the criminal justice system.
- To act locally to develop coordination and partnerships between all parties pursuing the objectives of addressing the underlying causes of crime and anti-social behaviour: and improving the operation of the criminal justice system.
- To communicate and promote the priorities, principles and best practice that should underpin all government programs of assistance to Aboriginal people in preventing and reducing their contact with the criminal justice system.

## **3. Statistical Profile of Indigenous Peoples**

- 3.1. Aboriginal people and Torres Strait Islanders comprise 2.4% of the total Australian population. The Aboriginal and Torres Strait Islander population is relatively young

with a median age of 20.5 years compared to 36.1 for the non-Indigenous population. More than half of the Aboriginal and Torres Strait Islander population (58%) is aged under 25 years and only 3% aged over 65 years. In contrast, the Australian population has a much higher proportion of older people (13% aged 65 or over) with only one-third (35%) aged under 25 years. Almost 40% of the Aboriginal and Torres Strait Islander population is under the age of 15 years, compared with 20% for the non-Indigenous population.

- 3.2. Indigenous people aged 15 years or over who had left school were half as likely (18%) as non-Indigenous people (41%) to have completed Year 12. Indigenous people are more likely to attend a Technical and Further education (TAFE) and less likely to attend university and more likely to start at a younger age. Of the 15-17 year age cohort, a higher proportion of Indigenous than non-Indigenous were attending TAFE (7% and 5% respectively). For those Indigenous people aged 15 years and over some 3% attend university while the age group from 18-24 were much less likely to attend university than non-Indigenous people (5% and 23% respectively).
- 3.3. The completion of both Year 10 and Year 12 affects labour force participation and only 42% of Indigenous people aged 15 years and over were employed, well below the 59% recorded for the non-Indigenous population.
- 3.4. The National Aboriginal and Torres Strait Islander Social Survey 2002 highlighted key issues across a range of broad social concerns noting that:
  - Removal from natural family: 10% of Indigenous people reported that they had been taken away from their natural family and that 8% of Indigenous people aged 15 years or over had been taken away from their natural family. These figures have repercussions in relation to stable family environments and parenting skills.
  - Work: Community Development and Employment Projects (CDEP) accounts for one in four jobs held by Indigenous people. Between 1994 and 2002, the proportion of unemployed Indigenous people fell from 22% to 14%. These translate to unemployment rates of 38% in 1994 and 23% in 2002 consistent with the decline in national unemployment from 10% in 1994 to 6% in 2002.
  - Income: The disparity between Indigenous and non-Indigenous incomes remains with the mean equivalised gross household income for Indigenous persons aged 15 years and over at \$394 per week compared to \$665 per week for non-Indigenous people.
  - Family and Community: Indigenous people are almost one and a half times more likely to experience stressors such as death of a family member or close friend, serious illness or disability or inability to get a job. Comparatively with the non-Indigenous population, 83% to 57% respectively.
- 3.5. In NSW, approximately 30% of the Aboriginal and Torres Strait Islander population live in NSW and comprise 2% of the NSW total population. Proportionally, the highest population is in the Far West region where Aboriginal people constitute 13% of the resident population, while numerically, the majority of the Aboriginal population reside in major cities or inner regional areas.

#### **4. Royal Commission into Aboriginal Deaths in Custody**

- 4.1. The Royal Commission into Aboriginal Deaths in Custody was a wide-ranging inquiry into Aboriginal deaths in custody, and the conditions that led to the death of a person in custody. 339 Recommendations were made for implementation by government and Aboriginal communities. However these recommendations have not been implemented successfully by government and are still pertinent some ten years later to addressing the Aboriginal over-representation in the criminal justice system.
- 4.2. Of particular concern to AJAC in relation to this inquiry are Recommendation 62 and 237. AJAC believes that the new legislation potentially places Aboriginal juveniles who come into contact with the Juvenile Corrective Centre into high-risk categories for behaviours such as self-harm and suicide.
- 4.3. AJAC is also concerned that it contravenes to an extent RCIADIC recommendation 62 which states:

*“That Governments and Aboriginal organisations recognise that the problems affecting Aboriginal juveniles are so widespread and have such potentially disastrous repercussions for the future that there is an urgent need for Governments and Aboriginal organisations to negotiate together to devise strategies designed to reduce the rate at which Aboriginal juveniles are involved in the welfare and criminal justice systems and, in from their families and communities, whether by being declared to be need of care, detained, imprisoned, or otherwise.”*

- 4.4. There was no consultation with AJAC or the Aboriginal Communities in regard to the transfer, which goes against the principle of RCDIAC Recommendation 62. Aboriginal people need to be consulted to provide our expertise in this area and concerns and advice.
- 4.5. The transfer of management will see a dramatic change in the contact that clients will have with Aboriginal employees an issue that can only be seen as negative and not in the interest of the health and safety of Aboriginal youth. AJAC also believes that by transferring Kariong to the Corrective Service system, juveniles will lose the specialised staff and programmes in place in the Juvenile Justice system that are necessary for effective rehabilitation, and by doing so to an extent, contravenes RCDIAC Recommendation 237:

*“At all levels of the juvenile welfare and justice systems there is a need for the employment and training of Aboriginal people as youth workers in roles such as recreation officers, welfare officers, counsellors, probation and parole officers, and street workers in both Government and community organisations. Governments, after consultation with appropriate Aboriginal organisations, should increase funding in this area and pursue a more vigorous recruitment and training strategy.”*

- 4.6. AJAC recognises that the Department of Juvenile Justice has successfully achieved a high Aboriginal employment rate of 9%, higher than any other criminal justice organisation. Currently the Department of Corrective Services has an Aboriginal employment rate of 4%.

## 5. Obligations and the Rights of the Child

- 5.1. Section 37 (c) of the Convention on the Rights of the Child states "every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of every human person, and in a manner which takes into account the needs of persons his or her age".
- 5.2. As a signatory to international Convention on the Rights of the Child (CROC) State and Commonwealth governments have an obligation to ensure that all legislation abide by the principle and intention of the Rights of the Child. The Juvenile Offenders legislation Amendment Act 2004 contravenes this convention by transferring control and management of a Juvenile Detention Centre to the Department of Correctional Services, a provider of adult prisons.
- 5.3. UNICEFF has found that *'around the world indigenous children consistently number among the most marginalised groups in society and are frequently denied the enjoyment of their rights, including the highest attainable standard of health, education, protection and participation in decision-making processes that are relevant to their lives.*
- 5.4. It is noted throughout all Australian Legislation relating to Juvenile Justice issues, in that children should be treated in ways that are appropriate to their stage of maturity and to reinforce the fundamental importance of rehabilitation.
- 5.5. Guiding principles found in legislation regarding the punishment of children are summarised as follows;
  - They should be *given the opportunity to develop in responsible and socially acceptable ways*
  - *Allows for their development into responsible and useful members of the community*
  - *Allows for the proper realisation of their potential*
  - *Allows the education or employment of the child to proceed without interruption*
  - *Allows the child to reside in his or her own home*
- 5.6. Legislation in many States are clear that a sentence of detention is only appropriate when other sentencing options have been considered and the court is satisfied that a non-custodial sentence would be not appropriate in the circumstances. Aspects such as the nature and seriousness of the offence age, maturation, reasons for the offence, capacity for rehabilitation, prior offending history, admission of responsibility, care and protection issues should always be considered.

## 6. Aboriginal Disadvantage

- 6.1. Aboriginal and Torres Strait Islander peoples experience multiple disadvantage and it is acknowledged that this results in poor outcomes across a range of dimensions of life leading to intergenerational disadvantage, societal exclusion and lack of access to goods, services, activities and resources. The implications of social exclusion are separation from institutions and wider society and consequently from rights and duties. On average, the Aboriginal and Torres Strait Islander population has lower life expectancy, lower income, lower educational attainment, lower labour force participation, and lower levels of home ownership. Aboriginal and Torres Strait

Islander people are more likely to commit suicide, be the victim of crime (including homicide) or be in prison.

- 6.2. Aboriginal peoples contact with the criminal justice system cannot be viewed from a limited perspective. Fundamental issues of colonisation, Australia's continued treatment of its Indigenous population, international vs. national attitudes towards its Indigenous population, alcohol and drug abuse, sexual assault, racism, high unemployment, lack of education, and lack of participation and acceptance in Australian society are all factors that need taken into consideration when understanding the high rates of incarceration rates. Identifying these issues will provide Aboriginal communities, governments and Australian society with tools to readdress the high levels of over representation.
- 6.3. A trend identified by the United Nations Committee on the Rights of the Child is the clear connection between the level of disadvantage experienced by Indigenous Australians and the over-representation of Indigenous juveniles and adults in criminal justice, care and protection systems.

#### 6.4. Economic Conditions

6.4.1. It is important to take into consideration issues of economic conditions connection and levels of disadvantage when looking at criminal behaviour. The Centre for Aboriginal Economic Policy Research 2003 social indicators clearly highlights the level of disadvantage experienced by Indigenous peoples. The unemployment rate is 20.0% compared to Non-indigenous Australians of 7.2%. For Indigenous families the median income per week is \$628.80 compared to Non-indigenous of \$872.70.

6.4.2. The levels of disadvantaged for Indigenous Australians is further highlighted in Moran's report '*Housing and health in indigenous communities in the USA, Canada and Australia: the significance of economic empowerment*', *Aboriginal and Torres Strait Islander Health Bulletin May 2000*." The report states that indigenous peoples in North America experienced higher levels of employment, education and home ownership than Indigenous Australians. The differences are attributed to a better structure and greater efficiency of Indigenous affairs in North America where Indigenous people actively assert, protect and participate in the decision-making processes relevant to their lives.

#### 6.5. Alcohol and Drug Abuse

6.5.1. The most serious social issue affecting Aboriginal communities is the misuse of alcohol. There is a high need for the development of culturally appropriate preventative educational, support and treatment programs for communities to address alcohol-related problems. About 80% of offences committed by Aboriginal youths are related to alcohol and drug abuse. Overall, the National Alcohol Strategy estimated that 20% of the Indigenous population compared with 10% of other Australians, had patterns of drinking that risk long-term harm, and 28% of the Indigenous population compared with 10% of other Australians had drinking episodes that were risky or high risk for short-term drinking.

#### 6.6. Sexual Assault

6.6.1. The NSW Aboriginal Justice Advisory Council (AJAC) conducted a report entitled *Speak Out, Speak Strong*. One of the most disturbing findings of this report is that 70% of the Aboriginal women in custody surveyed for the report



stated they were victims of child sexual assault. More than 40% also reported they had been sexually assaulted as adults. The Report found that women who had been sexually assaulted were more likely to use drugs, particularly heroin, and that drug use was the primary reason behind their imprisonment.

6.6.2. In some Aboriginal communities in NSW, the sexual assault of children and women is widespread, intergenerational and hugely under reported. The recorded rate for victimisation for assault, sexual assault and sexual assault against children is three times higher for Aboriginal people than the total population. The recorded victimisation rate for domestic violence related assault is six times higher.

## **7. Indigenous Over-representation in the Criminal Justice System**

- 7.1. Over representation of Aboriginal people and its continuing growth within the criminal justice system is a major concern of both AJAC and state and federal government alike, and one that presents a constant challenge as we look at ways that effectively create and deliver services that address this over representation.
- 7.2. For example, in 1991 in NSW, Indigenous Australians were nearly eight times more likely than non-Indigenous Australians to be in prison. By 1999, the level of Indigenous over-representation in NSW prisons had risen to almost ten times that of the non-Indigenous rate.
- 7.3. NSW data shows the level of over-representation of Aboriginal youth in detention centres to be unacceptably high by international standards, particularly when compared to other nations with an Indigenous people, with 40% of Australian Indigenous youth having contact with the criminal justice system. Aboriginal youth comprised between 39% and 47% of all juveniles in detention in NSW (monthly data from the DJJ covering the period August 01 to April 02.) The Australian Institute of Criminology reports that Indigenous persons aged 10 to 17 years are still almost 20 times more likely to be in detention than non-indigenous persons of the same group.
- 7.4. The Bureau of Crime Statistics and Research on Indigenous juveniles for 2003 indicated the 5 major offences being;
  - Theft- steal from retail store, Break & Enter, Motor Vehicle theft.
  - Against Justice procedures with breaching bail conditions being the main offence.
  - Assault.
  - Other offences (not specified).
  - Malicious damage to property.
- 7.5. For juvenile offenders a court can consider a number of sentencing options such as suspended detention, community service orders, fines, periodic detention or be dismissed without penalty. Ideally, the detention of juveniles should be the last resort for courts.
- 7.6. Other serious concerns highlighted in "*The Impact of Crime Prevention on Aboriginal Communities*" Report by Associate Professor Chris Cunneen Institute of Criminology Law Faculty University of Sydney include:-
  - people in prison are most over-represented in offences involving violence, public order, motor vehicle offences and property damage.

- A significant proportion of Aboriginal people received into prison are there for defaulting on a fine. This suggests that many Indigenous people are going through the prison system for relatively minor offences where a fine is imposed in the first instance.
- Indigenous people tend to come before the courts for more serious property offences including break and entering, and stealing motor vehicles, compared to non-Indigenous people.
- Indigenous people are also significantly over-represented in public order offences and offences involving violence.

## **8. Rehabilitation of Aboriginal Juvenile Offenders**

- 8.1. The rehabilitation of Aboriginal juvenile offenders, both male and female, must address the principles of the 'what works' principles of managing risk, criminogenic needs, responsively and integrity. These must be informed by the cultural needs of Aboriginal young people and the desire of Aboriginal communities to stop the system abuse of their children and young people and the entrenchment within the criminal justice system.
- 8.2. In particular the criminogenic needs of Aboriginal young people such as family and social factors, for example, family problems, ineffective use of leisure time and delinquent peers; educational factors; substance use history and non-severe mental health problems impact greatly due to the profound levels of multiple disadvantage suffered by Aboriginal young people, families and communities.

## Terms of Reference

- a) **The reasons for, and the consequences of, the transfer of management responsibility for the Kariong Juvenile Justice Centre from the Department of Juvenile Justice to the Department of Corrective Services including the impact on staff at Kariong and Baxter detention centres,**

AJAC has concerns that the proposed transfer of management responsibilities, was a political decision based on negative media coverage of Kariong as well as the media/publics general obsession with juveniles, juvenile crime and perceived anti social behaviour. AJAC, as a representative of Aboriginal people in the areas of Justice, are concerned that it is a "quick fix" solution and that in light of the high incarceration levels of Aboriginal people, the decisions can only have a detrimental effect on Aboriginal youth and their communities.

- b) **Whether the transition of Kariong Juvenile Justice Centre into a juvenile correctional centre operated by the Department of Corrective Services is the most effective method of addressing management problems at that centre,**

Implementing a system based upon an adult culture of imprisonment does not necessarily address management problems at the Kariong Juvenile Justice Centre. The management of young people who come before the criminal justice system should reflect our societies value of the Rights of the Child, their age and maturity and the potential for rehabilitation. Legislation and the creation of a Juvenile Justice Department reflects the desire for NSW to acknowledge the diverse needs of young people, to place the Juvenile Justice Centres into the management of a juvenile justice operation

Issues of staff management and workplace culture should not in anyway influence the decision by the legislature to transfer management from a Justice Centre to a Correctional Centre. These issues should be dealt with in the same way as all Government Department workplace practices that include Occupational Health and Safety issues and the recruitment, training and retention of appropriate staff.

- c) **The issue of adult detainees sentenced as juvenile offenders at Kariong and elsewhere in the juvenile detention centre system,**

AJAC believe that when considering this question there are many other issues that must be taken into consideration when addressing the issue of adult detainees sentenced as juvenile offenders. These issues include:

- Maturity of the individual
- Period of detention
- Emotional and mental state
- Rehabilitation and risk of recidivism

The use of a judicial review board needs to consider when determining the transfer of a detainee from a juvenile justice centre into a corrective centre. The Department of Juvenile Justice Review Council needs to consider the best interest of the detainee, offence, maturity, mental and physical aspects before transferring to a corrective centre.

**d) The classification system and appropriateness of placements for detainees,**

The principle view taken by the Department of Juvenile Justice, government and non government organisations, youth workers and many communities, is that youth are still developing both mentally and physically and their maturity levels cannot be compared to that of adults. These principles have led to the formation of International Conventions and legislation, policies and programs that recognise the diverse needs of youth that are in place to provide the best protection and opportunities for them. The classification system and placement of detainees must address these principles and consider not only juvenile offences and the risk associated with those categories but the criminogenic needs of age, maturity and mental development.

**e) Alternatives to the establishment of a juvenile correctional centre,**

The use of prisons or detention centres does not necessarily equate to punishment for many young Aboriginal youth. Many view "going to gaol" as a rite of passage to becoming a man. This worldview is of concern to Aboriginal families, communities and Aboriginal justice workers especially in light of the new legislation. The transfer from a Juvenile Justice managed facility to a corrective facility will only exacerbate the negative view held by young Aboriginal men.

The NSW Aboriginal Justice Plan Strategic Direction 5: Criminal Justice System aims to create a justice system that openly engages Aboriginal communities in reducing offending and subsequent over-representation of Aboriginal people, and also responds to the needs of Aboriginal communities.

AJAC, Attorney General's Department and other Government Departments along with Aboriginal communities of NSW are committed to the development of unique, programs that focus on crime prevention and diversionary programs that are community based and are seen to be more effective alternatives in addressing criminal behaviour than just "locking them up". Reconnection to education, culture, employment, individual self esteem, drug and alcohol rehabilitation and community involvement all underpin new initiatives that include:

NSW Crime Prevention Division Aboriginal Youth Project Grants in NSW

The Crime Prevention Division is offering grants of up to \$30,000 to organisations interested in implementing Aboriginal Youth Projects in NSW. Projects proposed should aim to reduce or prevent the involvement of young Aboriginal people in unlawful or anti-social behaviour and/or reduce the number of young Aboriginal people entering the criminal justice system.

Aboriginal Community Patrols

Community Patrols are community-based services that operate a safe transport and outreach service for people who are on the streets late at night. The overall aim of patrols is to reduce the risk of people becoming involved in crime and anti-social behavior, either as a potential victims or offenders

Aboriginal Youth Leadership Project

Is a project that encourages and support Aboriginal youth development, leadership and participation in civic life'. This project is managed by the Department of Community Services and the Attorney General's Department of NSW and will assist in supporting positive participation by Aboriginal youth in their community and that of NSW.

## NSW Aboriginal Justice Plan

The NSW Aboriginal Justice Plan is a unique whole of government and community approach to addressing Aboriginal peoples contact with the Criminal Justice system. This approach has been endorsed and signed off by Premier Bob Carr and Strategic Direction 1 and 2 deals specifically with Aboriginal Children and Young People.

### Strategic Direction 2. Aboriginal Young People

Objective: Build the skill capacity, self worth and resilience of Aboriginal young people to create healthy young individuals.

#### Section 2.5 Reduce the over representation of young Aboriginal people in the criminal justice system

- Examine options for Aboriginal community based sanctions for young Aboriginal people who commit criminal offences
- Develop Aboriginal crime prevention strategies that specifically provide for young Aboriginal people
- Consider community based policing programs to provide Aboriginal young people with full access to all interventions under the Young Offenders Act
- Examine options for community based and operated programs that aim to provide new sentencing options as alternatives to custody.
- Ensure access to sexual assault counselling services for young Aboriginal people held in detention centres.
- Analyse educational and training needs of Aboriginal young people in detention
- Conduct ongoing yearly reviews of services to young Aboriginal people in detention
- Examine family and community-based bail support and accommodation mechanisms and programs.
- Consider introducing specific transitional programs for young Aboriginal people in the criminal justice system to facilitate their return to their community as well as access to education and training.
- Improve access to services for young Aboriginal people who are victims of crime, specifically violent crime.

#### Alternatives for Rural and Remote areas

Alternatives to sending youth to detention centres need to be available for rural and remote communities of NSW, to recognise the difficulties faced by Aboriginal families and communities whose youth are sentenced to serve time. These issues are currently being discussed by a Standing Committee on Law and Justice 'Inquiry into community based sentencing options for rural and remote areas and disadvantaged populations'. These alternatives include:

**Good behaviour bonds** where there is an undertaking not to commit an offence for a specified period. Conditions may be placed on the bond, such as a requirement for the offender to attend a rehabilitation or treatment programme, pay a fine or compensation to a victim or accept the supervision of the Parole Service. In August 2004 the Sentencing Council reported that good behaviour bonds "are available in most areas. However, some difficulties are experienced due to limited resources, particularly in remote locations.

**Community Service Orders** where offenders are allocated to perform unpaid work at non-profit agencies are supervised during the community service. The work must be considered appropriate for the offender's circumstances, provide a service to the local community and provide the offender with positive work experience. They place restrictions on offender's time and liberty by requiring them to carry out community work and promote rehabilitation by allowing offenders to remain in the community and address the factors that have contributed to their offending through development programs. They also allow offenders to give back something to their community. They are available as sentencing options across NSW but "community service orders may not be widely used in some regional areas, as there is limited community service order work and corresponding supervision available." A lack of places in appropriate programs may also determine whether or not disadvantaged offenders can be sentenced to Community Service Orders.

**Drug Court of NSW and the Youth Drug and Alcohol Court** provides an opportunity for offenders with substance abuse problems to be diverted into treatment rather than imprisonment.

**Periodic Detention** where if a prisoner is sentenced for three years or less the court may decide that the sentence be served by way of periodic detention. This required an offender to remain in custody for two days a week for the duration of the sentence. You must be over 18 to be eligible and it is not available for certain sexual offences. It allows detainees to retain their links to community and employment and education options.

**Home detention** allows offenders to serve all or part of their sentence at home rather than in prison and participants may be required to perform community service, enter treatment programs and seek and maintain employment. The NSW Probation and Parole Service administer home Detention. A court imposed custodial sentence must have been imposed on the offender before home detention can be considered. Therefore is not available as an alternative for offenders who would otherwise receive a non-custodial sentence or periodic detention. It only available for sentences up to 18 months and is not available for any violence offence. It is considered more punitive, more intrusive and more costly than other penalties. It requires a high level of self-control and effectively turns the offenders home into a prison. They are required to remain in the home unless undertaking approved activities and also are required to submit to urine and breath analysis. It may also place undue stress on families.

**The Aboriginal Bail Justice Program** is a program where Attorney General's Department employ and train Aboriginal people in remote areas to act as bail justices and is similar to the Victorian experience. The program will ensure direct and immediate access to bail decisions with a view to improving Aboriginal access to justice and reducing breaches of bail in remote areas. It will also reduce the need for rural police to spend hundreds of hours transporting people to bail hearings in regional centres. Based on the success of a Victorian model, this program will employ Aboriginal community members to act as bail justices and to convene bail hearings for Aboriginal defendants in rural and remote locations particularly those without courthouses or full-time court staff. The Bail Justice programs will assist in reducing breaches of bail conditions as the program aims to empower Aboriginal community members (namely) Elders, to determine appropriate bail conditions that will be more suitable to the offender when on bail.

**f) The wider social implications of incarcerating juveniles in juvenile correctional centres run by the Department of Corrective Services,**

The wider social implications of incarcerating juveniles in juvenile correctional centres have been addressed in this submission, however, it needs to be stressed that effective

delivery of services that enhance a juvenile's potential to address his/her anti social behaviour, depends on quality, unique programs and policies that reduce recidivism.

The NSW Aboriginal Justice Plan Strategic Direction 2: Aboriginal Young People, strategic action 1 & 4, aim to create vibrant and functioning young Aboriginal people by developing community managed programs for young Aboriginal people at risk of offending. These programs will provide rehabilitation, cultural healing and personal development as well as develop strategies to address Aboriginal youth suicide and self-harm.

It also assists in the development of statewide strategies to reduce family violence in Aboriginal communities, and to establish services to specifically meet the mental and emotional health needs of Aboriginal young people, particularly throughout adolescence.

There is a need for meaningful and culturally appropriate alternative sentencing options for Indigenous youths as opposed to being incarcerated. The access to brief intervention or other preventive initiatives with an emphasis on educational programs that focus on Indigenous youth changing risk and anti-social behaviours, can empower Indigenous communities to deal more effectively with risk offending youths.

Other issues for concern with Indigenous juveniles in custody, is the assistance and support provided to detainees who are placed away from their relatives and friends. There is a need to increase the options for detainees to be closer to home. Therefore, the development and implementation of programs like the visiting Elders program, mobile outreach program, and financial assistance for travel and accommodation for families visiting inmates is vital.

**g) Management of staff assault issues in the juvenile justice system,**

There are mechanisms that all government Departments have in the area of staff assault issues. These are basic Occupational Health and Safety issues and grievance procedures to ensure a safe workplace. The NSW Ombudsman also plays a significant role in this area.

**h) Whether incarcerating juveniles in juvenile correctional centres achieves reduced recidivism, rehabilitation and compliance with human rights obligations.**

The incarceration of Indigenous juveniles in juvenile correctional centres will not achieve reduced recidivism and rehabilitation. International studies show that recidivism rates for young people leaving custody is high i.e. 96% North America (Lewis et al 94) and 88% British males between 14-16 re-offended within 2 years when released from custody. This research shows that incarcerating juveniles does not equate to a reduced recidivism. Specialised and targeted programs that are showing good outcomes include the 'what works' approach which is proving to be successful in reducing recidivism. This approach recognises that young people who come before the criminal justice agencies have many problems and experience high levels of need across all areas of functioning. A review of more than 200 'what works' programs by Lipsey and Wilson (1998:33) delivered to serious and violent offenders reported that the best programs were capable of reducing recidivism by as much as 40%.

Programs that support specific transitional programs for young Aboriginal people in the criminal justice system to facilitate their return to their community as well as access to education and training will enhance the rehabilitation of youth in detention centres.

As a signatory to international conventions, the State and Commonwealth governments have an obligation to ensure that all legislation abide by the principle and intention of the Rights of the Child. The Juvenile Offenders legislation Amendment Act 2004 contravenes this convention by transferring control and management of a Juvenile Detention Centre to the Department of Correctional Services, a provider of adult prisons.

Section 37 (c) of the Convention states "every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of every human person, and in a manner which takes into account the needs of persons his or her age".

The Department of Correctional Services, even though it maintains that NSW's obligations under CROC will be met, states that it cannot guarantee that they will not be met. The fundamental rights, health and safety of juveniles in detention should in no way be at risk by any lack of guarantee from the Department of Correctional Services.