

## **INQUIRY INTO JUVENILE OFFENDERS**

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**Subject:**

**Summary**

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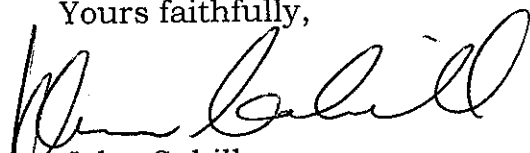
Ms Tania Busch  
Director  
Select Committee on Juvenile Offenders  
Parliament House  
Macquarie Street,  
SYDNEY, NSW, 2000.

Dear Ms Busch,

Please find attached the Association's submission to the Select Committee on Juvenile Offenders Enquiry into Juvenile Offenders.

Should you or your staff need to contact the Association regarding this submission, please contact PSA A/Senior Industrial Officer Andrew Wilson on Ph: 9220 0969.

Yours faithfully,



John Cahill  
General Secretary



**Public Service Association of New South Wales**

Submission to the Legislative Council Select Committee on  
Juvenile Offenders Inquiry into Juvenile Offenders

February 2005

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## **Introduction**

The series of well-publicised incidents that occurred at the Kariiong Juvenile Justice Centre in 2004 are evidence of a dysfunctional Department implementing inadequate policies and legislation. Substantial change to the legislation, regulations and policies administered by the Department is required in order to address fundamental issues within the Department. Significant cultural change within the Department is also necessary. Such change would see a move from a purely welfare based approach to the management of detainees within Juvenile Justice Centres to a more balanced approach that combines elements of welfare and disciplinary approaches in order push detainees to address their anti-social behaviour.

There are signs that change has begun- The Juvenile Offenders Legislation Amendment Bill may be taken as a starting point for further legislative change. The Department of Juvenile Justice has begun to improve the personal protective equipment available to staff. These initiatives should be the first elements of a comprehensive package of changes for Juvenile Justice.

This submission addresses the failures and successes of the Department that are covered by the Terms of Reference provided by the Committee. It addresses each of the points in detail and makes concrete recommendations. The Association maintains that if these recommendations were implemented, they would address many of the major problems currently facing the Juvenile Justice system in New South Wales.

## **Juvenile Offenders Legislation Amendment Bill 2004**

The Juvenile Offenders Legislation Amendment Bill 2004 fundamentally changed the nature of the Juvenile Justice system in New South Wales. In enabling the establishment of Juvenile Correctional Centres in New South Wales it ended the stranglehold that senior management of the Department of Juvenile had over the Juvenile Justice system in New South Wales. This will hopefully motivate them to change their approach to detainee management. It also expanded the capacity of the New South Wales Government to address the challenges facing Juvenile Justice. Conversely, this undercut the employment security of staff working within the system. The demoralisation of staff that has arisen out of the Kariong transfer is a major issue for the Department to deal with. Overall, it must be recognised that there will need to be more legislative change than this Bill provided in order to address the problems in Juvenile Justice. This Bill should be taken as a starting point for further change, legislative and otherwise, to address these problems.

This Bill enabled the establishment of Kariong Juvenile Justice Centre as a Juvenile Correctional Centre. Changing Kariong to a Juvenile Correctional Centre was one of two ways in which the New South Wales Government could have dealt with the problems at Kariong on a long-term basis. The Department of Juvenile Justice had begun to manage the problems at the centre appropriately and could have continued to do so. The transfer for Kariong to Corrective Services was a radical solution that appears to have worked so far in maintaining good order and discipline within that centre. What is now required is the appropriate follow up to ensure that Kariong is part of a coherent approach to managing detainee behaviour across the Juvenile Justice system.

The Bill also enables the establishment of further Juvenile Correctional Centres. This and the Kariong transfer have given rise to a belief amongst operational staff within Juvenile Justice that further centres might be moved to Corrective Services resulting in further job losses in Juvenile Justice. Staff are demoralised and feel vulnerable. The best way to address this is to provide staff with the means to prevent and to manage incidents of violence within Juvenile Justice centres. Further legislative change is required to do this.

What is also necessary is for the government to state that no further Juvenile Justice Centres are to be transferred to Corrective Services. This has occurred to date and should continue to occur. The most damaging blows to staff moral have been comments in the media by individuals advocating the wholesale transfer of Juvenile Justice Centres to Corrective Services. These have served to destabilise the Department in a time when it needs to move forward with a positive agenda.

## **The Kariong Juvenile Justice Centre**

The reasons for the transfer of the Kariong Juvenile Justice Centre from Juvenile Justice to Corrective Services are clear. The management of the centre over a significant period of time was extremely poor resulting in a series of well-publicised incidents. These included repetitive cases of violence against staff, the notorious sexual act in the visitors' area and significant security breaches. The occurrence of such incidents in the facility housing the most dangerous juvenile offenders in New South Wales undermined public confidence in Juvenile Justice. There were many management failings that gave rise to the circumstances leading to the transfer of Kariong to Corrective Services. These must be addressed in order to prevent the series of disgraceful incidents that plagued Kariong in 2004 from reoccurring.

### **Organisational Structure**

The organisational structure of the Department of Juvenile Justice during the various Kariong incidents last year created the conditions for the various problems in the centre to occur. The organisation structure of the Department features Regional Directors overseeing both community and custodial functions. This is problematic in that it has been common for the Department of Juvenile Justice to select Regional Directors on the basis of community rather than custodial experience. The nature of work within Juvenile Justice Centres and Juvenile Justice Community Offices is significantly different. Community work is welfare based with staff not assuming the complete responsibility for the clients. In contrast, centre based staff must assume custody of the detainees they care for. They are responsible for them all of the time and the behavioural problems of detainees are also usually more deeply ingrained than those of offenders in the community. Accordingly, the approach within a Juvenile Justice Centre must focus on the discipline of detainees.

The Regional Director who had responsibility for Kariong during the various incidents in 2004, did not have any experience working in a Juvenile Justice Centre or performing a custodial role within a similar institution. The Regional Director was also a staunch supporter of a purely welfare based approach to the management of detainees. There was no effective system of behaviour management with Kariong as a result. In contrast, after the Regional Director was removed from overseeing the management of Kariong and was replaced by managers with significant operational experience (in response to the recommendations of the Dalton Report<sup>1</sup>), behaviour management within the Kariong Juvenile Justice Centre improved significantly.

The Regional Director's role was taken over by a management team from the Frank Baxter Juvenile Justice Centre. The members of this management team had extensive experience working in Juvenile Justice Centres. Their experience has led them to adopt

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<sup>1</sup> Vern Dalton Report on the Kariong JJC (2004) commissioned by the Hon. Diane Beamer Minister for Juvenile Justice

an approach, which combines both welfare and disciplinary components in the management of detainees. In the limited time they managed the centre, there were no incidents of violence against staff.

The organisational structure of the Department encouraged the erroneous application of a welfare approach to the management of detainee behaviour at Kariong. Yet despite the failings at Kariong, this structure remains in place within the Department of Juvenile Justice. The Association recommends that the senior management structure of the Department change with Centre Managers reporting directly to an Assistant Director General for Custodial Services.

### **Management Culture**

There is a significant divide between senior management of the Department and operational staff within Juvenile Justice Centres. This divide manifests itself in the attitudes of senior management towards operational staff and vice versa, and in competing philosophies regarding how Juvenile Justice Centres ought to be run. The relationships between management and staff at Kariong were a microcosm of this Department wide problem. Both senior management of the Department and management at Kariong were strong believers in a purely welfare based approach to the management of detainee behaviour. In contrast the staff supported a more pragmatic approach with elements of both welfare and disciplinary/punitive models being applied according to the particular circumstances. Management typecast staff as ignorant and uneducated and viewed their desired approach as being purely punitive. This mindset caused management both within Kariong and at the highest levels of the Department to fail to come to terms with the endemic problem of detainee violence at Kariong. In response staff came to view management as elitist and out of touch- a remote group of well paid individuals who cared more for violent detainees than for their own staff. These views coupled with the arrogance and aloofness of management created the conditions for adversarial industrial relations within Juvenile Justice and at Kariong in particular.

In order to address the problems that exist across Juvenile Justice, Juvenile Justice management needs to respect operational staff, adopt a more hands on approach to managing Juvenile Justice Centres and adopt a more pragmatic approach to managing detainee behaviour. Unless this attitudinal and cultural change occurs within Juvenile Justice Management, there will be limited scope for the Department to address the problems facing it.

### **Detainee Violence**

The biggest failure of Juvenile Justice management at the Kariong Juvenile Justice Centre was the failure to address detainee violence. As identified above, this failure occurred within the context of the Department's management culture and organisational structure. Overall, the failure to address detainee violence can be seen as the failure of the Welfare Model to properly address detainee behaviour within a custodial environment. The "pure"



application of the Welfare model does not allow the implementation of the fundamental requirements of a safe system of work within a custodial environment.

The Welfare Model is based on addressing the needs of detainees arising out of their history of abuse and disadvantage. This is meritorious. It is required for any Juvenile Justice system to adhere to basic principals of human rights and it is essential in order to promote the rehabilitation of detainees. However, if the Welfare Model is applied in isolation and not as part of a broader approach, it fails. The pure Welfare model does not allow staff to discipline detainees for violent and other inappropriate behaviour. It doesn't allow staff to use sufficient force in order to properly manage detainees. It provides incentives for good behaviour but no penalties for bad behaviour- it provides the carrot but not the stick.

For the welfare approach to work it needs to be part of a broader model that incorporates effective disciplinary measures against detainees when they misbehave. This model of behaviour management goes beyond the mere recognition that poor detainee behaviour has its root cause in disadvantage, it seeks to encourage detainees to change their behaviour. Done at it's best, this model combines individual behaviour management plans with measurable long-term goals, appropriate placements for detainees and appropriate therapeutic interventions. This approach may be referred to as a behavioural change approach.

Effective behaviour management needs to address the particular demands of an individual Juvenile Justice Centre. With Kariong the demands were very high. Kariong housed the most serious juvenile offenders in New South Wales and the detainees with the worst behavioural problems. Many of the detainees were conditioned to violent and other anti-social behaviour. Several detainees in Kariong had been found guilty of serious indictable offences and were incarcerated for periods in excess of 10 years. The nature of the detainees at Kariong meant that the balance between welfare and discipline needed to be heavily weighted toward discipline. In addition, many detainees were mentally ill, intellectually disabled or dual diagnosis. There were insufficient services and programs in place within Kariong to address these particular needs.

Until the management team from Frank Baxter Juvenile Justice Centre took control of Kariong, the Department of Juvenile Justice failed to put in place the fundamental elements of a safe system of work. No effective behaviour management strategies were in place. The disciplinary sanctions available to staff were not a sufficient deterrent for violent behaviour. Management failed to separate and segregate detainees who were violent or had threatened violence. The authority of staff was undermined by management lessening punishments handed out to detainees by staff. The incentive scheme was poorly applied by management and was manipulated by detainees. What were incentives to encourage good behaviour became tools to placate detainees when they were misbehaving. This served to reinforce inappropriate behaviour. Detainees were conditioned to believe that if they behaved badly they would be given something for them to stop. There was a tacit acceptance of violence against staff by management and a failure to impose societies normal standards of behaviour within the centre.

Staff were denied the training, equipment and support in order to ensure their own safety. Staff were not given adequate training in physically intervening in violent situations. Many staff felt afraid to intervene when detainees threatened violence. Staff were not able to easily access personal protective equipment and only Unit Coordinators were allowed to carry handcuffs.

The routine in the Carinya Unit, the unit holding the most violent offenders, was not appropriate until after staff walked out of the centre in July 2004 due to ongoing violence against staff. Until the walkout there was no separation of compliant and non-compliant detainees within the unit. Detainees in Carinya were not effectively involved in education, employment or programs.

The external security of the centre was inadequate. A large amount of contraband got into the centre including cigarette lighters, cigarettes and illicit drugs. Casual staff with little experience and poor training were often in control of security functions. The incident whereby a tourist bus was allowed to drive into the centre occurred when an inexperienced casual staff member was in control of the gate.

The management team from the Frank Baxter Juvenile Justice Centre had control of Kariong for only 10 days prior to the transfer to Corrective Services. In those 10 days there were no incidents of violence against staff. A policy of zero tolerance towards violent behaviour was implemented. Detainees who exhibited aggressive behaviour were confined to their rooms. On one occasion detainees were locked down at 5.30pm (several hours earlier than usual) due to the threat of aggressive behaviour. When staff dealt with aggressive behaviour they dealt with it instantly not allowing tensions to simmer. This period showed that Juvenile Justice is capable of managing detainees who present severe behavioural problems. Maintaining this management strategy at Kariong was a realistic alternative to moving Kariong to Corrective Services. When the centre was transferred to Corrective Services, staff were dismayed because they were losing their jobs just after they had turned the centre around.

What must also be acknowledged is that the Frank Baxter management team interpreted Departmental policy and legislation in favour of centre discipline and staff safety. The recommended changes detailed in this submission are aimed at ensuring that the legislation and policies that determine the operations of the Department of Juvenile Justice cannot be interpreted in any other way than as supporting centre discipline and staff safety.

### **Consequences of the Transfer**

The consequences of the transfer have been significant. Approximately 100 staff were displaced by the transfer. A number of these staff took voluntary redundancy. The remaining staff had to be redeployed within Juvenile Justice. This redeployment exercise resulted in many staff at other centres failing to get permanent positions or promotionary positions. In addition to this material impact on staff, the transfer has had a significant

impact on staff confidence and morale. It has created a climate of fear and loathing with staff genuinely afraid that their jobs are at risk (this is discussed extensively at Chapter 2).

## **The Kariong Juvenile Correctional Centre**

The transfer of Kariong from Juvenile Justice to Corrective Services was one of two options available to the government to deal with the problems in the centre. The other being the continuation of the much stricter regime that had been implemented in the centre by the Frank Baxter management team. This was a clear alternative to the establishment of Kariong as a Juvenile Correctional Centre.

The Association believes that Kariong should continue to operate as a Juvenile Correctional Centre but that no other Juvenile Justice Centres should be transferred to the Department of Corrective Services. Kariong is now well established as a Juvenile Correctional Centre. It is fully staffed. The Juvenile Inmates within the centre are subjected to a highly structured and controlled routine. It is staffed by well trained and well led officers, both custodial and non-custodial. There have been no serious cases of detainee violence since it's establishment as a Juvenile Correctional Centre. However, the success so far of Kariong as a Juvenile Correctional Centre provides no immediate justification to move the management of other Juvenile Justice Centres to the Department of Corrective Services. None of the current Juvenile Justice centres has the serious management problems that have afflicted Kariong. None of the other Juvenile Justice Centres have had problems with detainee violence to the degree the Kariong has had. This has been recognised in the review into Juvenile Justice centres recently undertaken by Mr John Newbery<sup>2</sup>. Converting further Juvenile Justice Centres to Juvenile Correctional Centres could potentially compromise of the ability of the Juvenile Justice system as a whole to rehabilitate juvenile offenders. In addition, the Frank Baxter management team have demonstrated that severe behavioural problems can be managed within Juvenile Justice.

The challenge ahead is to integrate Kariong and the various Juvenile Justice Centres as part of a strategic approach to behaviour management across the Juvenile Justice system. Kariong with the strictest routine and the toughest security measures should continue as the centre charged with managing the most dangerous juvenile offenders in New South Wales over the age of 16. It needs to be complemented and supplemented in this role by other centres. A maximum security behaviour management and transfer unit should be established at the Frank Baxter Juvenile Justice Centre. This unit would be used as a transit point for detainees awaiting entry into Kariong, cater for the overflow in periods when Kariong is at full capacity and house detainees 16 years and over who present severe behavioural problems. Designated maximum security units for detainees under the age of 16 should be established at the Reiby Juvenile Justice Centre given that detainees under 16 cannot be sent to Kariong. There should also be distinctly different routines for offenders at different security ratings with lower rated detainees enjoying more incentives and benefits in order to provide offenders with an incentive to improve their security rating. All of these initiatives would encourage the synthesis of the Department of

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<sup>2</sup> John Newbery, Review of Department of Juvenile Justice Industrial Relations and Human Resources Practices, December 2004

Juvenile Justice and the Kariong Juvenile Correctional Centre as part of a coherent system.

## **Adult detainees within the Juvenile Justice System.**

The incarceration of adult detainees within the Juvenile Justice system represents both an opportunity and a threat in relation to the functions of Juvenile Justice. The Juvenile system offers a young adult offender the opportunity to address their offending behaviour in an environment where they are not exposed to older hardened criminals. Adult offenders are a threat to the Juvenile system due to the likelihood that their criminal behaviour is more entrenched and their propensity to manipulate, bully or otherwise frustrate the rehabilitation of younger detainees. Also the role of an adult detainee as a role model for younger detainees should not be understated. The policies of the Department of Juvenile Justice needs to distinguish between those adult offenders who see their placement within Juvenile Justice as an opportunity to address their offending behaviour and those adult offenders who present a continuing threat to the safety and security of Juvenile Justice Centres. These policies also need to protect vulnerable younger detainees.

The Association believes that the management of adult detainees needs to be part of a broader move to separate detainees of different ages. Given that the Department of Juvenile Justice can incarcerate offenders between the ages of 10 and 21 there is a need to separate younger vulnerable detainees from older detainees. It also allows the particular needs of offenders at different ages also need to be addressed. Broadly speaking detainees should be separated in the categories of under 16, 16-17 and young adult offenders. If possible, detainees under the age of 16 should be divided up into pre-teen and teenaged groups. This should not diminish the need to separate detainees according to their security rating, criminogenic needs and detainee management issues.

In addition to the separation of adult detainees from younger detainees, adult detainees should be divided between those who genuinely attempt to address their criminogenic behaviour and those who don't. Those detainees who regularly take part in education, programs and employment should not have their efforts compromised by forcing them to associate with detainees who have no desire to cease their criminal behaviour.

The placement of adult detainees is addressed in detail at Chapter 6.

In relation to detainee discipline, the Association supports an approach whereby older detainees incur more severe penalties for misbehaviour than younger detainees. This recognises the increased personal responsibility that should be accepted by older detainees and the potentially more serious consequences of misbehaviour by older detainees as opposed to younger detainees. Where an adult detainee assaults a staff member, a member of the public or another detainee they should immediately be transferred to the Department of Corrective Services without the possibility of return to a Juvenile Justice Centre. In addition, Section 28 of the Children Detention Centres Act should be amended to enable an adult detainee to be sent to any Correctional Centre, not only to a Juvenile Correctional Centre. This is discussed in detail in Chapter 7.

The government should also examine options for addressing the problem of offenders who are continually transferred between the Department of Corrective Services and the Department of Juvenile Justice. Consideration should be given to legislative change that makes it mandatory for a young adult offender who has previously been incarcerated within the Department of Corrective Services to be incarcerated within a Correctional Centre if they are found guilty of any offences committed subsequent to their original incarceration in Corrective Services.

The government should also examine possible legislative changes that would see serious indictable offenders transferred to Department of Corrective Services on their eighteenth birthday. These offenders present major management and behavioural issues and there is little gained through their placement in Juvenile Justice given that they will spend a significant amount of time in Corrective Services regardless.

## **The Classification System and Placements for Detainees.**

The current system of detainee classification and placement inadequately addresses the problem of violence against staff and fails to provide program pathways for detainees based on genuine behavioural change. A highly structured system of placements and a rigorous classification system is required in order to promote rehabilitation and maintain order and discipline within the Juvenile Justice system.

The new 'Objective Classification System' is an improvement on the previous policy concerning the classification of detainees. It has a logical basis whereby detainees receive points for different forms of misbehaviour and the number of points they receive in total determines their security rating. The major problem with this system is that it fails to give an adequate weighting to detainee violence. The Association maintains that any detainee who is physically violent towards a staff member, another detainee or a member of the public within a Juvenile Justice should receive sufficient points to enable them to be placed in the highest possible security classification.

The classification of detainees is meaningless without appropriate placements. The placement of detainees should ensure that they are placed in facilities that address the security risks they present and are able to address their particular criminogenic needs. Currently detainees are placed according to their broad security rating, their age and their region of origin. This is a reasonable basis to begin with but could be improved upon through a tighter structuring of the placement system. Broadly speaking the following placements should be available:

- Young Adult- violent, non-compliant and high risk
- Young Adult- compliant, low risk
- 16-17 years- violent, non-compliant and high risk
- 16-17 years- compliant, low risk
- 13-16 years- violent, non-compliant and high risk
- 13-16 years- compliant and low risk
- Pre-teen

The establishment of this more structured approach to detainee placement would require some minor capital works in order to separate different classifications and placements of detainees within individual Juvenile Justice Centres. It may also limit the placement of detainees on the basis of their family location. The benefits of this system are that it offers much tighter control over the detainee population and would increase the chances of getting detainees the placement they need in order for them to be rehabilitated.

Violence Prevention Programs should be available in all locations where violent detainees are placed and the successful completion of this program should be a prerequisite for reclassification to a lower security rating. Consideration should be given to



the establishment of specialist mental health units within Juvenile Justice Centres with specially trained staff from both Juvenile Justice and Justice Health.

The nature of privileges and incentives available for detainees should vary according to the placement and security rating of detainees. The system of privileges, incentives and rewards should operate in line with the classification system to encourage detainees to gain a lower classification. Detainees of the highest classification should receive less privileges and work harder to gain incentives than detainees on lower classifications.

## **The Management of Staff Assaults within the Juvenile Justice System.**

The management of staff assaults within the Department of Juvenile Justice requires urgent improvement. The Department's approach must change from one which is soft on violence to one which is tough on violence and tough on the causes of violence. Detainees who act violently towards staff or who threaten staff should be dealt with swiftly and professionally. The punishments which they receive as a result of such behaviour should act as a real deterrent from violence. At the same time programs, education, employment and case management need to be in place in order to facilitate positive behavioural change amongst detainees. All of this must be underlined by a Department wide policy of zero tolerance against detainee violence.

Staff need the authority, procedures, training and equipment to intervene decisively in violent or potentially violent situations. The current policies are welfare based and do not place sufficient emphasis on staff safety. The policies are based around the rights of the detainees and not around the rights of staff to enjoy a safe workplace. The current policies restrict staff from acting early to prevent violence and also severely restrict the ability of staff to segregate detainees after violent incidents. The restraint techniques available to staff are limited and impractical. All of the current policies that relate to detainee violence need to be addressed to enable staff to minimise the injuries to the victims of violence within Juvenile Justice Centres. In addition, staff should receive thorough training in addressing violent situations. The current training does not adequately address the physical demands of intervening in violent situations. Staff should receive realistic restraint and physical intervention training on a monthly basis so that they are always prepared to intervene in violent situations. This training should include the use of instruments of restraint (see below) and mock critical incident exercises.

The Department is currently organising critical incident training for local management and supervisory staff. These staff would be the officers in charge of any critical incident in a Juvenile Justice Centre. The Association strongly supports the provision of this training. This training should be complemented by basic critical incident training for other classifications of operational staff.

The Department has already begun to improve with respect to personnel protective equipment (instruments of restraint) and critical incident training. It is proposed that all Juvenile Justice Centres receive the following items of personnel protective equipment:

- Riot Shields
- Containment Shields
- Stab Proof vests
- Shin Guards
- Forearm Protectors
- Helmets
- Gloves

- Overalls
- Handcuffs
- Evacu Hoods
- Boots

It is also proposed that all centres have metal detectors available. The Association strongly supports the provision of this equipment. It is important to ensure that staff have ready access to this equipment. All staff working directly with detainees should be issued with handcuffs. The rest of the equipment should be able to be accessed quickly by staff in emergency situations.

In addition to these identified changes, the Association believes that it is necessary to make substantial amendments to the Childrens Detention Centre Act (1987) and Regulations. The proposed amendments are detailed in Chapter 9.

Enhancing the ability of staff to intervene in violent situations needs to be complemented by a coherent system for the classification and placement of detainees and for the provision of programs. There needs to be a clear choice for detainees- either they address their anti-social behaviour and receive appropriate rewards and incentives or they act in violent and anti-social manner and are subjected to a strict routine designed to minimise their opportunity to behave violently. As discussed in chapter 6, detainees should be placed according to their security classification, age and commitment to addressing their criminogenic behaviour. All detainees should be given access to appropriate programs including psychological services, alcohol and other drug services, physical exercise and other personal development programs (subject to non-violent behaviour). This should allow them to gain improvements in the classification and placement as well as other incentives.

Detainees should receive rewards and incentives (including re-classification to lower classifications) based upon the successful completion of programs or evidence of long-term behavioural change. Rewards and incentives should not be given out to placate detainees when they misbehave or to ensure the short-term compliance of detainees. Essentially, detainees need to earn any incentives or rewards they receive.

The Department also should examine the possibility of establishing specialist units for particular groups of detainees including mentally ill detainees and dual diagnosis (mentally ill and intellectually disabled) detainees. These units should be staffed by specialist staff from Justice Health and Juvenile Justice. The inappropriate management of detainees with these sorts of problems has led to violence against staff in the past. Specialist units would ensure that the Department is doing it's utmost to manage such detainees in a safe professional manner.

## **Juvenile Correctional Centres- recidivism, rehabilitation, social implications and human rights obligations**

The wider social implications of incarcerating juveniles in Juvenile Correctional Centres run by the Department of Corrective Services is dependent upon the programs available within such centres and whether or not Juvenile Correctional Centres together with Juvenile Justice Centres work together as part of a coherent approach to addressing the criminogenic behaviour of juvenile offenders.

At this stage it is not appropriate to expand the number of Juvenile Correctional Centres in New South Wales beyond Kariong. Kariong must become a specialist unit for the incarceration of Juvenile Offenders who are an extreme security risk or have serious behavioural issues. The Department of Corrective Services must ensure that there are appropriate programs for detainees at Kariong. The Department of Juvenile Justice must ensure that its programs and services are coordinated with those at Kariong. Both Departments must ensure that the placement of juvenile offenders in Kariong is part of a coherent approach to the management and rehabilitation of those offenders. Such an approach would ensure that the possibilities for the rehabilitation of juvenile and young adult offenders are maximised.

The establishment of Kariong as a Juvenile Correctional Centre does not require that the State of New South Wales breach any international treaties or conventions on human rights. Nor would an increased emphasis on discipline in Juvenile Justice Centres as advocated by the Association. The various treaties and conventions aim to protect Juvenile Offenders from punishment that is cruel, demeaning or abusive and to promote the rehabilitation of offenders. Neither the transfer of Kariong to Corrective Services or the implementation of recommendations made by the Association would compromise these aims. There is a recognition in international law that juvenile detainees ought to be subjected to reasonable disciplinary provisions and the rule of law. This is a requirement to protect detainees, staff and members of the public from violence- a central aim of our legal system and international law.

# **Recommended Amendments to the Children Detention Centre Act (1987) and Regulations**

## **Recommended Changes to the Act**

### **Section 19- Segregation of detainees for protection**

The current limitations of the segregation of detainees should be changed to enable staff to segregate detainees for longer than 6 hours in any 24 hour period. In addition, Centre Managers should have the authority to extend a period of segregation beyond 3 hours. S 19 (b) should be amended to state:

*The duration of segregation shall be as short as practicable and should generally not exceed 3 hours and may only exceed this time if there is a continuing threat to the health, welfare or safety of detainees, staff or visitors to the centre and the Centre Manager has approved the extension of segregation.*

*A Centre Manager may not authorise the removal of a detainee from segregation and place them in the company of other detainees if they reasonably believe that the behaviour of that detainee as is likely to threaten the health, welfare and safety of detainees, staff or visitors to the centre.*

### **Section 21. Punishments for misbehaviour.**

The current punishments under the Act are inadequate given the changes in the detention population over the past 17 years. It can be argued that the current population consists of more violent and serious young offenders than existed when the Act came into force. The following changes should enable staff to deal with the range of incidents of misbehaviour within a detention centre and provide a reasonable level of deterrence-

S 21 should be amended to state:

*(1) Subject to the regulations, the following punishments may be imposed on a detainee found guilty of misbehaviour:*

- (a) Caution,*
- (b) Restriction from privilege/s for a period of not more than 7 days in the case of a detainee under the age of 18 or 14 days in the case of a adult detainee*
- (c) Confinement to a place for a period not exceeding 12 hours in the case of a detainee being under the age of 16 years*
- (d) Confinement to a place for a period not exceeding 24 hours in the case of a detainee being over the age of 16 years and under the age of 18 years*
- (e) Confinement for a period not exceeding 48 hours for an adult detainee*

Consideration should be given to defining what privileges detainees are entitled to. The following description could be used to do this.

- (a) *Attendance at the showing of films, videos, concerts or other performances,*
- (b) *Participation in or attendance at any other organised leisure or sporting activity,*
- (c) *Use of, or access to computer games, video games, videos, films, cassettes or compact disks,*
- (d) *Use of, or access to, televisions, cassette, radio or compact disk players, computer game consoles, whether for personal use or for use as a member of a group,*
- (e) *Use of, or access to a musical instrument, whether for personal use or as a member of a group,*
- (f) *Use of swimming pool facilities,*
- (g) *Ability to purchase goods,*
- (h) *Participation in contact visits*
- (i) *Permission to be absent from a detention centre for outing, day or overnight leave*

### **Recommended Amendments to the Regulations**

A number of issues need to be addressed by changes to the regulations.

There is a need to add a new section under PART 2. Administration:

- (1) *The centre manager may order a detainee to be searched by an officer,*
  - (a) *on admission to a centre,*
  - (b) *on return to the centre from leave or absence,*
  - (c) *on return from police custody,*
  - (d) *After a visit from a person,*
  
- (2) *The centre manager may order a detainee to be searched by an officer if in the opinion of the manager the detainee is in the possession:*
  - (a) *Unauthorised article or thing,*
  - (b) *a weapon,*
  - (c) *drugs or other substances,*
  - (d) *any item which might compromise the safety, good order and discipline of the centre.*

*A detainee who fails to submit to a search is guilty of misbehaviour under the relevant section of the Act.*

There is a need to add a new section under PART 3 Visits and Communications:

**Number of visitors.**

- (1) *A detainee may receive a maximum of 4 visitors at the same time.*
- (2) *Notwithstanding sub clause (1) the centre manager may permit additional visitors to be present with the detainee at the same time.*

A new section may be added:

**Detainees confined to room may not receive visits.**

- (1) *A detainee confined to a place under relevant section may not receive a visit.*
- (2) *Notwithstanding sub clause 1 a centre manager may permit a visit to a detainee who is confined to a place by:*
  - (e) *a solicitor,*
  - (f) *a diplomatic or consular representative, or,*
  - (g) *a field officer of the Aboriginal Legal Service,*
  - (h) *a government official on official duties, or*
  - (i) *a visit by an official visitor.*
- (3) *The centre manager of a detention centre may permit a detainee who is confined to a room to receive visits from the detainee's family and friends as appropriate to do so to avoid hardship (such as where the family or friends have travelled a long way to make the visit).*

A new section needs to be added addressing the issue of non-contact visits:

**A detainee may receive a non-contact visit.**

- (1) *A centre manager of a detention centre may allow a detainee a non-contact visit by a person, if during a previous visit, that person has:*
  - (a) *Supplied contraband to detainees,*
  - (b) *acted in a threatening, offensive, indecent, obscene, abusive or improper manner,*
  - (c) *supplied drugs, tobacco or substances to detainees,*
  - (d) *breached any of the Act or Regulations or general routine of the detention centre.*
- (2) *A centre manager of a detention centre may allow a detainee a non contact visit by a person, if during a previous visit, that detainee has breached any of subclauses a, b, c or d of section, clause 1.*
- (3) *A centre manager of a detention centre may restrict a person from visiting the centre if in the opinion of the manager the person has breached any of sub clauses a, b, c, d of section, clause 1.*
- (4) *A centre manager may restrict a person from visiting for a period of not more than 2 months.*

There is a need to address the issue of visitors being subjected to searches or inspection of property being brought into a detention centre. A new section:

***Searching of visitors.***

- (1) *The centre manager of a detention centre may require a visitor:*
  - (a) *to submit to an inspection and search of personal possessions, to scanning by means of electronic scanning device and to being sniffed by a drug detector dog, and*
  - (b) *to empty the pockets of their clothing.*
  - (c) *All property brought into the centre must be securely stored by an officer before contact occurs between a visitor and a detainee.*
  - (d) *A visitor may only bring in property for a detainee as approved by the centre manager.*
- (2) *A person who refuses to submit to a search under this section may be refused entry to the detention centre by the centre manager.*

A new section may be added:

***Refusal, restriction and termination of visits.***

- (1) *A centre manager of a detention centre may restrict from visiting a detention centre a person who has, of the opinion breached any of the sub clauses under new Section X or new Section Y. (where sections X and Y refer to the proposed sections above)*
- (2) *An authorised officer may terminate the visit by a person to a detainee if of the opinion the person or detainee breach any of the sub clauses under new Section X and new Section Y.*
- (2) *The Director General may bar persons from visiting detention centres, or from visiting a detainee, if of the opinion:*
  - (a) *That such a visit would prejudice the good order and security of any detention centre, or*
  - (b) *That the visitor has, during previous visits committed acts outlined in the above sections.*
- (3) *A direction under this clause has effect for such a period as it may specify or, if no such period specified, until it is revoked by a further direction.*
- (4) *Despite the direction, the Director General may permit the person to whom the direction applies to visit a particular detention centre or particular detainee.*



## **SCHEDULE 1 – MISBEHAVIOUR**

There is a need to add to further misbehaviour to the schedule of misbehaviours to clarify and enhance the powers of staff so that they may ensure the safety, good order and discipline of Juvenile Justice Centres:

### ***Refusal to submit to urinalysis test.***

14. *A detainee must not refuse to supply a sample of urine for drug testing when required to do so.*

### ***Refusal to submit to a search.***

15. *A detainee must not refuse to submit to a search by an officer when required to do so.*

### ***Hinder, harm or obstruct drug detector dog.***

16. *A detainee must not hinder, harm or obstruct a drug detector dog when it is searching any area of a detention centre.*

### ***Breach of conditions of escorted absence.***

17. *A detainee must not breach any of the conditions of an escorted absence.*

## **B. Other Issues needing to be addressed.**

Consideration should be given to the issue of authorising the lock down of a detention centre in the event of specific emergencies and incidents. A new section may be created:

### ***Centre to be locked down in certain circumstances.***

*A Centre Manager may order the confining of all detainees to their rooms when:*

- (a) One or more detainees have attempted to or escaped from a detention centre,*
- (b) In the event of a disturbance or riot,*
- (c) In the event of industrial action by staff,*
- (d) In order to maintain the good order and discipline of a detention centre following a serious incident.*