

**Submission  
No 29**

## **INQUIRY INTO JUVENILE OFFENDERS**

**Organisation:**

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**Telephone:**

**Date Received:** 4/07/2005

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**Subject:**

**Summary**

## **Select Committee on Juvenile Offenders**

### **Terms of Reference**

1. That the provisions of the Juvenile Offenders Legislation Amendment Bill 2004, as passed by the House, be referred to a select committee for inquiry and report
2. That notwithstanding the generality of paragraph 1, the committee examine in particular the following matters:
  - (a) the reasons for, and the consequences of, the transfer of management responsibility for the Kariong Juvenile Justice Centre from the DJJ to the DCS including the impact on staff at Kariong and Baxter detention centres
  - (b) whether the transition of Kariong Juvenile Justice Centre into a juvenile correctional centre operated by the DCS is the most effective method of addressing management problems at the centre
  - (c) the issue of adult detainees sentences as juvenile offenders at Kariong and elsewhere in the juvenile detention centre system
  - (d) the classification system and appropriateness of placements for detainees
  - (e) alternatives to the establishment of a juvenile correctional centre
  - (f) the wider social implications of incarcerating juveniles in juvenile correctional centres run by the DCS
  - (g) management of staff assault issues in the juvenile justice system
  - (h) whether incarcerating juveniles in juvenile correctional centres achieves reduced recidivism, rehabilitation and compliance with human rights obligations

## **1. Relevant Professional Experience**

- Worked for the Department of Juvenile Justice between 92-99, including being Manager Programs and Staff Development in 2 Juvenile Justice Centres and in community roles, such as the Alcohol and other Drug Counsellor at Liverpool IPU and the Conference Administrator at Fairfield
- In 1999 I commenced work for NSW Police in the Youth and Child Protection Team, Operational Programs. I finished with NSW Police in 2002 to work as a consultant and casual lecturer.
- I have taught on policing young people, crime prevention, juvenile justice, security and social policy subjects in the last five years across four universities

## **2. Brief overview of the ‘what works’ literature and what it has identified as effective means of addressing offending behaviour in juveniles**

### ***Nothing Works***

For a time in the early 1970s, there was a pervading view that nothing works in terms of rehabilitating offenders. A particular piece of work cast doubt on the ability of corrections and prison administration to actually have any impact on recidivism.

### ***What Works***

In the last decade, there has been growing evidence that in fact there is much that can be done to reduce recidivism. This growing body of work has been termed the ‘what works’ literature, which tends to echo evidence-based practice and policy developments in other fields.

The ‘what works’ literature draws together existing empirical evidence on effective interventions for preventing recidivism.

Perhaps as James McGuire encourages, more sophisticated contemporary thinking is “what works when, where and with whom; and why the various combinations of such elements form the patterns they do”.<sup>1</sup>

In the meta-analytical reviews undertaken to distil what interventions are effective in preventing re-offending, Maguire has identified a number of principles of effective interventions to reduce recidivism (Attachment A provides a detailed list of these principles). Key issues raised in these principles include:

- Assessment of risk – identifying dynamic criminogenic risk factors and determining the most appropriate intervention underpins the what works literature – a one size fits all approach is not effective
- Programs must attend to factors associated with offending behaviour – ineffective programs are often based on vague objectives or issues
- Multi-modal intervention – programs should address multiple risk factors and accommodate different learning styles and needs
- Community-based settings and natural settings are going to be the most beneficial.

### ***Are prison / detention effective in reducing recidivism?***

Generally, it is suggested that prison and custodial environments are not particularly effective in preventing reoffending. Where possible, community-based interventions are preferred, not just because they are cheaper and more humane, but because they tend to be more effective.

Dr Andrew Day from the University of South Australia suggests that “the reoffending rate for young people leaving custody for any

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<sup>1</sup> Maguire, J. (2002) Integrating Findings from Research Reviews. In Maguire, J. (ed.) **Offender Rehabilitation and Treatment: Effective Programmes and Policies to Reduce Re-Offending**, Wiley, England.

offence is very high, between 80-90 per cent, but is much lower for those on community service orders”.

In a report for the ACT Department of Justice and Community Safety, national data on imprisonment was used to highlight the high rate of return to prison.

*More people than ever before are serving prison sentences. The 1998 National Prisoner Census showed that the national prison population increased by 62% from 1988 to 1998 to a figure of 19,906 (Australian Bureau of Statistics, 1999). Of these more than half (62%) were reported as having been previously imprisoned under sentence. In this report we review the evidence suggesting that recidivism can be significantly reduced through the provision of rehabilitation programs for offenders serving prison sentences.*

Furthermore, in Don Weatherburn’s recent book, *Law and Order in Australia: Rhetoric and Reality*, a study is cited which investigated whether offenders given a custodial penalty are less likely to re-offend than similar offenders given a non-custodial penalty. Weatherburn writes, “the researchers found that offenders given a prison sentence actually performed more poorly than those given probation on every measure of re-offending” (2004: 122).

### **3. Do you consider that the presence of adult detainees was likely to be a significant cause of the problems at Kariong?**

Without having been to the centre for some years, my observations are somewhat academic. What I would say is that major considerations of programming include age appropriateness and contamination. Clearly, if the centre contained detainees from wildly different age groups, then one could argue that this would potential be problematic. That said, I note that the Ombudsman’s Inquiry into Kariong published in March 2000, lists the average age of detainees as 17.5 years. I suspect that there have been adult detainees in Kariong for some period, many of whom would not have been responsible, it is fair to assume, for problems within the centre.

I am a little unsure how the mere presence of older detainees would have necessarily been associated with problems. Until Minister Tebbutt introduced legislation to remove older detainees for the juvenile justice system (amendment of section 19 of the *Children (Criminal Proceedings) Act 1987*), there were many detainees over the age of 18 in the system. Mount Penang, as it was known before being re-modelled as Frank Baxter, contained many older detainees. In fact, the centre managed to operate as an open centre quite effectively, some would argue, with many older detainees. I also draw your attention to the operation of Malmsbury Juvenile Justice Centre in Victoria. Malmsbury specifically caters for offenders aged between 17 and 21 years as part of the Victorian dual track system. Malmsbury is an open centre.

Finally on this point, if much the same offenders and aged offenders remain in Kariong now that it is operated by the Department of Corrective Services, can we expect problems? Surely this must be the outcome if older detainees are the problem.

**b. What options are there for dealing with young offenders over the age of 18 and 21?**

Perhaps unsurprisingly, the options available are perhaps not too dissimilar to their slightly younger and older counterparts. Effective programs will reflect the ‘what works’ principles discussed previously. Non-custodial settings will be the most effective. With respect to detention, then education, employment skills, meaningful programs, clear systems and routines, high staff-detainee interactions and consistent application of rules will be critical.

The repeated identification of the absence of programs at Kariong, is in my opinion, one of the most significant issues associated with the problems at the centre. While I note the entrenched staffing concerns, I do believe that centres that operate effectively provide

stimulating and meaningful programs for detainees. I cannot help but wonder how the Program Manager who told the Ombudsman Inquiry in 1999 that he had no program budget to speak of, would have spent just a portion of the funding that has been found for the transfer of the facility from DJJ to DCS.

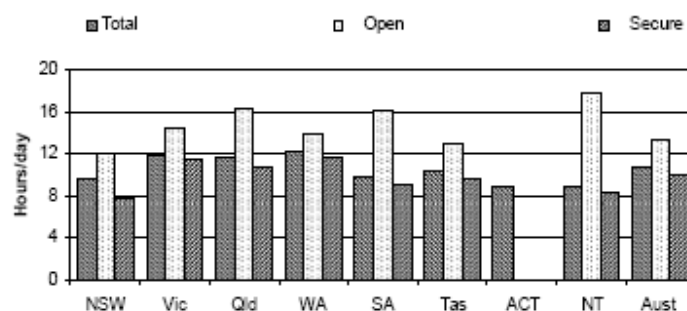
**4. Do you have any information on the impact of the transfer of Kariong in relation to policies and procedures that now apply to Kariong inmates that did not previously apply, access to programs and other consequences?**

This is in part a difficult question to answer, but I'd like to raise a few issues in responding.

Firstly, can I say the Australian Government's Productivity Commission's report in to Government Services in 2005 stated that NSW has a lower time out of cells average for adult corrections that other states and territories and the Australian average.

WA reported the highest average daily 'out-of-cell hours' for all prisons in 2003-04 combined (12.2 hours per day) and the NT reported the lowest (8.9 hours per day). 'Out-of-cell hours' for open custody ranged from 17.7 per day in the NT to 12.0 per day in NSW. 'Out-of-cell hours' for secure custody ranged from 11.7 per day in WA to 7.7 per day in NSW (figure 7.10).

Figure 7.10 Average out-of-cell hours, by prisoner security level, 2003-04<sup>a</sup>



<sup>a</sup> The ACT data are based on prisoners held in ACT remand facilities and therefore open and secure custody breakdowns are not applicable for that jurisdiction.

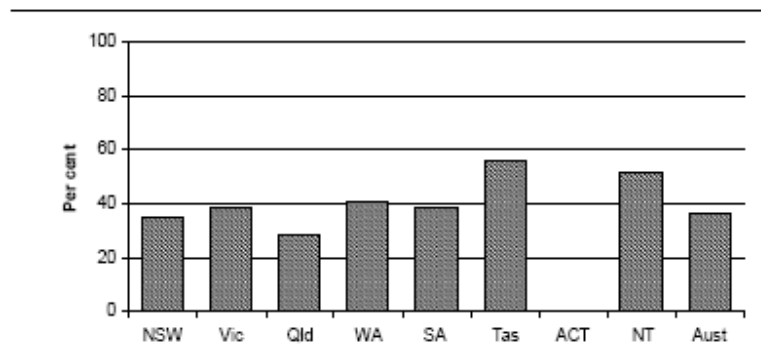
Source: State and Territory governments (unpublished); table 7A.17.

While similar data is not available for juvenile justice facilities, it is unlikely that detainees at Kariong would have spent less than 12 hours in their cells. General routines of juvenile justice facilities tend to operate on approximately 12 hours out of rooms, with extensions provided to privileged detainees or those earning requisite points for later bed times.

The difference in regimes in relation to time spent out of cells or rooms suggests quite an impact on the opportunities of detainees to access programs and services. This alone points to negative outcomes for those detainees at Kariong.

The table below, also from the Productivity Commission report (2005) shows the proportion of prisoners enrolled in education and training. NSW has a lower percentage than most other states and territories.

Figure 7.13 Proportion of prisoners enrolled in education and training, 2003-04<sup>a</sup>



<sup>a</sup> Excludes the ACT because ACT prison facilities accommodate only remand prisoners.

Source: State and Territory governments (unpublished); table 7A.2D.

While I am not a lawyer and defer to the greater legal prowess of later witnesses, there are obvious implications in terms of punishments available to DCS authorities as compared with DJJ authorities. In juvenile justice facilities, segregation for the purposes of punishment for minor misbehaviour cannot exceed 12 hours. The maximum is considerably longer for adult inmates – 5 days I believe.



Perhaps only partially linked to your question, I'd like to raise a few issues that have with the ongoing consequences of the transfer of Kariong to DCS management. Firstly, in discussions with current DJJ personnel, I have been anecdotally informed that the transfer has sent messages through DJJ custodial services. Some people appear to be concerned that Kariong was just the thin end of the wedge. As such, there have been some movements to tighten up discipline, as this was viewed as the weak spot that might result in further transfers. The symbolic impact of the transfer might be difficult to measure on the operation of the remaining eight juvenile justice centres in NSW, but is a critical issue to monitor.

Secondly, I am concerned about those young people who might have potentially been sent to Kariong in the future. This move, in part based on assumptions that contemporary Kariong population characteristics will be sustained (which I would argue is potentially incorrect), leaving young people who might cause disruptions in the system confined and perhaps isolated in other centres or cause disruptions in routines in these centres.

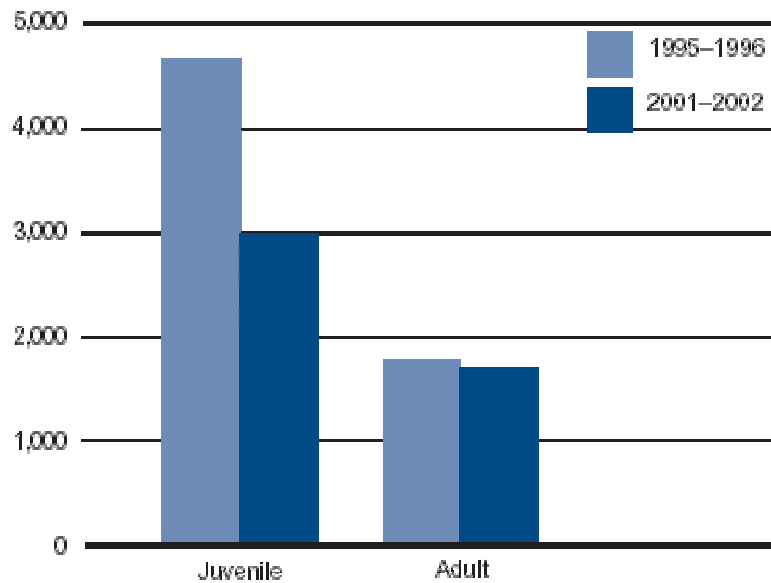
### **Further issues:**

- 1. Changing Profile of Juvenile Offenders** - *The Bill reflects the significant changes in the profile of juvenile offenders over the past 10 years. The profile is of more sophisticated, more hardened and violent individuals, with criminal records including gang rape, aggravated assault and murder.*

Perhaps the Department of Juvenile Justice or the NSW Bureau of Crime Statistics and Research (BOCSAR) might be able to better confirm or deny this assertion, but from a cursory scan of available evidence, I am unable to draw similar conclusions.

<b>Offence</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>
Murder	123	103	104	97	91
Attempt murder	113	123	161	102	93
Sexual assault	3201	3615	3771	3758	3855
Indecent sexual assault	3353	3833	3635	4069	3720
Robbery without a weapon	6462	7060	8085	6700	6390
Robbery with a firearm	637	656	886	716	701
Robbery with a weapon not a firearm	3528	3687	4326	2764	2230

Source: Recorded Criminal Incidents NSW BOCSAR



Source: AIC Australian Crime Facts 2003

While the most recent DJJ Annual Report (2003-2004) fails to provide statistical data on offence categories, which it once did, previous data suggests that there has not been a significant change in serious offences committed by young people. For instance, data published by the Department of Juvenile Justice in their annual report suggests an alternative picture. For example:

#### Finalised Appearances for Serious Person Offences

	95-96	96-97	97-98	98-99	99-00	00-01	01-02	02-03
Homicide and related offences	8	15	25	12	13	14	15	10
Aggravated sexual assaults	90	98	111	122	124	101	83	81
Aggravated robbery	367	391	472	534	559	460	518	569
Non-aggravated robbery	91	105	107	140	144	123	108	89
Aggravated assault	93	110	93	117	104	91	110	110
TOTAL	649	719	808	925	944	789	823	859

Source: DJJ Annual Reports

If we directly compare 1995/96 with 2002/03, we see that there were 2 extra murders, 9 less aggravated sexual assaults, 202 extra aggravated robberies, 2 less non-aggravated robberies and 17 more aggravated assaults. While such comparisons are fraught, these

figures tend not to suggest the supposed ‘significant changes in the profile of juvenile offenders over the past 10 years’, as is suggested in the second readings speech. Evidence to support such a claim might well, exist, but with the paucity of published DJJ data and the absence of such statements ever being accompanied with the requisite evidence, it is a little difficult to assert that there has been such a change in juvenile offender characteristics.

I note that the 2004 Dalton report makes mention of the offences for which the young people are detained. This list and the length of incarceration faced by many of these offenders is most certainly cause for concern. However, I question whether this is simply an anomaly rather than a trend or pattern. In part, there is an inherent assumption that the list provided by Dalton reflects a deeper trend. If not, would those offenders facing lengthy prison terms not have been transferred to DCS any way? The government has reduced the number of detainees in DJJ facilities over the age 18. Comparison with previous periods would have been useful to support Dalton’s assertions that the profile of offenders has dramatically changed.

By way of illustration of how profiles can shift and the vagaries of the system, I recall when Yasmar opened in 1994 as the Young Women’s Centre. Within 12 months, quite a percentage of the young women were detained for murder or manslaughter. A snapshot of the centre at particular times during this period would have revealed that any where up to 20% of the detainees were in for murder. To make policy based on that data would have been inappropriate. The numbers of young women in custody is approximately half what it was in 1994/95 and I suspect the profile today would not be so heavily skewed with young women charged with murder / manslaughter.

I also recall that when I first started with DJJ in 1992, Yasmar, then an inner-city remand unit, accommodated a number of young men charged with murder. One incident of murder resulted in 7 or 8 young men being charged. Again, a snapshot at that time would have shown an unrepresentative picture.

The tenor of debate around juvenile crime, and corrections more broadly is one that is often devoid of empirical evidence. Decisions are not always perhaps reflective of the best evidence. Rather, other more populist considerations seems to dominate this debate. Is there evidence to support the decision to transfer detainees?

A major concern that I have about the decision is the incremental nature of change. Fifteen years ago we were debating the merits of Kariong; now we are debating the merits of adult corrections managing young offenders; what is next? Now that this has occurred, where will the bar be set?

## **2. The behaviour of the detainees in Kariong deserves transfer to the adult system.**

I am curious as to why this suddenly necessitated the transfer of the centre to DCS. There were riots soon after Kariong opened (centre opened in 91 riots in 91 or 92). There have been reports virtually every year since 1996 identifying substantial problems with the

management of detainees in the centre. Why now is the government concerned with the potential contamination of the behaviour of a small number of older detainees on less serious or younger offenders?

It seems completely bizarre that we can have report after report identifying significant problems at Kariong for the past 8 or 9 years, and then the sudden transfer from DJJ to DCS. Why the haste? Why was the government not equally concerned in the last 8 or 9 years? How much has the transfer cost and could that money not have been better spent providing programs, training, extra staff and support services, which were repeatedly identified as being lacking?

Having perused and reviewed reports associated with Kariong released in the last few years, I note that the majority of reports point to failings within the system rather than detainee behaviour as the critical factors in the problems. The reports overwhelmingly suggest that the behaviour of the detainees should have been better managed. The inability of centre management, the Department and the Government has resulted in this transfer. Had appropriate steps have been taken, this should have been prevented.

Running a centre, any centre is a difficult business. Running Kariong was always going to be a major challenge. That said, there is no reason why the behaviour of the detainees could not have been managed and why the problems identified could not have been rectified, without having to resort to calling in DCS.

### **Consequences of transfer**

I suspect that others will have more telling commentary on aspects of the legal repercussions for young people in Kariong. I do query how longer potential periods of isolation and the potential transfer within the DCS system will be of benefit.

Kariong has for many years been the location in which escapees were held. What will happen with these offenders?

Having spoken to a few people in the juvenile justice system since the decision has been made, I have noted the concern that this will be the thin end of the wedge. What is stopping further transfer of DJJ functions to DCS? Some have commented on the need to tighten security and discipline, because they perceive it was an absence of security and discipline that resulted in Kariong being transferred. I think that this is worrying potential unintended consequence of the decision. Will other young people, those regarded as less serious and well-behaved, be negatively affected by practices that are executed in the belief that centres need to be more controlled? What will happen with those young people who misbehave in other centres? Will their behaviour affect programs for other young people? Will other centres not be able to cope with the greater pressure to retain their 'problem' clients?

### **Is the transfer from DJJ to DCS the best option for solving the management problems at Kariong?**

No. DJJ should have been able to manage. It is their job to manage. Bringing DCS sends a curious message to managers at other centres – if you have riots or disturbances then you'll lose your centre.

Why has DJJ not been able to rectify the problems associated with Kariong? What will DCS be better able to do?

It would seem that DJJ might have been able to learn from DCS and others strategies to better manage Kariong. Some possible options could have included:

- Consulting DCS on the management of difficult detainees
- Second DCS staff into specific positions
- Seconding internal staff into key positions to help improve programs, staff training, case management, client services, etc.
- Enhanced program budgets would have been helpful in going some way to alleviate the boredom that has been identified in various reports.
- DET could have been funded to provide greater array of programs, including vocational programs in the centre (i.e. not dependent upon the actual confines of the facility per se)
- Strategies to ensure the rotation of staff across Baxter and Kariong
- Incentives provided to good staff in the system to work at Baxter
- Provide DCS-style training for new staff at Kariong

Much of these strategies rely on extra funding. Again, the funding that has been provided to transfer the centre to DCS would have gone a long way to improving programs, client services and staff training at the centre.

With all of these reports written, surely there was ample guidance as to what was required. No one underestimates the challenges of running a centre like Kariong, but surely there could have been more successful attempts at running the centre effectively.

### **Malmsbury JJC – Victoria's Dual Track System**

The centre now accommodates up to 74 males in four purpose-built units. Malmsbury is solely a senior, male youth training centre and therefore accommodates young men aged between 17 and 21 referred from adult court under the Dual Track System.

Malmsbury has no external perimeter enclosure. Security is based on active staff interaction with clients.

## **Appendix A: Principles of Effective Interventions in Reducing Reoffending**

- Base interventions on a psychological theory of criminal behaviour
- Adopt a personality and social learning perspective which has provided an extensive evidence based on risk factors for criminal behaviour
- Introduce human service strategies
- Make use of community-based services where possible, in natural settings such as family; where custodial settings are required for other reasons they should be as community-oriented as possible
- Assess risk levels and allocate individuals to different levels of service accordingly
- Assess dynamic risks / criminogenic needs and target interventions toward remediation
- Multi-modal approaches: focus on a range of criminogenic needs in recognition of the multiple factors associated with offending
- Use the best validated methods for assessment of risk and need factors
- General responsiveness: attempt to match services to learning styles, motivations and aptitudes of participants within high quality interpersonal relationships
- Specific responsiveness: adapt intervention strategies to accommodate difference and diversity among participants and recognition of their strengths
- Assess specific responsiveness and strengths using specially developed approaches
- Develop coordinated strategies of monitoring continuity of services and care, including relapse prevention elements
- Identify and clarify areas in which staff may exercise personal discretion in the application of principles

- Develop and make available service plan or set of policies and guidelines regarding the application of these principles
- Establish procedures for monitoring programme and treatment integrity and for responding to departures from it; specify the elements within this, including staff selection, training supervision and recording of information on all aspects of service delivery
- Staff: focus attention on detailed development of staff skills, including abilities in developing relationships, motivating others, structuring programmes and sessions
- Management: ensure managers have foregoing staff competencies and in addition, extensive knowledge of background principles and the ability to coordinate processes of programme and site accreditation
- The most effective agencies will locate programmatic interventions within broader social arrangements, giving attention to variations in local contexts and client groups and adapting services accordingly.

### Reports into Kariong – Timeline

Report & Year	Key Issues Raised
<b>NSW Ombudsman – Inquiry into Juvenile Justice Centres (1996)</b>	The NSW Ombudsman’s report provided a thorough critique of juvenile justice centres in NSW and was a catalyst for major reforms. While the report highlighted many issues requiring attention, one issue specifically identified in relation to Kariong was the high number of casual or temporary staff. In May 1996, it was found that <b>of the 57 staff, 44% were employed as casuals and 23% were non-casual staff on temporary appointments</b> . This report also identified Kariong as one of four centres requiring <b>urgent action</b> .
<b>DAMOID Report (1997)</b>	While the DAMOID Report specifically dealt with drug related matters, recommendations included reviewing visitation procedures, increasing alcohol and other drug staff and using DCS sniffer dogs to detect drugs.
<b>Report of Review Team into Security &amp; Related Issues at JJs (1997)</b>	This report identified (amongst other things) the need for training on restraints, improvements to security equipment, the development of regimes for high risk offenders, and the need for improvement in programs for detainees.
<b>Shier and Sherlock Inquiry (1999)</b>	The 2000 Ombudsman’s Report notes that an action plan developed in response to the Shier and Sherlock Inquiry focused on “staffing matters, notably staff discipline, support and direction, rotations and transfers, staff grievance processes, staff selection and affirmative action, staff training, rosters and higher duties opportunities. It also required a number of improvements in programming and client services” (2000: 111)
<b>Rodgers Report (1999)</b>	Don Rodgers was brought in as acting manager of Kariong from 24 March to 26 July 1999 (following riots). Mr Rodgers was the Superintendent of Lithgow Correctional Centre prior to the Kariong role. A report was provided to DJJ at the conclusion of his time as Manager. It appears, from the 2000 Ombudsman’s report that many of the same themes previously identified were raised in hi report.
<b>NSW Ombudsman – Investigation into Kariong (2000)</b>	The NSW Ombudsman’s review of the riots in 1999 resulted in the release of a detailed report in March 2000. This report had over 60 recommendations, attending to centre’s management, staffing, training, security, detainee management, and case management. This report notes that of the <b>75 positions as at 3/6/99, 13 were vacant, 22 temporarily filled and that 19 of the 52 Senior Youth Workers were casuals</b> . It was also identified that there was no program budget.
<b>Johnston and Dalton Report (2002)</b>	This report reiterated the failings of Kariong management and staff to deal with the detainees. The authors noted that: “The lack of integration of case management, programs and behaviour management ... is contributing to significant safety, practice, behavioural and organizational culture issues at the centre” (2002: 5). And perhaps of significance is the observation that “if staff cannot take responsibility for their own actions, or lack of action, in this workplace, how can they expect detainees with less life experience and skills to do the same?” (2002: 2)
<b>Dalton Report (2004)</b>	Borrowing heavily from the Johnston and Dalton report (2002), Dalton highlighted, yet again, the high level of casualisation, low morale and inadequate systems. “There are too many casual staff working at Kariong. Thirteen Youth officer related vacancies are currently filled by casual staff. Other temporary positions to cover long terms absences of Youth officers are also filled by casual staff” (2004: 5).



