

INQUIRY INTO JUVENILE OFFENDERS

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Date Received: 01/03/2005

Subject:

Summary



Reverend the Hon Dr Gordon Moyes MLC
Chair
Select Committee on Juvenile Offenders
Legislative Council
Parliament of New South Wales
Macquarie Street
Sydney 2000
(sent initially via e-mail to Ms Tanya Bosch)

Our reference: jj05-nswlcb
28 February 2005

Dear Reverend Moyes

Re: *Juvenile Offenders Legislation Amendment Bill 2004*

We are writing with regard to your inquiry into the provisions of the *Juvenile Offenders Legislation Amendment Bill 2004*. The Centre has an interest in matters relating to Indigenous Australians and the law. We have several concerns regarding the provisions of this Bill (now, of course, an Act) and are keen to draw them to your attention. We would greatly appreciate your taking the time to consider our submissions and would be happy to provide further information if it were required.

The Indigenous Law Centre

The Indigenous Law Centre was established in 1981 and is affiliated formally with the Faculty of Law of the University of New South Wales. The Centre publishes the *Indigenous Law Bulletin* and the *Australian Indigenous Law Reporter*. Staff and associates of the Centre conduct research, publish widely and teach in the School of Law, other parts of the University and elsewhere. The Centre presents occasional seminars and conferences on issues relating to Indigenous peoples and the law.

The Bill - Areas of Concern

Schedule 3 Section 225A – Juvenile Correctional Centres

S 225A states that any premises may be declared to be a correctional centre and as the Department of Correctional Services is now responsible for the staffing and management of juvenile correctional centres, there is a real possibility that juvenile correctional centres will be established as annexes to adult correctional centres.

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Many Indigenous young people regard a period of (adult) incarceration as a rite of passage. An association between juvenile detention and adult imprisonment may be regarded by Indigenous juveniles as, simply, their inevitable entry into the adult justice system. The Royal Commission into Aboriginal Deaths in Custody, for example, found that “Gaol...is not seen by (many) young (Aboriginal) people as a deterrent, but rather as an initiation”. Given that Indigenous juveniles are already overrepresented in the juvenile justice system, any development that increases the likelihood of entry into the adult correctional system will have a disproportionate effect on Indigenous juveniles.

One of the issues raised by the transfer of management from the Department of Juvenile Justice to the Department of Corrective Services is the standard of care considered appropriate for juveniles. The Minister for Juvenile Justice made assurances to the Legislative Assembly on 9 December 2004 such that “the Department of Corrective Services (DCS) will implement the Australasian Standards for Juvenile Custodial Facilities (ASJCF), with only slight variations”. This statement raises questions as to what the “slight variations” may constitute. With management being undertaken by the Department of Corrective Services it is reasonable to assume that a punitive rather than restorative emphasis will be the norm. For this reason, issues of cultural sensitivity which form part of ‘Linguistic and Cultural Diversity Standard 2.1’ of the ASJCF, and relate specifically to Indigenous detainees, are at risk. It is important then, that these standards are strictly enforced.

A further consequence of the Minister’s reference to “only slight variations”, relates to ‘Separation Standard 7.6’ of the ASJCF. This standard provides for the separation and isolation of a juvenile only as a last resort, and only in response to “an unacceptable risk of immediate harm to the young person or to others”. Again, the concern here lies in that the new emphasis will be that of a punitive rather than restorative approach. If this standard is not strictly adhered to, we fear that Indigenous juveniles, in particular, will be adversely affected. This assumption owes largely to Recommendation 18 of RCIADC, that “unless there are substantial grounds for believing that the well-being of the detainee or other persons detained would be prejudiced, an Aboriginal detainee should not be confined alone in a cell”.

Location of Juvenile Correctional Centres

As the Act serves to detain juveniles within a specified ‘Juvenile Correctional Centre’ such as Kariong, Recommendation 21 of the Royal Commission into Aboriginal Deaths in Custody, that “visits by family members or friends should not be unreasonably restricted”, is undermined. As Indigenous people are more likely to come from non-urban backgrounds, the (re)location of juvenile detainees in a centralised juvenile correctional centre serves to further isolate Indigenous juveniles from their families and, therefore, increase the associated risks.

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Schedule 3 Section 41(C) – Transfers to and from Juvenile Correctional Centres

Section 41C(3)(a) could be seen as having a particular impact upon Indigenous juveniles, given the previous observation that incarceration in an adult prison is seen by many Indigenous juveniles as conferring adult status. Anything that too readily and easily facilitates the entry into an adult correctional centre of an impressionable 16 year old should not be part of a progressive juvenile justice regime. Also, it is difficult to see how it could be in the inmate's "best interests" that he or she be transferred to an adult correction centre 41C(3)(c).

We are also concerned that there is no right of appeal to the Court for the juvenile inmate; indeed the overall absence of judicial review is a serious oversight of the legislation.

Schedule 2 Section 28BA – Certain persons to serve balance of detention order in correctional centre.

This Section is intended, according to the Explanatory note, "to clarify that a person who serves a term of imprisonment in a correctional centre as a consequence of having a committed a detention centre offence must remain in custody in a correctional centre for any unexpired portion of a detention order..." but its current wording does not make this clear. Also, the term "detention centre offence" needs to be clearly defined.

We hope that these brief comments are of value and wish you well in your deliberations. Should you have any questions, please contact us.

Yours sincerely
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