

INQUIRY INTO JUVENILE OFFENDERS

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Summary

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The Director
Select Committee on Juvenile Offenders
Parliament House
Macquarie Street
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Dear Sir/Madam

Submission for Inquiry into Juvenile Offenders

Thank you for extending us the invitation to make a submission on the Inquiry into Juvenile Offender's. We welcome this opportunity to comment on both the provisions of the *Juvenile Offenders Legislation Amendment Bill 2004* as well the matters specifically raised by the Select Committee's terms of reference.

1 About us

The Shopfront provides a free legal service for homeless and disadvantaged young people aged between approximately 12 and 25. We represent and advise young people on a range of legal issues, with a particular emphasis on criminal law, which comprises about 75% of our practice.

The Shopfront is a joint project of Freehills, Mission Australia's Sydney City Mission and the Salvation Army, and have been working with young people in all parts of metropolitan Sydney since 1993. The vast majority of our clients are homeless, and most have also been forced to leave home due to abuse, neglect, domestic violence or extreme family dysfunction. Many of our clients have mental health problems, intellectual disabilities, or limited literacy and numeracy.

2 Comments on the Amendment Bill

The Shopfront Youth Legal Centre is concerned with the speed with which the *Juvenile Offenders Legislation Amendment Act 2004 (the Act)* was introduced to the New South Wales Parliament, and the lack of consultation with important stakeholders. On its face, it appears that the legislation is not the result of consistent policy, philosophy and legitimate concerns about the juvenile justice system, but rather, a response to negative media coverage of juvenile justice facilities. It will be our primary submission that the *Act* breaches the *UN Rules for the Protection of Juveniles Deprived of their Liberty (1990)*, *The Standards for Juvenile Custodial Facilities (1999)* formulated by the Australasian Juvenile

Justice Administrators and the recommendations of the *NSW Ombudsman's Inquiry into Juvenile Justice Centres in 1996*. Further, the legislation undermines a history of carefully developed juvenile justice policy and jurisprudence that emphasises the fundamental importance of rehabilitation and diversion away from the criminal justice system for young offenders.

3 Comments the particular matters raised in the Inquiry's 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*

Ms Diane Beamer, Minister for Juvenile Justice, in her second reading speech refers to the reasons for the introduction of this legislation.

Ms Beamer refers to a juvenile offender as being "*a more sophisticated, more hardened and violent individual, with criminal records including gang rape, aggravated assault and murder*". The message that the Minister delivers in her second reading speech is that the changes to the legislation are directed at a small group of young people that are in the most serious category of criminal juvenile offender, and that the current juvenile justice system is not suitable for this hardened offender.

It is our submission that the breadth of the new legislation allows any juvenile detainee, aged over 16 years, to come within the new powers of transfer.

The new section 28 provides that the Director General may direct the transfer of a detainee who is of or above the age of 16 years to the correctional centre at Kariong, provided that the Commissioner for Corrective Services agrees with this direction. There are four grounds on which the Director General may make such a direction. The last of these grounds includes, "*that the Director General has formed the view that the person's behaviour is such that they ought to be transferred to Kariong*". This is an extremely broad discretion on the part of the Director General. We note that this discretion is not monitored or able to be altered by the specialist Children's Court. Section 28BA of the *Children (Detection Centres) Act 1987* has been amended to specifically remove the opportunity for a detainee to apply to the Children's Court to return to the Department of Juvenile Justice. It is with serious concern that we note that judicial discretion has been undermined in this way.

The second reading speech makes it clear that the objective of the legislative change is to create a more punitive hardened and disciplined environment for those juvenile inmates of the correctional facility at Kariong. A consequence of this is that rehabilitation and prevention become a last priority in the case of many juvenile offenders. However, these offenders will not spend the rest of their lives in custody. They will eventually be returned to the community. The way in which we deal with these young offenders in custody is fundamental to how they integrate into our community upon their release.

It is our experience that the current Department of Corrective Services facilities present a more harsh and brutal environment for those detained. There has been much comment and literature on the often traumatic experiences of younger offenders in these correctional facilities. Magistrate David Heilpern, in his book

“Fear or Favour” (1998), provides us with a shocking insight into the plight of young men in adult correctional facilities. In the conclusions to his book he states, with regard to young men aged between 18 to 25 in NSW prisons, “...research suggests that approximately one in four will be sexually assaulted, and one in two will be assaulted other than sexually during their time in custody (*ibid*, page 222). The Department of Corrective Services do not have a record of dealing with these issues in a satisfactory way. When referring to the “causes of sexual assault in prison”, Heilpern refers to four factors, one being, “the acquiescence of prison authorities” (*ibid*, page 223).

Whilst we acknowledge that punishment and general deterrence are important foci when sentencing young people for very serious offences, it is not to be forgotten that rehabilitation is still a crucial issue to be addressed. People who commit offences as juveniles, even if they receive lengthy custodial sentences, are entitled to be given the maximum opportunity for rehabilitation. In the (adult) correctional centres presently run by the Department of Corrective Services, this opportunity is very limited indeed. We have witnessed this for ourselves, as a number of the Shopfront’s clients have been detained in both juvenile detention centres and adult prisons. As such, we are able to make a direct comparison between the systems run respectively by the Department of Juvenile Justice and the Department of Corrective Services, and in our experience, it has been obvious that the programs and facilities available in the centres run by the latter are significantly more limited than those available in facilities run by the former. This includes access to education, medical treatment and welfare support.

Consequently, we do not believe that the Department of Corrective Services is an appropriate body to manage juvenile correctional centres, including Kariong. The Department of Corrective Services lacks both the experience in, and resources required for, successful implementation and administration of the rehabilitative framework that juvenile offender management requires.

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

We do not believe that the transition of Kariong into a correctional facility run by the Department of Corrective Services will address the management problems that have arisen at the Centre.

In her second reading speech Minister Beamer refers to the new priority of discipline in a juvenile correctional centre. She states that, “*the Department of Corrective Services will institute a strict discipline system of privileges and sanctions. Officers will have the disciplinary and use of force powers of the counter-parts in the adult system...a strict system of a hierarchy of sanction and privileges has been instituted that requires inmates to behave appropriately, comply with directions and undertake necessary education and programs and privileges.*” She states further that a segregation unit will be built to segregate certain juvenile offenders from others.

It is our view that young men who commit serious offences are usually troubled individuals. We submit that a better alternative to that presented by this legislation is one that explores the causes of their crimes and their personal rehabilitation. This would ensure that upon their inevitable release these young people have the

potential to become better individuals, rather than being only the product of a harsh correctional, discipline regime that sees them re-entering our communities as more angry and hardened individuals.

In 1996 there was a comprehensive inquiry into Juvenile Detention Centres by the NSW Ombudsman. **A primary finding of that Inquiry was that punitive behavioural management systems in juvenile justice centres were not working.**

The speed with which this new legislation has been put together with little consultation from experts in the field is extremely concerning given there has been a previous comprehensive review of issues related to behaviour management in juvenile justice centres. We note also that the legislation is in breach of the very carefully thought out best practice and policy developed in the national *Standards in Juvenile Justice Centres*, which we will refer to later in these submissions.

The 1996 NSW Ombudsman's "*Inquiry into Juvenile Detention Centres*" made a number of findings and recommendations. A primary finding in the Inquiry was not, as suggested by Minister Beamer, a problem with more experienced, hardened and criminalised juveniles in detention, but rather "*the management and long term vision of government in the operation of juvenile detention centres.*" The Report stated that the key themes that permeated the Inquiry were "*the need for better initial and on-going staff training and support, the regular evaluation and review of centre operations and programs is significant. Without these the Department is in danger of neglecting its most vital resource, ie staff and will fail to recognise areas where additional support or improvement is needed to ensure that existing resources are most effectively utilised for the security and well-being of young offenders, juvenile justice staff and the community.*" ("*Inquiry into Juvenile Detention Centres*", Volume 1, NSW Ombudsman, December 1996, pg xvii).

The NSW Ombudsman's Report dealt with the issue of Behaviour management and discipline and punishment in juvenile justice centres. The findings in that Report state:

"Most behavioural management schemes rely on the use of "points" systems which permit detainees increasing levels of privileges. Unfortunately most schemes operating within the centre are more linked with control and punishment than in encouraging and rewarding detainees to manage their own behaviour. The philosophy behind incentive schemes is extremely misunderstood. Most schemes operating have had little, if any input from psychologists or others trained in this area for some years. The poorly designed schemes are implemented by staff who have never been trained in the aim and intent of the schemes. Many operational staff now consider them to be used to deduct points and remove privileges in response to inappropriate behaviour and they have become part of most centres disciplinary systems. The overall tenor of a "behaviour management" scheme used at Minda Juvenile Justice Centre for detainees considered to be "management problems" was found to be totally punitive, and showed little respect for the welfare and rights of detainees" (ibid, pg xii)

It is noted that after this Inquiry Minda Juvenile Justice Centre was closed.

Given, the findings of the 1996 Inquiry, it is our submission that the legislation's attempts to create a harsher, more disciplined environment for juvenile offenders detained at Kariong as a means to more effectively deal with management problems will be likely to fail. We note also the concern expressed by the Inquiry with regard to incentive schemes, described in similar terms to those schemes now envisaged by Minister Beamer.

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

We acknowledge the importance of keeping juvenile offenders separate from adults in custody, indeed, it is required by international law. However, we believe that the solution does not lie in sending juvenile detainees to adult prisons once they turn 18 years. Juvenile Detention Centres have had the capacity, for a significant time, to separate older, more serious offenders from those who are younger and more vulnerable.

We believe that if these very young adults committed offences as juveniles than they are entitled to be dealt with in the juvenile justice system, where juvenile justice principles apply. We believe that the same concerns already expressed about the harshness and brutality of the adult system apply to this category of young adult offender committing offences when aged under 18 years.

(d) ***Alternatives to the establishment of a juvenile correctional centre***

We submit that appropriate alternatives, principles and best practice has already been carefully developed and examined in the 1996 NSW Ombudsman's Inquiry into Juvenile Justice Centres and in the "Standards for Juvenile Custodial Facilities" in March 1999.

Alternatives that we believe are critical relate to legislation, resources, education and training that focus on the well established principle of rehabilitation as the best method to manage juvenile offending, not retribution and punishment.

(f) and (g) The wider social implications of incarcerating juveniles in juvenile correctional centres run by the Department of Corrective Services, and; Whether incarcerating juveniles in juvenile correctional centres achieves reduced recidivism, rehabilitation and compliance with human rights obligations

Recidivism

We believe that increased recidivism is a very real concern for juvenile offenders detained in a harsher prison environment. Young people who we represent who believe they have been harshly or inhumanely treated by "the system" speak about anger and revenge, not changing their ways.

In September 2003, the Australian Institute of Criminology reported that,

"one of the main findings that has emerged from previous research into the offending trajectories of juvenile offenders is that assignment of severe punishments for early criminal behaviour can result in greater recidivism. A notable study by Cain (1996) in NSW for example, involved the tracking of 5000 children over a nine year period. The research, which focused on juveniles who were processed by the children's court during this period, found a strong relationship existed between sterner punishments and higher levels of offending...in considering the research literature, it does

appear that progression of young offenders to more serious offending is not inevitable, and that we need to be cautious in using incarceration as a response to juvenile offending” (Lynch, Buckman, Krenske, “Youth Justice Trajectories”, Trends and Issues in Crime and Criminal Justice, Australian Institute of Criminology, Sept 2003, pg 2)

Rehabilitation

The statute law and the case law that underpins juvenile justice jurisprudence in NSW has developed in such a way as to emphasise the importance of the principle of rehabilitation for juvenile offenders. The courts in the past have recognised that there are typical causal factors in juvenile offending. The former senior children’s court magistrate, Rod Blackmore, talks about these factors as being, “*unsatisfactory family situations, social disadvantages within the family and community, poverty of educational skills, peer pressures, behavioural and psychological problems*”. He says that, “*At least 50% of children appearing before the courts live with only one parent, whether that be through death, separation, divorce, or ex-nuptial birth. There was also a higher rate of unemployment among delinquent juveniles appearing in the court than among the juvenile population of working age. That is not to say that children of single parents or unemployed juveniles are prone to commit delinquent acts, but the combination of these factors can be seen as typifying disadvantages from which many young offenders suffer and against which they react.*” (Blackmore R, “*The Childrens Court and Community Welfare in NSW*”, 1989, pg 53). Rod Blackmore writes that the young people “*become the products of their whole life – experiences which effect the gradual change through increasing maturity*”. (Page 52)

It is our submission that addressing the causes of offending and a more determined focus on the rehabilitation of juvenile offenders, including serious juvenile offenders, not only reflects a more sophisticated analysis of managing these offenders but can only lead to a more secure and safe community upon the inevitable release of these young people from detention. In 1998 in his book, Rod Blackmore stated that “*it is certainly true that a prison environment can result in most damaging experiences for a juvenile; although segregation from older prisoners may be attempted, even the most toughened juvenile will find that life in prison is no kindergarten. The rigours of imprisonment can be considered inappropriate even though a juvenile has repeatedly committed serious crimes, and is know to be likely to escape from low security detention. The need in NSW for both family and community services and corrective services to provide for the immediate needs of this category of offender.*” (Page 60)

Rehabilitation is a vital aspect of managing juvenile offenders. It is important not only for the offender, but for the community as a whole. A young person will emerge from detention whilst still young. Therefore, it is in the community’s interest to maximise a young offender’s capacity to become a law-abiding and productive member of society. We believe the juvenile justice system affords the best opportunity for this to happen.

Human Rights Obligations

We submit that a major consequence of the introduction of the *Act* is a direct breach of the *Standards for Juvenile Custodial Facilities*, and of the *United*

Nations Rules for the Protection of Juveniles Deprived of their Liberty, on which these *Standards* are based.

In March 1999, the national *Standards for Juvenile Custodial Facilities* were published. These *Standards* were formulated after broad national consultation and in response to the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty (December 1990)*. We note that the national working party that developed these standards was chaired by the NSW Director General of the Department of Juvenile Justice at the time, Mr Ken Buttrum.

The “Introduction” to the *Standards for Juvenile Custodial Facilities* states that, **“the objective of juvenile custodial facilities should be to provide a humane, safe and secure environment, which assist young people to address their offending behaviour and to make positive choices about their lives, both during custody and upon their return to the community”**. (*Australasian Juvenile Justice Administrators, “Standards for Juvenile Custodial Facilities”, March 1999 pg, 6*).

This is not the objective of the *Juvenile Offenders Legislation Amendment Bill 2004*.

We submit that the following Standards, and UN Rules are breached by the Act:

- **Standard 1.1: “The centre provides an environment in which young people, staff and others feel safe, secure and not threatened by any form of abuse or harassment”**.

The centres policy and practice documents include commitments to an environment free of physical, psychological and emotional abuse or harassment. This standard refers to a number of the United Nation Rules for the protection of juveniles deprived of their liberty. This includes Rule 66 which states, “*any discipline measure and procedures should maintain an interest of safety and ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basis rights of every person*”.

We note that a Juvenile Justice facility that is under the direction of the Department of Corrective Services has a broad mandate to manage by the use of force considered “reasonably necessary in the circumstances” (sec 121, *Crimes (Administration of Sentences) Regulation 2001*). This includes , “the use of a dog to assist in maintaining the good order and security of the correctional centre...” (sec 78 *Crimes (Administration of Sentences) Act 1999*). With the “concurrence of the governor, a correctional officer may use handcuffs, security belts, batons, chemical aids and firearms for the purpose of restraining inmates”, “ankelcuffs” may also be used (sec 122, *Crimes (Administration of Sentences) Regulation 2001*).

- **Standard 1.2 “The centre promotes the individuality and diversity of young people, built on their strengths, encourages their personal growth and respects their dignity as human beings”**.

A number of *United Nations Rules* are referred to in this *Standard*, including *Rule 28* that states,

“The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements, according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different category for juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical and moral integrity”.

- **Standard 7.1 “In their daily interactions with young people, centre staff provide young people with opportunities and support to make decisions and to responsibly manage their own behaviour”.**

This *Standard* refers to the *United Nation Rules*, including *Rule 66*:

“Any disciplinary measures and procedures should maintain an interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self respect and the respect for the basis rights of every person”.

- **Standard 7.3 “Disciplinary responses to unacceptable behaviour are in accord with international principles, local laws and the centres policies and procedures, which are applied in an impartial and fair manner”.**

In the second reading speech Minister Beamer refers to a segregation unit built for the purpose of segregating juvenile inmates in a correctional centre. She speaks of a strict system of a hierarchy of sanctions and privileges. Her colleague, Mr Milton Orkopoulos goes into further detail about this system. He states,

“Juvenile inmates demonstrating on-going compliance will be able to achieve promotion to higher stages and given greater privileges. Just as a compliant juvenile inmate will be progressed higher, a juvenile inmate who infringes discipline will be regressed to a lower level of privileges. The sorts of privileges which a juvenile inmate will be able to earn and which could be taken away, include more phone calls per week, contact visits rather than non-contact visits, increased disassociation with other inmates and greater access to books, magazines, newspapers and tapes.”

Standard 7.3 refers to a number of *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*. This includes *Rule 67* which states,

“All disciplinary measures constituting cruel, inhumane or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, close or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and denial of contact with family members should be prohibited for any purpose. Labour should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction”.

It is our view that the new system which allows for a segregation unit, restriction of contact with other inmates, denial or restriction of the phone call contact and contact with family, and the restriction or denial of reading material and probable

use of labour as punishment is in direct breach of *Standard 7.3* of the national *Standards of Juvenile Custodial Facilities*.

- **Standard 9.1** *“The Centre provides a physical environment that is safe and secure and has due regard to the rehabilitative expectations of custodial care, in accordance with the recommendations of the Royal Commission into Aboriginal Deaths in Custody and the Design Guidelines for Juvenile Justice Facilities in Australia and New Zealand”*.

It is extremely clear that the physical layout of the new correctional centre at Kariiong is designed to be like an adult prison, rather than a juvenile facility.

Standard 9.1 refers to UN *Rule 32* which states, *“The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment with due regard to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure/time activities”*.

Since the introduction of the *Juvenile Offenders Legislation Amendment Act 2004* we have already seen media coverage showing bulldozers at Kariiong Correctional Centre filling in the swimming pool that was once a place for detainees which allowed for, *“sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure/time activities”*.

Conclusion

Despite this Inquiry this new legislation is currently operative in NSW. In this regard, it could be said that the serious concerns expressed in this submission have little real weight or influence.

However, we do seek to make recommendations that may have some effect. We submit that this Inquiry make recommendations that there is real transparency in the processes that will be put in place to allow the transfer of juvenile offenders to juvenile correctional centres or adult prison. We also highly recommend that juvenile offenders at every step of the process have access to legal advice and representation and that the administrative decisions relating to transfer be accountable and reviewable.

As stated at the beginning of this submission, a real concern is that, although the current view is that this legislation will only relate to the most serious offender, the breadth of the discretion in the legislation does not limit administrative power to transfer only the most serious offenders. It is our view that the *Act* allows any young person over 16 years detained in a juvenile detention centre in NSW to be potentially subject to this new legislation and to be transferred to a juvenile correctional centre.

Yours faithfully

Jane Irwin
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