

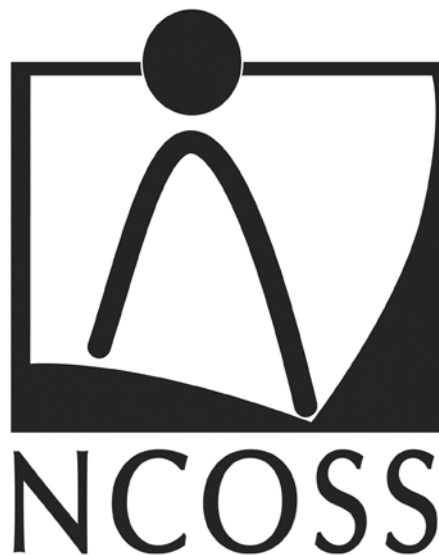
INQUIRY INTO JUVENILE OFFENDERS

Organisation: NCOSS
Name: Mr Gary Moore
Position: Director
Telephone: 9211 2599
Date Received: 08/03/2005

Subject:

Summary

**Submission to Select Committee
on Juvenile Offenders
Inquiry into Juvenile Offenders Legislation
Amendment Act 2004.**



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**Council of Social Service of NSW (NCOSS), 66 Albion Street, Surry Hills 2010
Ph: 02 9211 2599, Fax: 9281 1968, email: gary@ncoss.org.au**

About NCOSS

The Council of Social Service of NSW (NCOSS) is an independent non-government organisation (NGO) and is the peak body for the non-government human services sector in NSW. NCOSS works with its members on behalf of disadvantaged people and communities towards achieving social justice in New South Wales.

It was established in 1935 and is part of a national network of Councils of Social Service, which operate in each State and Territory and at Commonwealth level.

NCOSS membership is composed of community organisations and interested individuals. Affiliate members include local government councils, business organisations and Government agencies. Through current membership forums, NCOSS represents more than 7,000 community organisations and over 100,000 consumers and individuals.

Member organisations are diverse; including unfunded self-help groups, children's services, youth services emergency relief agencies, chronic illness and community care organisations, family support agencies, housing and homeless services, mental health, alcohol and other drug organisations, local indigenous community organisations, church groups, and a range of population-specific consumer advocacy agencies.

Introduction

NCOSS welcomes the opportunity to comment on the Inquiry into Juvenile Offenders.

This submission is divided into two sections. First some general remarks are provided. Following this, detailed responses are provided to each of the terms of reference.

General Comments

As members of the Select Committee will be aware NCOSS has some significant misgivings regarding the Juvenile Offenders Legislation Amendment Act 2004, and vigorously opposed its passage through the Parliament in December 2004. NCOSS is particularly concerned that:

- The running of juvenile facilities by the adult prison management and staff and the flexibility afforded to transfer young people throughout the system with minimal safeguards offends a number of children's rights principles;
- Passing the management of juvenile justice facilities to adult prison management contravenes one of the key aims of the juvenile justice system, that is 'turning young offenders away from a life of crime';
- Transferring management to adult corrections goes against the reform agenda that the Juvenile Justice system has been working towards since the Ombudsman's Inquiry into Juvenile Justice 1996, and that this positive reform agenda is put at risk by the Act;
- The lack of oversight in relation to transfers between detention and juvenile corrections centres runs counter to the principle of effective oversight of the juvenile justice system by the Minister for Juvenile Justice, We consider that this duty cannot be delegated to another Minister or department by way of a Memorandum of Understanding or use of delegation powers under Act; and

- The Act, so hastily put through the Parliament may contain unintended consequences

NCOSS is also concerned that the Act was been introduced with no consultation with community organisations and consumer groups involved with troubled and disadvantaged young people and the youth justice system.

Detailed responses to Terms of Reference

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

NCOSS cannot comment on the reasons for the transfer of management of the Kariong Juvenile Justice Centre save for the general perception that the Government sought a quick response to negative media reports about the Centre.

We note the comments of the Minister for Justice in the second reading speech that 'older, more serious offenders are best managed in the secure disciplined environment of the Department of Corrective Services. That is the reason for the recent decision to transfer the administration of the Kariong Juvenile Justice Centre to the Department of Corrective Services'.¹

However, NCOSS understands that the rationale for the initial establishment of Kariong was to provide a secure facility for serious young offenders. The Minister's suggestion that these same offenders actually belong in an environment run as an adult prison suggest either a failure of Kariong Management, or a significant withdrawal from the principles of a separate juvenile justice system focusing on the specific needs of juvenile offenders, even those found guilty of very serious crimes.

NCOSS considers that the Act is an inappropriate response to a management failure at Kariong resulting in a knee jerk hand over to adult corrections, rather than the Government taking responsibility for effecting improved management systems within the Department of Juvenile Justice.

NCOSS has identified a number of very serious negative consequences of the transfer of management of Kariong to the Department of Corrective Services. These are detailed in a briefing note that was tabled in Parliament on 9 December 2004 by the Hon Dr Arthur Chesterfield-Evans. In summary the easily identifiable negative consequences of the transfer and associated amendments contained in the Act include the following.

Potential breach of human rights

The running of juvenile correctional centres by the adult prison management and staff potentially offends a number of children's human rights principles. These concerns are discussed later in this submission under Terms of Reference H.

¹ Hon John Hatzistergos, Second Reading Speech, Legislative Council, *Hansard 9 December 2004*.

Breach of Standards for Juvenile Custodial Facilities

The document governing the conduct of juvenile correctional facilities is the *Standards for Juvenile Custodial Facilities* – which has as its underlying principle adherence to the *1990 United Nations Rules for Protection of Juveniles Deprived of their Liberty* – the Beijing Rules.

We note in the second reading speech that the Department of Corrective Services will implement the Standards for Juvenile Custodial Facilities, 'with only slight variations'.² This begs the question – which slight variations?

NCOSS is informed that Corrective Services will advise and enable each young person to make or maintain confidential contact with a legal advisor, they will not necessarily allow detainees to make or maintain confidential contact with advocates for young people within the justice system.

This raises the prospect of Kariong being a closed facility not subject to scrutiny by advocates for the humane treatment of juvenile offenders. It goes against the principles of transparency of government and suggests that independent advocates are some sort of 'security risk'.

NCOSS understands that the Minister for Justice is required to liaise with the Commissioner for Children and Young People to appoint an Official Visitor for Kariong. We have not been informed if this has been done, and if so, who the Official Visitor will be.

NCOSS is also informed that in Kariong, whilst a variety of foods will be offered, inmate preferences as to the preparation and choice will not be the determining factor. This raises the prospect of detainee's cultural and religious requirements being subjugated to the Departmental preferences.

Further the Department of Corrective Services will only endeavour to meet, rather than comply with *Design Guidelines for Juvenile Justice Facilities* and the recommendations of the Royal Commission into Aboriginal Deaths in Custody.

There are particular concerns as to how the 'slight variations' may impact upon Indigenous young people held in Kariong. NCOSS has received submissions from the Indigenous Legal Centre (ILC), which details some these concerns. These submissions are reproduced below and NCOSS endorses the arguments contained therein.

Indigenous Law Centre Areas of Concern

As it can be understood that the Act seeks to apply tougher adult correctional practice to the Kariong centre, 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

² Hon John Hatzistergos, Second Reading Speech, Legislative Council, *Hansard 9 December 2004*.

Indigenous detainees, are at risk. It is important then, that these standards are strictly enforced.

A further consequence of the Minister's unclear 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".

Adult management standards will undermine the philosophy of the juvenile justice system

As Kariong is now defined to be a juvenile correctional centre it will be subject to the same provisions regarding management and staffing as adult prisons.

For example, section 53(1)(c) of the *Crimes Administration of Sentences Act* will allow juvenile inmates to be punished by confinement to a cell for up to seven days. Section 78 will allow the use of dogs against juvenile inmates in maintaining good order and security.

Inmates at Juvenile Correctional Centres will not be have the benefit of requirements under the *Children's Detention Centres Act* (s114) for adequate arrangements to promote their physical and psychological well being, and their social cultural and educational development of detainees.

Removal of judicial discretion and oversight

The creation of a new category of juvenile justice client – the 'juvenile offender' effectively removes the power of sentencing judges to decide where a child or young person will serve a sentence for a serious offence. Instead the Department of Juvenile Justice will be able to move children and young people between juvenile detention centres and juvenile correctional centres (youth prisons operated by corrective services) without Court scrutiny.

Schedule 2[11] further offends the notion of judicial oversight. In circumstances where a young person has committed an offence whilst in detention, and is subsequently removed to the adult prison system under the Ministers powers, they must serve out their sentence for the detention offence within the adult system. They no longer have the right to apply to the Children's Court to make an order to return them to the juvenile detention system.

Lack of Ministerial oversight of transfers between detention and juvenile corrections centres

The Act allows the Director General of Juvenile Justice (without the need for Ministerial consent) to transfer children over 16 from juvenile detention centres to juvenile correctional centres.

Transfers are not limited to children serving sentences for serious offences. Under the new s28(2)(d) a child can be transferred to a juvenile correctional facility if their behaviour is considered to warrant this.

Of particular concern is S28 [2] (d), which is vague and open ended. Using the words 'the Director – General is satisfied that the detainees behaviour is or has been such as warrants the making of an order' provides a very wide discretion. Given that the transfer effectively moves the young person from the day-to-day management of juvenile justice to adult corrections a much tighter definition is warranted. As is the requirement of Ministerial approval as a safeguard to protect children from an abuse of administrative power.

Further, there appears to be no safeguard to ensure that the Director General has given adequate regard to the whole circumstances of the young person. The Director General is given wide discretion as to the circumstances warranting transfer. The safeguards contained in are all regarded in the alternative. That is, a transfer to a juvenile correction centre may be ordered by if, in the view of the Director General, **any** of those circumstances detailed in the new S.28 [2] (a), (b) (c) and (d) exist.

Under s39A of the Children Detention Centre Act the Director General can delegate this decision making function to any other person, so the decision to transfer a child to the adult regime at Kariiong may in fact be made by detention centre staff.

Section 41C deals with transfers between juvenile correction and adult correction centres. These transfers can only be made by order of the Minister for Justice. For young people over 18 years, Ministerial approval may be granted on recommendation from the Corrective Services Commissioner and for those under 18 years after recommendation by the Review Council.

This section removes the responsibility of the Minister for Juvenile Justice for considering applications to transfer a young person to adult prison. This is transferred to the Minister for Justice. It posits the issue of what is in the best interests of the child into a purely corrections framework and could have the unintended consequence of allowing young people with the highest support needs to be transferred into the adult prison system without adequate consideration of the full circumstances of the young person.

In both cases a series of tests apply in the alternative - 41C [3] (a) though (d). Only one criteria need be satisfied. This includes circumstances where the young person wishes to be transferred. NCOSS and other bodies concerned with juvenile justice including the Youth Justice Coalition have made previous representations to the NSW Ombudsman in regards to the dangers of young people being seen to self select into the adult prison system.

We note with concern the findings in the *NSW Ombudsman's Discussion Paper: Review of the Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001*, that young offenders are being encouraged by some Department of Juvenile Justice staff to consider moving to an adult prison earlier than their prescribed Section 19 date. Even more disturbing is the finding that some detainees are deliberately committing offences in order to leapfrog into the adult prison system.

We note that the Ombudsman's Discussion Paper does not go into any detail as to what is motivating young people to want to enter the adult prison system early. In many cases it

appears that the transfer motivated by trivial benefits, such as the availability of cigarettes, without a full understanding of the consequences of this decision. We note that of the seven people transferred into adult prison early, four were found to having moderate to severe intellectual disabilities.

Schedule 3 [C] attempts to restrict the transfer of people under 18 years into adult prison. It is assumed that this will be governed by the new Section 41C, by way of the operation of the Review Council. However, note the limitations of this section as discussed above. Note also the comment by the Legislative Review Committee that this section may offend the best interests of the child principle.

B. Whether the transition of Kariong Juvenile Justice Centre into a juvenile correctional centre operated by the Department of Corrective Services is the most effective method of addressing management problems at that centre.

NCOSS does not consider the transition of Kariong into a Juvenile Correctional Centre to be the most effective method of addressing management problems, as it simply removes responsibility for resolving these problems to another Minister. Rather than resolving the problem, it shifts the challenge to a Department, that by its own admission is unaware of basic human rights standards regarding children in detention. See section H of this submission.

Management problems of Kariong have been well known and understood for many years. The centre has been the subject of numerous Parliamentary and Ombudsman Inquiries. Many recommendations have been made addressing these management issues, yet the problems remain. In particular the Ombudsman's 2000 report recommended that a competent and professional management team was needed in Kariong to promote a sense of common purpose and professionalism among staff.³

It can be reasonably be argued that a heavy reliance upon casual staff at Kariong may have also contributed to instability at the Centre. The Ombudsman recommended that Kariong be given adequate resources, programs and suitably skilled and trained staff. It is difficult see imagine how this could be achieved when large numbers of Kariong staff were casuals.

We do not accept the arguments put forward by the Hon Catherine Cusack in the debate following the second reading of the Bill that a 'welfare mentality' overwhelmed the management imperatives at Kariong.⁴ Effective management and a rehabilitative framework based on human rights principles are non mutually exclusive. This point was made in the 2000 Ombudsman's Report where it states 'The mainstay of security in any custodial facility however is its dynamic security, ie the interaction of staff with detainees, the involvement of detainees in activities and programs, and the maintenance of appropriate and safe work practices'.

We note the comments by the Hon Peter Breen in the parliamentary debate of 10 December 2004:-

'Transferring responsibility for Kariong to Corrective Services is an admission of defeat by the Government. It has failed the staff at Kariong and it has failed the detainees. Kariong should have been a place of reform and rehabilitation for these

³ NSW Ombudsman, 2000, *Investigation into Kariong Juvenile Justice Centre*, p11.

⁴ Second reading speech debate, Hansard, 9 December 2005.

young offenders, but because of incompetent management and defective operational structures detainees now will be subject to an adult prison management system. Their greatest opportunities for reform and rehabilitation will be lost forever. It is a mistake to write off young offenders. The Kariong detainees were entitled to expect education, motivation, incentive, rehabilitation and the chance to start again. Because of the failures of Kariong these detainees will be transferred to an adult prison system characterised by overcrowding and assault. The legislation marks a turning point away from the commitment to rehabilitate young people and, instead, to cement them into a life of habitual crime and prison.'

C. The issue of adult detainees sentenced as juvenile offenders at Kariong and elsewhere in the juvenile detention centre system

NCOSS considers that the mandatory transfer of young offenders who have turned 18 into adult prisons to be contrary to the spirit of the Beijing Principles⁵. We consider that these principles apply to these young people because they were children at the time of their offence.

Whilst NCOSS accepts that it is not appropriate for young adult detainees convicted of serious children's indictable offences (SCIO) to be held together with children under 18 in juvenile justice facilities we are concerned that young adult offenders being transferred to adult prisons will become hardened by the prison system and could be put at risk of significant harm such as sexual assault.

We note that representations made by the former Minister for Juvenile Justice, Carmel Tebbutt that this group of offenders would be moved to the young offender program at Parklea Prison⁶ have not been realized in practice. Rather young people have been transferred to the main sections of maximum-security prisons.

Levels of overcrowding and the prevalence of sexual assault and other forms of abuse within the adult prison system are of serious concern. Of 300 adult prisoners between 18 and 25 years interviewed in one study⁷ 25% stated they had been sexually assaulted, and 50% stated they has been physically assaulted in prison. The same research also found that the "protective partnership" is one tactic used by prisoners to cope with abuse even though this involves trading sexual favours for protection.

It should also be noted that mental health problems amongst both juvenile and adult prisoners. Mental illness often emerges in mid to late teens or early twenties. Adult prison is the not the right environment to treat young people with mental illness.

NCOSS believes that rather than sending young people who committed a SCIO when children to adult prison as a matter of course, a preferable solution would be to detain them in separate units – away from children under 18 years– but still within the scope of the juvenile justice system. This would give these young people (and therefore society) the best chance of effective rehabilitation without sacrificing the rights and best interests of other young people in detention.

⁵ United Nations Rules for the Protection of Juveniles Deprived of their Liberty http://www.unhchr.ch/html/menu3/b/h_comp37.htm, accessed 25 May 2004.

⁶ The Hon Carmel Tebbutt (Minister for Juvenile Justice) *LC Second Reading Speech. Hansard, Legislative Council, 13 December 2001, Page 20179*

⁷ Heilpern D, 1998, *Fear or Favour*, Southern Cross University Press, p7.

D. The classification system and appropriateness of placements for detainees

The current system of placement of juvenile detainees is not transparent. It is usually accepted that Kariong has been used to detain older children convicted with serious indictable offences and/or older detainees who are difficult to manage. These are clearly two distinct groups as difficult to manage detainees may not be serious offenders. Difficult to manage detainees may have a disability and/or learning difficulties and so require additional resources and programs.

The Objective Classification System being implemented by the Department of Juvenile Justice may overcome some of the issues relating to the placement and transfer of detainees into Kariong. It should be the basis for placement of detainees in juvenile detention centres and transfers of detainees to Kariong, regardless of who is managing the facility.

The new powers granted to the Director General of Juvenile Justice to transfer children over 16 from juvenile detention centres to juvenile correctional centres should only be used on the basis of a transparent and fair classification system. The new Objective Classification System may be the appropriate tool but it will need careful and independent evaluation as it is implemented.

E. Alternatives to the establishment of a juvenile correctional centre

The simple alternative to establishing Kariong as a juvenile correctional centre is to revert its status to that of a juvenile detention centre and invest in the management, staffing and reform initiatives recommended by the Ombudsman in 2000.

F. The wider social implications of incarcerating juveniles in juvenile correctional centres run by the Department of Corrective Services.

NCOSS considers that the negative impacts of blurring the lines between the NSW adult corrections and juvenile justice system far outweigh any benefits. It is universally accepted that for young offenders rights *as children* to be properly observed a separate juvenile justice system is needed. The transfer of the day-to-day management of Kariong into the hands of the adult prison service offends that principle and damages the integrity of the NSW juvenile justice system.

The wider social implications of the transfer of Kariong relate to how this winding back of the clock in juvenile justice policy and practice will impact upon juvenile justice clients capacity to rehabilitate. 'Above all they must come out of custody in better shape than when they went in'.⁸

As the Department of Juvenile Justice acknowledges 'The effectiveness of interventions with juvenile offenders depends on a number of factors including engaging with a wide range of other organisations and agencies that have responsibilities in supporting and addressing the needs of families, children and young people'. It is hard to reconcile how this engagement with external agencies and a focus on rehabilitation will be achieved under the adult prisons management.

⁸ Children's Rights Alliance, 2002, Rethinking Child Imprisonment, CRAE, UK, p1.

If the objective is to give young people the best possible opportunity to choose positive alternatives to offending how will, this be achieved when core functions are being transferred to another Department whose record is less than adequate?

According to the Report on Government Services 2005, in 2003-04 the NSW adult corrections system had:

- The second highest rate of imprisonment rate for indigenous people in the country;
- The lowest level of out of cell hours rates for open and secure custody;
- Less than national average proportion of eligible prisoners employed in prison employment initiatives;
- Less than national average rates of prisoners engaged in education and training
- More prisoners in facilities than allowed for in the design of the facilities;

In 2002-03 the NSW adult corrections system had:

- The highest prisoner on prisoner assault rates in the country and 59 percent above the Australian average.⁹

G. Management of staff assault issues in the juvenile justice system

NCOSS cannot comment on allegations of assaults at Kariong as we have not been informed of any detailed allegations, nor do we represent Kariong staff. However, we note the profile of young people within the NSW juvenile justice system and in particular that an estimated 30 percent of these children have been in the care of the Minister for Community Services.¹⁰

It would seem reasonable to suggest that detention at Kariong marks 'just one further stage in the exclusion of a group of children who between them, have already experienced almost every form of social exclusion on offer'.¹¹

The *2003 Young People in Custody Health Survey* found that these young people have 'considerable physical and mental health needs and risk behaviours, difficult family and social backgrounds and multiple learning difficulties'.¹²

Major findings include:

- 43 percent of the detainees surveyed had parents who had been in prison, 11 percent had a parent currently incarcerated;
- 42 percent said they had been physically abused, ten percent said they had been sexually abused, 38 percent had experienced emotional neglect and 34 percent physical neglect. Note that the Report states this is an under-reported rate as young people minimized and denied experiences of abuse and neglect;

⁹ Productivity Commission, 2004, Review of Government Service Provision

¹⁰ Hon Peter Wong, 2nd reading speech debate, Hansard 9 December 2004.

¹¹ Children's Rights Alliance, 2002, Rethinking Child Imprisonment, CRAE, UK, p5.

¹² Department of Juvenile Justice, Annual Report 2003-04 at <http://www.djj.nsw.gov.au/pdf/publications/DJJAAnnualReport2004.pdf>, accessed 28 February 2005.

- 84 percent reported mild, moderate or severe symptoms consistent with clinical mental disorder;
- 19 percent of males had seriously considered attempting suicide.
- 17 percent had intelligence scores consistent with intellectual disability, the arithmetic skills of 64 percent were equivalent to those of people with intellectual disabilities.
- almost 90 percent had used cannabis; 59 percent said they had been under the influence of alcohol, drugs or both at the time of offending; and
- 19 percent of males and 24 percent of females had seriously considered attempting suicide.¹³

As the former Director General of the Department of Juvenile Justice stated 'Working with entrenched offenders typically identifies a constellation of personal and social problems which appear to have contributed directly to their criminal behaviour'.¹⁴

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

Recidivism rates can tell us only part of the story in regards to the outcomes of the justice system. However in regards to juvenile recidivism it is generally acknowledged that 'the majority of juvenile offenders will not reappear after their first proven offence; and, it is a small proportion of juvenile offenders that accounts for a large percentage of juvenile offences. Juveniles given a custodial sentence, community service order, or supervised probation as their first penalty are more likely to re-offend than juvenile first offenders given lesser penalties, such as fines or nominal penalties'.¹⁵

Given this, the Department of Juvenile Justice operates an instrument for measuring the risks of re-offending.¹⁶ The idea being that by using case management principles more effective interventions in reducing juvenile re-offending will be delivered. It is not clear if this model of assessing re-offending risk and subsequent case management, including use of external services such as post release options will continue under Department of Corrective Services Management.

It is important to note that the NSW adult corrections system has the second highest rate for prisoners returning to prison after two years (recidivism) in Australia.¹⁷

¹³ NSW Department of Juvenile Justice, *2003 NSW Young People in Custody Health Survey*, p9.

¹⁴ Ken Buttrum, 1997, *Juvenile justice: what works and what doesn't!* at <http://www.aic.gov.au/conferences/juvenile/buttrum.pdf>, accessed 28 February 2005.

¹⁵ <http://www.aic.gov.au/publications/rpp/14/ch2.pdf>, accessed 28 February 2005.

¹⁶ The Youth Level of Service/Case Management Inventory – Australian Adaptation (YLS/CMI-AA) is an adaptation and extension of a Canadian risk of re-offending assessment inventory for adolescents.

¹⁷ SCRGSP (Steering Committee for the Review of Government Service Provision), 2005, Report on Government Services 2005, Productivity Commission, Canberra, 7.11

Throughout this submission NCOSS has articulated its concerns that the capacity for rehabilitation at Kariong will be reduced by the implementation of an adult prison management regime. We consider the transfer to be against the spirit and intent of the mission of the Department of Juvenile Justice.

The defining principle of the modern juvenile justice system is an emphasis upon rehabilitation and reintegration of the young offender into society. How will the Minister for Juvenile Justice ensure the operations of the centre(s) are aligned with the stated objective of her department of 'striving to break the juvenile crime cycle' when young offenders are no longer under the care and control of her Department?

NCOSS is concerned that the Kariong transfer offends a number of children's human rights principles. These include that the best interests of the child shall be a primary consideration in the actions of government,¹⁸ that every child deprived of liberty shall be treated in a manner which takes into account the needs of persons of his or her age, and to be separated from adult prisoners¹⁹, the right of every child found to have infringed the law to be treated in a manner which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.²⁰

NCOSS is informed that Department of Corrective Services has not undertaken to comply with all international human rights principles as at the time of the effective hand over of Kariong to the Department of Corrective Services, as the Department would not have had sufficient opportunity to locate such principles or compare them to Departmental operating procedures. This is an extraordinary state of affairs, where a government agency, being given control of a juvenile facility is not required to learn about or ensure compliance with human rights principles in advance of the transfer of management.

The potential breach of human rights issue was also raised in the Legislation Review Digest comment on the Act dated 6 December 2004. In that comment the Legislative Review Committee notes that the 'proposed s 41C of the *Crimes Administration of Sentences Act* 1999, allows children to be detained with adults on the recommendation of the Review Council on alternative grounds to the best interest of the child'.²¹

Although Australia maintains a reservation to the provisions of Article 37 C, Convention on the Rights of the Child (CROC) this relates to the geographic considerations rather than to a disregard of the 'bests interest of the child' principle. The transfer of Kariong to adult corrections and the introduction of associated powers including the use of dogs and solitary confinement seriously undermine this principle and the capacity of the NSW government to observe international human rights obligations

Conclusion

Passing the management of juvenile justice facilities to adult prison management contravenes one of the key aims of the juvenile justice system, that is 'turning young

¹⁸ Article 3, *United Nations Convention on the Rights of the Child*.

¹⁹ Article 37[3], *United Nations Convention on the Rights of the Child*

²⁰ Article 40, *United Nations Convention on the Rights of the Child*

²¹ Legislative Review Committee, *Legislation Review Digest, No17-6 December 2004*, Parliament of NSW, p8.

offenders away from a life of crime'. The Act offends human rights principles, acceptable standards of judicial and ministerial oversight and contains negative unintended consequences.

Transferring management to adult corrections goes against the reform agenda that the Juvenile Justice system has been working towards since the Ombudsman's Inquiry into Juvenile Justice 1996. This positive reform agenda of the Department of Juvenile Justice is put at risk by the Act, which signifies both a winding back of the clock in regards to best practice and a failure of responsibility by the Minister.

NCOSS maintains its opposition to the transfer of Kariong to the Department of Corrective Services.