

CORRECTED

REPORT OF PROCEEDINGS BEFORE

SELECT COMMITTEE ON JUVENILE OFFENDERS

At Sydney on Wednesday 9 March 2005

The Committee met at 9.30 a.m.

PRESENT

Reverend the Hon. Dr Gordon Moyes (Chair)

The Hon. C. E. Cusack

The Hon. A. R. Fazio

The Hon. C. J. S. Lynn

The Hon. E. M. Roozendaal

The Hon. Dr P. Wong

CHAIR: For the sake of media here this morning, this Select Committee on Juvenile Offenders has previously resolved that the press and public be admitted to proceedings of the Committee, and that the media may broadcast sound and video excerpts of its public proceedings. In accordance with the Legislative Council guidelines for the broadcast of proceedings, only members of the Committee and witnesses may be filmed or recorded. People in the public gallery should not be the primary focus of any filming or photos. In reporting the proceedings of the Committee, you may take responsibility for what you publish or what interpretation is placed on anything that is said before the Committee.

DAVID WILLIAM JOHN SHERLOCK, Director-General, Department of Juvenile Justice, 477 Pitt Street, Sydney, and

PETER JAMES MUIR, Assistant Director-General, Operations, Department of Juvenile Justice, 477 Pitt Street, Sydney, sworn and examined:

CHAIR: In what capacity are you appearing before the Committee—as a private individual or as a representative of an organisation?

Mr SHERLOCK: As a representative of the Department of Juvenile Justice.

Mr MUIR: I am appearing as the Assistant Director-General.

CHAIR: If you should consider at any stage during your evidence that certain evidence or documents you may wish to present should be heard or seen in private by the Committee, the Committee will consider your request. However, the Committee or the Legislative Council may subsequently publish the evidence if it decides that it is in the public interest to do so. Mr Sherlock, do you wish to make a statement?

Mr SHERLOCK: Yes. I thank the Committee for the opportunity to provide evidence at today's hearing. With me today is Mr Peter Muir, Assistant Director-General, Operations, of the department. The department has provided to the Committee a detailed submission. Members would be aware of that. In doing so, we have sought to provide factual information concerning the department's legislation, our plans, policy direction and operations. We have provided more specific information concerning the department's custodial services, with particular attention to Kariong Juvenile Justice Centre.

The submission provides context. In providing it, we have not sought to address in detail the terms of reference for this inquiry. We believe that this can be achieved in a more interactive manner through our appearance today. I would like to make some very brief comments about the environment in which the department operates and the very significant challenges that we face in providing services to young people in detention. Our detention centres accommodate only 7 per cent of the young people the department works with—currently a total of 300 young people in detention. Kariong represents 10 per cent of this group, or less than 1 per cent of the department's total client group.

The challenges for the department are many. They include the need to maintain a safe and secure environment and to engender community confidence in our policy and operations. They also include the need to promote the rehabilitation of young people with the ultimate goal of reducing offending. These are no easy tasks, and commentary on the department's operations often reflects a simplistic approach to what are very complex issues. The Committee will be well aware of the very recent public portrayal of youth lawlessness in the community in a number of locations, posing significant challenges for the police in managing those situations. It is the more sophisticated and damaged of these young people that the department's staff are required to manage on a daily basis. I have the highest regard for the commitment and the professionalism of the great majority of the department's staff in undertaking this work.

It is our belief that security and control can coexist with effective casework and rehabilitation. Indeed, each requires the other. Our priority is to ensure at all times the safety and security of our centres, and constructive work with young people can only occur in such an environment. We also believe that the dynamic security of centres is best achieved through positive interaction between staff and detainees. Our submission outlined in some detail how we meet these requirements, and includes some of the research that underpins our approach. I welcome questions from the Committee. On some issues I may seek Mr Muir's assistance given his specific role in operational management.

CHAIR: Mr Muir, do you wish to make a statement?

Mr MUIR: No.

CHAIR: We have your submission, which is very detailed and most helpful. You made mention of the fact that you have a rehabilitative task as well as a custodial task. How confident are you at keeping the balance between the two?

Mr SHERLOCK: It is a constant challenge for the department to maintain that balance. I guess we see a range of views about where that balance should be achieved. People have differing views about what end of the spectrum we should be focusing on, whether it is purely a safety and security focus, one about control. There are others at the other end of that spectrum who seek to have a very strong focus on rehabilitation but perhaps less focus on safety and security. Our view is that we have great confidence in our ability for those two competing issues to coexist. We believe that we have been successful over recent years in particular in achieving that balance, and the way in which we have undertaken that is outlined in our submission.

CHAIR: I ask not out of idleness but early in my life I was a parole and probation officer and I lived with that for a long period of time. That balance is very difficult. Do Government members have any questions?

The Hon. AMANDA FAZIO: We do not have any questions at this time. We will have some a bit later.

The Hon. CATHERINE CUSACK: I take you to the section of your submission regarding the inquiries that have been held into Kariong over the years, in particular the 2002 Dalton Johnston review of Kariong. I understand that this was a very significant review of the centre. I see that Lou Johnston was retained to oversee the implementation of the recommendations.

Mr SHERLOCK: That is correct.

The Hon. CATHERINE CUSACK: Can you explain what the qualifications of Lou Johnston were?

Mr SHERLOCK: Perhaps Mr Muir may have that.

Mr MUIR: In terms of formal qualifications, I am aware that Ms Johnston holds a degree in social work. I am not aware of other formal qualifications. I could not answer without going into further details, but if you want more information we could take that on notice. In terms of her work experience, Ms Johnston was a very experienced operational manager in juvenile justice centres, both at Reiby Juvenile Justice Centre for many, many years and then at the Worimi centre at Newcastle until its closure.

The Hon. CATHERINE CUSACK: But her area of expertise is basically in terms of programs for young offenders for rehabilitation and those sorts of things, as I understand it.

Mr MUIR: No. Her experience is very broad ranging, not just in programming. She has very broad experience in operational management.

The Hon. CATHERINE CUSACK: Given the riots and the history of incidents at Kariong, did you have anybody with a background in security assisting the centre following the 2002 Dalton report?

Mr SHERLOCK: Shortly after Mr Dalton's review we appointed a new manager at Kariong. His name is Ray Wiley. He has an extensive background in security, both in juvenile and adult correctional facilities. He was charged, very much, with leading the implementation of the recommendations from Mr Dalton's and Ms Johnston's report.

The Hon. CATHERINE CUSACK: Was it part of his performance agreement to implement the recommendations?

Mr SHERLOCK: He does not have a formal performance agreement as such. The only officers that have formal performance agreements are SES officers. Certainly, there were very clear

expectations of him in terms of his role description and expectations communicated to him by me personally, by Mr Muir and by his direct supervisor, Suellen Lembke.

The Hon. CATHERINE CUSACK: I understand he was contracted to work for an initial twelve-month period.

Mr SHERLOCK: No, he was not. He was substantively appointed to the position.

The Hon. CATHERINE CUSACK: Did the terms of his appointment relate at all to the implementation of the Dalton report?

Mr SHERLOCK: The terms of his appointment were such that he was appointed as the manager of the centre. Clearly, that was in the context of Mr Dalton's report, because it immediately followed that report. He was not employed specifically to implement the recommendations of that report; he was appointed to manage the centre in all its aspects and in all its requirements. A key requirement of that, quite clearly, was the implementation of Mr Dalton's report, given the time of his appointment.

The Hon. CATHERINE CUSACK: It was accountable in that process to Suellen Lembke.

Mr SHERLOCK: He was directly accountable to her, yes. But, as I said before, both Mr Muir and I communicated very directly with him about the priorities that existed at the time of his appointment.

CHAIR: Did he not have a direct line of accountability to you, as director?

Mr SHERLOCK: Ultimately, Mr Chair, he did. But, at a later stage, more recently, leading up to the changes at Kariong and its transfer to the Department of Corrective Services, there were some changes in the reporting arrangements. But, at the time that he was appointed, his direct supervisor was Ms Lembke.

The Hon. CATHERINE CUSACK: Was Sue Ellen Lembke providing quarterly reports to you on the implementation of those recommendations?

Mr SHERLOCK: I think, from memory, they were quarterly. Certainly, regular reporting was required, yes.

The Hon. CATHERINE CUSACK: Were those reports satisfactory?

Mr SHERLOCK: The reports indicated varying progress at various points in time, and clearly the implementation of those recommendations was a huge challenge, both for Kariong and the department generally.

The Hon. CATHERINE CUSACK: Were you satisfied that that challenge was being met?

Mr SHERLOCK: I was not totally satisfied at all times, no. That is not necessarily a reflection on Mr Wiley. It was a feature of a wide range of issues that were impacting at that particular time, and indeed as seen in the history of Kariong.

The Hon. CATHERINE CUSACK: You are getting reports that are not satisfactory, you can see there are problems there, and you are not holding the local managers accountable for that. Is that because you say they were things they could not control?

Mr SHERLOCK: They were certainly being held accountable. This is not something that could be achieved in a matter of weeks, or indeed months. The change required at Kariong was extremely significant. I think members of this Committee would be well aware of the history of Kariong, the many deficiencies in the operations of Kariong, ranging from the physical environment to the entrenched attitudes of some staff, and not least the very challenging client group found at Kariong.

The Hon. CATHERINE CUSACK: One of the recommendations related to the need for a clear system of rewards and punishments at the centre; that there was a lot of inconsistency and there needed to be a clear system. Surely that is something that can be quickly implemented. It is not a cultural problem.

Mr SHERLOCK: It is directly related to a cultural problem. Indeed, the implementation of any significant change in Kariong was in the context of very significant cultural problems, and they are well documented not only by the department but by the Ombudsman and the Council on the Cost and Quality of Government. They have been documented extensively. That is the environment that we faced at Kariong in implementing those changes.

The Hon. CATHERINE CUSACK: Could you describe those cultural problems to the Committee?

Mr SHERLOCK: Yes. I am sure Committee members would have read our submission. They are also documented in reports from the Ombudsman and other sources. But, in simple terms, a significant number of staff at that centre had very entrenched attitudes in terms of how young people should be managed at that centre. Many previous attempts to implement reforms at that centre had been unsuccessful. Again, that has been documented. Those problems were, really, about attitudes held by some staff—I certainly do not say all staff, but a significant number of staff—in relation to how young people should be managed. I refer to my earlier comments about the balance we seek to achieve between safety and security and rehabilitation. There were at that centre a number of staff whose view was that control and security were the only imperatives and that rehabilitation was something that was not desirable, certainly something that they did not seek and work towards.

The Hon. CATHERINE CUSACK: Can you tell us where that is documented in the submission?

Mr SHERLOCK: It has been documented to the extent that, in general terms, I have alluded to cultural difficulties at Kariong. I cannot take you to a page immediately. But I think we have outlined reports from the Ombudsman on two occasions, the Council on the Cost and Quality of Government, and indeed Mr Dalton's report. If you have read Mr Dalton's report, you will know he certainly referred to the entrenched attitudes of a number of staff in that centre.

The Hon. CATHERINE CUSACK: So the issue of security was a major sticking point of conflict within the centre?

Mr SHERLOCK: No. The issue of rehabilitation was a major sticking point.

The Hon. CATHERINE CUSACK: I have in front of me the recommendations of the Dalton report of 2002. The first one is for clear penalties for abusive, indecent and threatening language to staff and other detainees. Can you say that recommendation was implemented at Kariong? It seems fairly straightforward.

Mr SHERLOCK: I might ask Mr Muir to answer the question in terms of the program work that we did at Kariong, and what precisely we did put in place.

Mr MUIR: Mr Chair, if I may backtrack a little. There was a clear system of rewards and punishments implemented. There was a program predicated. Following the review the department accepted the recommendations of the review that Kariong should essentially be broken up into three streams. One was a specific behaviour management unit, which was called Carinya. The second was the units specifically for young people there are on serious indictable offences. The third was a transitional unit. The majority of the most aberrant behaviour was in young people who were residing in the Carinya unit. That unit had a system that was predicated on directly addressing the behaviour that put young people in Kariong, that is, abuse of staff, abuse of other detainees, and violence. Young people were put on individual behaviour management plans, and their rewards and punishments were directly related to their response, to their behaviour and to their willingness to address that behaviour.

CHAIR: Ms Cusack asked how consistent were staff.

Mr MUIR: The feedback that we had from our reviews is that there was great staff inconsistency. Some staff were very willing to address the sort of behaviour to which the honourable member refers; some staff were unwilling to address it. In our interviews with staff at various quality reviews throughout the period, it became apparent, from talking to other staff members there, that some staff felt particularly supported by staff who were willing to draw boundaries and to maintaining those effective boundaries. There were other staff members there who were not willing to maintain effective boundaries and where some of that behaviour was let go. The department systems around that are very clear: Where young people engage in inappropriate behaviour, there is a system of misbehaviour which can, and does, result in young people being confined.

The Hon. CATHERINE CUSACK: Were their clear penalties for abusive, indecent and threatening language to staff and other detainees?

Mr MUIR: Clear penalties are provided for under the Act and are regularly implemented, and young people are dealt with under what the legislation calls minor misbehaviour, which results in formal punishment under the department's punishment regime.

The Hon. CATHERINE CUSACK: What was the clear penalty for abusive, indecent and threatening language to staff and other detainees?

Mr MUIR: The legislation stipulates a range of penalties, from caution to confinement. The administration of those penalties is a matter for the people on shift, on a day-by-day basis, and to deal with each situation as they see fit. There are no riding instructions from the department prohibiting any or all of those legislated punishments.

The Hon. CATHERINE CUSACK: The recommendation is for clear penalties. I do not find your answer to that question very clear as to what the penalty was that was implemented at Kariong.

Mr SHERLOCK: Could I comment, Mr Chair? Mr Muir has indicated those penalties are covered in legislation. They are outlined very clearly in our submission. There are a range of penalties. No two situations are alike. Obviously, the circumstances of any particular offence or instance of misbehaviour need to be taken into account. There are a range of penalties contained in the legislation, and the department, after considering and taking into account the circumstances of any particular incident, will determine what is the most appropriate penalty in those circumstances.

The Hon. CATHERINE CUSACK: That is not identified in your submission. Your submission does not address the terms of reference of this inquiry, and that presents a problem in trying to puzzle out, from your submission, the responses to the inquiry.

Mr SHERLOCK: Can I say, Mr Chair, that they are covered in the submission.

The Hon. CATHERINE CUSACK: What was the penalty for abusive, indecent and threatening language?

Mr SHERLOCK: In which particular incident?

The Hon. CATHERINE CUSACK: In Kariong. It says there need to be clear penalties for abusive, indecent and threatening language. I can tell you what the penalties are now that Corrective Services are there. But I am asking you: What was the clear penalty, recommended in 2002, that was implemented at Kariong?

Mr SHERLOCK: Mr Chair, I think we have answered the question. The answer is very clear. There are a range of penalties available to the department. The actual penalty at any particular time will depend on the circumstances surrounding that particular incident.

The Hon. CATHERINE CUSACK: Another 2002 recommendation was that the electronic systems at Kariong not be overridden for the purposes of leaving doors open, for example, gate 2 in

units. Was that recommendation implemented? We have a general statement in your submission that many of the recommendations have been fully or partially implemented.

Mr MUIR: I am aware that the manager of the centre gave clear instructions about the implementation of that particular recommendation. I am also aware that on occasions staff have disregarded that, and the department has in fact at various times pursued a range of options in relation to that, which have been from performance management of staff who have failed to follow that recommendation, up to disciplinary action of staff who have failed to follow that recommendation.

The Hon. CATHERINE CUSACK: Was the recommendation that detainees wear overalls during visits implemented?

Mr MUIR: Overalls are at Kariong where it has been the view of anyone, from the centre manager to the unit co-ordinator delegated to oversee visits, or even indeed non-contact visits, that the use of overalls was appropriate, and that option was available.

The Hon. CATHERINE CUSACK: So it was available as an option, rather than a requirement, that detainees wear overalls during visits? The report recommends that detainees should wear overalls during visits. It is a pretty clear-cut matter: either they are wearing overalls, or they are not. It seems to me to be a recommendation that can be implemented immediately.

The Hon. AMANDA FAZIO: It could have been. We are talking in the past tense, remember.

The Hon. CHARLIE LYNN: He has not answered the question yet.

The Hon. CATHERINE CUSACK: Was that 2002 recommendation that detainees wear overalls during visits implemented?

Mr MUIR: Did all detainees wear overalls during visits? No. where it was adjudged, through the department's intelligence mechanisms, that there was a risk, then that was implemented. We took the view that it was not necessary in every case, because not every detainee posed a risk of introducing contraband to the centre.

The Hon. CATHERINE CUSACK: In terms of the progress in implementing the Dalton report recommendations, what exactly was being implemented? Was it actually the 2002 recommendations, or was it another version of the recommendations that was being implemented?

Mr SHERLOCK: The recommendations being implemented were Mr Dalton's recommendations. I think, from memory, there were something like 16 recommendations. The department endorsed, I think, 14 of those and a very clear plan of action was put into place to implement those 14 recommendations. I think it is important to understand that recommendations are just that—recommendations. The department and the local management at Kariong obviously had significant discussions following that report and the great majority of those recommendations were endorsed by the department. As I said earlier, a process was put in place to implement them.

The Hon. CATHERINE CUSACK: Did you endorse the recommendation that there be high standards of personal hygiene and appearance, with a requirement that all detainees shave daily?

Mr MUIR: The matter of daily shaving was one the department has to look at in terms of other obligations the department has in terms of the Australasia Juvenile Justice administrator's national standards. We had issues put to us from people such as the Ombudsman as to whether or not a universal enforcing of shaving posed a security risk. Were standards of hygiene addressed by the centre management? Yes. Very substantial improvements were made over the period of time. As with any residential facility, these happened with varying degrees of success and they are, to some extent, dependent on how vigilant staff are on a day-by-day basis about maintaining those standards. Detainees were properly dressed, hygiene was very clearly a part. We referred earlier to the system of rewards and sanctions and personal hygiene was very clearly linked to the system of rewards and sanctions.

The Hon. CATHERINE CUSACK: They did not have to shave every day?

Mr MUIR: I am not aware of anyone who did not shave every day, but I am yet to be given an argument that shows me that someone shaving everyday poses a risk to the security of a detention centre.

The Hon. CATHERINE CUSACK: Removal of covers over lights and observation windows in cabins, was that implemented?

Mr MUIR: Not entirely, and indeed on some of my inspections there and in some of the Director General's inspections there that was regularly reinforced by both of us on our visits to the centre.

The Hon. CATHERINE CUSACK: Detainees confined for minor misbehaviour, not to be released early unless in exceptional circumstances and, in any event, not until the confinement room has been thoroughly cleaned by the detainee?

Mr MUIR: There are matters in terms of legislation and that particular recommendation conflicts with legislation which permits unit co-ordinators in the department to review punishments, and indeed in terms of sound behaviour management, to just impose a universal sanction that gives no latitude for people on shifts to make decisions about the safety of their shift and the most appropriate way for dealing with a young person, is something we do not accept. The legislation says that punishments may be reviewed and our staff are quite rightly able to exercise their legislated discretion.

The Hon. Dr PETER WONG: Do you agree that Kariong, under the management of the New South Wales Department of Juvenile Justice, has failed? If it has, who is responsible?

Mr SHERLOCK: I think the history of Kariong, both under the Department of Juvenile Justice and previous administrations, is well documented. Certainly, it has not been possible to implement the requirements that we would have wished to implement at Kariong, nor has it been possible under previous administrations. That centre and its operation has been well documented by the Ombudsman, by the Council on the Cost of Government, by Mr Dalton, and indeed it was our very significant efforts to implement some very significant reforms after Mr Dalton's 2002 report that led to an escalation of opposition from a number of staff that became very public, very political, and ultimately led to the transfer of the centre to the Department of Corrective Services.

So the department has documented that history in our submission. We do not step away from that. That history is very clear; there were many problems, and from the day the centre opened until the day that it closed it was riddled with difficulties and problems, and ultimately the Government made a decision that it should be transferred.

The Hon. Dr PETER WONG: Have you been back to Kariong since the changeover to the Department of Corrective Services?

Mr SHERLOCK: No, I have not. It is not part of my administration. The Minister has visited the centre in the context of her general concern about young people in the juvenile justice system and the impact that Kariong has on those young people, and the Minister has personally been to the centre. I have no formal role in relation to Kariong; it is under the administration of the Commissioner for Corrective Services.

The Hon. Dr PETER WONG: As an academic, as an administrator, as someone in charge of juvenile justice, will you not be interested to go back and have a look at whether it has improved, whether it has deteriorated or whether there has been no change?

Mr SHERLOCK: Yes, indeed, I will be interested. In fact, the Commissioner for Corrective Services has invited me to do exactly that. Since the transfer of the centre I have been on a period of leave; there have been a number of other matters that we have had to deal with and I also thought it was important for there not to be any confusion about the administration of the centre, who was

responsible for it, and I thought that it was appropriate to leave it for a discreet period of time before I visited the centre again. But it is certainly my intention to do that.

The Hon. Dr PETER WONG: Will the Department of Juvenile Justice be handing over more detention centres to the Department of Corrective Services as a result of the Kariong experience?

Mr SHERLOCK: That is a matter for the Government, not the department.

The Hon. Dr PETER WONG: Given your submission recognises that two major child welfare legislative reform packages of the last century were intended to reduce the number of children in the care system entering the juvenile detention system, do you think that your department has achieved anything in that regard, given the 2003 New South Wales Young People in Custody Health Survey found that more than one in three male inmates and 40 per cent of female inmates had been in the care of the State as children?

Mr SHERLOCK: I assume the honourable member is referring to the role of the Department of Community Services rather than the Department of Juvenile Justice. The young people that are coming to our detention centre environment, or indeed into any service system that we provide, come in through a court process, with the exception of youth justice conferencing where it may be through a police referral. That custody health survey, which is the first undertaken, gives very important and critical information about the needs of young people in our system, I agree. The point I am making in relation to that is that the young people coming into our system are there largely because of failures in many other environments, and whilst I am not wanting to attribute responsibility to any agency or any individual in relation to that, quite clearly the department has very limited control over the young people coming into its system.

We do, at times of court processes, advocate, where we believe it is appropriate, for bail options for young people, for various other community-based accommodation in an effort to keep people out of detention. However, ultimately the decision is one for the courts and the department takes those young people into its care and, as we have outlined in our submission, we use our very best endeavours to work with those young people to try to make sure that they do not in fact return and that they do not continue to reoffend.

The Hon. Dr PETER WONG: How many of the detainees in Kariong have been or are presently in the care of the Minister for Community Services?

Mr SHERLOCK: I think we have that number. If I could come back to that.

The Hon. Dr PETER WONG: I understand your department has previously made comments about children remaining in custody for welfare rather than for justice reasons. Can you elaborate on this point?

Mr SHERLOCK: I think if we go back to the child welfare legislation of 1939, prior to the 1987 legislation, there were many young people detained in custody for what one would regard as welfare reasons, particularly young women. They were charged with being exposed to moral danger, with being uncontrollable, and the numbers in detention—and I managed detention centres in the late seventies—I can recall something like about 1,500 young people being in custody at that time. Now we have seen significant change since then and, as our submission indicates, we have moved from a welfare model to a justice model and we now have only 300 young people in detention. They are there mostly for significant, if not very serious, criminal offences; they are not there for welfare-related matters.

However, it is important to acknowledge that many of them have had a background which involves child abuse, domestic violence, poor education, health deficits: all those things that are listed in the custody health survey are evident in our detainee population. But they are not there because they have run away from home or they are living with their boyfriend or something similar where we saw, up until the 1987 legislation, many young people detained in custody for those very reasons. Could I just come back to the honourable member's question about the number of young people in Kariong?

The Hon. ERIC ROOZENDAAL: You could take it on notice.

Mr SHERLOCK: Perhaps if we could take it on notice. I have some information here about the whole department, but not necessarily Kariong.

CHAIR: While you are taking a question on notice, I am trying to bring together some of Ms Cusack's questions before. In November 2002 the Vern Dalton report made a number of recommendations and in 2004 Mr Dalton repeated much of the criticism of the 2002 report, indicating that it had not been implemented. Could the department provide the Committee with details of what changes were made subsequent to 2002, including specific information on the implementation of each of those recommendations?

Mr SHERLOCK: Certainly, we could provide that in writing to the Committee.

CHAIR: I do not think we need to go through each recommendation word by word to get off-the-cuff responses, but if you could provide that written information?

Mr SHERLOCK: Certainly.

The Hon. Dr PETER WONG: Given the 2003 New South Wales Young People in Custody Health Survey shows that 84 per cent of detainees reported symptoms consistent with clinical disorder and 20 per cent with schizophrenia, surely holding such a significant number of these young people actually degrades the chance of rehabilitation of a few normal young people there through creating a disturbed and dysfunctional environment, does it not?

Mr SHERLOCK: It certainly does, and it presents major challenges for the department. Going back to my introductory comments about the group of young people that we work with, can I say that there have been some significant improvements in our ability to manage those particular issues and in 2003 what was then the corrections health service and now justice health took over responsibility for the management of health and nursing services in the Department of Juvenile Justice detention centres. Prior to that they had been responsible for the provision of those services in the adult system. That has led to a range of enhancements in terms of specialist services available to the department, in particular in relation to mental health services, and I believe we are now in a better position to be able to address the needs of young people in that context. But the honourable member is quite correct in saying that it makes it very difficult for the department to manage young people in detention when they are presenting with those sorts of needs.

The Hon. ERIC ROOZENDAAL: Mr Sherlock, I will not ask you about the shaving habits of the inmates or anything like that, I will leave that to the other members who consider that important. I am more interested in your views on alternatives to the establishment of juvenile correctional centres. Do you think there are alternatives that your organisation could consider or has considered?

Mr SHERLOCK: Our submission outlines one alternative that we were considering, prior to the transfer Kariong, that was to work towards the closure of Kariong in its current form for all the reasons that I think members of this Committee would be aware. It was a totally unsuitable environment and the department, as outlined in our submission, had a plan to work towards closing the centre and establishing a number of dispersal units, if you like, at other detention centres. That would have meant that we would have had a fresh start, we would have had a suitable physical environment, we would have had an opportunity to select and train appropriate staff to work in those units, and they would have been much smaller.

I believe the experience of bringing together in one centre, particularly an unsuitable physical environment, all the unsuitable—perhaps "unsuitable" is the wrong word; all the very difficult and challenging young people in the juvenile justice system has clearly failed. It is clear for a number of reasons why it has failed, but we have a plan that we were working towards. That is documented in the submission. We had consultants cost that for us. Quite clearly, events developed to the point where the Government felt that the time and cost of those options was not sustainable in all the circumstances. But as an alternative that is one that the department had identified, yes.

The Hon. AMANDA FAZIO: Just to follow on from that: at the lower end of the system where people are coming into their first contact with the juvenile justice system, I know we have youth conferencing, but are there any other measures you are looking at that might enable you to not take children into custody in juvenile detention centres?

Mr SHERLOCK: Firstly, could I say that while the department's primary role is the management and care of young people in our system, we work actively with other State agencies in a crime prevention context at a community level in trying to work with young people at risk and ensure that they do not in fact enter our system in the first place. In addition to the conferencing example that the honourable member has given, at the time of a young person's court appearance we are active in providing background reports for the magistrate or judge. That is information provided to the court that generally will point to a range of options that may be appropriate for that young person. In that context we seek to keep people firstly out of the department's system, out of the juvenile justice system, but, to the extent that they are part of it, to maintain them in a community-based program rather than a detention centre—which all the research, all the literature, indicates very clearly does very limited good for young people relative to what we can achieve in the community.

The Hon. AMANDA FAZIO: I think the last time I spoke to you two gentleman was at an estimates hearing. At that time the department had just announced a revision of the classification system for juvenile offenders.

Mr SHERLOCK: Yes.

The Hon. AMANDA FAZIO: That was probably about six months ago. What has been the result of that new classification system so far as allowing you to better manage inmates is concerned?

Mr SHERLOCK: The system is now implemented in the department. I might ask Mr Muir to talk about some of the detail of the basis for that objective classification system and its impact on, firstly, safety and security in our centres, but more generally on presenting a range of opportunities for young people that may not have been there before.

Mr MUIR: Prior to the implementation of the objective classification system, the department merely had a two-tier system, which said that young people were either A classified, and the definition of A classification required them to be held behind a secure fence at all times; and every other detailing the in the system was B classified. We found it was a major weakness that there was no differentiation in the security levels of detainees. Research was telling us very clearly that if the department wants to understand the risk that detainees posed to staff and to the community, then what is called an actuarial approach to risk assessment provides us with a much firmer basis for assessing that risk than what is referred to in the literature as "clinical judgement"—that is, people making subjective decisions about a range of factors before them.

The department spent a number of years researching this. We engaged what we believed to be one of the foremost experts in the world on classification, Professor James Austin, from George Washington University. The system now provides us with a five-tier stage in which every young person who enters the system is given an initial security rating based on factors such as: the severity of their offence, the number of previous offences and what we know about them previously in terms of past violence, and they are assigned a security classification on the basis of a range of objective factors.

We have worked very hard to make sure that those factors provide the most accurate assessment of the relative risks of detainees entering system. There is the ability within the system to override if people believe the system has not got it right. We now have this five-tier system fully implemented across the organisation. My Manager of Classification, who was formerly Assistant Manager at Frank Baxter, has only given me some very preliminary advice, but, in assessing her own former centre, one of the indications she has given to me is that Frank Baxter Centre is reporting that detainees under this system are able to manage their behaviour much better because it gives them a much more structured approach to reach goals.

For example, a now cannot obtain leave unless they have reached a certain security classification. The pathway before them is now much clearer. As a result, Frank Baxter in the early part of this year has seen a quite significant decline in minor misbehaviour. It is very early days and we really cannot evaluate this until it has been in place for a while, but the very early indications are positive in that it is giving detainees a much better framework for managing their behaviour and is giving us a much better framework for where we locate and how we deal with detainees.

The Hon. AMANDA FAZIO: Under the classification system is there capacity for the classification to be revised both upwards and downwards for individual detainees?

Mr MUIR: That is correct.

The Hon. AMANDA FAZIO: When you are looking at the whole range of issues that help you to determine the classification you give to someone, does the issue of being at risk from, or a risk to, other detainees come into it as well? Or is that a separate management issue?

Mr MUIR: The instrument used after the basic criteria on which we assess everybody includes a range of other factors that should be taken into account—such as known gang affiliations and past institutional violence. I will give an example both ways. Someone who comes in on a very serious offence, but is known to the system as having in the past been an exemplary detainee, may have the ability to be classified downwards. Someone who comes in on a relatively minor offence, but has a known gang affiliation or known past institutional violence, can be also classified upwards.

The Hon. AMANDA FAZIO: Does every centre have the full range of inmate classifications from one to five? Or do you try to keep first offenders segregated from contact with young people who might have had more interaction with the department?

Mr MUIR: The department's basic structure of the centre system is outlined in the submission. We try to keep young people in settings closest to their home environment. The centres placed around the State would largely try to keep young people in the areas from which they originate. For example, west of the Great Dividing Range most of the young people would be contained in either Riverina or Orana; on the North Coast it would be at Acmena; in the Sydney metropolitan area there are some differentiations we would make. For example, Reiby specialises in holding some of the younger and vulnerable detainees; there is also Yasmar and soon-to-be Juniperina for young women; older and more sophisticated detainees are housed at Baxter; and Cobham specialises mainly remandees, young people who come into the system solely on remand.

The Hon. AMANDA FAZIO: Given that you have a policy of trying to keep detainees in the area from which they come in order to facilitate family contact, do you actively do anything to assist that process? The Committee undertook a site visit to Kariong the other week and I took particular note of its location. One thing that came to mind was that if parents wishing to visit an inmate there did not have a car they would have to walk a very long way to get there. Does the department do anything to facilitate the maintaining of contact? I do not refer only to transport services. Do you arrange videoconferencing and that sort of thing?

Mr MUIR: The department channels a significant amount of funds into what we call family assistance. I have the figures for the financial year 2003-04. We budgeted for an amount in excess of \$90,000 to assist families to visit. That assistance is in the form of direct travel assistance. For example, some families who may have a car but not the means to travel long distances will be provided with assistance to buy petrol on a formula basis; those who require public transport will be given assistance for public transport; and families required to travel long distances will be provided with support for accommodation if that is appropriate, again on a means-tested basis. We are also increasingly using the video conferencing facilities that are located within each of the centres to assist families to stay in contact.

Of course, the Arunta telephone system, which is also for security, gives detainees greater flexibility. Whereas, in the past we have a system that telephone calls from detainees were made only on certain days, detainees are now free to call their families, within centre routines, pretty well when they want. They have an allocated number of calls per week but they are given much greater flexibility to telephone their families than they used to have.

CHAIR: I just want to take up one of the points that the Hon. Eric Roozendaal raised with you, Mr Sherlock. You may wish to take this question on notice. You indicated that the department has been considering other alternatives. Did you employ any consultant to look at suggested alternatives and did he make any comparative financial projections on the various alternatives? Do you want to take that question on notice?

Mr SHERLOCK: I can answer the question generally at this time. At page 89 of our submission reference is made to a review by Fish, Payne, Pattenden, Viney Pty Ltd, Consultants. The department contracted those consultants to look at a number of options in relation to Kariong. I think, from memory, they considered a number of options which were around, firstly, reconfiguring the centre on the current site and, secondly, rebuilding a new centre on that site. The third option, which was the option that the department favoured, was establishing a number of small units at several other detention centres to accommodate perhaps 10-12 detainees in each of those units and some costings were provided on that. Certainly the department did some work on a proposal around that and costed it fully. This was at a time when the events at Kariong were becoming very public. There was clearly community concern generated that the Government needed to respond to, and the Government did that by making a decision to transfer the centre to the Department of Corrective Services.

CHAIR: Can the Committee have a copy of the report?

Mr SHERLOCK: Certainly, Mr Chair, yes.

The Hon. CHARLIE LYNN: In your introduction you referred to entrenched attitudes of staff. Would you like to elaborate on what you meant by that?

Mr SHERLOCK: At an extreme, there are some staff—and I stress some—because I also said in my introduction that I had absolute confidence in the great majority of staff in the Department of Juvenile Justice and their commitment and the professional way in which they work. However, there are, as you would find in many organisations, unsuitable staff and there are some staff whose attitudes are such that, quite simply, they should not be working in an organisation like the Department of Juvenile Justice. They have a view that when young people are placed in detention that is an opportunity to further punish them and certainly to the extent that their behaviour is unacceptable, that is appropriate, but the legislation indicates quite clearly that being placed in detention in itself is the punishment.

Being deprived of your liberty for a young person is a very significant penalty. It is not an opportunity for staff in the department to further punish young people in a general sense unless their behaviour warrants that punishment and, as I said earlier, the legislation again outlines a clear range of penalties which we expect people to impose. There are, unfortunately, staff who, on occasions, will seek opportunities to be very punitive in their approach to young people and the department expects a high standard of behaviour and discipline in its centres. However, we do not condone unsatisfactory behaviour on the part of staff towards young people, in the same way that we certainly do not accept unacceptable behaviour by young people towards staff.

The Hon. CHARLIE LYNN: We had an incident at a previous hearing where one of these staff members apparently corrected one of the young blokes in the centre and he was punched on the nose. I understand that he was then—

CHAIR: Charlie—

The Hon. CATHERINE CUSACK: The incident was referred to in the report that was tabled.

The Hon. AMANDA FAZIO: Yes, I think it was actually raised in estimates as well.

The Hon. CHARLIE LYNN: That staff member had to apologise to the inmate for saying something that upset him. Is that unacceptable behaviour by the staff member?

Mr SHERLOCK: I do not have the full detail of that with me but I do have a general understanding of that particular incident. There are conflicting views about what occurred. There was a process in attempting to mediate what had occurred there and my general understanding is that the staff member acknowledged that his behaviour at the time contributed to what occurred. He was not, as I understand it, asked to apologise to the young person concerned. That is something that he did freely. I accept that. I think that staff member, in giving evidence to a previous committee, gave evidence that was somewhat different to that.

But what I can say is that there are processes at times in centres where there is conflict between staff and young people. You would expect the department to take action wherever possible to try and mediate the dynamics of those situations. These people have to exist alongside each other, day to day. You cannot treat incidents in isolation and to the extent that there were dynamics around that particular incident, the department attempted to deal with it. The way in which it was reported, I believe, is not consistent with the facts. I do not have the facts with me, but it is not representative of some policy by the department; that quite clearly does not expect a staff member, who is punched, to apologise, and I do not think that was the case in this particular incident.

The department does do everything in our power to maintain a harmonious working environment in the centres and there are occasions when, quite clearly, detainees, often without being requested, do apologise to staff for their behaviour. That is a good thing. This particular issue, I think, is one that has not been accurately reported. That is all I can say at this stage.

The Hon. CATHERINE CUSACK: How did you investigate that matter when it became a public issue?

Mr SHERLOCK: I do not recall the detailed circumstances of how it was investigated. I am not quite sure what the question is alluding to.

The Hon. CATHERINE CUSACK: Just in terms of the conflicting information; it is highly publicised, the Minister is being asked questions about it: as director-general, how do you ascertain the facts as to what occurred?

Mr SHERLOCK: My recollection—and it is only a recollection, I could be wrong—is that this staff member was interviewed in relation to what occurred. He gave a particular version of events. I understand that comments he had made—

The Hon. CATHERINE CUSACK: I am sorry to interrupt, but I am asking not so much the version that occurred but how you got your information. Does that come from the centre manager, the regional director or would you have someone separately investigate the incident so that you can be confident when you are advising the Minister that these are the facts.

Mr SHERLOCK: It would depend on the circumstances. Again, I do not recall precisely what occurred in relation to this but a lot of information comes to me from various sources. Where there are disciplinary matters, they are investigated independently, usually independently of the department; if not, by one of the investigators in the department's professional conduct unit. That report comes ultimately to me and I make a decision about appropriate action if it is an issue about the conduct of a staff member.

The Hon. CATHERINE CUSACK: Has Suellen Lembke been working in that professional conduct unit?

Mr SHERLOCK: She did assist there for a short period of time. My recollection is that it was late last year, I think, yes.

The Hon. CATHERINE CUSACK: Did she have any role in relation to matters at Kariong in terms of investigations of Kariong staff?

Mr SHERLOCK: I do not recall. Sorry, are you talking about in the professional conduct unit?

The Hon. CATHERINE CUSACK: Yes. I understand two former Kariong staff were investigated in relation to the incident where a sexual act occurred in the visitors centre and because of the highly publicised nature of that, there are a lot of different views in the department about that. I am asking if the former regional director, who was very embarrassed by that incident, was then in the professional misconduct unit overseeing investigations into staff that she would have been blaming?

Mr SHERLOCK: There are a couple of comments I can make in relation to that. I cannot answer your question directly because I cannot recall but, firstly, to say that her role in that unit was an administrative role. Any investigation is an independent investigation. That investigator's report comes to me and I make decisions about it. The particular incident you are referring to—and again I might be incorrect here but I think it is fair to say that disciplinary action was not taken against staff in relation to that particular incident that the honourable member refers to.

The Hon. CATHERINE CUSACK: Let me just correct that. The investigator recommended no disciplinary action be taken and in spite of that recommendation, you wrote to both staff members, saying that disciplinary action would be taken and that they had to show cause—in spite of the clear recommendations of the report against disciplinary action.

Mr SHERLOCK: I do not think it is appropriate to discuss that here in detail because I do not have the information with me.

The Hon. CATHERINE CUSACK: Okay. I am happy to take that on notice.

CHAIR: Can I ask that you provide a written reply to that because it was a highly publicised issue?

Mr SHERLOCK: Yes, but can I say, Mr Chair, that despite the comments of the honourable member, I do not think there was any disciplinary action taken against any staff member in relation to that incident.

CHAIR: Can you put that in writing?

Mr SHERLOCK: Yes, Mr Chair.

The Hon. CATHERINE CUSACK: Can I ask what the budget was for Kariong detention centre prior to its transfer?

Mr SHERLOCK: We will come back to that.

The Hon. CATHERINE CUSACK: I also ask you to take the following question on notice. I refer to the splitting of the departments' budget for detention centres versus non-detention centre services.

Mr SHERLOCK: Perhaps we can take that question on notice.

The Hon. CATHERINE CUSACK: What qualifications did architects Fish, Payne, Pattenden, Viney Pty Ltd have when assessing custodial facilities?

Mr SHERLOCK: Mr Muir might be able to address that issue.

Mr MUIR: I do not have that detail in front of me but I can at least give a tentative answer. They do have experience in the design of custodial facilities. They worked extensively with the Victorian Government in both adult and juvenile settings as well as in the design of police custodial facilities.

The Hon. CATHERINE CUSACK: I refer again to the issue of investigation. In addition to my question about the budget I also request details relating to staffing detention centres versus non-detention centre staffing, and Kariong staffing at the time of its transfer.

Mr SHERLOCK: I think we have it here but perhaps we can take that question on notice.

The Hon. CATHERINE CUSACK: I refer to investigations relating to allegations made in detention centres. I understand that allegations are made all the time—detainees against staff and staff complaining about detainees. I understand that you have in place a system of independent investigations. I refer to an incident at Orana where a staff member was alleged to have given a high five to a detainee returning from court with an outcome that pleased the detainee. What was your means of investigating that complaint?

Mr SHERLOCK: I do not see the relevance of that to this inquiry's terms of reference.

The Hon. CATHERINE CUSACK: I refer to the allegations that have been made.

The Hon. AMANDA FAZIO: I think Mr Sherlock asked the Chair for a ruling as to whether or not that comes within the inquiry's terms of reference.

The Hon. CATHERINE CUSACK: I was about to make a submission relating to that issue. I refer to complaints made at Kariong that are being investigated.

CHAIR: It is another part of the detention centre. Do you want to make a comparison?

The Hon. CATHERINE CUSACK: Absolutely.

CHAIR: I will allow that question.

Mr SHERLOCK: Thank you, Mr Chair.

The Hon. CATHERINE CUSACK: How are those matters being investigated? Have they been successfully resolved? I refer to the Orana incident and to the staff member who gave a detainee a high five. It was indicated, I think by the Minister that that matter was being vigorously pursued. What does that mean? What was the mode of investigation? How could it have been investigated vigorously for a week with an unsuccessful result?

Mr SHERLOCK: The management of the centre made initial inquiries. Based on that I appointed an independent investigator to fully investigate all the allegations that had been made and to interview witnesses, alleged witnesses, or potential witnesses to what allegedly occurred. I expect to receive that report in the very near future.

The Hon. CATHERINE CUSACK: Who was the independent investigator?

Mr SHERLOCK: I do not see the relevance of that question, Mr Chair. It is a person who has been contracted by the department to investigate this matter—a person with considerable experience in similar investigations. I do not see that it is helpful for that person to be publicly identified through this inquiry.

The Hon. CATHERINE CUSACK: I do not understand why you have a problem with referring to the name of the person who is conducting the investigation.

Mr SHERLOCK: What is the relevance of that question?

CHAIR: You could supply that answer in writing and the Committee would ensure that it was kept as part of its in camera evidence.

The Hon. CATHERINE CUSACK: I refer to independent investigators. My definition of the word "independent" could be different to other people's definition of the word "independent". How did those investigators come to be appointed?

Mr SHERLOCK: The department has a number of sources available to it relating to independent investigators. Some of those are contracted through the Internal Audit Bureau, which is not a government agency but which operates as an independent agency. That is one source of

investigators. The department is aware of other investigators who undertake this work on a regular basis for the department, for other government agencies and in the private sector.

The Hon. CATHERINE CUSACK: Do you have panel of independent investigators that you use?

Mr SHERLOCK: In an informal sense we do, yes.

The Hon. CATHERINE CUSACK: Are they really just people that you basically pick?

Mr SHERLOCK: Ultimately, someone has to pick them. I am not quite sure what it is that you are asking.

The Hon. CATHERINE CUSACK: I am trying to understand how these people are identified and how you assure yourself that they are genuinely independent. I have to note that they are suppliers to you, if you like. You are paying these people to investigate.

Mr SHERLOCK: There is no alternative for that unless it is through—

The Hon. CATHERINE CUSACK: Unless another agency outside your organisation paid them. Some would argue that that would give them greater independence.

Mr SHERLOCK: In many cases these investigations are oversighted by the Ombudsman's office. If the allegation relates to the abuse of a young person in a centre the department is required to report that to the Ombudsman. They scrutinise very closely the department's investigation. Many of the investigations fit into that category. Where that is not the case, I am aware of many other investigations where we have sought the involvement of the Ombudsman and the Independent Commission Against Corruption, those agencies have an active role in overseeing our investigation. While we might initially appoint the investigator I would argue that the majority of those investigations are oversighted by the Ombudsman and, in some cases, by the ICAC.

The Hon. Dr PETER WONG: I refer to the Ombudsman's statement IN the Kariong inquiry. What investigation did the department undertake into allegations that certain staff members threatened and intimidated officers from the Ombudsman's office?

Mr SHERLOCK: I am sorry, I am not quite sure to what the honourable member is referring.

The Hon. Dr PETER WONG: I am referring to the Kariong inquiry. The Ombudsman said that certain staff members in his office were threatened by juvenile justice staff.

Mr SHERLOCK: Is the honourable member referring to an inquiry by the Ombudsman into Kariong?

The Hon. Dr PETER WONG: Yes.

CHAIR: I took that as the meaning of his question.

Mr SHERLOCK: Which inquiry was that, Mr Chair?

The Hon. Dr PETER WONG: It was an inquiry that was conducted in 2000. It was quite a recent inquiry.

CHAIR: Was that contained in the Ombudsman's report?

The Hon. Dr PETER WONG: Yes.

CHAIR: It was in the Ombudsman's annual report for 2000. You might like to take that question on notice.

Mr SHERLOCK: I will take that question on notice, yes.

The Hon. Dr PETER WONG: Who were the investigators? Was anyone punished or dismissed as a result of this treatment to officers in the Ombudsman's office? Did you make a full report to the Ombudsman? What was the Ombudsman's response to the report?

Mr SHERLOCK: I refer to the report by the Ombudsman in 2000 and to the 1996 report. The department received correspondence from the Ombudsman in relation to both those reports that indicated that he was absolutely satisfied. I am paraphrasing here, but that is the essence of the correspondence. The Ombudsman was totally satisfied with the department's response to its recommendations. I would be happy to provide to the Committee copies of correspondence relating to both those reports.

CHAIR: On page 79 of your submission you note that between 1987 and 1999 the department undertook quarterly reviews of detention centres. What did the reviews of Kariong show? Can the Committee have copies of the reports relating to Kariong?

Mr SHERLOCK: I do not have that sort of information available here today, but I will seek to obtain it. Some of that quite clearly would have been under other administrations. It would have been prior to the establishment of the Department of Juvenile Justice and it may be difficult to obtain. The department was established in 1993. The material that you are seeking goes back to 1987, so some of that would have been under the administration of what is now the Department of Community Services.

CHAIR: On page 80 you indicated that quality reviews based on Australasian juvenile justice administration standards were undertaken every six months and they include both staff and detainee focus groups. Could you give the Committee those that are appropriate to Kariong?

Mr SHERLOCK: Yes, Mr Chair. Was that for a particular period? We can certainly summarise for you.

CHAIR: I would say over the last three years.

Mr SHERLOCK: Yes Mr Chair, certainly.

CHAIR: You also indicated in your report that you have reports on Kariong from the official visitors?

Mr SHERLOCK: Yes.

CHAIR: Can you supply those over the last three or four years?

Mr SHERLOCK: Official visitors report directly to the Minister, not to the department.

CHAIR: You do not receive copies of them?

Mr SHERLOCK: We do not. The Minister's office may seek advice from the department about matters that are raised in those reports. That should be referred to the Minister.

CHAIR: We will ask the Minister about that. Dr Wong, do you have any questions?

The Hon. Dr PETER WONG: Earlier the director-general referred to rehabilitation and to custodians, which are both objectives of the department. We have concerns about the custodian part of it for security and safety reasons. I refer to rehabilitation and agree with the director-general: it is an important issue. What is the success rate of the department? What is a good benchmark or indicator of that success?

Mr SHERLOCK: That is a difficult question to answer in relation to reoffending and recidivism, as very little research is available in Australia on those issues. The department has a corporate plan with clear goals that it seeks to achieve. As the Government now requires, we also have

a results and services plan, which looks at the results that the department is seeking to achieve. We are happy to provide that material to the Committee. In relation to the ultimate goal, breaking the juvenile crime cycle or reducing reoffending, Australian research goes back for some time. Dr Don Wedderburn from the Bureau of Crime Statistics and Research is currently undertaking research. That is being worked on and it has not yet been finalised.

One of the difficulties with looking at the performance of the juvenile justice system is that once people turn 18, generally if they reoffend they are dealt with in the adult courts and they become clients of the Department of Corrective Services in a number of forms. So the juvenile court data will not necessarily follow young people through into the adult system. That is what Don Wedderburn is seeking to do at the moment. The earlier work that has been done indicates in simple terms that approximately 70 per cent of young offenders only offend once, about 20 per cent offend twice and 10 per cent—the hard end of the system, if you like—are the repeat offenders. That research was done well before youth justice conferencing was brought in, so I guess that complicates the picture somewhat.

A statutory evaluation of the Young Offenders Act has been undertaken which clearly indicates in relation to offences and other issues that young people of similar backgrounds have a much better success rate in not reoffending than those going through a court process for similar offences. That document, which has been tabled in Parliament, clearly indicates strong success in relation to youth justice conferencing and the Young Offenders Act in general, which has three options—warnings, cautions and conferencing. The department is involved in the conferencing option and the police administer the cautions and warnings. A detailed evaluation of the that legislation came into place in 1998. The outcome of that evaluation was very positive.

The Hon. Dr PETER WONG: What results has the Department of Juvenile Justice in New South Wales achieved as opposed to other States or countries?

Mr SHERLOCK: Very limited material is produced relating to that. The Productivity Commission and other bodies have made some comparisons around the rates of detention, the percentage of Aboriginal young people in custody, and those sorts of issues. But there is limited data available. At a national level we have established a minimum data set and performance indicators for juvenile justice right across Australia. That has only been put in place in the last 12 months. That work will enable us, through the Institute for Health and Welfare which is administering the work, to get much better comparisons interstate.

Another point I make in relation to that is that, as indicated in our submission, New South Wales is the only stand-alone juvenile justice department nationally. Other departments fit either with community services, human services, justice departments or corrective services across Australia. It is much more difficult to make some of the comparisons, given the administrative arrangements for juvenile justice elsewhere.

The Hon. Dr PETER WONG: Earlier you made reference to young people with a mental illness. According to some reports about 20 per cent suffer from schizophrenia. You mentioned also the role that the Department of Corrective Services plays in those instances. Does your department have a policy relating to young people who suffer from schizophrenia or psychotic illnesses? What is your management program?

Mr SHERLOCK: The department has in place good screening processes. I will ask Mr Muir to talk about that in a moment. We have a psychological and specialist services section of the organisation, and psychologists in all our detention centres, along with other professional staff, such as drug and alcohol counsellors and counsellors who, deal with offences of a sexual and violent nature. I will just pick up on the honourable member's point about the Department of Corrective Services. The justice health service is not part of the Department of Corrective Services; it is part of the health department. It provides services to the Department of Corrective Services, as it does for juvenile justice. To more specifically answer your question, I will ask Mr Muir to talk about the specialist services that we have in place.

Mr MUIR: The issue of mental illness is one that the department has to face with increasing frequency. We use a number of processes to ensure that every young person entering the system is

thoroughly and comprehensively screened. There is not just one process in place for screening. On admission to the centre every young person is seen by one of our generalist staff and an assessment process is carried out. If there are any obvious signs of concern at that point in time immediate referrals are made. The department, under its own staffing, has what we call a specialist crisis team. Specialist counsellors and psychologists are on call 24-hours a day, seven days a week. They are able to come directly to the centre, if so requested.

Our most senior psychologist, our director of psychological and specialist services oversees that service. Last year the department successfully trialled, and it is now in the process of implementing, a new youth screening instrument. It is called the Massachusetts Adolescent Youth Screening Instrument, or MAYSI. Through that program we ask a number of questions about the wellbeing of a young person, which includes any suicidal ideation and past instances of trauma and abuse. That screening instrument then serves as a mechanism to ensure that the right services are matched to the young person. The next stage of the screening process is that Justice Health provides a very comprehensive health screening, ostensibly within 48 hours of admission. With the majority of admissions the assessments are carried out within 24 hours of admission. Appropriate referrals are then made to psychiatrists, psychologists or other allied health professionals.

CHAIR: Do Government members wish to ask any questions?

The Hon. AMANDA FAZIO: Yes, I have some questions. On page 66 of your submission you talk about the staff make-up for each juvenile detention centre. Could you give us an idea of the typical staff profile in terms of the sort of qualifications that you look for in the staff rather than the number of different levels that you have at each centre? Do you try to have a mix of skills? How do you handle that?

Mr SHERLOCK: We look for people with a wide range of backgrounds and, very importantly, people with appropriate attitudes. Our recruitment process casts a fairly wide net. We see value in people, for example, who have trade backgrounds, who have worked with young people in a recreational context. Several years ago following the review of the department by the Council on the Cost and Quality of Government we upgraded the entry-level requirements for our staff. More significantly, we also put in place a very rigorous screening process for staff coming into the department. We seek a wide range of people. We have information nights at which we provide information about the work of the department. We do not want people who have perhaps a misunderstanding of the nature of the work of the department. We clarify that before people even apply to join the organisation. The process includes firstly a written application. It involves psychological screening, psychological interviews, a selection panel interview and the criminal records checks.

The working with children check is another check. Since we have put the new process in place the staff we have attracted have been from a wider range of backgrounds and, significantly, many of them have tertiary qualifications. That is something we have not seen in the past. The new career structure that we have put in place right across our detention centre system provides career progression. We believe it is far more attractive to staff entering the organisation. They can work through a range of promotional opportunities but, perhaps more significantly, as was recommended by CCQG, there are opportunities for them to move into other streams of the organisation and work perhaps in the community-based services, specialist services or in the administrative support areas. We do not have a narrow focus. We do not have a particular view about the background of people joining us. We seek a broad range and we find that that works best for us.

The Hon. AMANDA FAZIO: In your submission you talk in general terms about the transfer of young people from the Department of Juvenile Justice to the Department of Corrective Services. Could you give us a little detail about the transfer of detainees from other juvenile justice centres into Kariang and from Kariang back out into the normal juvenile justice system? How has that been set up and what experience have you had to date?

Mr SHERLOCK: The process in simple terms I guess is no different from what it was prior to Kariang being transferred to the Department of Corrective Services. Transfer to Kariang from other centres is based on reclassification of a young person. That decision can be made by Mr Muir or me based on a review of the classification and using the instrument that we have. The ability to transfer

someone to Kariong is subject to my approval and the approval of the Commissioner of Corrective Services. It requires both those approvals. If they have been transferred for behaviour management reasons, as in the past, we seek to return those young people once they are more settled back to the centre from which they came. There are essentially two groups of detainees at Kariong, as has always been the case.

One is a group of young people who have been sent there because they have presented management problems elsewhere. The other group are those who are automatically classified as A1 classification because of the nature of their offence. They will generally go directly to Kariong once they are sentenced. At Kariong corrective services staff have a regular case review process operating. They are regularly reviewing the young people at that centre, in particular those who have been sent there for management reasons, with a view to getting them back to the Department of Juvenile Justice mainstream centres. In that process they consult with classification staff of the department. If their classification is going to be downgraded they consult with us about that and we jointly make that decision and the young person can be transferred back to a juvenile justice centre.

CHAIR: Thank you, Mr Sherlock. I think we will move to the last section of questions.

The Hon. AMANDA FAZIO: No, I actually had another question.

CHAIR: I am sorry about that but your time has expired.

The Hon. AMANDA FAZIO: That is pretty rich because I have only asked about four questions today.

CHAIR: Time has expired.

The Hon. CATHERINE CUSACK: Returning to the manner in which the department investigates and reacts and response to incidents in detention centres, taking that Orana case as an example, the high-five case, how long did you wait until you appointed an independent investigator into that matter?

Mr SHERLOCK: From memory, it would have been several days. Preliminary inquiries were made. It is obviously not appropriate to jump to independent investigations until we know something about whether there is evidence or not to be investigated. Wherever possible the department seeks to resolve matters at the local level. Since the Kariong transfer the Minister appointed an independent expert in human resource management to review the investigation processes of the department and look at our industrial relations processes. He has recommended that we look in more detail at the potential to deal with what are regarded as minor matters at the local level, because if we routinely transfer everything into a professional conduct unit there is obviously a time delay.

It is important for staff who are facing allegations to have those allegations dealt with in a timely way. It may simply be that remedial action needs to be taken through counselling or warning of staff at the local level. What Mr Newbery, who conducted that investigation for the Minister, indicated was that the features found at Kariong in relation to some of the human resource and disciplinary matters were not found in other detention centres across the State. It was his clear view that many of the aspects at Kariong that were reported so publicly were indeed unique to Kariong.

The Hon. CATHERINE CUSACK: I think you have described the high-five incident as, by the department's standards, a relatively minor incident in terms of investigations—

Mr SHERLOCK: No, I have not. I have never described it as a minor incident.

The Hon. AMANDA FAZIO: Point of order: I really do not understand what the basis of this high-five incident is in relation to the terms of reference for this inquiry.

The Hon. CATHERINE CUSACK: Mr Chairman, what I am asking about is the means by which those matters are investigated. We are getting advice that what happened at Kariong was because of issues unique to Kariong. We are obviously interested to know about those procedures in relation to other detention centres, hence my question about how this matter is being investigated.

CHAIR: Procedures would be in line.

Mr SHERLOCK: I think I made it clear that an independent investigator was appointed. The report will come to me. I am happy to talk about the department's investigation procedures at any length that you require. But they are based on legislative requirements and they are the requirements that the department meets.

The Hon. CATHERINE CUSACK: It was not a matter that was initially assessed as requiring the appointment of an independent investigator.

Mr SHERLOCK: It was alleged that something had occurred. In a superficial investigation at the local level there appeared to be no witnesses to that event. I then became aware of information that indicated that there were witnesses who had alleged that that had occurred. The moment I became aware of that information I conducted an independent investigation.

The Hon. CATHERINE CUSACK: Did you become aware of that information through the media?

Mr SHERLOCK: No. I did not.

The Hon. CATHERINE CUSACK: How did you become aware of it?

Mr SHERLOCK: That is not a matter that I wish to raise here.

The Hon. CATHERINE CUSACK: It was not from the centre management?

Mr SHERLOCK: No.

The Hon. CATHERINE CUSACK: I can understand your initial assessment that for the centre management it is pretty simple: it happened or it did not happen. Does it concern you that the centre management was unsuccessful in its ability to establish just those simple facts given that you need to rely on them—

Mr SHERLOCK: I think your assumption is that it did in fact happen. We do not know that at this stage. We have people saying it did not happen and we have people saying that they saw something. That is precisely what we are trying to get to the bottom of.

The Hon. CATHERINE CUSACK: We have talked in the past about drugs entering Kariong detention centre. Do you have any concerns about staff in the juvenile justice system dealing drugs in the detention centres?

Mr SHERLOCK: Of course I am concerned about the potential for that to occur. But, as you will see in our submission, we have a range of mechanisms in place that have been put in place since 1999 and the Government's Drug Summit. Funding of the department was provided through that process whereby we have established a unit in our central support office where they are managing a range of strategies to detect drugs in centres. They include random urinalysis of the detainees, regular visits by the drug dog detector teams from the Department of Corrective Services, and monitoring of phone calls from the detainees in detention centres.

CHAIR: Thank you. I will close at this time. There are a couple of other short things we need to do.

The Hon. AMANDA FAZIO: We still have a couple of questions.

CHAIR: I am glad. Your time has expired.

The Hon. AMANDA FAZIO: That is very interesting. I think I will have to ask procedurally that we get a clock for allocation of time in the future for the Committee secretariat.

CHAIR: Time has been allocated by the clock on the wall. It is provided for us.

The Hon. AMANDA FAZIO: No.

CHAIR: You can see it quite clearly from where you are. If you cannot count minutes—

The Hon. AMANDA FAZIO: It is your timekeeping that I am not satisfied with. We need to have a fair allocation of time.

The Hon. ERIC ROOZENDAAL: With respect, Mr Chair, I do not think it is the issue of our seeing the clock; I think it is a matter of how you see the clock, frankly.

The Hon. CATHERINE CUSACK: Mr Chairman, perhaps we could recall the witnesses so that the Government members and others else who have further questions can have another opportunity to pursue those questions?

The Hon. AMANDA FAZIO: That is a matter to consider in a deliberative meeting. I thought you would have been around here long enough to have understood that by now.

The Hon. CATHERINE CUSACK: I am simply making the point that there is another way to deal with this matter.

The Hon. CHARLIE LYNN: She is trying to answer your concerns.

The Hon. ERIC ROOZENDAAL: No, the concern is over the apparent bias in the way the time has been allocated so far.

The Hon. CHARLIE LYNN: That is your view.

The Hon. CATHERINE CUSACK: Perhaps that is also a matter for a deliberative meeting.

The Hon. AMANDA FAZIO: I think something needs to be placed on the public record.

The Hon. ERIC ROOZENDAAL: I think it is.

CHAIR: I have a minute-by-minute record of everybody's questions and the time allocated to the crossbench, to the Government and to the Opposition.

The Hon. AMANDA FAZIO: It will be interesting to see how that compares with the transcript when we get a chance to check it against it.

CHAIR: Exactly. We have an opportunity.

The Hon. AMANDA FAZIO: Which may well result in a dissent motion at the next hearing.

CHAIR: There are two things that I had to say. Given that your submission does not address the terms of reference, which you made mention of right at the beginning, I wonder whether you would agree to answer any questions we care to send you on the terms of reference?

Mr SHERLOCK: Certainly, Mr Chair. Could I just say in relation to the terms of reference, whilst I said that it did not in a point by point way address them, I do believe the submission does address the key issues for the department in terms of the events that led up to the transfer of Kariong, the management of assaults in our detention centres, the classification system, for example. There are a number of terms of reference which I do not believe it necessarily matters for the department to comment on. However, I am happy to do my best to respond to questions in relation to those, but we saw our role as providing factual, contextual information. While it has not necessarily followed the terms of reference point by point, I suggest that the key issues for the department are indeed addressed in the submission.

CHAIR: You understand that in our deliberative we will look at the issue of whether we may need to recall you.

Mr SHERLOCK: Yes.

CHAIR: We have a tabled letter that came from the Ombudsman. I think it is a result of the 2000—

The Hon. AMANDA FAZIO: I move that the tabled document be accepted.

Mr SHERLOCK: I think we tabled two letters, one in relation to the 1996 Ombudsman's review, the other in relation to the 2000 report on Kariong.

CHAIR: We will correct that to two letters. Thank you for your attendance.

(The witnesses withdrew)

(Short adjournment)

GARNER ROBERT CLANCEY, New South Wales, sworn and examined:

CHAIR: What is your occupation?

Mr CLANCEY: I am self-employed but work for the University of Western Sydney as a casual lecturer.

CHAIR: In what official capacity are you appearing—as a private citizen or a representative of an organisation?

Mr CLANCEY: Private citizen would be the best analysis of that.

CHAIR: Do you wish to make a brief opening statement?

Mr CLANCEY: No.

CHAIR: We have your submission. Do Government members have any questions?

The Hon. AMANDA FAZIO: Not at this stage. Shortly after we will have questions.

The Hon. Dr PETER WONG: Can you tell us about your relevant professional experience?

Mr CLANCEY: I commenced work for the Department of Juvenile Justice in 1992. I was manager of programs and staff development in two juvenile justice centres, Yasmar and Cobham, through that period. I worked in various contexts with the department until 1999, at which time I left to work for New South Wales Police in the youth and child protection team, responsible for elements of introduction of the Young Offenders Act and supporting youth liaison officers around the State of New South Wales. From there I departed New South Wales Police to work in a private capacity, which I have done since. That has involved work for the University of Western Sydney, some casual lecturing for Charles Sturt University and other universities in youth crime, crime prevention, juvenile justice and security studies.

The Hon. Dr PETER WONG: What is your expertise in juvenile justice and young people?

Mr CLANCEY: Criminology is my background in terms of study, and work experience has been the application of criminology in various contexts.

The Hon. Dr PETER WONG: You know Kariong fairly well by now. Can you tell the Committee what in your view were the major problems with Kariong before the transfer to Corrective Services? Have you been there since then? What is your impression? What lessons could have been learnt from all this?

Mr CLANCEY: I have not been there since it has been transferred. The last time I was there was in 2002 as a member of the juvenile justice advisory council. Prior to that I had been to the centre on a number of occasions in various work capacities. My opinions in terms of some of the factors that led to the transfer and led to the problems at Kariong are based on a lot of the information that has been provided through the Ombudsman's inquiry and various other reports. Since 1996 there has been virtually an inquiry and report released every year since—a couple in some of those years. The things that stand out for me in terms of my experience and understanding of the operation of juvenile justice centres, the areas that I focused on out of those reports relate to casualisation of the work force. Each and every inquiry seems to point to massive levels of casualisation within either the senior youth worker ranks or now the youth officer ranks.

My personal experience of working in centres, which is some time ago but I suspect the tenets still remain relevant, is that if you do not have a stable work force employed and engaged consistently, it is very hard to get consistency in your operation, your practices, your procedures. The centres I think are very much the result of good systems and good consistent application of systems so the casualisation of the work force was one factor that I would identify that has been identified elsewhere. The absence of programs was again identified in a number of reports. The lack of

programming, the boredom factor associated with the absence of programs, comes up in a variety of reports, not least of which the Ombudsman's reviews in 1996 and 2000, and also the reports released by Johnston and Dalton and then Dalton in 2004.

I would probably focus on those key issues that then led to the riots over a number of years across the life history of the Kariong juvenile justice centre. The reports tend to focus on riots that happened in the latter part of the 1990s and early part of 2000 and 2004, but there were certainly riots prior to that time at Kariong. Soon after it opened, there were quite major riots and concerns about detainees. So it is not a new phenomenon for Kariong. Therefore one might also question some aspects of its design, at the matter raised in various reports. Lastly, there was quite heated debate about the need for Kariong when it was first built. There are debates about how to best manage serious offenders who are causing disturbances within facilities, but there is also some debate about whether necessarily housing the group together would be the most effective way to manage them. So some might suggest the results were inevitable.

The Hon. Dr PETER WONG: There have been complaints that the experience, expertise and training of the staff could be part of the problem. Could you comment on the experience, expertise and training of the staff from your point of view?

Mr CLANCEY: Clearly, in recent times the department has acknowledged the movement towards professionalisation of youth officer staff, so there certainly have been improvements. That said, the training of staff in particular issues around restraint have been identified repeatedly through the reports. Lack of opportunities to meet with staff in units, and the sharing of ideas and experiences about how to consistently implement the procedures of the centre, were identified in various reports as being concerns. From my personal point of view, staff training is absolutely critical. We are talking about difficult detainees, in a difficult environment. Being trained in issues to do with management of detainees, understanding about development, understanding the needs of this particular client group are all critical aspects of functioning effectively in a juvenile justice facility.

The movement towards greater training for staff in juvenile justice centres is pleasing and should be applauded. The disparity between training of youth officers and the staff in corrective services has always stood out as an area of concern; staff in juvenile justice were expected to operate on far less training than their colleagues in corrective services, though they may be experiencing some of the same difficulties, in part, through management of the detainees.

The Hon. Dr PETER WONG: Obviously, there have been a lot of complaints about inconsistencies, both at a policy level and a protocol level, and apparently that has affected some of the detainees. In your opinion, have Department of Juvenile Justice policies and protocols been inconsistent, or is the problem at the local level and related to training and expertise?

Mr CLANCEY: That is a somewhat difficult question to answer. My response is that perhaps the answer lies in both. I note Nigel Brown's comments to the Ombudsman in 1999 that he virtually had no program budget, which also meant no staff training budget. So, whilst there might be good policies and procedures in place, their implementation on the ground might have been affected by the absence of resources on occasion. If you look at the repeated failings—if I could call them that—of the Kariong juvenile justice centre over the 14 or 15 years that it has operated, then one might say that there are elements of procedural failure in terms of the systems being implemented effectively. Pointing the finger at individual staff I would regard as slightly problematic, given the casualisation of the work force, lack of training, and the short periods of induction that many of the staff would have undergone. Therefore, I would be less inclined to necessarily single out staff as being personally responsible.

CHAIR: That is your first segment, Mr Wong. We will come back to you again. Opposition members?

The Hon. CATHERINE CUSACK: Did you ever identify a cultural problem in Kariong?

Mr CLANCEY: Did I personally? Cultural problems are probably difficult to observe, in part, through relatively short visits. So I would not necessarily say that I observed a cultural problem. I

would say that the reports and inquiries point to some cultural concerns within the centre. Personally, that would be my belief. But I think it would be difficult for me to say that I observed that.

The Hon. CATHERINE CUSACK: You made the comment that it is difficult to manage problem detainees if they are all housed together in one centre. I guess this goes to the issue of whether we should have a super-max in the juvenile system. My understanding is that the difficulty to manage detainees came to Kariong because the other centres found them unable to be managed in those centres. Are you suggesting we need to make other centres more capable of managing those detainees, or should they be going to Corrective Services? What is the alternative?

Mr CLANCEY: Historically, the debate hinged on whether centres necessarily managed their clients as well as they could have. There has always been a fear that a super-max or more maximum security centre within the juvenile justice system would result in centres abdicating their responsibilities, in part, and offloading difficult young people to that specific centre. So, therefore, maybe there was a safety valve that allowed centre managers or other staff to recommend that detainees be sent to Kariong, when in actual fact it may have been in the best interests of the young person and the centre to try to manage the young person in that location. So that certainly has been one debate: that people have felt that centres should perhaps have taken greater responsibility for difficult clients, and not necessarily sought the use of a maximum security facility. That would be, I think, a consistent concern right throughout the existence of Kariong. Kariong, in part, was used as a facility to offload problems that could have been better managed elsewhere.

I am not a strong advocate of saying that Corrective Services needs to be the answer. I think a system designed to rehabilitate juvenile offenders should be a system that seeks to rehabilitate juvenile offenders. I do not think the transfer to Corrective Services is necessarily a solution. When Kariong was built and opened, in the early nineties, the security facilities within the department were probably of a lesser standard than they are today, so maybe there was a greater call then, than there is today, to protect the community and provide a high security location for young people. But, if you have a look at the design of facilities today, they would have much higher security standards than would have existed in the early nineties. Penang was an open unit—and open units were far more the norm than they are now, because we appear not to have any.

The Hon. CATHERINE CUSACK: Would you accept, though, that because the juvenile system is relatively small now—300 people in custody—there is a huge range of offenders in terms of age, sophistication and types of offences, and there is an issue of behaviour management versus serious indictable offenders? The department has a large range of offenders. Added to that, they are keen to keep country kids in the country, if you like. So that is another consideration. So is it difficult for one facility, of say 30 to 40 detainees, to manage that full range?

Mr CLANCEY: Absolutely. I think that has always been a concern of the system. Irrespective of number, you will have a great variety of clientele. I think the variety of clientele has probably diminished, not increased, in part, because, if you have a look at the numbers in the system now compared with 10, 15 or 20 years ago, the numbers in the system were much greater, and therefore you had a much greater bulk of less serious offenders. So, in part, we have actually got a smaller range of offenders, potentially. One of the things about the second reading speech that interests me, and one of the interesting aspects of the transfer, is the discussion around the changing profile of offenders in the past 10 years. Evidence may well exist, but, in terms of published evidence, I have looked at the annual reports by the Department of Juvenile Justice published in the past 10 years, and I have looked at the Bureau of Crime Statistics and Research published data on serious offences and, apart from very small categories, I do not see evidence that there has been a massive shift in offending profile. If there is evidence, I have not been able to find it, or it does not appear to have been published. It is almost become, in part, an accepted norm to say: It is true; we have a totally different profile of offenders today than we had years ago.

I would like to point out — this is not an attempt to sort of romanticise the past — that we have pockets of different offenders moving through the system throughout its history. In 1992, when I first started at Yasmar, the number of young men at that point who were in the system for murder was quite high. When Yasmar opened in 1994 as the young women's unit, if you had looked at the statistics and policy based on the profile of offenders at that point, you would have assumed that the population would always consist of a high proportion of young women in there for murder or

manslaughter. That has not been the case. Yet, after Yasmar opened in 1994, the number of young women in custody rose to more than 30. In recent years they have fallen to about 15 or 20 young women. So some of the assumptions might well be challenged. Yes, in recent times, perhaps the system has had a higher than normal number of young men on serious sexual offences, but will that be the case in 5 or 10 years time? That is difficult to predict. Historically, we have trends that show increases in certain types of offenders but which do not necessarily sustain themselves throughout time. Does that answer your question?

The Hon. CATHERINE CUSACK: Yes, it does. Have you any comment on staff recruitment practices and the profiling that is done prior to accepting staff into juvenile justice centres?

Mr CLANCEY: I would say my comments are abroad, rather than specific. I would say that in the past 15 years there has been a dramatic shift in selecting staff and recruiting staff, and that has been a massive improvement. The days of perhaps 10 years ago when the induction was very short and very brief, and people were put into units very swiftly after completing a fairly limited induction, have now changed. The movement towards qualifications associated with certificates in youth work is a good example of the professionalisation of youth officers in the system. I see those as very positive movements to improve the nature of staff within the system. In terms of recruitment currently, I would not wish to comment because I do not have sufficient information.

The Hon. CATHERINE CUSACK: Would you like to comment on the very high proportion of Aboriginal and Torres Strait Islanders in the system?

Mr CLANCEY: My comments would be shared by many. There are massive concerns about the overrepresentation of the young Aboriginal people in the system. Despite the introduction of the likes of the Young Offenders Act, falling numbers of court appearances, and falling numbers in young people detained in the juvenile justice system, we see no impact on the raw numbers of young Aboriginal people coming into custody. That means that we now have a higher proportion of young Aboriginal people in custody. That is of great concern to me, and no doubt to everyone around the table and in this room. How one fixes that is a real challenge, and investment in programs outside detention obviously will be the best way to reduce the numbers of young people in custody, in my opinion.

CHAIR: Government questions.

The Hon. AMANDA FAZIO: I understand that most of the kids in juvenile detention centres and in Kariang are from families with a very poor or non-existent employment history, or from dysfunctional family backgrounds, often a history of abuse, substance abuse, and often not very good educational qualifications. Does that make them very different from the sorts of offenders that we had in the past? What are the changing characteristics of young offenders in custody? Are the issues more complex now than they used to be? Are they a harder group to manage?

Mr CLANCEY: It is a difficult question to answer convincingly. I would say that the background of offenders has not necessarily dramatically altered in terms of those socioeconomic circumstances that you have pointed to. You allude to factors that we know are true of clients today, but were true of clients in former years. High rates of abuse, neglect, poor parenting, erratic and inconsistent parenting practices, high rates of school failure and dropout, and truancy I think are just as true today. I suspect we are probably better able to capture some of this information. I note the Department of Juvenile Justice health survey in recent times identified, qualified and quantified how difficult the environments are that young people in juvenile justice centres come from.

That information is probably not news to anyone who has worked in the system, but it quantifies what people have probably known for some time. Personally, I think there probably have been some shifts around some social policies that impact more adversely upon people today than they did 10, 15 or 20 years. But, in terms of the background, I suspect we would now have very similar characteristics as did young people in detention 10 or 15 years ago. We may have had more on less serious offences who may have probably been in for more welfare concerns, but nonetheless, the underlying causes and symptoms are fairly consistent across time, I would suggest.

The Hon. AMANDA FAZIO: There was a suggestion at estimates hearings at the end of last year into this portfolio area that juvenile detainees should be subjected to internal body cavity searches. Would you think that that is an appropriate measure to use on juvenile detainees?

Mr CLANCEY: I would say they there have been a number of things that have occurred in the juvenile justice system over recent time for legitimate reason. The concern about safety and security in the juvenile justice centres is of paramount concern to staff and the welfare of young people. Whether they are effective and whether they are ultimately in the best interests is difficult to determine, and I think history will inform us as to whether some of those developments have been useful and beneficial.

In terms of internal body cavity searches, I certainly would not advocate that. I would like to think that with the measures that the Department of Corrective Services has adopted around the use of sniffer dogs, the tightening of visitation procedures and enhancing aspects of punishments associated with people bringing drugs into the facilities, I would not necessarily advocate that that was required. But that said, in fairness, I do not work on the floor at a juvenile justice centre in New South Wales; they may have a very different view. My view would be we should look to alternative measures.

The Hon. AMANDA FAZIO: I think you said in your opening statement that you are a member of the Juvenile Justice Advisory Committee. Could you give us a bit of an outline of what you do on that committee and what value you see there is in having that committee there?

Mr CLANCEY: Professor Chris Cuneen will probably speak far more eloquently than I about JJAC, but the role of JJAC is to provide advice to the Minister for Juvenile Justice on issues that affect the operation of the juvenile justice system in New South Wales. What we do is often determined by what is occurring, so I would say it is fair to assume that the past few years there has probably been more legislative amendment than maybe preceding periods. In my personal opinion, for what it is worth, I think that a lot of the reform is much less about what research is saying and much less about having roundtable discussions and summits to determine what the policy in the area is, as with the standing committee in 1992 and then the subsequent green paper in juvenile justice that really set out the blueprint of reforms of the system. In recent times it feels less like the Juvenile Justice Advisory Council than any other group necessarily participating in shaping the debates around legislative reform.

We provide advice to the Minister on aspects of legislative reform and on operations and policies within the system so that juvenile justice will table policies and procedures that have been amended or updated and the council will provide advice. We sit on various subcommittees and have various subcommittees to look at specific issues around community, Aboriginal young people, young women and various other specific population and specific issue interests within the system.

The Hon. ERIC ROOZENDAAL: In terms of the other centres, how do you feel the staff at the other juvenile centres carry out their responsibilities when managing the detainees?

Mr CLANCEY: Not having been to all of the centres in recent times it is a difficult statement, one that is full of disclaimers. I would say I think the staff generally perform well in difficult circumstances. I would say that there are good intentions in all centres from all the staff to provide young people with the most humane of environments. I think that periodically we see problems emerge in centres that are at times beyond the control of staff, that sometimes will point to other issues that could be around resourcing that I think the Kariong inquiries have continued to point to. So I think my general statement would be that staff perform their functions quite well in juvenile justice more broadly.

The Hon. ERIC ROOZENDAAL: Do you think that is really within the leave of juvenile justice to handle the really serious offenders and the violent offenders we now have at Kariong?

Mr CLANCEY: Yes, I do. I think if that expertise does not exist then it should be harnessed from other locations. I think if the systems do not exist then they should be developed. I really do believe that the system is designed to deal with all juvenile offenders that come to it, and that shifting responsibility to corrective services is not necessarily an answer that I would advocate. I think there are examples in other States and other Territories and other locations where expertise can be

harnessed. I think there is expertise within corrective services that may inform elements of practice within the juvenile justice system; not all elements but some elements. I know that Malmesbury in Victoria is a facility that operates as an open facility for 17 to 21-year-old offenders. They could be people who could provide assistance. So yes, I do think it should occur and it can occur and has in the past occurred, and there is no reason why it could not.

CHAIR: What are the wider consequences of changing Kariong?

Mr CLANCEY: I think that will be, in part, difficult to predict. My view about the wider consequences is that, in part, the incrementalism of the debate about whether Kariong should exist then transformed into a debate about whether it should be with corrective services. The fact that it is now with corrective services means that a precedent has been set. I have spoken to some people informally recently in the juvenile justice system; they have concerns that they need to tighten up their procedures because there is almost a perception of the thin edge of the wedge, that if corrective services can take over Kariong is there anything stopping them taking over other facilities?

There is no evidence for that per se but the information from a couple of people I have spoken with is that there are probably moves afoot within some centres to adopt particular regimes to ensure that they do not have problems that might expose them to publicity or that they do not have problems that might make them vulnerable to a similar take over, if you like. I do believe that there needs to be close attention to what impact this has on the system today and tomorrow; what impact it has on the system in terms of how centres deal with young people who create difficulties; what impact it is having on the system already in terms of how centre managers and other staff view their role and whether they view their role as being specifically directed towards detainment rather than rehabilitation in view of warding off any speculation about DCS taking over the juvenile justice system in total.

The Hon. CATHERINE CUSACK: Were you consulted by the Government prior to the decision to transfer Kariong to corrective services?

Mr CLANCEY: The Juvenile Justice Advisory Council has submitted a brief report to the select committee and my view was shared in that report that no, there was consultation post the event, or we were informed post the event rather than prior to the event.

The Hon. CATHERINE CUSACK: Could I ask you about adults in the juvenile system? Rod Blackmore has submitted that we need to be looking at our custodial facilities dealing with offenders given the age they are rather than basing them all on the age they were when they committed their offence. Do you have any comments on that?

Mr CLANCEY: I think there have probably been moves to reduce the number of detainees who are quite old from the system and I think that has probably been an effective measure. I think it is very difficult for centres that have young people potentially between the age of 10 and 21 to structure their programs and their regimes for client groups that have vastly different needs. That said, the Kariong inquiry in 1999 and the report in 2000 identified that the average age of offenders in Kariong was 17.5 years. The average age of Kariong's detainees has been quite old for some time. So I think that there has been real opportunity to design programs and regimes for that client group. I do not think it is necessarily a centre that has housed 10-year-olds and therefore there is this concern about contamination or programming issues with the 20-year-olds or the 18-year-olds.

The Hon. CATHERINE CUSACK: In terms of detention centres, for example, they have schools, they do not have TAFE facilities. If you have got someone who is 20 they are probably less likely to be engaged by the idea of going to a school—especially since the sort of key component of the programs being offered at the centre is going to school—is it unreasonable for the community to expect that someone who is 19 or 20 and clearly better suited to TAFE-type courses, would be in a corrective services system than a large number of people under the age of 21 in the correctional system?

Mr CLANCEY: It is a question that one could debate. I would say that school is more of a term. School in the juvenile justice centre context has offered TAFE courses and university courses for a long period of time and would continue to. So I think there is opportunity to provide services for

the older client group, though not necessarily year 10 certificate if that is not what is required. I would say that the Australian Government's Productivity Commission's report on government services, released this year, points to some issues in terms of access to rehabilitation programs and education programs in New South Wales prisons at lower rates than some other States in the country. We also see lower rates of out of cell time in adult facilities in this State in comparison to other States and Territories in Australia. So in some ways I could argue that you have probably got more opportunity to access services within juvenile justice facilities than some correctional facilities.

The Hon. CATHERINE CUSACK: Could I ask you about the configuration of detention centres at the moment? Do you have any comments on that, just where they are located and the way they are structured?

Mr CLANCEY: It is a very difficult question, one that the department has grappled with and many people have grappled with. I think the move towards regionalisation was a healthy move. The idea of keeping young people as close as possible to their families, relatives, peer groups and people who are likely to be supportive, was a good move and should be applauded. I think a system trying to manage as best it can clients in centres that have similar needs is important. It is often difficult to manage because the department has almost no control over the clientele that it receives, so you could get a large increase in a certain type of client that then causes some problems for the management of the overall system. But I think the way the system is structured is beneficial in terms of having clients with similar needs at specific centres.

It, in part, works against the regionalisation because if you have all of the younger boys, for example, at Reiby and all of the young women at Lidcombe and all of the older young men at Baxter at Gosford, you then move away from the regionalisation movement that the department has tried to work towards. That is an inherent tension with a system that only has 320 young people in custody.

The Hon. CATHERINE CUSACK: So do you agree that the size of the system makes it very difficult—and can I in particular point to Aboriginal offenders in the country where there are a limited number of facilities because of the logistics of having such a small overall number—and is there the potential for corrective services with more facilities to look at developing another sphere that can deal with that, and particularly female Aboriginal offenders who all end up in Sydney?

Mr CLANCEY: I think it would be an interesting research question to determine what has the least negative outcome in terms of where clients are placed. I would say that placing them in adult correction facilities simply because of proximity to geographic location would have more detrimental impact than less.

The Hon. CATHERINE CUSACK: Can I just correct what I was asking? I did not mean placing them in the prison itself but asking that system to create a module, if you like, that accommodated a nearer system. Perhaps if I could ask it differently. More generally, the issue of the sophisticated juvenile offender and the unsophisticated adult offender, is there a way, particularly in the regions, that we could be managing that?

Mr CLANCEY: Can I ask you to repeat that?

The Hon. CATHERINE CUSACK: The idea of the 17-year-old who is very difficult to manage in the juvenile system versus, and you might be aware of a case at Maclean where a 19-year-old boy has been admitted to the juvenile system because he is just too immature to go into the correctional system—is there some midpoint between being in corrective services and being in the juvenile system? Is there some third way that we could develop between the two systems?

Mr CLANCEY: I referred to Malmesbury in Victoria, and I think that is potentially an example of part of their dual track system where appropriate offenders between 17 and 21 are placed in a less secure environment. They also obviously have more secure environments under the adult corrections system for more sophisticated offenders—perhaps using your language. So that could be an alternative model that could be considered. I think in New South Wales the tyranny of distance and the expense of running facilities is a real challenge for any system to ensure that we have the best relationship possible with offender and community. I think there will be inherent tensions, irrespective

of what model is developed, but certainly Malmesbury, I would suggest, would be an option worth reviewing as an alternative to having Kariong transferred to the Department of Corrective Services.

The Hon. AMANDA FAZIO: I have one or two issues relating to the establishment at Kariong. Do you have any comments on Kariong having been designed and built with no school, at the time when it was initially set up?

Mr CLANCEY: There has been debate about the design of Kariong and I see that numerous reports have been developed around its design. The Juvenile Justice Advisory Council submission points to concern about the design, and reinforces some of those concerns. The absence of a school and the inability to have detainees placed in school and in other programs is of real concern. It is a real limitation to the design of the facility. It has been identified repeatedly that the inability of program and teaching staff to accommodate all detainees in that centre created what were circumstances that could only be described as boredom. A work party in a centre that is quite small, that has very few facilities that require daily maintenance, is likely to lead to boredom. I think it is fair to say that, yes, there were some concerns about the design of the facility, and concern about the inability to access school numbers has been identified repeatedly.

The Hon. AMANDA FAZIO: The Committee went to Kariong on a site visit and staff appeared to be trying to do the best they could. I think some of the inmates were undergoing supervised TAFE training, some were studying for the School certificate and the Higher School Certificate, and—

The Hon. ERIC ROOZENDAAL: And the arts.

The Hon. AMANDA FAZIO: Yes—the indigenous inmates were doing art work. Do you consider that that is appropriate, so far as the range of educational pursuits that should be offered is concerned?

Mr CLANCEY: Another issue is, I suppose, the inherent tension in the design of facilities. Often facilities are designed for a period in history. The development of Centres historically with metal workshops, for example, may not have been necessarily the best use of that 10 or 15 years after the facility was opened. I think there is a tension around how much you can provide. I think TAFE and the Department of Education and Training do an excellent job in juvenile Justice facilities, providing a breadth of educational experience. It has certainly been my personal experience, having seen the quality of interventions that occur throughout those facilities, that they are really turning young people around. I have heard stories of accelerated reading age, and numeracy and literacy in incredibly short periods of time that they would not have got in the mainstream schooling system.

I think that what the teaching staff at Kariong has provided and is attempting to provide has been very beneficial. Could there be more? I think with more resources then, yes, there could be more. Firstly, there is the finding that went into the transfer of the system. If Nigel Brown had had \$100,000 a year for the past 10 years, as the Manager of Programs commented to the Ombudsman in 1999, he may well have had an easier time at Kariong than was experienced in trying to provide an increased level of educational exposure that young people were entitled to.

The Hon. AMANDA FAZIO: Earlier on you said that the transferred of Kariong to the Department of Corrective Services was an option that you really would not advocate. Have you been to the centre since it has been transferred?

Mr CLANCEY: No, I have not.

The Hon. AMANDA FAZIO: You also said that you thought that other juvenile detention centres may be adopting programs to try to reduce the number of incidents because staff were scared of a takeover by the Department of Corrective Services. Are you aware that there is no other proposal by the Government to transfer any other juvenile detention centres into the Corrective Services system?

Mr CLANCEY: In answer to that, I think it would be more important that those staff are familiar with that policy or position of the Government. Whether or not I know it is largely

superfluous in terms of their view and their concerns. I have certainly not heard that Department of Corrective Services were taking over the Department of Juvenile Justice or the operation of juvenile Justice facilities. But I think the issue begs the question as to what some of the staff within the existing system think.

The Hon. AMANDA FAZIO: Do you think it would cause a problem anyway if they were doing that, because would that not just mean that they are handling situations a little better in their own centres? Perhaps it is a negative incentive, but it might be improving some of the management systems there.

Mr CLANCEY: As I said when referring to monitoring the impact, there could be unintended positive and negative outcomes of all of this, but the unintended consequence of perhaps ensuring or preferring security over other projects and programs that might be more beneficial in terms of rehabilitation, could be an unintended negative consequence in my opinion. If we actually cut back on the use of leave, if we restrict access of young people to programs outside facilities because we believe that that might expose greater risk to the system—and that is hypothetical—then I think we have taken a step backwards rather than a step forwards.

The Hon. AMANDA FAZIO: You referred to the way that some inmates have been able to turn their lives around because of improvements in their literacy and numeracy. That actually goes to one of the Committee's terms of reference relating to rehabilitation and reducing the incidence of recidivism. Do you have any general comments that you would like to make about how juvenile detention centres are doing so far as recidivism and rehabilitating inmates is concerned?

Mr CLANCEY: If you assessed the performance of juvenile justice centres solely on recidivism data, then this State, as with most States, will not appear to have performed particularly well. We know that correctional facilities are not necessarily the preferred model of rehabilitation. A lot of the literature points to negative outcomes in terms of people who have been through a facility and their later likelihood of reoffending. Dr Andrew Day from the University of South Australia has suggested that 80 per cent to 90 per cent of young people passing through juvenile detention facilities will reappear in a custodial environment.

The national census of prisoners points to around 60 per cent of prisoners having previously experienced a period of incarceration. If that were the sole measure, then not particularly well; if we look at other things, then I think the system has really grappled with elements of the literature and empirical research about what does work in rehabilitation. Certainly an integrated community service model's movement towards case management and improved case management systems, big transitions to improved programming models in the last 10 years. Those things are certainly in keeping with the literature and empirical evidence.

The Hon. CATHERINE CUSACK: You have information about recidivism rates that you could leave with the Committee?

Mr CLANCEY: I have some information that did not print off so well. I can send it to you later on.

CHAIR: Will you take that question on notice?

Mr CLANCEY: Yes.

(The witness withdrew)

(Luncheon adjournment)

CHRISTOPHER CUNEEN, Professor of Criminology, University of Sydney Law School, and Chairperson of the Juvenile Justice Advisory Council of New South Wales, 81 Francis Street, Leichhardt, affirmed and examined:

CHAIR: Do you wish to make an opening statement?

Professor CUNEEN: No. I have submitted a submission from the council and at the moment I do not have anything to add to that, so I am happy to take questions.

CHAIR: Please turn to your submission. We have started questioning with Government members and then Opposition members, so I shall ask now ask a crossbench member, Dr Wong, to start.

The Hon. Dr PETER WONG: Professor, I have read your submission. How concerned are you about possible breaches of International Human Rights by transferring the juvenile justice centre to the Department of Corrective Services?

Professor CUNEEN: Well, I think there are two issues. The first issue that came to our attention was that in the memorandum of understanding [MOU] between the Department of Corrective Services and the Department of Juvenile Justice, the Department of Corrective Services stipulated at the signing of the memorandum that they had had insufficient opportunity to locate such principles, that is the international law principles, and so were unwilling to commit to meeting those principles. So, I think it is of obvious concern that the institution has transferred to a department, which, by its own admission, is not aware of the guiding international law principles relating to the human rights of young people in custody. That is one point.

The second point is, I think, that the principles themselves stipulate particularly issues around the importance of diversion, rehabilitation and reintegration. I am not suggesting that those principles are completely absent from the operation of the prisons operated by Corrective Services, but they are not given the same weight or the same consideration as international law would require and, as indeed, they are within the Department of Juvenile Justice. So the short answer to that is: we are very concerned.

The Hon. Dr PETER WONG: I also understand that the current legislation gives considerable discretion to the director-general to refer or transfer from Juvenile Justice directly to the Department of Corrective Services and the Serious Offenders Review Council [SORC], bypassing advice from the Serious Young Offenders Review Panel [SYORP]. Do you think that this is an appropriate situation and could you make suggestions about what you would consider as an alternative?

Professor CUNEEN: I think that there will those situations where there will be a requirement to transfer young people under the age of 18 into an adult facility. They may be approaching the age of 18, they may have committed a serious indictable offence or they may be facing a long sentence and they may not be able to be safely contained within a juvenile justice facility. However, I think that the fundamental principle should be that that decision is one that is made by a judicial officer rather than is an administrative decision. And failing that, at the very least, it should be an independent decision that is made by an organisation like the Serious Young Offenders Review Panel [SYORP] rather than SORC, which is the adult body. In principle, it should be a judicial officer who makes the decision, but failing that, it should at least be an independent body like SYORP.

The Hon. Dr PETER WONG: We now know that roughly 30 per cent of juvenile inmates have been or are presently in the care of the Minister for Community Services. Obviously, this has had a major impact on resources on policing the court in the corrective establishment. With your considerable knowledge in this field, are you aware of any senior officers, groups, interdepartmental committees, working parties or the like that are examining what Kerry Carrington has described as a "welfare justice nexus"?

Professor CUNEEN: No, I am not aware of any particular groups. I am certainly aware that specialist workers, specialist counsellors within the Department Juvenile Justice are aware of the issues. In fact, it has been brought to our attention at the advisory council that one of the concerns with the way things are happening at the moment in relation to Kariong is that not enough attention is being paid to the needs of former State wards who are now part of the juvenile justice system, particularly the intensive counselling needs that many of those young people require.

Also, that the current processes that have been put in place do not really provide an opportunity for the special needs of those young people to be taken into account and the sort behavioural problems that might be associated with traumatised young people who were formerly State wards, in a sense can be brushed under the carpet, they can be pushed aside and can be treated as management and behavioural problems to be foisted onto Corrective Services rather than being dealt with intelligently and sympathetically within the department.

The Hon. Dr PETER WONG: Are you also aware that at least 25 per cent, if not more, of the detainees or inmates in the juvenile justice system happen to have serious mental illnesses? Do you think either the juvenile justice system or the Department of Corrective Services is an appropriate place for treatment of mentally ill young people and if not, what are the alternatives?

Professor CUNEEN: That is the large question.

The Hon. Dr PETER WONG: I am a doctor, by the way.

Professor CUNEEN: And one that I have not really thought about immediately in relation to this inquiry. I would say that the recent review of young people in custody by the Department of Juvenile Justice and Justice Health shows a growing awareness of mental health issues amongst young people who are the clients of the Department of Juvenile Justice. It seems to me that there is a greater awareness at a departmental level of the issue within juvenile justice than there is within corrective services. That is probably not surprising, given the size of the corrective services system.

The Hon. Dr PETER WONG: The Department of Corrective Services has exactly the same problem. A former colleague of mine, the Hon. Dr Brian Pezzutti, conducted a similar survey. He established that 25 per cent of inmates at corrective services have mental illnesses. I was wondering whether our resources are misplaced. Should there not be more mental hospital facilities for young juvenile offenders rather than just locking them up?

Professor CUNNEEN: There are a number of different issues relating to whether a person is a forensic patient. That has posed particular problems for the Department of Juvenile Justice, which has a young woman who is a forensic inmate. There are problems relating to placement. In a sense, that is at the extreme level. But coming back from that, there are a number of other problems relating to mental health issues that are facing young people. I agree that alternatives to incarceration should be considered for those young people. So it is a complex area. I find it difficult to give you a short answer to the question because of the number of issues that are faced there. As a general answer, yes, I agree that there are better alternatives than the incarceration of young people who have mental health issues.

The Hon. AMANDA FAZIO: In your submission you state that while the Department of Corrective Services may have the capacity to imprison adults it does not have the experience or expertise to deal with young offenders. My understanding is that there are about 500 people under the age of 21 in the corrective services system and that it also runs some specialised programs for young men in general. Another program at Brewarrina is run for Aboriginal inmates. What was the basis for you saying that the Department of Corrective Services does not have the experience or expertise to deal with young offenders?

Professor CUNNEEN: Most of the young people who are dealt with by corrective services are not technically young offenders; they are adults. They are young people in the age group of between 18 and 21. The Department of Corrective Services does not have the same sort of expertise that the Department of Juvenile Justice has. You might think, say, of Parklea as an example within corrective services of a prison that deals with young men—not juvenile offenders but young men. That single prison holds more young men than all the young offenders in the Department of Juvenile

Justice and they are spread over 10 or 11 detention centres. I think you have to grasp a fundamental point, that is, that corrective services deals with a very large number of people compared to juvenile justice.

One corrective services institution holds more than the whole of the juvenile justice system combined. But corrective services does not have the same level of programming; it does not have the same level of expertise and it does not have the same level of staffing that the Department of Juvenile Justice has. I do not want to paint a picture that shows that everything in corrective services is bad and everything in juvenile justice is good, because demonstrably that is not the case. What I am trying to say is that the capacity to deal in a specialised way with young people is not to be found in corrective services.

The Hon. AMANDA FAZIO: Do you think that is still relevant, given that this morning we heard that the average age of people in Kariong is 17½ years? So they tend to be at the older end of the spectrum of the people who are dealt with through the children's courts.

Professor CUNNEEN: Yes. I am not sure of the question.

The Hon. AMANDA FAZIO: In view of the fact that people in Kariong tend to be at the older end of the spectrum, would that make it less of an issue because of the experience and expertise that corrective services may have?

Professor CUNNEEN: Young people in the older age group will still only respond to the sort of intensive programming that they receive from juvenile justice. They will not receive the same level of program or same type of program if they are in corrective services. So there is a difference in the response to the young person and in the capacity to deliver that response. I think it is vastly different between the two organisations.

The Hon. AMANDA FAZIO: You refer in your submission to some concerns about United Nations conventions and the fact that children deprived of liberty should be separated from adults. Is that not what is happening at Kariong anyway? People who have been convicted or are on remand through the adult court system or prison system are not put into Kariong. Only juveniles who are dealt with by the courts as juveniles go there. I do not understand how that can be seen as a breach of the United Nations convention.

Professor CUNNEEN: In our submission we do not raise the issue of mixing juveniles with adults. The United Nations Convention on the Rights of the Child requires the separation of juveniles from adults, but that is not an issue that we raise in our submission. It poses some problems for juvenile justice. How will it deal with older offenders, given that the Convention on the Rights of the Child requires separation of adult offenders from juvenile offenders? I do not think that that is an insurmountable problem within the institutional framework of juvenile justice and that separation can occur. That was not really what we were thinking of when we were talking about or referring to the Convention on the Rights of the Child and human rights standards. We were more concerned about basic principles around diversion, rehabilitation and reintegration.

The Hon. AMANDA FAZIO: But they run quite a few programs at Kariong. They have TAFE programs and kids do their Higher School Certificate and their School Certificate. One inmate is doing some sort of accountancy course and some of the indigenous students are doing arts and crafts courses. Do you see it as appropriate for those programs to be run there?

Professor CUNNEEN: I do not see any problem with it. I think the issue in juvenile justice has been the relative lack of programs. More programs could be offered. However, having said that, I still think that if you were to look at the availability of and the participation in programs in a comparative sense between juvenile justice and corrective services you would find that there is greater availability of and greater participation in programs in juvenile justice than there is in corrective services.

The Hon. AMANDA FAZIO: When we went on our site visit there was a waiting list for inmates to get into the school at Kariong because it is full.

The Hon. ERIC ROOZENDAAL: Have you been to Kariong recently?

Professor CUNNEEN: Recently, no. It depends on what you mean by recently.

The Hon. ERIC ROOZENDAAL: Have you been there since the changeover?

Professor CUNNEEN: No, I have not. I have not been there for a couple of years.

The Hon. ERIC ROOZENDAAL: What is your view about the attempt by the Department of Juvenile Justice to improve Kariong? What is your view on the design of Kariong?

Professor CUNNEEN: As we point out in our submission, Kariong has been problematic since it was built, so we have had 14 years of problems there. What is happening in relation to the transfer shows quite clearly that the management problems at Kariong were not resolved. My view and the view of the majority of people on council is that the transfer of Kariong into the adult system was an attempt to resolve the management problems. So, in a sense, all this discussion about young people is beside the point when we want to determine why Kariong was transferred into the adult system. Was it the inability to resolve those managerial problems that caused the transfer?

The Hon. CATHERINE CUSACK: Do you accept that there was a control problem at Kariong prior to its transfer?

Professor CUNNEEN: I think that the problems that have been identified in the Ombudsman's reports, in particular in the 2000 report, were still there. You say that there is a control problem but you can read that two ways. You could say that the control problem was caused by incorrigible youth who should not be there and that they should be in the adult system, or you could say that the control problem was a management problem and the inability of management effectively to manage the institution that led to the problem. It is certainly the latter explanation that was dominant in the Ombudsman's inquiries. If I might add something at this point, the Dalton report was grossly inadequate—

The Hon. CATHERINE CUSACK: Which one?

Professor CUNNEEN: The most recent one. It was a grossly inadequate report on which to base the transfer of the institution. If you compare it to the comprehensive and incisive reports of the Ombudsman's office—and the Dalton report has a particular slant on the cause of the control problem—it is a very different view from what the Ombudsman's office came up with. They were far more thorough inquiries.

The Hon. CATHERINE CUSACK: Leaving aside the causes of the control problem, it is difficult to see how programs can be adequately delivered to detainees if there is a control problem, and that needed to be addressed at Kariong.

Professor CUNNEEN: Yes.

The Hon. CATHERINE CUSACK: May I ask about the way in which Kariong accommodated the behaviour management people and the people who had committed very serious offences? Do you think that is an appropriate thing to do?

Professor CUNNEEN: I think that the problem is— it will be exacerbated now—that when you set up a separate institution like that you can use it within the system or now, as it is, as part of another system, as a dumping ground rather than trying to deal with management problems within the existing institutional framework. That mixing is problematic. You are setting up a small institution and saying that it is for the very worst of the worst. Particularly with young people, that creates a range of problems and I do not think it is a way to resolve the issue. I and members of the council accept that there may be a small number of young people who pose very serious problems for the Department of Juvenile Justice and who would be far better placed in the adult system. But the number is very small and that does not provide a rationale for a Kariong approach.

The Hon. CATHERINE CUSACK: Do you accept that there is an inequity in an 18-year-old who has committed a driving offence being in the corrective services system and a 20-year-old serving a very long custodial sentence—perhaps 30 years—for serious sexual offences being held in the juvenile system?

Professor CUNNEEN: On the face of it you could say that there is an inequity arising from that. But most of the young people who have remained in the juvenile system on long sentences have really grown up in juvenile detention and the effect of transferring them into the adult system is going to give rise to a range of problems for them. If we take our ultimate goal as being rehabilitation then the potential for rehabilitation is going to be greater by keeping that person in the adult system. I have visited Baxter on many occasions, and there are older detainees there who were sentenced at a young age for long periods for very serious offences. If there is ever going to be any opportunity for those young people to reintegrate back into society it is going to occur there rather than transferring them into a big institution such as one of the corrective services gaols. If that is our goal we should work towards that rather than simply drawing a whole lot of arbitrary lines around the process.

The Hon. CATHERINE CUSACK: What about the 18-year-old in the present system?

Professor CUNNEEN: In general terms I would not like to see an 18-year-old in prison for a motor traffic offence anywhere.

The Hon. CATHERINE CUSACK: A lot of them are in for that reason.

Professor CUNNEEN: Yes.

The Hon. CATHERINE CUSACK: Would you accept in terms of the separation of children from adults, which is the purpose of having a juvenile system, that at Kariong half of the inmates at the time of transfer were adults and therefore you were already mixing children and adults through the Kariong model?

Professor CUNNEEN: I think we were. I am of the view though that older detainees should be moved into the adult system. As I said before, the requirement of the convention about the separation of adults and juveniles does pose some problems in terms of how it is put into practice. The figures from the Department of Juvenile Justice submission to my mind show a fairly consistent proportion in Kariong. In a couple of years a majority of young people in Kariong were legally adults and not juveniles but for the year 2003-04 a quarter of the detainees are 18 years and older. That is consistent for the decade.

The Hon. CATHERINE CUSACK: I hear that but you also said that it was consistently problematic over the decade. So the fact that it has been consistent does not mean that—

Professor CUNNEEN: It is not a problem, yes. But I do not think necessarily that the fact that someone has turned 18, as in Kariong, has been the problem in Kariong, if I can put it that way.

The Hon. CATHERINE CUSACK: I understand that all the serious indictables go straight into Kariong from court. What role does the Serious Young Offenders Review Panel have now in the Department of Juvenile Justice?

Professor CUNNEEN: I am not sure of the answer to that now with the change but presumably they would continue to deal with other issues that they have always dealt with such as day release and review of A1 classifications. I am not sure whether they have had a role in 24 (1) (c) the early release process. But presumably all the other functions that it has fulfilled in the past it would continue to fulfil. What concerned me in terms of the legislation, the transfer process, was that the adult Serious Offenders Review Council, SORC, was going to have a role in making determinations rather than SYORC. It is far more appropriate that it is SYORC rather than SORC.

CHAIR: How do you see your continuing role as an advisory council in light of the fact that on what was a most significant change you were not consulted at all?

Professor CUNNEEN: This is not the first time that the council has not been consulted on the issues—either by this Minister or previous Ministers—but we would argue that this represents a fundamental shift. The council was seriously concerned about that failure. Council members became aware of the transfer through journalists—

CHAIR: Through the newspapers, yes.

Professor CUNNEEN: In fact, I received the Minister's press release from a journalist asking me to comment on it. I think it goes to a number of issues about the council. It is important to have an independent advisory council. We provide advice not only to the Minister but also to the department, to the Ombudsman's office and to a range of government departments and agencies. There is a great deal of expertise, some of which you have heard and will hear in the course of this inquiry, from individuals that are on the council. It is a difficult position. I would really hope that advisory councils of this sort have their independence respected and their ability to provide advice taken up.

CHAIR: The department funds up a number of initiatives from community-funded organisations. I understand it has had difficulty getting access to Kariong. Is that still the situation?

Professor CUNNEEN: I do not know that it is still the situation. It was the situation. I was aware of the work of the post-release support program. It is a very good program that the department runs, a very important program. Workers are not being allowed access in—

CHAIR: There is also the pre-release program and a whole range of other things.

Professor CUNNEEN: Yes.

CHAIR: I will take the fact that you say you do not know the answer—

Professor CUNNEEN: As of today I do not know but my understanding is that a protocol is being established between the Department of Juvenile Justice and adult corrections for access.

The Hon. Dr PETER WONG: Obviously the Department of Juvenile Justice is underperforming. You mentioned one key issue was a management problem. What other problems within the Department of Juvenile Justice do you see that should be improved?

Professor CUNNEEN: There is a range of problems. One of the concerns—it is probably a good opportunity to mention it now because it has not come up yet—with the change is how the department is going to deal with young women. The current change has been applied only to young man but there is nothing in the legislation that stops it from being applied to young women. There is nothing that stops an adult correctional centre being declared a juvenile correctional centre for the purposes of holding young women. That is one issue. Another issue of major significance is Aboriginal young people. My view is that this will be again a fast track for Aboriginal young offenders into the adult system, because it is often Aboriginal young offenders that pose particular management problems for the department. So even if they are not put into Kariong as a result of a serious indictable offence, they may well reach A1 classification and end up there as a management problem.

The other area you have already referred to, mental health. The department does have some good programs. We mentioned the post-release program. That is an area that I have been involved in the valuation of. That is a very good program. But overall where there have been improvements in community services with the Department of Juvenile Justice the same level of improvements have not occurred in terms of the detention facilities. There have certainly been some improvements there but the issues that are brought to our attention still relate to management of detention centres, and often the lack of programs in detention centres. Even though I have said previously that programs are more available in juvenile justice than they are in corrective services, and I would stand by that, I still think there is a problem in terms of developing adequate programs within juvenile detention centres. As I said previously, I do not want to paint a picture where juvenile justice is all things perfect and corrective services is not; there are significant things in juvenile justice that need to be addressed.

The Hon. Dr PETER WONG: You were saying that it is part of a management problem. Are you also implying that what happened at Kariong is also happening at other detention centres managed by juvenile justice—maybe in a smaller or less dramatic way?

Professor CUNNEEN: I think that is a possibility. I do not want to push that issue too much without adequate evidence but in our submission we refer to a confidential statement which I received from a specialist counsellor in another institution. At that institution there is certainly a perception about problems in relation to management.

The Hon. Dr PETER WONG: As you would obviously know more than I do, the Department of Juvenile Justice is supposed to balance the custodial and rehabilitation roles. There is an argument that detainees tend to be more violent or commit more serious crimes nowadays. With the Government of Australia looking more towards security and safety issues, is more emphasis being put on discipline compared with rehabilitation? Are we seeing a trend to lock them up and do nothing?

Professor CUNNEEN: That trend has been far more pronounced with the adult offenders than with juvenile offenders. One of the beneficial things that have occurred over the last decade has been a lowering in the number of young people in detention and an improvement in the level of programming for those young people. Again, I am not saying that it cannot be improved beyond what it is, but generally speaking it has improved over the longer term. Far fewer young people are in detention now than there were 10 years ago. That is an important issue. It is the opposite of what is happening in the adult sphere. In that sense the young people who are in detention now tend to be there for more serious offences than they might have been 10 or 15 years ago. That is partly a function of the lowering of the overall numbers of young people in detention rather than an argument that says that young people are becoming more violent or worse offenders. It is very important to keep that in mind.

The Hon. ERIC ROOZENDAAL: There has been lot of public comment and criticism about the Department of Juvenile Justice being too welfarist in its approach to managing juvenile offenders. Is that what you meant by a control problem when you talked about the control problems in juvenile justice?

Professor CUNNEEN: No. I think the Hon. Catherine Cusack mentioned the term "control problem" rather than me. What I said was that you can interpret a control problem as either being a management problem, a problem of management, or a problem of the offending behaviour.

The Hon. ERIC ROOZENDAAL: What are your views on the notion that some critics say that Juvenile Justice is too orientated towards the welfare of the inmates or the detainees, too welfarist in what it deals with? What is your attitude to that?

Professor CUNNEEN: My attitude is that it belies a lack of understanding of the way institutions work and the programs that are there. I actually do not know what people are talking about when they talk about welfarist. I do not know what it means. It is not like we provide a welfare approach to young people in detention. We provide programs to the extent that they are there, and they tend to be based on a psychological discourse about helping the young person improve their behaviour. A welfarist approach would, to my mind, be providing some sort of social welfare for young people, such as giving them a job, providing them with an education, providing them with housing. That to my mind would be a welfare approach to dealing with young people and we obviously do not do that. We provide programs to young people who are detained, and if the debate is whether we should simply lock people up and provide them with no programs or lock them up and provide them with programs, it is the second approach that we tend to adopt.

The Hon. ERIC ROOZENDAAL: I understand that you have done a fair bit of research into juvenile offending and management of young offenders. How would you compare the management approaches in New South Wales to other places, other States, other countries?

Professor CUNNEEN: I have not done research in that area.

The Hon. ERIC ROOZENDAAL: I have been misinformed.

Professor CUNNEEN: And I really do not have anything to offer in terms of a comparison in relation to the management approaches in other States, only to say that roughly one-third to a half of all young people who are detained in Australia are detained in New South Wales. So the management of juvenile offenders in other States is even smaller than it is here. I paint this picture in terms of numbers because it gives you an idea of the comparisons. If you think about 8,000 or 9,000 prisoners in the adult system, 350 or whatever the current number is of young people in the juvenile system in New South Wales, I think Western Australia might have 100, if that, young people detained. They are very small systems. By comparison, you would expect New South Wales and Victoria to have roughly similar numbers incarcerated because of the comparable populations, but Victoria has a much smaller number of young people incarcerated than we do.

The Hon. AMANDA FAZIO: You said earlier that Aboriginal offenders equate to management problems. Can you tell us why, and what you think might be able to be done?

Professor CUNNEEN: The issue is that often Aboriginal young people are less likely to comply or conform to the regimes within centres. I think historically if you look at the transfers to Kariong—and there is no evidence in the Department of Juvenile Justice report of this so I am speaking anecdotally—it is Aboriginal young people. There has always been a high proportion of Aboriginal young people in Kariong, higher than the general proportion in the overall detention centre population, and my perception is that they are there because of the management problems that they have posed, rather than because of the serious nature of the offence.

The Hon. CHARLIE LYNN: Are they city-based Aborigines or are they Aborigines from rural areas? What is the proportion?

Professor CUNNEEN: Most Aboriginal young people in detention come from the North Coast region and the far west region. I could be proven wrong on that but I am fairly sure that is right. Certainly in terms of Children's Court data, about two-thirds of Aboriginal people who appear before the Children's Court come from rural areas.

The Hon. CHARLIE LYNN: Has there been any research done, particularly on the Aboriginals outside the city area, of a sort of rural-based detention centre, almost without walls but with a lot of space that would be more suited to their culture and environment?

Professor CUNNEEN: The Hon. Amanda Fazio mentioned Yetta Dhinnakkal in the adult system and that is an adult correctional centre at Brewarrina. I think that has been quite innovative in terms of dealing with Aboriginal adults that have been incarcerated. One of the problems of simply building juvenile detention centres in rural areas is that we fill them up. If you build one in Dubbo you can be sure you will fill it up with Aboriginal kids, and that is basically what has happened. The department has made some initiatives in terms of setting up committees and bringing the Aboriginal people from the community into the centres but it does not really go to the heart of the issue as to why Aboriginal kids are going into detention. In terms of reoffending, there are problems with reoffending across the board but the likelihood of reoffending rates amongst aboriginal kids tends to be higher than for non-Aboriginal kids, and I think that points to a problem of lack of effective response from the department. The best things that can be done can be done outside detention in terms of Aboriginal kids, not within detention centres, and building more detention centres, even if they are in rural areas, will not solve the problem.

The Hon. CATHERINE CUSACK: In terms of the role of the committee, how do you formulate your agenda? Are those issues referred to you by the department or the Minister, or do you start on your agenda?

Professor CUNNEEN: Both. Generally though most of the work we do are matters that are referred to us by the Minister. I can give you a brief example. We are looking at issues relating to indigenous young people, particularly diversionary processes that are working in other States. That relates to your question as well. So what is effective in other States. We are looking at young women with babies and how they are dealt with in other jurisdictions. These are young women who are detained and who have children. We have also had a reference from the Minister on forensic patients, how other jurisdictions deal with forensic patients. So basically they are issues of importance to the Minister and the department, and they are referred to us. In addition, we take on matters that we see as

being important. I can give you an example of that. One is the relative little use that is made of 24 (1) (c) as an appropriate process for taking people out of detention and bringing them back into the community prior to the expiration of their sentence.

The Hon. CATHERINE CUSACK: In terms of visiting detention centres, do members of your committee, for example, Kariong, you have not been for a while but would the members of your committee have been there recently?

Professor CUNNEEN: We have members who are official visitors. Although that official visitor may not have been to Kariong, any concerns that are raised for instance through the official visitors will be put through her into the council.

The Hon. CATHERINE CUSACK: So that keeps you in touch with what is current?

Professor CUNNEEN: Yes.

The Hon. CATHERINE CUSACK: Would you accept that there seems to be a philosophical conflict in the department between people who favour a stronger custodial approach and those who favour more of a rehabilitation type approach?

The Hon. AMANDA FAZIO: Welfarist.

The Hon. CATHERINE CUSACK: A welfarist approach?

Professor CUNNEEN: I think a rehabilitation approach is much more—

The Hon. CATHERINE CUSACK: Is there a conflict?

Professor CUNNEEN: I am aware that there are different conflicts or different layers of conflict within the department between different groups. Perhaps that is one kind of rift, if you like. But I am only aware of it in very general terms. Our connection with the personnel of the department is not such that we would necessarily have direct knowledge of those types of conflict.

The Hon. CATHERINE CUSACK: In terms of staffing policies, have you ever reviewed or looked at those issues? I am interested in particular in the recruitment of staff, how staff are selected.

Professor CUNNEEN: No. The council has not looked at that issue in recent times.

The Hon. CATHERINE CUSACK: Staff training is an issue?

Professor CUNNEEN: No.

The Hon. CATHERINE CUSACK: Casualisation of the work force?

Professor CUNNEEN: I think they are important issues but they are not ones that have been addressed by the council.

The Hon. CATHERINE CUSACK: In terms of the relationship between Juvenile Justice and Corrective Services, can you comment on perhaps the potential to develop that in the future, especially when there are detainees moving between the two systems? Do they go into Corrective Services and that is the end of the matter? You never have any contact between the two departments?

Professor CUNNEEN: Sorry, I am not quite sure what you are asking.

The Hon. CATHERINE CUSACK: For a detainee who has been transferred into Corrective Services, is there communication between Corrective Services and Juvenile Justice?

Professor CUNNEEN: I am not aware of that. I am not aware that there is. In fact, as we suggested in the submission, our understanding is that there have been detainees from Kariong transferred into the adult system. Indeed, once they are fully in the adult system—that is, out of

Kariong and into the adult system—I cannot see that there would be any connection any longer to the Department of Juvenile Justice. There would be no ongoing mandate for the department to be involved. Our experience of trying to be involved in the working party, as we have mentioned in the submission, seemed to us to indicate that Corrective Services was not keen to have any input, even less keen to have input on this matter than what the department had from the council.

The Hon. Dr PETER WONG: Earlier we were talking about inconsistencies of the department's policy and Juvenile Justice. Does inconsistency between the custodial role and the rehabilitation objective of the department translate into management, therefore causing all this confusion?

Professor CUNNEEN: I find it difficult to understand why there is necessarily a conflict between custodial approaches and rehabilitation approaches. I say that because the first point is that young people are in custody and it seems that the only appropriate response once they are in custody is to provide some sort of rehabilitative approach. The functions of the department in relation to community services occur separately from and outside of a custodial approach. So once young people are in custody it seems that the only appropriate thing to do is to provide programs and rehabilitation. That is leaving aside all the debates about the numbers of young people in custody and whether they should be there. But once they are there I cannot see any validity to an argument that says we do nothing, they should be in custody, therefore they should be punished, therefore there should be some sort of punitive regime put in place.

The Hon. Dr PETER WONG: There are people who say they go there to serve their time, and therefore need strict discipline. They are not there to enjoy themselves.

Professor CUNNEEN: Frankly, anyone who says that should not be working in the Department of Juvenile Justice because they do not seem to me to have even a basic understanding of principles around juvenile justice, why we have a juvenile justice system in the first instance.

The Hon. AMANDA FAZIO: Just in relation to your last comment, what would you see as an ideal set up for Juvenile Justice if you had no budgetary constraints and no political conflict, no media breathing down your back—your wish list?

Professor CUNNEEN: Fewer numbers again. I think that numbers could certainly be reduced further. Once you reduce the numbers further, then the possibilities of putting in effective programs increases, even within existing budgets because you have lower numbers to deal with. So I think that is an important issue. The use of 24 (1) (c)—this is just within an existing framework; it is not merely answering your question in a utopian way—there certainly could be greater use of 24 (1) (c), to use that as a vehicle to reintegrate young people leaving custody into the community so they can be released earlier under supervision where it is appropriate. So you do provide a real vehicle for reintegration back into the community.

There is certainly scope to reduce the numbers further, particularly the number of young people who commit property offences. There are a range of programs around that have been shown to work well with young people. There needs to be a great deal of emphasis put on post-release. Section 24 (1) relates to a process to get people out of the system but, once they are removed from it, it is really important to provide fundamental support for those young persons to get back into the community. If I could give a very brief example from the work I have been doing on post-release. One of the very simple things is being able to provide young people with the ability to meet Centrelink reporting requirements, so that they do not get thrown off that system and have no money. These are quite fundamental things. It is important for young people to know that if they still have an outstanding fine they can write to the State Debt Recovery Office to have a plan put in place so that they can repay the fine, rather than be left thinking, "It's all too much! I can't do anything about it," and then find themselves back in detention.

These are basic requirements centred around housing, employment and income support. This is not rocket science. These are very simple things. Yet, in the past, very little has been done in that area. The department is doing some work in that area now, but a great deal more could be done. If you think about the life chances of young people, particularly when they come out of detention, it is not difficult to understand why they re-offend.

CHAIR: A final question.

The Hon. CATHERINE CUSACK: We have the opposite impression regarding what the community-based staffing department are doing. They are working very hard to do that. Their problem seems to me to be a lack of resources. They are so thin on the ground, and their client loads are so high, it is difficult for them to achieve an appropriate balance between the budget and resources of the detention centre system and the community-based system.

Professor CUNNEEN: I do not know what the differential in the budget is at the moment, but traditionally something like 85 per cent of the budget goes to maintaining the correctional aspect of juvenile justice. I do not think the balance is there. One way of improving that would be to reduce the number of young people in custody, and in particular removing young people who do not necessarily need to be in the system. My understanding is that over the longer term Juvenile Justice has had significant budgetary restraints. I do not doubt for a moment that that has restricted its capacity to deal with these issues.

The Hon. CATHERINE CUSACK: Plus, they too have to do the job of the Department of Community Services for these detainees.

Professor CUNNEEN: Yes.

CHAIR: Thank you, professor, for your contribution today. It has been most valuable. Thank you also for your submission.

(The witness withdrew.)

(Short adjournment)

JANE ANNE SANDERS, Principal Solicitor, Shopfront Youth Legal Centre, and

JANE VERONICA IRWIN, Solicitor, Shopfront Youth Legal Centre, affirmed and examined:

CHAIR: Ms Irwin, what is your occupation?

Ms IRWIN: I am a solicitor. I work at the Shopfront Youth Legal Centre, which operates out of a Salvation Army building in Victoria Street, Darlinghurst. We deal with people 25 years and younger who are homeless and/or otherwise disadvantaged.

CHAIR: Are you appearing in an official capacity for the centre?

Ms IRWIN: I am appearing in an official capacity for the Shopfront Youth Legal Centre. I am also a member of the Youth Justice Coalition, and I understand nobody from that coalition is attending the hearing, so I would like to appear as a member of the coalition also.

CHAIR: Ms Sanders?

Ms SANDERS: I also am a solicitor at the Shopfront Youth Legal Centre. I am the principal solicitor there. I also am a member of the Youth Justice Coalition. So I am appearing primarily in my capacity as a representative of the Shopfront Youth Legal Centre, but also as a member of the Youth Justice Coalition.

CHAIR: Do either of you wish to make a brief statement first?

Ms IRWIN: I may like to make a brief statement at the end, depending on the course of the hearing, if that is acceptable.

Ms SANDERS: The only preliminary statement I would need to make—and, it is a point made clear in the submission—is that we do have serious concerns about the manner in which the management of Kariong Juvenile Justice Centre has been transferred from the Department of Juvenile Justice to the Department of Corrective Services.

CHAIR: You might care to expand on that statement before members ask questions.

Ms SANDERS: Certainly. I note the first question on our question sheet asks us what are our main concerns. So, if you would like us to address that, we will. Our concerns relate partly to the fact of what has occurred but also to the manner in which that has been done. In relation to the substance of the issue, it is of grave concern that a juvenile detention centre—albeit a very high security one for serious offenders—that was under the management of Juvenile Justice has been transferred to the Department of Community Services. The two departments have vastly different cultures. When it comes to running prisons and detention centres, they have different roles, and the centres are run quite differently.

We both have to make clear at the outset that we have not had first-hand exposure to the situation at Kariong since the transfer, so that we cannot comment directly on whether there have been improvements to the way the centre has been run, or whether the changes have been for the better or for the worse. However, we certainly have anecdotal evidence from colleagues and other practitioners as to some of the detrimental effects of the transfer. Also, with our experience being in both the juvenile justice system and also the adult criminal justice system, our client group straddles the 18-year age mark, and so we are very well placed to observe the differences between the juvenile and the adult justice systems.

We are very worried that the emphasis is shifting quite clearly from a rehabilitative focus to a very punitive one, and we do acknowledge that Kariong is a centre for very serious offenders who do present with behaviour management problems most of them, and who do require a very high security classification. We are not denying that. We are not suggesting that these are young kids who might have done something a little bit naughty; they are serious offenders. That does not mean, however,

that a hardline, punitive approach is necessarily the correct approach. And certainly that is what we understand now has been done.

We do hear reports of increased use of lockdowns, young offenders there being confined increasingly to their cells for longer periods of time—which is the norm in adult correctional centres—reduced access to programs, reduced access to visits, including legal visits with legal practitioners. We have heard from the Legal Aid Commission, the Aboriginal Legal Service and from the private profession that they have been facing increasing difficulties in getting access to the centre; the visiting hours have been vastly truncated. I understand it is also a lot more difficult to get telephone access to inmates. And for inmates who are young their needs, I would suggest, are often higher and more pressing than inmates who are older and perhaps a bit better resourced. There also seems to be now a move towards reduced access to educational and rehabilitation programs, also to visits by counsellors and juvenile justice caseworkers and the like.

Something that has been very well publicised in the media was the filling in of the swimming pool. That was an image that was flashed across our television screens when the transfer of management was announced. That, to me, is indicative of the manner in which this has been done; it has been largely, in my opinion, driven by negative media publicity—and, again, that is not to deny that there were serious problems at Kariong, we certainly do not deny that, and those problems have been festering, if I could use that word, for several years now. So there were serious problems that needed to be addressed, but it seems that the impetus to address those problems came from negative media publicity, and the manner in which the transfer was undertaken was quick, it was done with little or no public consultation, and I would suggest that it also was done in a manner calculated to address the media exposure and to, if I could say this, appease the law and order lobby.

The filling in of the swimming pool, I think, is a very powerful image because Kariong was being portrayed as some kind of luxury resort where kids lay about all day eating pizza by the pool, where they had enormous privileges and were not being disciplined. Kariong, in fact, and I have been there, is very high security, even before the transfer of management to the Department of Corrective Services; it is a very tough environment; it is by no means a holiday camp. Something like filling in the pool is an indication that neither department adequately recognises the value of recreation, exercise and positive activities.

For these young men, some of whom have committed extremely violent offences, some of whom have serious behavioural problems and no doubt serious mental health problems, to cut off opportunities for exercise and for positive activities is, in my view, a very shortsighted way to go about things and doomed to create angrier young men with more tension and more pent-up energy which, if it cannot be channelled into positive ways, is going to be channelled negatively.

Ms IRWIN: As I understood it, that first general question was what are our concerns. Ms Sanders has outlined very comprehensively most of the concerns which are identified in the submission. If I could just add what are my concerns also—I will try and be brief: the lack of consultation as this legislation was introduced and moved through Parliament, particularly with the Juvenile Justice Advisory Council; the lack of consultation with experts and stakeholders in the area with expert skill and knowledge, that was of great concern; another concern to me is the fact the breadth of the legislation—and I detail that in the submission at page 2—in section 28 does not simply narrow this legislation to dealing with those offenders who are the most serious, the most hardened and the most criminal offenders as described in the second reading speech, but indeed that section is so broad as to include anybody who is over 16. Ground (4) states that "the Director General has formed the view that the person's behaviour is such that they ought to be transferred to Kariong".

In my respectful submission, that is a very, very broad power of transfer, and that is of great concern. That is not something that is, in my view, monitored by the judiciary or a judicial officer, it is a bureaucratic decision that causes us lawyers acting for these young people to hear alarm bells.

CHAIR: If you could just pause there.

The Hon. CATHERINE CUSACK: Just in relation to the concerns that you have outlined, what sort of model of consultation would you like to see with groups outside the department in

relation to these big policy decisions? Are you saying that the appropriate way to get it would have been through the Juvenile Justice Advisory Council?

Ms IRWIN: I cannot pretend to be an expert on all the people who should have been consulted but I know that the Juvenile Justice Advisory Council was not consulted and yes, I think that that body is critical in terms of having input and expertise in such an extraordinary policy decision that has huge implications for the juvenile justice system.

Ms SANDERS: I would agree with that. I am actually a member of the Juvenile Justice Advisory Council; I am its deputy chair, and I can therefore speak firsthand as to the complete lack of consultation. The Minister was kind enough to come and brief us about the transfer after the event, and I do acknowledge that the situation at Kariong had reached crisis point and something needed to be done. In an ideal world this inquiry ought to have occurred before anything happened, but I do concede that there were problems which needed urgently to be addressed. But there have been problems at Kariong for years and there could have been proper consultation had the Department of Juvenile Justice or the Minister had enough foresight to grapple with the problems earlier on.

The Hon. CATHERINE CUSACK: In terms of the outstanding issues, have you looked at all at the issue of transport of juveniles who are in Kariong? I understand that is being done by the juvenile system at the moment but that is under review for a decision in July.

Ms SANDERS: Are we talking about transport to and from courts?

The Hon. CATHERINE CUSACK: Yes.

Ms SANDERS: I am not sure. I cannot comment directly on that area.

Ms IRWIN: I cannot comment either, I am sorry, I do not have that knowledge.

The Hon. CATHERINE CUSACK: Would you concede that there were issues about transferring juveniles into the prison system who become adults prior and that in terms of the new power, which I concede you are saying has made it very quick and easy to decide, that the previous system was very cumbersome, particularly when young people are pending a decision and remanded back to the centre?

Ms SANDERS: There have been amendments to the legislation in the past couple of years, which has made it increasingly easy for detainees to be sent to adult prisons once they turn 18, or in some cases, for less serious offenders, when they turn 21. Depending on which provision was invoked, those transfers could actually take quite quickly and I would not call it cumbersome. I think any system of transfer that requires some judicial oversight is not cumbersome; it is fair and it contains checks and balances. If we are going to throw away proper procedural fairness on the grounds that it is cumbersome, I think that sets a very dangerous precedent.

The Hon. CATHERINE CUSACK: There was a situation at Kariong in that some young offenders who were adults and who had received long custodial sentences wanted to go to prison, but were unable to do so unless they committed further offences and were remanded as adults. The Ombudsman's report referred to that. Are you aware of that?

Ms SANDERS: Yes. I cannot speak directly of those particular inmates, but I understand that the Ombudsman's report referred to some juvenile detainees, now adult detainees in a juvenile centre, who had requested to go to adult prisons. I understand that three or four out of seven of them had moderate to severe intellectual disabilities. There may be young people who seek a transfer for reasons that perhaps have not been adequately thought through, such as access to cigarettes. Also, young people, particularly if they are from indigenous backgrounds and may have cousins or relatives or friends in adult prisons, may feel that that is a better place to be.

We come very much from a children's and youth advocacy perspective, and we believe that the participation of young people in decisions that involve them is of the utmost importance. However, one would have to be very careful about young people expressing a wish to go to an adult prison. They must be properly advised and know what it is that they are actually requesting and

consenting to; and know that if the transfer to an adult prison occurs and for some reason does not pan out, they are able to come back to the juvenile system.

Ms IRWIN: Could I just add to that? I would support what Ms Sanders says. The reason I smiled is because I am incredulous in a sense, even though I do not doubt that that is what has happened, because all the very young adults that we represent and see in adult prison always expressed anxiety and fear. They do not want to be there, and find it a dreadfully overwhelming, frightening place to be. I must concur with my colleague. The reasons why these young people are asking for that needs to be very carefully explored.

The Hon. CHARLIE LYNN: You said earlier that the problems in Kariong have been evident for years. Could you give the Committee an indication of the how many years? What were the warning signs? Why was no action taken in light of those warning signs? Did this just explode or, as you said, was it years in the making?

Ms IRWIN: Ms Sanders has much more knowledge than I do of the actual workings and problems at Kariong so I will defer to her in relation to that. But I referred in the submission to the very comprehensive 1996 report prepared by the Ombudsman. These problems are not new; these issues about behaviour management or other issues in juvenile justice centres are not new. In fact, a lot of resources have been committed and a lot of work has already been done on how to deal with these sorts of problems, I guess I can say at least from 1996 or even before the report was first commissioned. At page four of the submission we referred to the key themes that the report stated were problems. The report talks a lot about behaviour management problems and those key themes that permeated the inquiry, the Ombudsman's report states:

... the need for better initial and ongoing staff training and support; the regular evaluation and review of centre operations and programs are significant. Without these the department is in danger of neglecting its most vital resource, that is, 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 wellbeing of young offenders, juvenile Justice staff and the community.

The reason I want to refer to this is that the solutions to these problems have been looked at in detail before. The recommendations are not simply greater control or greater punitive schemes, but rather more resources and more staff training. They are the sorts of issues that we would support so that they can continue to be a focus on the importance of rehabilitation and change for these young people who are going to become young adults and enter into our community. It is inevitable that these people are going to enter into our community again. We do not want young people who have just been controlled and punished; we want young people who have been rehabilitated. We want to know that resources have been there at a very developmental part of their lives to change their behaviour for the protection of the community upon their release.

The Hon. AMANDA FAZIO: I want to ask you some questions about some of the comments you made in your opening statement. You said that visits appear to have been slashed. Are you aware that a system has been instituted at Kariong whereby all visits are booked and that, in fact, not all the available spaces in the booking system have been taken up?

Ms SANDERS: I am aware that it has changed to a system of visit bookings. I was not aware that not all the slots had been taken up. I do not know whether the time slots when you can book visits are generally convenient time slots. I certainly have heard, from one practitioner at least, that the time slots available for legal visits are seriously limited, usually to a time when most legal representatives will be appearing in court and therefore unable to visit. I cannot talk about other visitors, but, in the case of family members, they may be travelling from some distance and relying on means of transport that are not perhaps all that reliable. In the case of professional and legal visitors, the times at which they can visit very much depend upon factors beyond their control—such as court schedules or whether their case happens to finish early. The same would be true of professional visitors such as psychologists and the like.

If you work in the human services or juvenile justice field your work is often crisis-driven and it can be quite difficult to plan and schedule visits. So there does need to be flexibility in regard to visits, in particular visiting times. I can speak not specifically Kariong as we have not had to visit any clients there lately, but visiting time slots for legal visits at adult correctional centres such as

Parklea and Parramatta are very limited, 9.00 a.m. to 11.00 a.m. and 1.00 p.m. to 3.00 p.m.—and not on every day of the week, but most days of the week. For legal practitioners who spend most of their time in court it is virtually impossible. Sometimes it takes us a couple of weeks to actually find a time when you can go out and visit a client. That would be my comment about the visits.

The Hon. AMANDA FAZIO: You also talked in your opening statement about restricted access to recreational activities. Even though the swimming pool has been filled in, are you aware that detainees still have access to cricket, soccer, basketball, badminton and all that sort of thing?

Ms SANDERS: That is certainly good. I was not suggesting that recreational activities have been curtailed altogether. To me, the filling in of the swimming pool was a very powerful symbol of the culture that has now taken over and the fact that the whole decision was very media-driven. I am certainly heartened to know that there are still some programs and recreational activities available but I do suggest they are probably more limited.

Ms IRWIN: Could I just add to that, please? Ms Sanders and I have an understanding of the different way that the Department of Corrective Services deals with adult jails, compared with the way the Department of Juvenile Justice deals with juvenile detention centres. Our great concern is that the culture of the adult system is going to permeate the culture of the juvenile justice correctional facility at Kariong. It is undoubtedly the case that the recreational facilities for adults in adult correctional centres are significantly less than those in juvenile justice detention centres. It is not just recreational. My colleague referred to the fact that legal visits have been significantly altered.

If a young person in detention is in need of crisis legal advice, someone we need to have access to urgently because something has happened in respect of a court matter, we can pick up the telephone and speak an officer in the juvenile detention facility. That officer will eventually put us through to the young person and we can provide them with legal advice and direction. In an adult centre we just cannot get hold of our clients. We have to travel all the way out to Parklea, which is a long way from Darlinghurst, in order to have a legal interview. At court it is generally through audio-visual link. We get very limited opportunity. In some courts we get some, but, for example at Liverpool, it is at the Bar table that you get to pick up the phone and have a conversation with your client and it is extremely difficult to give them legal advice. It is very important for young adults, who are frightened of the process, to have access to their solicitors and to information.

In terms of welfare, could I just say that the other day I heard a comment from a very young adult in Parklea. He was there for two weeks before I could get out to see him. He had significant drug and alcohol issues and a range of other things, including the death of his grandmother and was grieving. I told him that he needed to go and see the welfare officer. He said to me, "What is a welfare officer?" He had been in detention for two weeks and did not even know what a welfare officer was. I would like to give another example on the issue of resources. I had the young HIV positive client in an adult prison, a very young adult only 20 years old. He felt that the stigma of being HIV positive in an adult correctional facility was such that he would not take his medication. His words were, I wrote them down so that I could quote them to the Committee, "In prison you are outlawed when on medication and you are put on show three times per day when your meds are dropped off for you." He was in the moderate to serious range of HIV because of the culture and experience of an adult correctional facility.

The Hon. AMANDA FAZIO: You do not have any clients in Kariong at the moment and have not been up there since the changeover. Committee members went on a site visit to Kariong and detainees volunteered to us that they are lot happier up there now. Because they have boundaries they know what they can and cannot do, and there is a very consistent approach. there was quite a detailed selection process for the Corrective Services staff who went into Kariong to ensure that they were people who would be appropriate to deal with the detainees. Is it not the case that your submission is based on your fears and concerns about the potential detrimental effects of the changeover, rather than based on practical knowledge of what has happened since the changeover?

Ms SANDERS: I think we would have to concede that that is the case, yes. We would have to concede, as we already have I think, that Kariong was in crisis before the changeover. It was badly managed and poorly staffed. Staff selection left a lot to be desired. There was a real dichotomy between the rehabilitation programs on the welfare side of things, and the security control and

behaviour management. Those two aspects of the centre were not properly integrated. Clearly, the centre is being more, shall I say, efficiently managed now. There is a greater sense of boundaries and that is certainly a positive thing. A well-run centre is better than a poorly run centre. However, in my view the Department of Juvenile Justice would have been well placed to run the centre had it actually dealt with these problems head-on instead of transferring it to another department.

I see no reason why the Department of Juvenile Justice, with some reforms to the staffing and management of the centre and some proper consultation, could not have redeveloped the centre into a well-managed one. Yes, we are concerned about the potential for what could happen. It may be now that Kariong is very much in the spotlight, partly as a result of this inquiry. We do have fears that in the future perhaps it might go a little bit out of the spotlight; resources allocated to Kariong may begin to dwindle and more young people will be transferred not only from other juvenile justice centres into Kariong but from Kariong to mainstream adult prisons and we are, quite frankly, worried that this may be the thin end of the wedge.

CHAIR: Have you got any comments on the fact that at Kariong under the present regime at 3.30 p.m. everybody is locked into their cells; they have their evening meal at 3.30 p.m. and they are then locked there until 7 o'clock or 6.30 a.m. the following morning?

Ms SANDERS: I view that as a very negative thing. That is generally what happens in adult correctional centres, except perhaps some inmates in some centres such as the John Moroney correctional complex at Windsor get a later lock down if they are fortunate enough to have a job within the prison; they get a slightly later lock down, but the vast majority of adult inmates like those at Kariong now are locked in at 3.30. Some may have a TV in their cell, which can help them while away the hours.

The Hon. AMANDA FAZIO: They have all got TVs, toasters and fans now.

Ms SANDERS: Yes, well, that is good at least that they have something to occupy them. One must remember also that among other juvenile and adult prisoners or detainees, literacy levels are appallingly low. Reading and that sort of activity is virtually—it is not an option for these kids. You have got young males, many presumably with a lot of energy, being locked in for hours on end to watch TV or to while away the time. It is not a constructive form of activity. There is not an appropriate outlet for their energy.

The Hon. Dr PETER WONG: Given the relative "success" of Kariong since the changeover, what urgent reforms do you think that the Department of Juvenile Justice must do so that not more and more detentions go that way?

Ms IRWIN: That is a difficult question because I do not think that it is a positive reform that Kariong is now a juvenile justice correctional facility, so the urgent reforms that I would propose would be a change to the legislation to ensure that it is the Department of Juvenile Justice that oversaw our juvenile justice facilities not the adult Department of Corrective Services.

I agree that it is urgent because I think all the issues that we have been talking about around this table today, if we look at the United Nations rules on detention of children, in particular the comment made by Mr Chair, they are in breach of the United Nations rules. That confinement from 3.30 at night until seven in the morning surely is a breach of the United Nations rules in relation to juveniles. There is a very good reason why we have these rules and why we have the national standards that we refer to in our submission. The Australasian standards for juvenile justice are very carefully thought out, developed policies and rules about how we should be detaining our juvenile offenders.

The Hon. Dr PETER WONG: Notwithstanding your argument, the facts are that we have a totally incompetent and maybe dysfunctional Department of Juvenile Justice where there are many complaints. Indeed, Amanda Fazio made the statement that many inmates, fortunately or unfortunately, did mention that they do feel a lot safer and more disciplined. That perception could give the Government more impetus to move more that way with law and order. Obviously, we need to reform the juvenile justice system. There must be some suggestions that you can give the Committee that we can put to the Government.

Ms SANDERS: I would not accept that we have a totally dysfunctional Juvenile Justice Department. In many aspects the department works very well indeed, particularly in relation to their community-based services. In relation to other detention centres, and admittedly some are run better than others and I think there is an urgent need for the department to undergo review of its detention centres and the way they are managed, particularly in trying to better integrate the functions of rehabilitation, programs, welfare and health, I might add, with the needs for behaviour management and security and control.

It seems that in some of the juvenile detention centres there is a dichotomy between the two and you have some staff mainly concerned with programs and others mainly concerned with the day-to-day security and discipline at the centre and they do not integrate very well, so there is a real urgent need for the department to look at that. Might I add, though, that within the Department of Corrective Services from my experience those functions do not integrate very well.

You have your correctional officers, responsible for security and discipline. You have got your welfare staff, the drug and alcohol workers and the like. They are very, very separate groups of staff. When they work well together, that is great, but often they seem to be at cross-purposes or at loggerheads. I would not suggest that the Department of Juvenile Justice is unique in that regard. Those problems exist within the adult correctional system too, and probably to an even greater extent.

The Hon. CATHERINE CUSACK: Your submission is really on the legislation, is it not, rather than on what has actually occurred at Kariong in recent months? It is about the legislation and there is always the potential under the legislation for these concerns you have to come about, would that be fair comment? Would it also be fair to say that the legislation is not Kariong-specific? Does that raise questions?

Ms IRWIN: Yes, I think that is a fair comment, that the submission is about the legislation and about the potential for the legislation. And I agree, I do not think that the legislation is Kariong-specific.

Ms SANDERS: Clearly, the legislation was enacted to deal with the problems at Kariong, but the concern is, as we have said, the thin end of the wedge; that other centres could be proclaimed to be juvenile correctional centres. It could open the gate for the transfer of larger numbers of detainees from juvenile detention centres into adult facilities and it does concern us.

The Hon. CATHERINE CUSACK: Just to be clear about what you are recommending to the Committee, are you saying that you can see a role for juvenile correctional centres but that they should be operated by Juvenile Justice?

Ms SANDERS: Well, the concept of a juvenile correctional centre is one that is a little bit difficult for us to accept or to fathom perhaps, but there is certainly a necessity for a high security detention centre or centres. There is no doubt that there are juvenile offenders who are violent and who are a real behaviour management problem. They do need to be dealt with in a different way from your average juvenile detainees. There are also, of course, people who commit offences as juveniles, who are now over 18; they are adults, some who still have years left on their sentence.

We agree that separating juveniles from adults is important, however, the answer is not to just ship everybody off to an adult prison once they turn 18. We believe that within the juvenile justice system, even though the numbers are relatively small, there are adequate facilities available to house those older and more serious offenders away from the younger and the more vulnerable.

CHAIR: You mean in a place like Parklea or somewhere?

Ms SANDERS: No, I was not suggesting that. I was suggesting within the juvenile justice system.

The Hon. CATHERINE CUSACK: There seems to be a gulf between the juvenile and the adult systems, and there seems to be a group of people in the middle who are not easily

accommodated by either system. Do you have any comments to make on that? I know in Victoria they have the training centre concept. These are the alternatives that we would be interested in.

Ms SANDERS: I think that is something that could really be worth exploration. We do not have direct practical experience of how that two-track system works, but I think it would certainly be worth exploring. Certainly, there are young adults—among them many of our clients—who may be 18 or 19, who commit a serious offence. Some of them may have a juvenile criminal history; some may have no criminal history and out of the blue suddenly they are in big trouble. For those people, that kind of a two-track system where they could be in some kind of the training centre or a young adult correctional facility certainly would be worth exploring.

The Hon. CATHERINE CUSACK: Could I ask you to give some consideration to that matter?

CHAIR: And could you give that to us in writing?

Ms SANDERS: We could endeavour to do that.

CHAIR: Your positive contribution would be most helpful.

The Hon. CATHERINE CUSACK: You raised in your submission compliance with the recommendations of the Royal Commission into Aboriginal Deaths in Custody. Would you like to further expand on the recommendations that are not being complied with?

Ms IRWIN: That is on page 9 and it relates to the Australasian Standard on Juvenile Justice Custodial Facilities. It refers to the standard that says:

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.

I did not actually access those recommendations. I just referred simply to the national standard of juvenile custodial facilities.

Ms SANDERS: Could I perhaps comment on that? Certainly, one of the factors in the physical design of cells is no opportunities for hanging, and I am not suggesting that has been breached, but also one of the factors behind Aboriginal deaths in custody is isolation, particularly young Aboriginal people being locked down, often for extended periods in isolation. So, we are concerned about the extended periods of lock down that are now occurring at Kariiong.

Also, I am not sure of the extent to which this is happening in practice but certainly in the adult correctional system the use of segregation as a behavioural management tool and as a punishment for misbehaviour is quite widely used in the adult system and a lot of our clients have been subjected to that. You can be in "segro" for days or weeks. For indigenous people that kind of segregation, lock down and isolation is in direct breach, I would suggest, of the recommendations of the royal commission.

CHAIR: May I just correct comment I made about the lock down. It is from 3.30 p.m. to 9.00 a.m. not 7.00 a.m.

Ms SANDERS: Well, that is even worse then.

CHAIR: As you raised the issue of isolation, it is now up to five days in isolation.

The Hon. ERIC ROOZENDAAL: I understand the thin end of the wedge argument, although I do not find it persuasive since you have not actually been to Kariiong to see the changes. We went on a site visit. We got feedback from inmates who spoke to us—inmates either walking around or inmates who booked the time to see us. The feedback from teachers, art teachers and other teachers participating in the educational program and the feedback from the chaplain was all extremely positive.

The Hon. CATHERINE CUSACK: I do not think that is right.

The Hon. ERIC ROOZENDAAL: I thought it was very positive in relation to a number of aspects. A number of other indicators are that the school at Kariong is running at 100 per cent capacity, which I think is a change from the way in which it was running previously. There are now negotiations with the Department of Education and Training for additional placements. That does not quite lock in with your view that educational programs have been reduced. In fact, they seem to have been expanded.

The Hon. CATHERINE CUSACK: Point of order: The honourable member needs to ask a question rather than make a speech.

The Hon. ERIC ROOZENDAAL: What I was going to say before I was rudely interrupted was that inmates have been given an opportunity to participate in various jobs—ground maintenance, work in the laundry and kitchen, and things like that. Do you not think that is a positive aspect for the detention centre?

Ms SANDERS: It certainly is, if that is what is happening. As we have both said, we do not have first-hand knowledge of what has been happening at Kariong since the transfer. That is a positive thing. Access to those programs is good and they have a place. Education is an important and meaningful activity. We are concerned, however, that access to health, in particular, mental health programs and welfare support in order to meet the needs of these young people, may be reduced, in particular, access from outsiders. Some of the chaplains at the centre appear to be concerned about that. Access for people such as juvenile justice caseworkers, chaplains, mental health professionals and the like from outside seems to be reduced.

In a correctional centre—whether it is a juvenile or an adult correctional centre—it is vital that professionals from the outside are able to have access so that the programs can be run. So there may be positive developments at Kariong. It appears discipline-wise that there is an improvement. A well-run centre is much preferable to a badly run one. However, we still believe that it is within the capacity of the Department of Juvenile Justice to transform the centre into a well-run centre without transferring it to corrective services with all of the changes in culture and the management that that entails.

The Hon. AMANDA FAZIO: You said earlier, or I got the impression from your comments that you thought there was lack of procedural fairness regarding transfers of detainees from the Department of Juvenile Justice to the Department of Corrective Services. If I tell you what happens you can tell me what you think about that process and whether it meets your criteria for procedural fairness. At the moment transfers up from a juvenile justice centre to an adult correctional centre can only be made on the order of the Minister. That has to be recommended to her by the commissioner, that is, in the case of someone aged 18 or older. If they are under 18 they have to go before the Serious Offenders Review Council, which has a look at it to see whether it is appropriate. The juveniles are entitled to appear and be heard before the Serious Offenders Review Council and they are entitled to be accompanied by legal representation of their choice. Do you think that process gives procedural fairness to that transfer system, or what else would you like to see done to enhance that process?

Ms SANDERS: Some transfers can occur without juveniles appearing before the Serious Offenders Review Council. So they are merely administrative.

The Hon. AMANDA FAZIO: For juveniles under the age of 18?

Ms SANDERS: For juveniles under the age of 18. I cannot speak about specifically about the composition of the Serious Offenders Review Council, but I have some experience with the Parole Board. As I understand it, it is a fairly similar body. It is not the Serious Young Offenders Review Panel; it is a different entity. It is a body that traditionally is concerned with serious adult offenders, not just juveniles and young people. Like the Parole Board, it is an administered tribunal and it may have a judicial member. Again, if it is anything like the Parole Board, I do not find that tribunal procedurally fair. I would like to see an avenue of appeal to a court and particularly to a court that has expertise in dealing with children, preferably the Children's Court and for some more serious

offenders to the District Court. But I think judicial scrutiny over and above that of the Serious Offenders Review Council is necessary.

CHAIR: To a magistrate?

Ms SANDERS: I think it would depend—ideally to a Children's Court magistrate because they have the expertise in dealing with young offenders.

The Hon. AMANDA FAZIO: You made comments about the period for which detainees are locked down. At the moment it is at 3.30. That will be changed shortly to 7.30. The problem with 3.30 at the moment is that they are sorting out a process of sanctions and a privileges scheme, which includes buy-ups, which they have in the adult system. If they are locked down at 7.30 p.m. would you regard that as being far more positive?

Ms SANDERS: Yes, certainly. That is a lot better than 3.30. It is a difference of four hours. It means that they are locked in for more like 12 hours rather than 16. If the lockdown continues to finish at 9.00 a.m. that is quite a late time of the morning to remain locked in. It would be preferable if the lockdown could finish, say, at 7.30 a.m. But 7.30 p.m. is a big improvement on 3.30 p.m.

Ms IRWIN: When you said that the reason it is 3.30 is that they are working out a system of privileges, what do you mean by that? Do you mean that staff are busy during that time and that is why they are locked down so early?

The Hon. AMANDA FAZIO: No. It is not that staff are busy and that is why they are locked down during that period. They are revising a system that works in an adult correctional centre to make it more appropriate for a juvenile correctional centre and it is taking a little time to finetune. I think that is the reason for the delay.

Ms IRWIN: My comment about that would be that it is extremely concerning. The reason for the current lockdown is that things are being organised. If that is the way the Department of Corrective Services needs to operate now when there is a problem and it needs more time and the rights of young people at the correctional centre are overlooked, that is a concerning and problematic precedent.

CHAIR: I was concerned with the food arrangements, namely, at breakfast time. There were seven slices of bread, a packet of cereal and two pieces of fruit. That was not just for breakfast; that was also for the evening meal. For lunch it was traditionally pasta and the evening meal was whatever remained of the bread and fruit.

The Hon. ERIC ROOZENDAAL: No, the evening meal was a hot meal.

CHAIR: Does that sound reasonable food for growing lads?

Ms IRWIN: Our legal expertise probably cannot comment on the nutritional value of the breakfast, but I think anyone sitting around the table would be very concerned about that.

The Hon. AMANDA FAZIO: They are introducing a buy-up scheme.

Ms IRWIN: I make the comment that that is a dreadful precedent.

The Hon. CATHERINE CUSACK: Is the quality of legal advice to children in detention what it should be?

Ms SANDERS: I believe generally that it is. The children's legal service is an excellent service that has gone from strength to strength over the last six or seven years since it was introduced. The Aboriginal Legal Service also has high-quality lawyers. I think the difficulty is the resources that those organisations have. They are not as able to be as available as is desirable simply because funding for legal services is extremely limited. So from a resourcing perspective advice is never adequate. However, from a quality perspective I think it is quite good.

The Hon. CATHERINE CUSACK: In rural communities where a lot of pro bono work is being done, children's law is very different to adult law. Is that an issue at all? A lot more kids from rural communities are in detention than there are kids from metropolitan areas.

Ms SANDERS: I think that is an issue. In rural and remote areas where there is a high Aboriginal population and where the Western Aboriginal Legal Service or other legal services exist they produce high quality lawyers. But in areas where young people are non-Aboriginal or they do not have access to such a service there is always going to be a variation in the quality of legal advice. You will have country practitioners who do not have access. They do not necessarily get to do a high volume of children's work to get the experience. They also do not have access to the training and resources that we are lucky enough to get in the city. So the quality of legal advice is likely to be more variable. Having said that, I know several rural practitioners who are committed and who are excellent lawyers and they have a good knowledge of children's and juvenile justice issues.

The Hon. AMANDA FAZIO: I refer to the experience that you have had not necessarily at Kariong but in dealing with clients in other juvenile detention centres. They have now separated out any of the vulnerable detainees at Kariong who are at risk, for a variety of reasons, from other detainees. They seem to be quite happy that they did not have to mix in with the general population of detainees. Do you think that is appropriate? Do you think that is an improvement on what was there before?

Ms SANDERS: It is certainly appropriate that detainees who are at risk be given some protection. I think the way it is done though has to be very carefully thought out. In the adult prison system, for example, we have quite a few clients who go on protection for various reasons—usually because they are very young. They might be young gay men, physically slight and incredibly vulnerable. They go on protection either because they request it or because they get beaten up and they are told, "Right, you are going on protection." Once you are in protection there is no way out. This is in the adult system. There is no way out of protection. If you sign yourself out of protection you are going to get bashed 10 times more severely than before you went in. I think partly that is to do with the association of protection with child abusers and police informants. So you are a dog or a rock spider. If that culture from the adult system begins to permeate Kariong and the juvenile system there will be a difficult problem with protection. In principle, protecting vulnerable inmates is a very good thing, but it has to be done carefully.

CHAIR: The culture may already be there.

Ms SANDERS: It may well be.

Ms IRWIN: The concern also is what they do whilst in protection. Are they isolated? Is it one person or is it two people? How many people are there? Who are they interacting with? What are they spending their time doing? I remember a client in protection telling me that he spent all day in his cell watching television and he just wanted to know how to get out. That is just awful. The question is: What is happening in protection for these young people?

The Hon. AMANDA FAZIO: There seemed to be four or five in the population out of a bit over 30 who had recreational activities within the area that they were in. One was doing correspondence through TAFE or something. They seemed reasonably content.

The Hon. CATHERINE CUSACK: They were restricted but they were placed there to be separated from the other detainees.

CHAIR: Are there any other questions?

The Hon. Dr PETER WONG: Yes. Can you tell us from your general knowledge the level of appeal at juvenile court as compared to adult court appeals?

The Hon. AMANDA FAZIO: The number of convictions appealed?

The Hon. Dr PETER WONG: The level. How many they appealed.

Ms SANDERS: I am not entirely sure of the question.

The Hon. AMANDA FAZIO: The volume of appeals that come from the juvenile court compared with the number of appeals in adult courts.

Ms SANDERS: I do not know. I really could not say. Speaking from our experience, at metropolitan children's courts, where there are specialist children's magistrates and specialist children's lawyers, all the kids coming before the court are legally represented. Generally you get fairly good decisions, you know, reasonably fair, that perhaps are less likely to be appealed; whereas sometimes in adult Local Courts people may go unrepresented. Magistrates may not have all of the relevant information at their disposal. Decisions may be more rushed. Perhaps you are more likely to get bad decisions there which may be appealed—often once the young person, offender, gets legal advice for the first time. That would be a general comment but I do not actually know the statistics.

CHAIR: Ms Sanders and Ms Irwin, thank you very much for your contribution. The work that you are doing in the heart of the city is extremely important and we thank you for that too.

(The witnesses withdrew)

(The Committee adjourned at 4:17 p.m.)

NOTE:
Peter Wong's correction's were made on the 11 Mar. 05